

Kebekol v. Palau Election Comm'n, 1 ROP Intrm. 654 (1989)
HUMIO KEBEKOL, KEIBO RIDEP, EVENCE KEBEKOL, and KORO NGIRASMAU,
Appellants,

v.

PALAU ELECTION COMMISSION,
YOICH KOHAMA, CHAIRMAN,
Appellees.

CIVIL APPEAL NO. 1-89
Civil Action No. 977-88

Supreme Court, Appellate Division
Republic of Palau

Reconsideration order granting appellee's motion to dismiss
Decided: September 14, 1989

Counsel for Appellants: Carlos H. Salii

Counsel for Appellees: Shad D. Priest, AAG

BEFORE: MAMORU NAKAMURA, Chief Justice; ARTHUR NGIRAKLSONG, Associate Justice; EDWARD C. KING, Associate Justice.

PER CURIAM:

Appellee Palau Election Commission moved on April 14, 1989, for reconsideration of this Court's order denying its motion to dismiss the above entitled appeal for failure to comply with Rule 31 of the Palau Rules of Appellate Procedure, entered by the Court on April 12, 1989.

The motion to dismiss the appeal was filed by Appellee on March 22, 1989, and was based on Rule 31(b):

Time of Filing: Appellant's brief shall be filed within forty-five (45) days after the **L655** notification (service) of certification of the records by the clerk of the trial court or after entry of the trial court order settling the transcript, whichever shall occur last; or if a transcript is not designated or is waived, then within forty-five (45) days after the filing of the notice of appeal.

Palau Rule of Appellate Procedure 31(b) (1983).

This Court in its Order of April 12, 1989, said:

In this case, Appellants filed their Notice of Appeal on January 24, 1989. The

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Clerk of Courts certified the docket entry of the trial court on February 3, 1989.
Upon this certification the time for Appellants to file their brief began to run . . .
[T]his filing was within the time period established by Rule 31(b). Therefore,
Appellee's motion to dismiss must be denied. (Emphasis added).

Kebekol v, et al., v. Palau Election Commission et al., Civil Action No. 977-88 (Pal. 1989).

Upon reconsideration, this Court holds that the earlier denial of Appellee's motion for dismissal was in error. We therefore reverse the Order of April 12, 1989, and accept appellee's motion to dismiss appellants' appeal, bringing this case into conformity with our holding in *Silmai v. Pension Plan*, Civil Appeal No. 15-88 (Civil Action No. 129-88) (App. Div. 1989), in which the Court dismissed Silmai's appeal pursuant to Palau Rule of Appellate Procedure 31(b). In that case plaintiff failed to file his appellate brief within forty-five days from the date the notice of appeal was filed, having been told by the court clerk, mistakenly, that he had forty-five days from the date of the clerk's certification of **¶656** the record. In fact, he had only forty-five days from the date of his appeal.

Rule 31(b) is simple. Appellant shall file his brief (either) "forty-five days after notification of certification of the record by the clerk of trial court" or "after entry of the trial court order settling the transcript, whichever shall occur last," (Emphasis added). If there is no transcript designated, or if it is waived, appellant must file the brief "within forty-five (45) days after the filing of the notice of appeal." (Emphasis added).

In the instant case, appellants did not designate a transcript, thus bringing them within the stricture of the final clause quoted above, forty-five days after filing of the notice of appeal. If appellants herein had designated the transcript, they would file (the brief) within forty-five days of whichever came last: certification of the record by the clerk, or entry of the trial court order settling the transcript.

Any difference between "waiving the transcript" (Silmai), and "not designating" the transcript does not predicate a different result. In both cases only one of the two conditions specified in the first five lines of Rule 31(b) exists, "certification of the record" (by the clerk). Where only one condition exists, plaintiff is directed to refer to its original notice of appeal date, to start the forty-five days. Plaintiff chooses between either the date of "certification of the **¶657** record" or that of "entry of the trial court settling the transcript," only where both conditions exist.

The "motion to reconsider [the] order denying appellee's motion to dismiss" is accepted. Appellants' appeal, due to lack of timely filing of its brief, is DISMISSED.