

FILED

DATE 9/4/13 TIME _____

BY [Signature]
CLERK, FSM SUPREME COURT
APPELLATE COURT

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
APPELLATE DIVISION

WEBSTER GEORGE

APPELLANT

Versus

K4-2012
Kos.Civ. 30-06

ERSINA V. GEORGE

APPELLEE

SECOND MOTION FOR ENLARGEMENT OF TIME TO
FILE APPELLANT'S BRIEF

COMES NOW WEBSTER GEORGE, Appellant, by and through undersigned counsel, who submits this, his Second Motion for Enlargement of Time to File Appellant's Brief in the above styled and captioned matter, accompanied by a Memorandum of Points and Authorities in support of the Motion pursuant to FSM Appellate Rules of Procedure 26(b) and 27(a). Appellant requests an additional ten (10) days in which to file his brief.

I.
INTRODUCTION

Appellant's first motion for enlargement of time in which to file his brief was filed mailed to the Court in July 2013. The Court granted the motion and ordered the 5th of August 2013 as the deadline. Appellant has not been served the hardcopy of the order as of this writing. But a copy of the order was received and read via email through the undersigned counsel's address on August 23, 2013, which counsel responded to the same day and prompted this motion. Appellant's brief was completed on August 22, 2013 but it has not been filed with the Court for the reason that the ink cartridge for counsel's printer and photocopying machine ran out and was out of stock during the brief's photocopy process.

Counsels have met on the substance of the motion with acquiescence

II.

MEMORANDUM OF POINTS AND AUTHORITIES

The applicable FSM Rules of Appellate Procedure are 26(b) and 27(a) which rules part and whole is referenced below:

The court for good cause shown may upon motion enlarge the time prescribed for doing any act, or may permit an act to be done after the expiration of such time;...

FSM R. App. Proc. 26(b), Enlargement of Time (in pertinent part). Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, 6 days shall be added to the prescribed period. *Id. at (c)*. The appellate court, for good cause shown, may upon motion enlarge the time prescribed by the appellate rules or by its order for doing any act, or may permit an act to be done after the expiration of such time. Kimoul v. FSM, 4 FSM Intrm. 344, 345 (App. 1990). But such application shall be made by filing a motion with other requirements.

Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by brief, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order [for which see subdivision (b)], within 7 days after service of the motion, but motions authorized by Rules 8 and 9 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

R. 27(a) of the FSM R. of App.Proc. Due to this supply problem and based upon the timing of Appellant's actual receipt of the order granting the first enlargement, coupled with his inability to complete his brief in a manner not within his control good cause has been shown for granting of this second motion for enlargement of time to file the brief. It is not that counsel neglects his duty or disregards the Court's order as the delay was caused by other factors meant to be

prejudicial or showing undue delay. It is only fair and just that the Court grants this second motion so that the brief can be filed within no more than 10 days.

III.

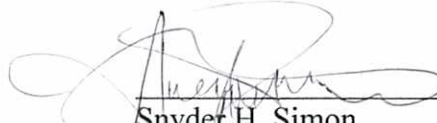
CONCLUSION

Assent bad faith, undue delay and prejudice, a continuance will serve to the benefit of fairness and justice.

WHEREFORE, Appellant Webster George requests that the Court allows a 10 days extension from the date of this motion to allow Appellant to present his brief to the Court and Appellee.

Dated this the 27th day of August 2013.

Respectfully submitted,

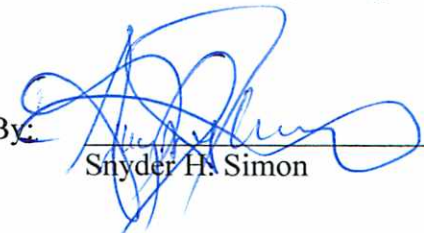


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Certificate of Service

The undersigned hereby certifies that on this 27th day of August 2013 a true and correct copy of the foregoing Motion for Enlargement of Time was served upon Appellee by hand delivery to the offices of Micronesian Legal Services in Tofol, Kosrae State, through attorney Canney L. Palsis, Esq.

Dated: 8.27.13

By: 

Snyder H. Simon