

Blesam v. Tamakong, 1 ROP Intrm. 547AA (1988)

**ICHIRO BLESAM,
Appellee,**

v.

**ILAB TAMAKONG and
GILLIAN TELLAMES
Appellants.**

CIVIL APPEAL NO. 13-86
Civil Action No. 24-85

Supreme Court, Appellate Division
Republic of Palau

Rulings on motions
Decided: September 2, 1988

Counsel for Appellants: John K. Rechucher

Counsel for Appellee: Johnson Toribiong

BEFORE: LOREN A. SUTTON, Associate Justice; ARTHUR NGIRAKLSONG, Associate Justice and FREDERICK J. O'BRIEN, Associate Justice Pro Tem.

PER CURIAM:

Notice of Appeal was filed on October 27, 1986. The estimated cost of transcript was filed February 10, 1987, and paid on February 18, 1987. At some point not revealed by the record, between February 18, 1987, and April 21, 1987, there was a waiver of transcript entered by Appellants and money paid by Appellants for the estimated cost was returned. On April 21, 1987, Certification of the record by the Clerk occurred.

Appellants' opening brief was due, pursuant to ROP R. App. Pro. 31(b), on June 5, 1987.

Two motions for extension of time were timely filed by **L547BB** Appellants and granted by the Court, the last requiring filing of Appellants' opening brief by no later than July 13, 1987. The brief was filed on that date.

Appellee's response was due on August 12, 1987 (ROP App. Pro. 31[b]). Three motions to extend time were filed timely and each was granted by the Court, the final Order being that Appellee's response was due by no later than November 20, 1987.

No further Motions to extend were made and Appellee finally filed a response on January 14, 1988, some fifty five (55) days late.

Blesam v. Tamakong, 1 ROP Intrm. 547AA (1988)

On January 15, 1988, Appellants filed Motions to Deny Oral Argument and to Strike Appellee's Brief on grounds of late filing and pursuant to ROP App. Pro. 31(c).

Appellee responds by contending that the wording of Rule 31(c) calls for sanctions only if Appellee fails to file a brief and does not cover the situation here where Response Brief was filed, albeit late.

Appellee argues further that Appellants have waived any objection to Appellee's late filing by virtue of their having not entered same before the Response Brief was actually filed.

Finally, Appellee moves the Court to strike Appellants' Brief as not in compliance with ROP App. Pro. 28(a)(2).

Given Appellee's concession, on p. 2 at lines 14-16 of his Motion and Argument in Opposition, that he and Appellants L547CC are both guilty of misfeasance, a fact which we now FIND to be true, it rests upon this Court to decide what result such misfeasance warrants.

We first consider Appellee's contention that ROP App. Pro. 31(c) provides for no sanction for late filing and covers only those situations where Appellee files no brief at all.

The time limits for filing appellate briefs are clearly set out in ROP App. Pro. 31(b); forty five (45) days for Opening Brief and thirty (30) days for Response. While Rule 31(c) may be read to require Appellee to file within thirty (30) days, and we do so interpret it, the words left unsaid, we FIND, are that this requirement exists only if Appellee files a response at all. While Appellant is required to file a brief and thus introduce and define the issues upon which the Appeal rests there is no requirement that Appellee respond with a written brief, and we agree that, if no response by written brief is opted by Appellee, Rule 31(c) provides discretion to the Court to deny to Appellee the opportunity to present oral argument.

We HOLD, however, that if Appellee decides to file a responsive brief, and here that decision is noticed by way of Appellee's first Motion for Extension of Time filed on August 5, 1987, that Appellee is bound by the time rules of ROP R. App. Pro. 31 and that we are possessed of discretion to impose sanctions by way of our inherent power to discipline attorneys granted in ROP Const. Article X §§ 5 and 14 and 4 PNC § 101. *ROP v. Leeman Singeo*, Crim. App. No. 2-87 (App. Div., Nov., 1987).

L547DD We decline to disturb the ultimate resolution of this matter on appeal, and to disallow full revelation and discourse on the merits, by striking Appellee's written brief or by denying Appellee the opportunity for oral argument.

We determine and FIND, however, that the misfeasance conceded by Appellee is serious, and, consistent with past rulings by this Court¹, deserving of sanction.

¹ *ROP v. Leeman Singeo*, *supra*.

Blesam v. Tamakong, 1 ROP Intrm. 547AA (1988)

We FIND likewise in the case of Appellants but, on balance, consider Appellants' violation of Rule 28 to be less serious and that therefore a lesser sanction is appropriate.

Accordingly, we ORDER Counsel for Appellee, John Rechucher, to pay over to the Clerk of Courts forthwith the sum of \$100.00 as sanction for late filing of Appellee's responsive brief and Counsel for Appellants, Johnson Toribiong, to pay over to the Clerk of Courts the sum of \$25.00 for violation of Rule 28(a)(2), ROP Rules of Appellate Procedure.

As to the merits of this appeal, now perfected, hearing for oral argument shall be set in the normal course.