

FSM SUPREME COURT APPELLATE DIVISION

IN THE MATTER OF THE SANCTION OF)	APPEAL CASE NO. K5-2013
ATTORNEYS LIPAR L. GEORGE and)	(KSC Civil Action No. 84-2011)
YOSLYN G. SIGRAH,)	
)	
Appellants.)	
_____)	
KERSIN TILFAS, MAXWELL SALIK, and)	APPEAL CASE NO. K8-2013
and ESTHER EUVER,)	(KSC Civil Action No. 84-2011)
)	
Petitioners,)	
)	
vs.)	
)	
CHIEF JUSTICE ALIKSA B. ALIKSA, Kosrae)	
State Court,)	
)	
Respondent,)	
)	
HEIRS OF KILAFWAKUN LONNO,)	
)	
Real Parties in Interest.)	
_____)	

ORDER ENLARGING TIME AND ASSIGNING SEPARATE DOCKET NUMBER TO THE PETITION FOR
A WRIT OF PROHIBITION

Martin G. Yinug
Chief Justice

Decided: September 6, 2013

APPEARANCES:

For the Appellants/Petitioners: Yoslyn G. Sigrah, Esq.
P.O. Box 3018
Kolonia, Pohnpei FM 96941

For the Real Parties in Interest: Canney L. Palsis, Esq.
Micronesia Legal Services Corporation
P.O. Box 38
Tofol, Kosrae Tofol, Kosrae FM 96944

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HEADNOTES

Appellate Review – Notice of Appeal; Mandamus and Prohibition – Authority and Jurisdiction

Unlike a notice of appeal, there are no jurisdictional time frames for filing a petition for a writ of prohibition or for other extraordinary writs. The Appellate Rule 4 time limits for filing notices of appeal

do not apply to petitions for extraordinary writs under Appellate Rule 21. *In re Sanction of George*, 19 FSM R. 131, 132 (App. 2013).

Appellate Review – Decisions Reviewable; Mandamus and Prohibition – Procedure

When parties seek relief from a final order and interlocutory relief in the nature of relief usually sought by a petition for a writ of prohibition, the two are deemed to be two separate appellate cases with the appeal from the final order proceeding on the usual course of an appeal on the merits and with the petition for a writ of prohibition proceeding separately under a different docket number on the Rule 21 expedited procedure pertinent to that form of relief. *In re Sanction of George*, 19 FSM R. 131, 133 (App. 2013).

Appellate Review – Decisions Reviewable; Attorney and Client – Attorney Discipline and Sanctions

A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. *In re Sanction of George*, 19 FSM R. 131, 133 (App. 2013).

* * * *

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

On August 1, 2013, the court granted, pending resolution of this appeal case, a stay of the May 17, 2013 Kosrae State Court order that sanctioned counsel, struck the brief filed on behalf of Kersin Tilfas, Maxwell Salik, and Esther Euer and set oral argument in Kosrae State Court Civil Action No. 84-2011. The August 1st order also noted that the interlocutory relief sought was apparently a writ of prohibition and gave Tilfas, Salik, and Euer until August 9, 2013, to conform their filing and service to the requirements in Appellate Procedure Rule 21 for petitions for writs of prohibition.

On August 12, 2013, Tilfas, Salik, and Euer filed a motion to enlarge time, asking that they be granted two further weeks to complete a petition for a writ of prohibition because their counsel needed more time for research, consultation, and drafting and that she had been unable to finish the motion earlier because of other work and a power outage. On August 30, 2013, they filed their petition for a writ of prohibition and on September 2, 2013, filed a second motion to enlarge time, asking that the August 30, 2013 filing be deemed timely.

The Heirs of Kilafwakun Lonno oppose the motions to enlarge because they do not believe that the motions are based on excusable neglect or good cause and because they were not supported by affidavit.

Regardless of whether the reasons given for the enlargement of time requests constitute excusable neglect or good cause, there are, under these circumstances, other sound reasons to grant the enlargements. Unlike a notice of appeal, there are no jurisdictional time frames for filing a petition for a writ of prohibition or for other extraordinary writs. The Appellate Rule 4 time limits for filing notices of appeal do not apply to petitions for extraordinary writs under Appellate Rule 21. *See, e.g., Clyma v. Sunoco, Inc.*, 594 F.3d 777, 782 n.5 (10th Cir. 2010); *Equal Employment Opportunity Comm'n v. K-Mart Corp.*, 694 F.2d 1055, 1060 (6th Cir. 1982). Accordingly, even if the petition were dismissed for the failure of Tilfas, Salik, and Euer to file the petition by the date set by the August 1, 2013 court order, they could merely file a new petition for a writ of prohibition. Judicial economy thus favors the grant of the enlargement of time to conform their filings to Appellate Rule 21's requirements instead of a dismissal and a refile of the petition. The motions to enlarge are therefore granted.

Since the appellants in Appeal Case No. K5-2013 seek relief from a final order sanctioning their attorneys and interlocutory relief in the nature of relief usually sought by a petition for a writ of prohibition, NOW THEREFORE IT IS HEREBY ORDERED that the two are deemed to be two separate appellate cases with the appeal on the merits of the attorney sanctions proceeding on the usual course of an appeal on the merits and with the petition for a writ of prohibition proceeding separately on the Rule 21 expedited procedure pertinent to that form of relief.

IT IS THEREFORE FURTHER ORDERED that the clerk shall assign the next available docket number to the petition for a writ of prohibition and all filings related to that petition shall be assigned that docket number and placed in that file.

IT IS FURTHER ORDERED that the matter of the attorney sanctions shall proceed under the current docket number (K5-2013) with all filings related thereto assigned that docket number and with the sanctioned attorneys who are appealing listed as the appellants under docket number K5-2013. A sanction against an attorney who is not a party to the underlying case is immediately appealable if the sanctioned attorney proceeds under his or her own name and as the real party in interest. In re Sanction of George, 17 FSM Intrm. 613, 616 (App. 2011); FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 463 (App. 2004); FSM Dev. Bank v. Yinug, 12 FSM Intrm. 450, 453 (App. 2004); In re Sanction of Woodruff, 9 FSM Intrm. 374, 375 (App. 2000); In re Sanction of Berman, 7 FSM Intrm. 654, 656 (App. 1996).

AND IT IS FURTHER ORDERED that the August 1, 2013 stay will remain in effect until further order in both the case that retains docket number K5-2013 and the petition that is assigned the next available docket number.

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FSM SUPREME COURT TRIAL DIVISION

ELIORY ALEXANDER,)	CIVIL ACTION NO. 2008-039
)	
Plaintiff,)	
)	
vs.)	
)	
POHNPEI STATE GOVERNMENT,)	
)	
Defendant.)	
_____)	

DENIAL OF REQUEST TO ORDER REPROGRAMMING

Martin G. Yinug
Chief Justice

Hearing: August 9, 2013
Decided: September 9, 2013