

In re Contempt of MR. HOWELL
TRUST TERRITORY OF THE PACIFIC ISLANDS

v.

HAINRICK ETSE, ALBERT MUDONG and RETINER OLTER

Appeal No. 68

Appellate Division of the High Court

Ponape District

June 19, 1978

Appeal from order of contempt. The Appellate Division of the High Court, Gianotti, Associate Justice, held attorney ordered by another judge to accompany him on court business could not be found in contempt for not appearing at trial.

Contempt—Civil—Failure of Attorney To Appear

Order finding attorney in contempt for not appearing at trial before Trial Division of the High Court would be reversed where Chief Justice of the High Court had ordered attorney to accompany him on court business some 345 miles from site of trial and attorney was with Chief Justice on such business on trial date.

Counsel for Appellants:

JAMES A. BRANCH, JR., ESQ.,
Office of the Public Defender

Counsel for Appellee:

MINOR POUNDS, ESQ., *Office of
the District Attorney, Ponape
District*

Before HEFNER, *Associate Justice*, GIANOTTI, *Associate
Justice*, and NAKAMURA, *Associate Justice*

GIANOTTI, *Associate Justice*

This is an appeal from an Order of Contempt issued by Criminal Case No. 2-77, Ponape District, High Court of the Trust Territory.

During the months of March, April, May and June, 1977, appellant, John A. Howell, was a practicing attorney in the Trust Territory, assigned as the Public Defender in the Truk District. On or about March 18, 1977, High Court Associate Justice Brown set High Court Criminal Matter 2-77

for trial. Appellant was attorney for one defendant in this matter. Trial was scheduled to commence March 28, 1977, and was subsequently continued to June 1, 1977. On or about May 30, 1977, Chief Justice Harold W. Burnett ordered appellant to accompany him (Judge Burnett) to the Kosrae District, Trust Territory, and assist in Court matters set there.

It is interesting to note that Kosrae is approximately 345 miles from Ponape District.

Appellant notified Judge Brown of the Order of Judge Burnett; however, Judge Brown refused to continue or set aside the trial setting. Appellant accompanied Judge Burnett to Kosrae, and was not present in Court in Ponape on June 1, 1977. As a result thereof, Judge Brown held appellant in contempt of Court; fined him \$100.00 and, in addition, sentenced him to a period of 10 days in jail, suspended on condition that the fine be paid. From the ruling of contempt an appeal has been filed.

As a general rule, absence or tardiness of an attorney from a courtroom or other place where he has a duty to appear before a Judge or other officer of the court at a specified time for the purpose of participating in a trial, hearing, or other proceeding in which he is counsel for a party, or of taking a step necessary in the prosecution or litigation, including an appeal, may constitute a contempt unless the default is due to the Attorney's inability or incapacity to be present or punctual without fault on his part. 17 Am.Jur.2d *Contempt*, Section 25, citing numerous cases.

"Impossibilium nulla obligatio est." There is no obligation to do impossible things. DIG 50, 17, 185; Broom Max, 249.

Mr. Howell's actions do not appear to be willful or deliberate and he cannot be expected to do the impossible.

The Judgment of the High Court holding Mr. Howell in contempt is hereby REVERSED and the fine is directed to be returned to appellant or his counsel.