

Kumangai v. Isechal, 1 ROP Intrm. 577A (1989)
**MIYOKANG KUMANGAI and
ETIBEK SHMULL,
Appellants,**

v.

**YASINTO ISECHAL, TOMOE
POLLOI, and DILKEDIL OSAM,
Appellees.**

CIVIL APPEAL NO. 22-88
Civil Action No. 11-87

Supreme Court, Appellate Division
Republic of Palau

Appellate decision and order
Decided: March 16, 1989

Counsel for Appellants: Kaleb Udui

Counsel for Appellees: Jonas Olkeriil, T.C.

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

PER CURIAM:

Before the Court are Appellants' Motion to Preclude Oral Argument pursuant to ROP R. App. Pro. 31(c) and Appellees' Motion For Extension of Time to File Appellees' brief.

Appellants filed Opening Brief on November 15, 1988. Appellees' Answering Brief was due pursuant to ROP R. App. Pro. 31(b) thirty (30) days thereafter or, on or about December 15, 1988. On January 6, 1989, Appellants filed affidavit attesting **L577B** to no filing by Appellees to that date of Appellees' Brief and Motion to Preclude Oral Argument. On January 16, 1989, Appellees filed Motion for Extension citing responsibilities of custom as cause for failing to file within the time prescribed.

At Oral argument on the Motion, heard March 6, 1989, Counsel for Appellees conceded that neither good cause nor excusable neglect was present in support of his Motion for Extension and his request to be heard but urged the Court to suspend the operation of Rule 31(c) pursuant to ROP R. App. Pro. 2.

A question of procedure under our rules is raised by this case.

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Under Rule 31(c) is oral argument automatically precluded on violation so that appellant need file no motion or take other action and is the burden placed on Appellee then to Petition the Court for permission to argue, or, must Appellant, as has occurred here, make the Motion in order to trigger the operation of the Rule?

Two cases before the Appellate Division of the High Court suggest that either procedure is acceptable.

In Re Transpacific Lines, Inc., formerly styled: *In Re David M. Sablan, Receiver of Transpacific Lines, Inc., Petitioner*, (1977) 7 TTR 546, 559, the Court entertained oral Motion to Preclude Oral Argument and to Strike Petitioner (Appellee's) brief, filed late, and granted the Motions.

In Trust Territory of the Pacific Islands v. Kennedy Este, Itiko Roman, Teas Este and Apas (1977), 7 TTR 568, 570, n.1, the Court, on its own Motion, and without application of **1577C** Appellant and noting that the late filing of Appellee's brief was the third violation by the same Counsel in as many cases before the Court, precluded oral argument and struck appellees brief.

We find that since binding precedent on this question is not dispositive one way or the other that an opportunity exists for us to interpret Rule 31(c) in a manner that will best insure the efficient administration of justice and provide a firm guideline for the operation of this rule in the future.

We hold therefore that ROP R. App. Pro. 31(c) provides, with no Motion required from Appellant, that Appellee be precluded from oral argument and that the Clerk of Courts not accept Appellee's late brief. If filed and stamped by the Clerk such late brief shall be stricken by the Court.

The burden then, we hold, is upon the Appellee to petition the court for permission, pursuant to Rule 31(c), to be heard or to suffer the automatic consequence imposed by the Rule. Applying the Rule in this fashion removes the need for Appellant to prepare and file an unnecessary Motion and relieves the Court from the time consuming task of hearing argument on the Motion and will allow a more expeditious presentation of the merits on appeal.

As to the Motion now before the Court we hold that neither good cause nor excusable neglect has been shown by Appellees to support the request for permission to be heard and we decline to suspend Rule 31(c) pursuant to ROP R. App. Pro. 2 as requested by Appellee on the same ground.

1577D The Motion to Preclude Argument is granted and the Motion to Enlarge time is denied.

The Appellee's brief, filed February 2, 1989, is Ordered stricken from the record.