

Orrukem v. ROP, 5 ROP Intrm. 256 (1996)
MILONG ORRUKEM,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 5-95
Criminal Case No. 220-94

Supreme Court, Appellate Division
Republic of Palau

Order

Decided: July 19, 1996

PER CURIAM:

The Appellant's appointed counsel has submitted a report to the Court in which he states that he has reviewed the record and **¶257** has found no nonfrivolous appellate issue. We have not yet set standards for how this situation should be handled.¹

The Palau Constitution guarantees a criminal defendant a right to counsel. Palau Const., art. IV, sec. 7. Counsel's bare determination that an appeal lacks merit is insufficient to safeguard the right to assistance of counsel. "The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of *amicus curiae*. The no merit letter and the procedure it triggers do not reach that dignity." *See Anders v. California*, 87 S.Ct. 1396, 1400 (1967). "Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw." *See id.*

We adopt the following procedures for such a motion. The motion "must be accompanied by a brief referring to anything in the record that might arguably support an appeal." *See id.* The brief must include "the strongest arguments in favor of [the Appellant] supported by citations to the record and to applicable legal authority." *See United States v. Griffy*, 895 F.2d 561, 563 (9th Cir. 1990). A "copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses." *See Anders*, 87 S.Ct. at 1400. "[T]he court - not counsel - then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous." *See id.* If the Court determines that the appeal is frivolous, it will grant the motion and will dismiss the appeal. *See id.*

We construe the report filed by the Appellant's counsel as a motion for leave to withdraw

¹ Given the prior lack of standards in this area, nothing herein should be construed as a criticism of Appellant's counsel.

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and for dismissal of the appeal as frivolous. The motion is denied without prejudice to its renewal in accordance with this opinion. Counsel must serve any such motion and accompanying brief on the Appellant, along with a notice informing the Appellant of his right to file a written document with the Court presenting any issue he wishes the Court to consider. The notice must also inform the Appellant that any such document must be delivered to the Court, through the mail or otherwise, within 45 days of the service of the notice.

If the Appellant's counsel chooses to renew his motion, he must do so no later than 60 days from the date of this order. If **1258** the Appellant's counsel chooses not to renew the motion, he must file his opening brief within 60 days of the date of this order.