Appellant's counsel made no effort to analyze his appeal, did not go through the file, nor did he use the basic or minimal process required to comply with Rule 16.

Rule 16 was promulgated with the intent and design to eliminate the useless procedure of having the Clerks of Courts certifying everything in the file when there is absolutely no need for it. The shotgun approach of appellant's counsel is nothing more than a cavalier attitude with little attempt to do basic legal work required of him.

Consequently, pursuant to T.T. Rules App. P. 16, it is determined that the appellant failed to make a good faith effort in the designation of the record and included frivolous and obviously unnecessary documents. It is found that $300.00 is a reasonable expense to be taxed the appellant.

The appellant's counsel should more properly be assessed the costs, but until and unless an amendment to Rule 16f is promulgated, it appears that the appellant must bear the cost (e.g. see *In Re Sutter*, 543 F.2d 1030 (2nd Cir. 1976)).

Accordingly, the Judgment of the Trial Court is REVERSED. Costs are taxed appellant in the sum of $300.00. Payment shall be made to the Director, Administrative Office of the Courts, within 60 days of the date of this Opinion.

In the Matter of the Application for the Deportation of LORETTA BLAIR

Civil Appeal No. 293

Appellate Division of the High Court

Yap District

June 14, 1979

Appeal from deportation order. The Appellate Division of the High Court, Gianotti, Associate Justice, held that deportation was moot and would not be considered where person had voluntarily left the territory pending appeal and could not reenter without an administrative reentry permit.

Appeal and Error—Reviewability of Issues—Moot Questions

On appeal from deportation order, where, notwithstanding stay of the order by the court, the person voluntarily left the territory, and she could not return to Yap, from which she was ordered deported, without obtaining administrative reentry authorization, any decision by appellate division would be futile as to her permission to remain in Yap under her original right to enter; and the deportation issue was moot and would not be considered.

Counsel for Appellants: CHARLES K. NOVO-GRADAC, *Office of the Public Defender*

Counsel for Appellees: ELON A. PLACE, *District Attorney,* Yap

Before BURNETT, *Chief Justice,* GIANOTTI, *Associate Justice,* and LAURETA, *Designated Judge*

GIANOTTI, *Associate Justice*

This is an appeal from a deportation order issued out of the High Court, Yap District, on or about December 20, 1978. A stay of said deportation was subsequently ordered by said Court. Notwithstanding the stay order and prior to the hearing on appeal, appellant, apparently on her own volition, left Yap and no longer is physically present in the Trust Territories or Micronesia. Counsel agree that she could not now return to Yap without first obtaining administrative reentry authorization.

Appellant raised four issues in her appeal. However, by leaving Yap and the Trust Territories, any decision rendered by this Appellate Division would in effect be a lesson in futility as to appellant's permission to remain in Yap under her original right to enter. The question of deportation is no longer applicable to her, and the issue of the deportation order pertaining to her is moot. This being moot, we will not consider her appeal.

Further, more compelling, reason for holding this appeal abandoned is found in the absence of appellant from our jurisdiction. In a similar situation, where appellant had escaped from custody, the Supreme Court said, in *Smith v. United States,* 94 U.S. 97,

"Under such circumstances we are not inclined to hear and decide what may prove to be only a moot case."

More recently, in *Eisler v. United States*, 338 U.S. 189, 69 S. Ct. 1453, where Eisler fled the country after the Supreme Court granted certiorari and after submission on the merits, the cause was removed from the docket "since petitioner may have rendered moot any judgment on the merits." The writ was subsequently dismissed. *Kaneshima v. Trust Territory*, 5 T.T.R. 99, 102 (App. Div. 1970).

As cited in *Dorman v. Young*, 332 P.2d 480 at 481, under *Mills v. Green*, 159 U.S. 651, 16 S. Ct. 132, 40 L. Ed. 293, the court said:

The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. . . .

However, the instant decision applies only to the immediate case. The same question or controversy could arise in the future and the then appellant would not be precluded from exercising his or her right of appeal. Only by abandoning her position, i.e., departing Yap and the Trust Territory, did this appellant render a determination as to the legality of her deportation order moot, and such determination of mootness cannot be applied ad hoc to an entirely different fact situation.

(See *Sosna v. Iowa*, 419 U.S. 393, 42 L. Ed. 2d 532, 95 S. Ct. 553, Footnote 2.)

This Court is also aware of the ruling of the Appellate Division, High Court, in *Trust Territory v. Skiadopulus*, 7 T.T.R. 240, 242 (App. Div. 1975). However, to quote *Ski-*

adopulus, p. 242, "A review of that case shows a decidedly different set of circumstances than those in this appeal."

This appeal is therefore dismissed.

NUNUWA HAMO, for herself and all others similarly situated, Petitioner

v.

HONORABLE ERNEST F. GIANOTTI, Associate Justice of the High Court, for the Districts of Truk and Ponape, Respondent

Civil Appeal No. 297

Appellate Division of the High Court

June 15, 1979

Original appellate division action for mandamus to compel judge to recuse himself in all pending cases in which petitioner and members of the class she represented were parties, the class being those represented by the Micronesian Legal Services Corporation, because of bias and prejudice toward the corporation's attorneys on the judge's part. The Appellate Division of the High Court, per curiam, held the requested remedy would be ordered where events showed an appearance that judge could not act with impartiality and must have inevitably produced a degree of prejudice against the attorneys, without hereby approving of actions of the legal services attorneys of the type creating prejudice.

1. **Statutes—Construction—Retrospective Effect**

   Generally, whether a statute is given retrospective operation depends on whether it is remedial or procedural, in the absence of specific statutory direction or legislative history indicating a contrary intent; if, however, it affects substantive rights it can be given only prospective application.

2. **Statutes—Construction—Retrospective Effect**

   Right to trial before an unbiased judge is a substantive one, not necessarily dependent on statute, is essential to due process and thus a constitutional right, and a statute designed to provide a means of obtaining disqualification of a judge for bias is clearly remedial or procedural, serving to implement the basic due process right and should be applied retrospectively. (5 TTC § 351)

3. **Judges—Disqualification—Affidavits**

   Facts presented by affidavit in support of a motion to disqualify a judge are to be taken as true, though they are subject to determination of their legal sufficiency. (5 TTC § 351)