

1 Based on the papers submitted by counsel, the Court GRANTS in part Counsel's
2 requested attorney's fees.

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4 **II. BACKGROUND**

5 On November 9, 2004, the Administrator retained the services of Counsel to represent
6 him in the above entitled probate matter ("Probate Case") and in the separate, but related,
7 action: *The Board of Marianas Public Lands Authority v. The Heirs of Rita Rogolifoi, et al.*,
8 Civil Action No. 05-0197A (NMI Super. Ct.) ("Quiet Title Action"). The Administrator and
9 Counsel executed a retainer agreement ("the Retainer Agreement"), wherein, the Administrator
10 agreed to pay Counsel \$175.00 per hour for his legal services on the Probate Case² and a
11 contingency fee based on any recovery obtained in the Quiet Title Action. The Retainer
12 Agreement outlined the contingency fee as follows:

- 13 1. Twenty Percent (20%) if recovery is obtained
14 before any judgment is obtained;
15 2. Thirty Percent (30%) if recovery is obtained after
16 any Judgment is obtained; and
17 3. Forty Percent (40%) if recovery is obtained after
any appeal (or any other form of appellate proceeding) is
filed by any party.

18 (Exs. A, B.)

19 On May 12, 2009, this Court entered a judgment ("Judgment") in favor of the
20 Administrator in the Quiet Title Action, awarding the heirs to the Estate of Rogolifoi ("Heirs")
21 fee simple ownerships and titles to Lot 616 and Lot 630, collectively containing some 33,927
22 square meters, more or less. *The Board of Marianas Public Lands Authority v. The Heirs of*
23 *Rita Rogolifoi, et al.*, Civil Action No. 05-0197A (NMI Super. Ct. May 12, 2009) (Judgment at
24 2). Also, the Heirs were awarded a total sum of \$2,690,020.07, which represented "just
25 compensation" for certain government takings and rental payments collected by the
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² On March 4, 2011, Counsel submitted his final billings on the Probate Case for \$2,795.75, which the Court approved on December 22, 2011. *In re Estate of Rogolofoi*, Civ. Case No. 03-0079 (NMI Super. Ct. December 22, 2011) (Order Approving Proposed Actions of Administrator at 2.)

1 Department of Public Lands (DPL), plus nine percent post-Judgment interest.³ The total
2 Judgment award plus post-Judgment interest came out to a grand total of \$2,844,566.64 (“the
3 Recovery”). (*Id.* at 3-4.) Pursuant to the Retainer Agreement and negotiations with the
4 Administrator, Counsel seeks thirty percent of the Recovery for a total sum of \$853,369.99 in
5 attorney’s fees (“the Contingency Fee”). (*Id.*)

6 **III. LEGAL STANDARD**

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8 The cornerstone of any award of attorney fees, including contingency fees, is
9 reasonableness. See *Matsunaga v. Matsunaga*, 2006 MP 25 ¶ 19 (“While recognizing the
10 value of contingency fees, the Legislature also found that it has the power to ensure that
11 attorney’s fees are reasonable.”). “In evaluating the reasonableness of attorney fees, the court
12 considers the time and labor required, the novelty and difficulty of the questions involved, and
13 the skill required to properly perform the legal service.” *Ishimatu v. Royal Crown Ins. Corp.*,
14 2010 MP 8 ¶ 68. The court “may consider its own knowledge and experience concerning
15 reasonable and proper fees and may form an independent judgment either with or without the
16 aid of witnesses as to value.” *Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1303
17 (11th Cir. 1988).

18 With respect to contingency fee agreements, the court must first rule on the validity of
19 the contingency fee agreement. *In re Estate of Malite*, 2010 MP 20 ¶ 49. “If valid, it must be
20 enforced. If the agreement is declared invalid, then the court must examine all relevant MRPC
21 1.5 factors to determine reasonable attorney fees.” *Id.*

22 **IV. DISCUSSION**

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24 On November 9, 2004, the Administrator and Counsel signed the Retainer Agreement
25 that clearly outlines the legal services to be provided and the terms of compensation. (Exs. B,
26 C.) There are no apparent signs or allegations of overreaching or other improper tactics
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28 ³ Post-Judgment interest accrued from May 13, 2009 to December 31, 2009, totaling \$154,546.57. (Ex. E.)

1 involved in the execution of the Retainer Agreement. Counsel obtained an extremely favorable
2 outcome for the Administrator and the Heirs in the Quiet Title Action, and thereafter, engaged
3 in negotiations with the Administrator to affix an exact amount of compensation for Counsel.⁴
4 On December 20, 2010, the Administrator signed an “Amendment to Retainer Agreement,”
5 agreeing to Counsel’s attorney fees in the sum of \$853,369.99, representing thirty percent of
6 the Recovery. (Ex. E.)

7 Despite the immediate appearance of a valid contingency fee agreement and the
8 Administrator’s approval thereof, the Court is reluctant to approve the Contingency Fee
9 without the consent of all the Heirs. *See In re Malite* 2007 MP 3 ¶ 26 (holding that all “the
10 Heirs had a right to be heard *in the probate matter* as to the propriety of the attorney fees
11 requested in the civil case.”). The Heirs are the direct beneficiaries of the Recovery, and thus,
12 are interested parties who shall have an opportunity to be heard on the matter regarding the
13 Retainer Agreement. *See id* ¶ 29 (“The major policy concern underpinning probate courts –
14 safeguarding the interests of those who can’t care for themselves – is equally implicated
15 regardless of whether the probate court is protecting the interests of an incapacitated or a
16 deceased and heirs.”). If the Heirs approve the Contingency Fee then so will the Court.
17 Otherwise, the Court will conduct a further analysis to determine whether the Retainer
18 Agreement is valid and whether the Contingency Fee is reasonable.

19 Regardless of whether the Heirs approve the Contingency Fee, the Court does approve
20 \$71,006.25 in attorney’s fees entitled to Counsel based on Counsel’s hourly rate of \$175.00 for
21 the 405.75 hours Counsel spent on the Quiet Title Action. (Exs. H, H-1.) In light of the time
22 and labor required, the novelty and difficulty of the questions involved, and the skill required
23 to properly perform the legal service, the Court finds that \$71,006.25 is a reasonable fee. *See*
24 *Ishimatu*, 2010 MP 8 ¶ 68. Certainly Counsel is entitled, at least, to the value of the actual
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26 ⁴ Although the Retainer Agreement’s express language may have entitled Counsel to forty percent of the
27 Recovery because DPL brought a “certified question” to the CNMI Supreme Court, which is arguably a “form of
28 appellate proceeding,” Counsel agreed to pursue only thirty percent of the Recovery. (Exs. B, H.) Additionally,
Counsel declined to seek any percentage of the obtained quarterly rental incomes and real properties, which was
included as part of “the Recovery” in the Retainer Agreement. (*Id.*)

