

FSM SUPREME COURT APPELLATE DIVISION

ROSLYN REYES, individually and d/b/a)	APPEAL CASE NO. P1-2016
Pohnpei Arts and Crafts,)	
)	
Appellants,)	
)	
vs.)	
)	
FEDERATED STATES OF MICRONESIA)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Appellee.)	
_____)	

ORDER OF DISMISSAL

Dennis K. Yamase
Chief Justice

Decided: October 6, 2020

APPEARANCE:

For the Appellant:	Yoslyn G. Sigrah, Esq. P.O. Box 3018 Kolonias, Pohnpei FM 96941
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HEADNOTES

Appellate Review – Dismissal

Rule 31(c) does not prevent the appellate court, in an effort to control its own docket, from moving to dismiss an appeal for an appellant’s failure to timely file a brief. Reyes v. FSM Social Sec. Admin., 23 FSM R. 61, 62 (App. 2020).

Appellate Review – Dismissal

When an appellant has failed to comply with the appellate rules’ timing requirements for filing its brief, a single justice may, on its own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Reyes v. FSM Social Sec. Admin., 23 FSM R. 61, 62 (App. 2020).

Appellate Review – Dismissal

When the appellants’ brief and appendices were due on December 19, 2016; when no opening brief having been filed, a September 23, 2019 single justice order notified the appellants that their appeal was subject to dismissal if no further action is taken within 40 days from service of that order; and when no further action was taken and no brief was filed, the appeal will be dismissed. Reyes v. FSM Social Sec. Admin., 23 FSM R. 61, 62 (App. 2020).

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COURT'S OPINION

DENNIS K. YAMASE, Chief Justice:

On January 12, 2016, Appellants ROSLYN REYES, POHNPEI ARTS AND CRAFTS filed a notice of appeal. On November 4, 2016, a notice of briefing schedule was entered notifying the parties that the record ready notice and copies of the certified lists of documents and docket entries from the court appealed from have been received by the FSM Supreme Court appellate division. In the same notice, the parties were informed that the appellants' brief and appendices were due on December 19, 2016.

On September 23, 2019, with no opening brief having been filed, a single justice order of possible dismissal was entered notifying Appellants that their appeal is now subject to dismissal and that if no further action is taken within forty days from service of that order this appeal may be dismissed.

FSM Appellate Rule 31(a) provides that, "[t]he appellant shall serve and file a brief within 40 days after the date of notice by the clerk of the appellate division pursuant to Rule 12(b) that the record is ready." Moreover, a court, even an appellate court, has the right to control its own docket, and Rule 31(c) does not prevent the appellate court, in an effort to control its own docket, from also moving to dismiss an appeal for an appellant's failure to timely file a brief. Heirs of George v. Heirs of Dizon, 16 FSM R. 100, 112-13 (App. 2008). In the event that an appellant has failed to comply with the appellate rules' timing requirements for filing its brief, a single justice may, on its own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Ting Hong Oceanic Enterprises v. FSM, 8 FSM Intrm. 264, 265 (App. 1998).

In this instant case, Appellant filed its notice of appeal and nothing else since then. Appellants did not file an opening brief within the time set by the briefing schedule. Appellants did not seek any enlargement of time within which to file its opening brief at a later time. Appellants were provided notice that their appeal is now subject to dismissal and was given another 40 days from service of that order to take further action in this appeal. No further action has been taken in this appeal. Still, of date, no brief has been filed in this appeal.

In light of the above, this appeal is ACCORDINGLY DISMISSED.

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