

Republic of Palau v. Singeo, 1 ROP Intrm. 428A (1987)

REPUBLIC OF PALAU
Plaintiff/Appellee,

v.

LEEMAN SINGEO
Defendant/Appellant.

CRIMINAL APPEAL NO. 2-87
Criminal Case No. 370-86

Supreme Court, Appellate Division
Republic of Palau

Ruling on appellee's motion to dismiss and on appellant's motion for extension of time
Decided: November 13, 1987

Counsel for Appellee: Shad D. Priest, AAG

Counsel for Appellant: Carlos H. Salii

BEFORE: MAMORU NAKAMURA, Chief Justice; ARTHUR NGIRAKLSONG, Associate Justice; and FREDERICK J. O'BRIEN,¹ Associate Justice Pro Tem.

PER CURIAM:

Appellee moved to dismiss the appeal herein, pursuant to ROP R. App. Pro. 31(c), on the grounds that Appellant had failed to file his brief within 45 days, as required by ROP R. **1428B** App. Pro. 31(b), and had not filed a timely motion for an extension. Appellant did file such a motion, albeit two days after Appellee had filed his motion to dismiss, and 45 days after his brief was due to be filed. He ultimately did file a brief on September 1, 1987, 65 days late.

Appellant's reasons for his dereliction were (a) substantial legal research outside the jurisdiction was necessary due to the limited research facilities available in the Republic and the complexity of the issues involved in the appeal, particularly the matter of the constitutional validity of 17 PNC § 3306(a) [unlawful use of a firearm], (b) after completing his research and having written most of his brief, appellant's counsel lost the brief when a power outage erased his work from his computer, and (c) counsel lost his secretary via resignation; she had always kept track of his deadlines for him. Counsel filed no affidavit in support of his motion.

Good cause has not been shown for counsel's failure to file his brief on time, nor for his failure to file a timely motion for an extension, nor for his failure to file a supporting affidavit.

¹ Presiding Judge of the National Court of the Republic of Palau, assigned for temporary service with the Supreme Court by the Chief Justice, pursuant to Article X, Section 12, of the ROP Constitution, and 4 PNC § 201.

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An attorney -- whether for a private party or for the government -- owes his client the utmost degree of diligence and industry.
United States v. Raimondi, 760 F.2d 460, 462 (CA 2,1985).

1428C There was simply no valid reason put forth for counsel's failure to file for an extension before the time for filing his brief had run. Counsel is an experienced attorney and, therefore, is familiar with the doctrine of respondent superior, so the loss of his secretary is simply a lame excuse. Even the loss of his work product from his computer's memory due to a power outage, if true, was not good cause, first, because that occurred after the filing deadline had passed, and second, because the brief could have been reconstructed from counsel's research notes. The absence from the brief of any sign of research beyond the capacity of the facilities available in the Republic makes counsel's excuse on that account highly suspect. Finally, there was no reason offered for counsel's failure to file a supporting affidavit.

The language of ROP R. App. Pro. 31(c) makes it clear that the consequences for a failure to file timely are discretionary. The Court is concerned about the severity of the sentence with which Appellant is faced and whether dismissing his appeal would serve the ends of justice. It seems to the Court that justice can best be served by allowing Appellant to pursue his appeal, by sanctioning appellant's counsel, and by serving notice upon the Bar that henceforth naught but good cause shown will be sufficient grounds for any departure from the rules. The Court adopts the following **1428D** language from *United States v. Raimondi, supra*:

. . . all those who practice before this Court should consider themselves on notice that motions to extend time to file briefs will be carefully scrutinized and denied unless good cause is shown. Good cause shall not be deemed to exist unless the movant avers something more than the normal (or even the reasonably foreseeable but abnormal) vicissitudes inherent in the practice of law. When such a motion is not made in a timely fashion, it will be scrutinized all the more carefully, as will the reasons for its untimely filing. *Id.* at 462 (emphasis added).

Appellant's motion for an extension is GRANTED. Appellee's motion to dismiss is DENIED.

In the exercise of its inherent power to discipline attorneys, ² the Court hereby sanctions Carlos H. Salii, and orders him to pay \$500.00 to the Clerk of Court by 4:00 p.m., on Friday, November 27, 1987.

² ROP Constitution, Article X, Sections 5 and 14, and 4 PNC § 101.