

FILED

AUG 27 2021

ASSISTANT CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

MAUJ EDMUND, et al.,

Plaintiff-Appellee,

vs.

MARSHALL ISLANDS MARINE
RESOURCES AUTHORITY, et al.

Defendants-Appellants.

Supreme Court Case No. 2021-00406

**ORDER REINSTATING APPEAL AND
IMPOSING SANCTIONS**

**TO ALL PARTIES HEREIN THROUGH THEIR RESPECTIVE COUNSEL OF
RECORD:**

CADRA, C.J.; SEABRIGHT, A.J.; SEEBORG, A.J. [Full Panel Review of Single-Justice
Procedural Order - Supreme Court Rule of Procedure 27(c)]

I. INTRODUCTION

Upon full panel consideration of Appellant's August 18, 2021 "Motion to Vacate Order Dismissing Appeal," we vacate the August 9, 2021 single-Justice Order dismissing this appeal and reinstate the appeal conditioned upon Appellant's payment of a sanction of \$1,000 to Appellee's counsel.

While we find a troubling pattern of repeated rule violations, we conclude that dismissal of this appeal is not warranted. Appellee has not been prejudiced by Appellant's disregard of

the rules, and the Court's institutional interest in ensuring compliance with Supreme Court Rules of Procedure ("SCRIP") can be accomplished by imposition of a monetary sanction.

II. DISCUSSION

Appellee filed a "Motion to Dismiss Appeal for Repeated Rule Violations" on May 10, 2021. That motion was denied, but sanctions in the amount of \$250 were imposed against Appellant. On July 28, 2021, Appellee then filed a "Second Motion to Dismiss Appeal for Repeated Violations of the Rules," which was unopposed by Appellant. The Second Motion to Dismiss was granted by a single-Justice Order on August 9, 2021. Appellant now seeks an order vacating the dismissal of its appeal.

SCRIP 42(b)(2) and (3) authorize dismissal of an appeal upon motion by a party or upon the Court's own initiative "for failure of appellant to abide by these rules or for lack of timely compliance with these rules." Failure to comply with the rules in pursuing an appeal is grounds for dismissal. And because flouting of the rules undermines the guarantee of equal treatment to all parties, there is no requirement that the Court balance the merits of an appeal against the prejudice to an opposing party before issuing a sanction, including dismissal.

The parties to an appeal must recognize that rules are not mere annoyances, to be swatted aside like so many flies, but, rather, that rules lie near the epicenter of the judicial process. . . . Of course, there must be some play in the joints. No one is perfect, and occasional oversights—fribbling infringements of the rules that neither create unfairness to one's adversary nor impair the court's ability to comprehend and scrutinize a party's submissions—ordinarily will not warrant Draconian consequences. But major infractions or patterns of repeated inattention warrant severe decrees. In the long run, . . . strict adherence to . . . procedural requirements . . . is the best guarantee of evenhanded administration of the law. . . . We hold that a party's persistent noncompliance with appellate rules, in and of itself, constitutes sufficient cause to dismiss its appeal.

Reyes-Garcia v. Rodriguez & Del Valle, Inc., 82 F.3d 11, 15 (1st Cir. 1996) (internal citations omitted).

Here, there have been numerous and continuing rule violations—the Notice of Appeal was not served, a motion for enlargement of time was not served, an overlength reply brief was filed, and certificates of service were not filed.

As noted in prior Orders issued in this case, there is a strong policy in favor of deciding appeals on their merits. While the Court fully expects counsel to know and comply with the rules, we decline to dismiss this appeal given the lack of prejudice to Appellee. Instead, the Court's interest in securing counsel's compliance with the SCRCP can be secured by imposition of an escalating sanction pursuant to SCRCP 51. A monetary sanction in the amount of \$1,000 is imposed against Appellant, payable to Appellee within ten (10) days. The sanction is imposed (1) to send the message to Appellant's counsel and to the bar that compliance with the SCRCP is mandatory, not voluntary, and that there are consequences (which might include dismissal) for repeated failures to comply with the rules; and (2) to compensate Appellee for the time and expense of filing the instant motion to dismiss.

III. CONCLUSION

It is therefore ORDERED:

- (1) Within 10 days of the date of this Order, Appellant shall pay a sanction of \$1,000 to Appellee and provide proof of payment to the Court;
- (2) Once the Court receives proof of payment, this appeal shall be automatically reinstated;
- (3) Appellant shall file a new Reply Brief that complies with all rules within seven (7) days of reinstatement of this appeal; and

(4) Failure to pay the \$1,000 sanction in a timely manner, or failure to file a new Reply Brief in a timely manner, will result in the automatic dismissal of this appeal.

Dated: August 27, 2021

/s/ Daniel N. Cadra
Daniel N. Cadra
Chief Justice

Dated: August 27, 2021

/s/ J. Michael Seabright
J. Michael Seabright
Associate Justice

Dated: August 27, 2021

/s/ Richard Seeborg
Richard Seeborg
Associate Justice