

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF THE ESTATE OF NORBERTO EDUARDO PANGELINAN,
Deceased.

Supreme Court No. 2017-SCC-0011-CIV
Superior Court No. 15-0169-CIV

**ORDER DENYING MOTION TO STRIKE AND INSTRUCTING
APPELLANT TO REGISTER AS ELECTRONIC FILING SERVICE
PROVIDER USER**

Cite as: 2018 MP 6

Decided August 22, 2018

John S. Pangelinan, Pro Se, Saipan, MP, for Appellant.

Janet H. King, Saipan, MP, for Appellee.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice, JOHN A. MANGLOÑA, Associate Justice, PERRY B. INOS, Associate Justice.¹

PER CURIAM:

¶1 Pro se Claimant-Appellant John S. Pangelinan, (“Appellant”) moves to strike (“Motion to Strike”) Appellee Estate of Norberto Eduardo Pangelinan’s (“Appellee”) response brief (“Response Brief”). Appellant seeks to remove the Response Brief from the record or construe it as untimely filed. He also requests Appellee’s counsel be sanctioned. Appellant asserts that Appellee failed to serve him with the Response Brief and its motion to late file (“Motion to Late File”) the Response Brief and, therefore, did not comply with the NMI Supreme Court Rules. He claims Appellee could have served him through mail pursuant to NMI Supreme Court Rule 25(c)(1)(a). Thus, Appellant, through his Motion to Strike, informs the Court that he does not now wish to be served because Appellee procedurally waived its right to serve. Motion to Strike at 2.

¶2 In response, Appellee moves for an order (“Motion to Register”) directing Appellant to register as an Electronic Filing Service Provider (“EFSP”) user. Appellee asserts compliance with the Commonwealth Rules for Electronic Filing and Services (“E-Filing Rules”) by filing electronically. It claims Appellant actively evaded service and registering as an EFSP user is required to receive electronic service (“e-service”). Appellee argues the E-Filing Rules require Appellant to register as an EFSP user.

¶3 For the following reasons, we DENY Appellant’s Motion to Strike and conclude that he is required to register as an EFSP user.

I. FACTS AND PROCEDURAL HISTORY

¶4 Appellant appeals the probate court’s Findings of Fact and Conclusions of Law denying his claim to certain estate assets. He filed his opening brief and Appellee moved to late file its Response Brief, which we granted. Appellee then filed its Response Brief, which Appellant moves to strike or construe as untimely.

¶5 Although Appellant is not an EFSP user, he files electronically (“e-file”) using the Public Access Terminal with the assistance of the Clerk of the Supreme Court (“Clerk”). Particularly, in this appeal, the e-file case history not only shows Appellant’s filings, but also indicates Appellee was e-served with all of his pleadings.² Appellant additionally served Appellee by providing physical copies of his pleadings to Appellee’s counsel at her office.

¹ NMI Supreme Court Rule 27-2(c)(1)(C) allows the full Court to decide on a motion when referred by a single justice. NMI SUP. CT. R. 27-2(c)(1)(C). Here, the procedural lead justice referred the motion to the full panel.

² The EFSP system, File & Serve*Xpress*, displays all e-filings within this appeal, including the pleadings and documents e-filed by Appellant.

¶6 Meanwhile, Appellee’s counsel is a registered EFSP user and e-files using the EFSP system. Appellee e-filed all its filings in this case and made multiple attempts to serve Appellant through conventional means. In particular, Appellee attempted to arrange service through telephone calls and hired a process server to serve Appellant at his last known residence, but both were to no avail.

II. DISCUSSION

¶7 To address the motions before the Court, we frame the issues as follows: (1) whether, in this appeal, e-service is the proper manner of service; and (2) whether alternate service is required because the Court orders otherwise or electronic service is impossible, inappropriate, or unavailable. We analyze the issues in turn.

A. Effectuating Electronic Filing and Service

¶8 Before the E-Filing Rules took effect, parties filed and served documents either in person, via postal mail, or facsimile machine processing. NMI R. APP. P. 25(a), (c). Now, the NMI Supreme Court Rules direct that the method of filing and manner of service be done pursuant to the E-Filing Rules. NMI SUP. CT. R. 25. The E-Filing Rules specify that all civil writs, petitions, and appeals *shall be filed and served electronically*. NMI R. ELEC. FILING 3.6(c) (emphasis added).

¶9 E-filing is “the electronic transmission of documents to . . . and from the court, for the purpose of filing.” NMI R. ELEC. FILING 1.3. NMI Supreme Court Rule 25(a)(2)(A) provides that filings must be made electronically according to the E-Filing Rules, unless the Court orders otherwise. NMI SUP. CT. R. 25(a)(2)(A). To e-file, a party may either access the EFSP independently or use the Public Access Terminal at the Clerk’s office. *See* NMI R. ELEC. FILING 3.8.

¶10 E-service is “the electronic transmission of documents to a party, attorney or representative under these rules.” NMI R. ELEC. FILING 1.4. Service must also be made electronically pursuant to the E-Filing Rules, “unless the Court orders otherwise or electronic service is impossible, inappropriate, or unavailable.” NMI SUP. CT. R. 25(c). “E-service is accomplished by use of the other party’s or attorney’s correct and current electronic mail address as registered with the Clerk’s office.” NMI R. ELEC. FILING 6.6(b). Upon e-filing, the EFSP system generates a “Notice of Electronic Filing” and transmits the notice to all registered users in the case. *See id.* Recipients of the notice shall then access their documents through the EFSP. *Id.* 6.6(a). The Notice of Electronic Filing acts as the proof of service for e-service—no additional proof of service is required. *Id.* 6.6(b); *see also* NMI SUP. CT. R. 25(d).

B. Electronic Service is Possible, Appropriate, and Available

¶11 Turning to the first issue, we review whether the Motion to Late File and the Response Brief fall within the types of documents that must be e-filed and e-served. Appellee’s motion to late file is permitted under NMI Supreme Court Rule 31-1(b), and its responsive brief is a NMI Supreme Court Rule 28(b) brief. Both pleadings are permitted to be filed in an appeal. NMI R. ELEC. FILING 3.6(c). Thus, we find that the Motion to Late File and the Response Brief must

be e-filed and e-served pursuant to E-Filing Rule 3.6(c).

¶12 However, turning to the second issue, the Court may allow alternative service by Court order or if electronic service is impossible, inappropriate, or unavailable. NMI SUP. CT. R. 25(c). Therefore, we examine whether the factual circumstances present here warrant departure from the general rule mandating e-filing and e-service. If they do, then the manner of service should be accomplished as directed by Court order or pursuant to Rule 25(c)(1).³

¶13 First, the Court may excuse e-service for good cause and thus allow alternative service by Court order. *See* NMI SUP. CT. R. 25(c). By written motion, a party may seek alternative service under NMI Supreme Court Rule 25(c)(1) on the basis that the party will suffer undue hardship or significant prejudice if e-service is not excused. The Court may also find good cause for excuse on the basis of indigency, by reason of disability, any consideration to ensure access to justice, or when the EFSP system is inaccessible for technical reasons other than regularly scheduled maintenance. In this case, there is no order excusing the parties from e-service. Thus, alternative service was not permitted.

¶14 Next, we examine whether e-service is impossible. There are a myriad of reasons why e-service may be impossible. The party asserting such impossibility must provide specific facts and circumstances that preclude the movant from registering as an EFSP user to receive e-service. Here, Appellant has not registered as an EFSP user and has failed to provide facts or circumstances which prevent such registration. EFSP registration is accessible to pro se litigants and the E-Filing Rules make the Clerk available for assistance. The registration process is simple and costs nothing. We cannot construe Appellant's non-registration without reason as an impossibility. If we do, many litigants could circumvent the mandate to e-file and avoid e-service by simply not registering as EFSP users. E-service promotes the efficient and expeditious administration of justice. Therefore, under the present circumstances, we find that it is possible to e-serve Appellant, and for Appellant to e-file and to e-serve Appellee. The impossibility exception is inapplicable.

³ NMI Supreme Court Rule 25(c)(1) states:

If electronic service is impossible, or if electronic service is unavailable under law or Court rule for a particular paper, filing may be had by either of the following: (A) Personal service, including delivery to a responsible person at the office of counsel; (B) By mail; (C) By third-party commercial carrier for delivery within 3 calendar days; or (D) By electronic means, if the party being served consents in writing.

NMI SUP. CT. R. 25(c)(1). Although NMI Supreme Court Rule 25(c)(1) only specifically mentions the impossible and unavailable exceptions, based on note two to this rule and NMI Supreme Court Rule 25(c), we expand Rule 25(c)(1) to include when e-service is inappropriate. Specifically, note two to Rule 25(c)(1) explicitly indicates that “[t]his rule is intended to provide an alternative method of service when electronic service is inappropriate.”

¶15 We also examine whether e-service is inappropriate. Electronic service is inappropriate “for documents that initiate an action, such as a petition for a writ of mandamus.” NMI SUP. CT. R. 25 n.2. Moreover, e-service is inappropriate “when serving documents not permitted to be [e-served] (e.g., sealed documents).” *Id.* Here, the pleadings at issue are not sealed nor do they initiate an action and, therefore, e-service is appropriate. As such, the inappropriate exception is inapplicable.

¶16 Finally, we discuss whether e-service is unavailable. E-service is never unavailable in this Court. Pursuant to E-Filing Rule 3.6(c), e-service is available for all appeals. In contrast, in the Superior Court, e-service is unavailable for “[c]riminal cases and petitions, unless expressly permitted by General Order of the Court.” NMI R. ELEC. FILING 3.7(a). This is an appeal of a trial court order in a probate case. Therefore, electronic service is available and the unavailable exception does not apply.

¶17 Because e-service is not impossible, inappropriate, or unavailable and we have not ordered an alternative manner of service, we find e-service is the proper manner for service in this case. Appellee has e-filed all its pleadings. Under the circumstances of this case, we deem Appellee has complied with the E-Filing Rules. Appellant, however, must register as an EFSP user to receive e-service.

III. CONCLUSION

¶18 We therefore instruct Appellant, with the assistance of the Clerk, to register as an EFSP user. Appellant can continue to file his documents in the current manner (i.e. filing his documents with the Clerk, who, in turn, uploads them electronically). Appellant’s new deadline to file his reply brief is fourteen days from the date of this order. *See* NMI SUP. CT. R. 26(b).

¶19 For the aforementioned reasons, we DENY Appellant’s Motion to Strike and GRANT Appellee’s Motion to Register.

SO ORDERED this 22nd day of August, 2018.

/s/ _____
ALEXANDRO C. CASTRO
Chief Justice

/s/ _____
JOHN A. MANGLOÑA
Associate Justice

/s/ _____
PERRY B. INOS
Associate Justice