

FSM SUPREME COURT APPELLATE DIVISION

IN THE MATTER OF THE SANCTION OF	)	APPEAL CASE NO. K5-2013
ATTORNEY YOSLYN G. SIGRAH and TRIAL	)	
COUNSELOR LIPAR L. GEORGE,	)	
	)	
Appellants.	)	
_____	)	

ORDER REJECTING BILL OF COSTS

Martin G. Yinug  
Chief Justice

Decided: May 7, 2014

APPEARANCES:

For the Appellants: Sasaki L. George, Esq.  
P.O. Box 780  
Tafunsak, Kosrae FM 96944

For the Complainants: Canney Palsis, Esq.  
(Heirs of Lonno) Micronesia Legal Services Corporation  
P.O. Box 38  
Tafunsak, Kosrae FM 96944

\* \* \* \*

HEADNOTES

Costs – Procedure

When a party desires that appellate costs be taxed, the party must state them in an itemized and verified bill of costs which must be filed with the clerk, with proof of service, within 14 days after the entry of judgment. The appellate clerk will act on the bill of costs, at least when no opposition has been filed, but when there is opposition, the matter is usually referred to the court or a judge thereof. In re Sanction of Sigrah, 19 FSM R. 396, 397-98 (App. 2014).

Appellate Review

Although it must first look to FSM sources of law and circumstances, when the court has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. In re Sanction of Sigrah, 19 FSM R. 396, 398 n.1 (App. 2014).

Appellate Review; Costs – Procedure

The appellate panel's presiding justice may consider an opposed bill of costs, but the single justice's action may be reviewed by the court. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Attorney's Fees – Court-Awarded; Costs – Disallowed

A request for attorney's fees sought as costs must be denied since attorney's fees are not

recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. *In re Sanction of Sigrah*, 19 FSM R. 396, 398 (App. 2014).

Attorney's Fees – Court-Awarded; Costs

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. *In re Sanction of Sigrah*, 19 FSM R. 396, 398 (App. 2014).

Attorney's Fees – Court-Awarded; Costs – Disallowed

Although, as a general rule, attorney's fees can be awarded as an element of costs only if it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, but, even if attorney's fees could be awarded under Appellate Rule 39, they would not be when no such vexatious actions were shown during the course of the appeal. *In re Sanction of Sigrah*, 19 FSM R. 396, 398 (App. 2014).

Costs – Disallowed

When there was no appellee in the case, there is no one to tax costs against. *In re Sanction of Sigrah*, 19 FSM R. 396, 398 (App. 2014).

Appellate Review – Parties; Costs – Disallowed

While the Micronesian Legal Services Corporation Kosrae office was the party whose complaint led to the now reversed attorney sanction, the sanction was imposed by the Kosrae State Court, but, unlike sanction where the sanction is monetary and paid to an opposing party, there was no opposing party on the appeal because, although the Micronesian Legal Services Corporation Kosrae office did file a brief on the appeal, the court viewed the brief as more of an amicus curiae brief appearing because it was the complainant whose complaint led to the now reversed attorney disciplinary sanctions in the case below. *In re Sanction of Sigrah*, 19 FSM R. 396, 398 (App. 2014).

Appellate Review – Parties; Costs – Disallowed

When there is no appellee against whom the prevailing appellants may tax costs, the appellants' bill of costs must be denied in its entirety. *In re Sanction of Sigrah*, 19 FSM R. 396, 398 (App. 2014).

\* \* \* \*

COURT'S OPINION

MARTIN G. YINUG, Chief Justice:

This comes before the court on the appellants' Bill of Costs, filed April 17, 2014 and the complainants' Memorandum in Opposition to Appellants' Bill of Costs, filed April 16, 2014. The bill of costs is denied for the reasons explained below.

The appellants, as prevailing parties, state that they are entitled that their appellate costs be taxed against Micronesian Legal Services Corporation Kosrae office as the appellee. They ask for \$100.40 as the expense of producing and mailing the briefs and \$5,510 as their attorney's fees for this appeal.

The Micronesian Legal Services Corporation Kosrae office opposes the bill of costs. It contends that it was not a party to the appeal – it was not an appellee – and therefore costs cannot be taxed against it.

FSM Appellate Rule 39 governs the taxation of costs in an appeal case. "A party who desires

such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after the entry of judgment." FSM App. R. 39(d). "The [appellate] clerk will act on the bill of costs, at least where no opposition has been filed; where there is opposition, the matter is usually referred to the court or a judge thereof." 16AA CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §3985.1, at 589 (4th ed. 2008).<sup>1</sup> The panel's presiding justice may therefore consider this opposed bill of costs. "The action of a single justice may be reviewed by the court." FSM App. R. 27(c).

The request for attorney's fees must be denied because attorney's fees cannot be awarded as costs. Attorney's fees are traditionally not considered part of costs. See Lewis v. Rudolph, 16 FSM Intrm. 278, 280 (Chk. S. Ct. App. 2009); Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 220, 223 (Chk. S. Ct. App. 2001); DJ Store v. Joe, 14 FSM Intrm. 83, 86 (Kos. S. Ct. Tr. 2006). "Attorney's fees are not recoverable as costs under Appellate Rule 39." Santos v. Bank of Hawaii, 9 FSM Intrm. 306, 307 (App. 2000). Furthermore, the statute the appellants refer to as allowing the court to grant fees to the prevailing party, 6 F.S.M.C. 1017, does not grant the court power to award attorney's fees. It only refers to court fees and the like and no court fees were imposed in this appeal.

As a general rule, attorney's fees will be awarded as an element of costs only if it is shown that such fees were traceable to unreasonable or vexatious actions of the opposing party. Salik v. U Corp., 4 FSM Intrm. 48, 49-50 (Pon. 1989). No such vexatious actions were shown during the course of this appeal. Thus, even if attorney's fees could be awarded under Appellate Rule 39, they would not be in this case.

The \$100.40 in costs for the briefs, while taxable in general, are not taxable in this particular case. That is because there was no appellee in this case, and thus no one to tax costs against. See Thomson v. Washington, 2009 WL 3816863 at 1 (S.D. Ill. 2009) (appellate costs cannot be taxed when there is no appellee).

This was an appeal from an attorney discipline sanction imposed by the Kosrae State Court. While the Micronesian Legal Services Corporation Kosrae office was the party whose complaint led to the now reversed sanction, the sanction was imposed by the Kosrae State Court. Unlike (for example) a Civil Procedure Rule 37 sanction where the sanction is monetary and paid to an opposing party, there was no opposing party on this appeal. Although the Micronesian Legal Services Corporation Kosrae office did file a brief on the appeal, the court viewed the brief as more of an amicus curiae brief appearing because it was the complainant whose complaint led to the now reversed attorney disciplinary sanctions in the case below.

Accordingly, since there is no appellee against whom the prevailing appellants may tax costs, the appellants' Bill of Costs is denied in its entirety.

\* \* \* \*

---

<sup>1</sup> Although the court must first look to FSM sources of law and circumstances, when the court has not previously construed an aspect of an FSM appellate procedure rule that is identical or similar to a U.S. counterpart, it may look to U.S. sources for guidance in interpreting the rule. See, e.g., Kosrae v. Langu, 16 FSM Intrm. 83, 87 n.1 (App. 2008); Berman v. College of Micronesia-FSM, 15 FSM Intrm. 622, 624 n.1 (App. 2008). Whether a single justice may rule on an opposed Rule 39 bill of costs has not been considered before.