

Ramon v. Umedib, 1 ROP Intrm. 564 (1989)
ELUMEL RAMON, et al.
Appellants,

v.

NGIRABEDECAL UMEDIB, et al.
Appellees.

CIVIL APPEAL NO. 7-87
Civil Action No. 118-78

Supreme Court, Appellate Division
Republic of Palau

Order dismissing appeal
Decided: January 20, 1989

Counsel for Appellants: John K. Rechucher

Counsel for Appellees: Johnson Toribiong

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;
and ARTHUR NGIRAKLSONG, Associate Justice.

MAMORU NAKAMURA, Chief Justice:

The appeal of Blumel Ramon, et al. in the above-captioned case is hereby dismissed. Appellants failed to timely file their appellate brief by the deadline, February 22, 1988.

Rule 31(b) of the ROP Appellate Procedure states:

Time of Filing. Appellant's brief shall be filed within forty-five (45) days after the notification (service) of certification of the record by the clerk of the trial court.

Certification of the record occurred on January 7, 1988, when the Clerk of Courts, Mr. Lucio Ngiraiwet, certified the transcript and records of the case as complete for appeal. The forty fifth day deadline for the filing of Appellants' brief was February 22, 1988.

1565 Rule 31(c) of the ROP Appellate Procedure states:

Consequences of Failure to File Briefs. If an appellant fails to file his brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal

Appellants argue that Rule 31(c) is permissive and does not require that we dismiss their appeal.

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We agree with appellants on these points. 9 J. Moore, Moore's Federal Practice, ¶ 231.02[3] (2nd ed. 1983). We also agree with them when they note that our Rule 31(c) is identical with Rule 31(c) of the U.S. Federal Rules of Appellate Procedure, and that cases from the United States which have applied this rule offer useful guidance to us.

This Court has previously considered the circumstances under which Rule 31(c) will be applied in *ROP v. Singeo*, Criminal Appeal No.2-87, (App. Div. 1987). Ruling on Appellee's Motion to Dismiss and on Appellant's Motion for Extension of Time. In that ruling, the Court served "notice upon the Bar that henceforth naught but good cause shown will be sufficient grounds for any departure from the rules". *Id.* at p. 3. In the instant appeal, Appellants did not file a request for extension of time to file their brief until March 2, 1988, long after the deadline of February 22, 1988. The Appellants, therefore, have disregarded Court's warning in *Singeo*.

1566 Appellants cite several cases from the United States, among them *Teamsters, Chauffeurs, Warehouseman and Helpers Local Union 524 v. Billington*, 402 F.2d 510 (9th Cir. 1968). Appellants have misread this case. *Billington* stands for the proposition that even though appellee has failed to file a brief and failed to appear at argument, an appellate court must nevertheless consider the appellant's brief and the record made below. *Id.* at 511.

United States v. Edwards, 366 F.2d 853 (2nd Cir. 1966), *cert. denied*. 386 U.S. 966, 87 S.Ct. 1048, 18 L.Ed.2d 117 (1967), was a criminal appeal case in which the court vacated a dismissal for failure to file a timely appellate brief. *Id.* at 857, n.1. The dismissal had previously been granted by the same appellate court, but because of "unusual circumstances which prevented his attorney from devoting his time to [the] case," *Id.*, the 9th circuit vacated its earlier decision. We do not know what these "unusual circumstances", were. However, the press of an attorney's other important business does not constitute excusable neglect for purposes of ROP App. Pro. Rule 31(c). *ROP v. Singeo*, Criminal Appeal No. 2-87 (App. Div. 1987); *United States v. Bowen*, 310 F.2d 45, 47 (5th Cir. 1962); *Marcaida v. Rascoe*, 569 F.2d 828, 830 (5th Cir. 1978). Counsel should not feel entitled to indulge in assumptions of leniency simply because Rule 31(c) contains an express grant of judicial discretion. *United States v. Bowen*, 310 F.2d at 47.

1567 *King v. Laborers International Union of North America, Union Local No. 818*, 443 F.2d 273 (6th Cir. 1971), cited by Appellants, only stands for the proposition that where an appellant is proceeding in forma pauperis and without counsel, and is otherwise diligent, the courts will be especially solicitous. *Id.* at 277.

Phillips v. Employers Mutual Liability Insurance Company of Wisconsin, 443 F.2d 273 (5th Cir. 1956), likewise cited by Appellants, ruled that (then) Fed. R. Civ. P. 73(a) (now Rule : 31(c)) was not jurisdictional, so that the court maintained its discretion as to whether or not to dismiss the appeal for failure to timely file the appellate brief. *Marcaida v. Rascoe*, 569 F.2d 828, is inapposite because in that case appellant timely requested and received several extensions of time to file its brief, but failed to so inform opposing counsel at one point. Appellee in *Rascoe* filed its motion to dismiss appellants' appeal only "well after the extended time period for filing appellants' brief had passed." *Id.* at 830.

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In fact, *Rascoe* reinforces the proposition that “preoccupation of counsel with other matters does not dispense with the necessity of compliance with the rules” that require timely filing. *Marcaida v. Rascoe*, 569 F.2d at 830.

¶568 It is the responsibility of counsel to organize their practice in such a way as to meet the time requirement of court rules.

IT IS, THEREFORE, ORDERED that Appellees Motion to Dismiss Appeal be, and the same is, hereby GRANTED.