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1 **FOR PUBLICATION**

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4 **IN THE SUPERIOR COURT**
 5 **FOR THE**
 6 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

7 BANK OF GUAM,)	CIVIL ACTION NO. 17-0234
)	
8 Plaintiff,)	
)	
9 v.)	ORDER GRANTING
)	ATTORNEY FEES AND COSTS
10 CHRISTINE M. CABRERA,)	IN THE AMOUNT OF
)	\$1,837.36
11 Defendant.)	
)	

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14 **I. INTRODUCTION AND PROCEDURAL BACKGROUND**

15 **THIS MATTER** came before the Court on Plaintiff's Motion for Default Judgment on
 16 April 6, 2018 at 10:30 a.m. at the Rota Courthouse. Attorney Oliver M. Manglona, standing in for
 17 Attorney Robert Torres, appeared on behalf of Plaintiff the Bank of Guam ("Plaintiff"). Defendant
 18 Christine M. Cabrera ("Defendant") failed to appear.

19 After hearing Plaintiff's arguments, the Court granted Plaintiff's Motion for Default
 20 Judgment on April 11, 2018, and awarded Plaintiff a judgment amount of \$16,033.09—comprised
 21 of \$10,698.07 in principal, \$5,104.52 in pre-judgment interest, and \$230.50 in court fees.¹
 22 However, the Court withheld its award on Plaintiff's request for attorney's fees and other costs, and
 23 instructed Plaintiff to submit a memorandum to the Court detailing the charges and legal basis for

24 ¹ The April 11, 2018 Order Granting Pl.'s Mot. for Def. J. miscalculated the total of these amounts to be \$16,033.29.

By order of the Court, Associate Judge Wesley M. Bogdan

1 its requested attorney's fees and costs in the amount of \$2,313.61.² Following review of the
2 submitted memorandum and the relevant law, this Court issues its Order with respect to reasonable
3 attorney fees and costs as follows:

4 II. STATEMENT OF FACTS

- 5 1. On November 7, 2012, Plaintiff and Defendant executed a Promissory Note (the "Note" or
6 "Contract") in the amount of \$31,289.81.
- 7 2. Defendant later defaulted on her payments and was served a Notice of Default and Demand
8 for Payment by the Plaintiff.
- 9 3. Subsequently, on May 19, 2016, Plaintiff and Defendant entered into a Settlement
10 Agreement (the "Settlement Agreement") in the amount of \$20,772.50. (Pl.'s Mem. In Supp.
11 of Req. for Award of Att'ys Fees in the Amount of \$1,837.36 and Additional Att'ys Fees and
12 Costs Incurred for its Mot. for Default J. in the Amount of \$467.25 (hereinafter "Pl.'s
13 Mem."), Ex. 1).
- 14 4. The Agreement provided: "If Debtor defaults in any of the payments agreed to herein, the
15 Creditor, at its sole option, shall bring an action to collect the entire amount due plus other
16 Bank costs and additional reasonable attorney's fees and associated costs." *Id.*
- 17 5. The Agreement further provided: "The prevailing party to such action shall be entitled to
18 recover all costs and expenses incurred, including all reasonable attorney's fees and court
19 cost." *Id.*
- 20 6. Defendant failed to make payments under the terms of the Settlement Agreement and the
21 instant suit was thereafter filed.
- 22 7. On April 11, 2018, this Court granted Plaintiff's Motion for Default Judgment against
23 Defendant and awarded Plaintiff a judgment amount of \$16,033.09—comprised of

24 ² Further, the April 11, 2018 Order mistakenly did not include \$476.25 when it stated that the remaining amount of Plaintiff's requested attorney fees and costs for the instant case was \$1,837.36.

1 \$10,698.07 in principal, \$5,104.52 in pre-judgment interest, and \$230.50 in court fees.

2 However, this Court withheld judgment on Plaintiff's requested attorney's fees and costs.

3 8. Plaintiff's Motion for Default Judgment requests for costs and attorney's fees based in part
4 on what Plaintiff's Counsel describes as the "mandatory" attorney fee schedule used by
5 CNMI Superior Court. (Pl.'s Mem., Ex. 2).

6 9. Plaintiff's Counsel requests \$1,250.00 in attorney's fees based on the referenced fee
7 schedule. *Id.* According to that schedule, when the amount of principal judgment awarded in
8 a civil action is between \$10,001.00 and \$15,000.00, the Court should award attorney fees
9 in the amount of \$1,250.00. *Id.*

10 10. In addition to that amount, Plaintiff's Counsel requests \$587.36 for costs related to the
11 instant lawsuit. (Pl.'s Mem. at 5-6).

12 11. Plaintiff's Counsel also requests \$476.25 for additional attorney fees and costs associated
13 with bringing the default judgment before the Court.

14 12. In total, Plaintiff's Counsel requests \$2,313.61 in attorney fees and costs.

15 III. LEGAL STANDARD

16 Determining an award of "reasonable" attorney's fees in the Commonwealth of the Northern
17 Mariana Islands ("CNMI") is a two-step process. *In re Malite*, 2016 MP 20 ¶ 17 (citing *In re Malite*,
18 2010 MP 20 ¶ 45). The court must first determine whether the requested fees are reasonable by
19 comparing the requested fees with similar fee agreements in the local legal community, and
20 weighing the relevant factors of the American Bar Association Model Rules of Professional
21 Conduct Rule 1.5 ("MRPC Rule 1.5"). If the requested amount is deemed unreasonable, the court
22 must then determine the appropriate fee award. *In re Malite*, 2016 MP 20 ¶ 17.

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IV. DISCUSSION

A. Awarding Attorney Fees and Costs: The American Rule

This case discusses the appropriate manner in which this Court is to grant attorney fees and clarifies that a previously utilized fee schedule is not the lawful manner by which attorney fees are to be awarded in the CNMI. Typically, legal fees and costs are paid for by private agreements between an attorney and his or her client. This is the so-called "American Rule" of assessing attorney fees arising out of litigation which, as explained by the United States Supreme Court, provides that each party is responsible for paying its own attorney's fees and costs unless specific authority granted by statute, contract, or court rule allows for the assessment of those expenses against the other party. *Alyeska Pipeline Service Co. v. Wilderness Soc'y*, 421 U.S. 240, 257 (1975). The CNMI has long recognized and followed the American Rule as several CNMI Supreme Court decisions explain.³

1. Contract Exception

The instant case presents one of the exceptions to the American Rule in that the underlying Promissory Note and the Settlement Agreement signed by the Defendant provide the prevailing party with an award of reasonable attorney's fees and associated costs. *See Saipan Achugao Resort Members' Ass'n. v. Wan Jin Yoon*, 2011 MP 12 ¶ 68 (an exception to the American Rule allows the

³ See *Reyes v. Reyes*, 2004 MP 1 ¶ 79 (the award of attorney's fees is governed by the common law American Rule, which states that parties must bear their own costs of litigation and based on the philosophy that one should not be penalized for merely defending or prosecuting a lawsuit, and that the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included the fees of their opponents' counsel); *Demapan v. Bank of Guam*, 2006 MP 16 ¶ 14 (under the American Rule, the Bank is not entitled to legal fees for defending the Superior Court action and its appeal); *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 71 (commonly recognized equitable exceptions to the American Rule include the common fund, substantial benefit, private attorney general, third-party tort, and bad faith); *Saipan Achugao Resort Members' Ass'n v. Wan Jin Yoon*, 2011 MP 12 ¶ 68 (under one exception to the American Rule, a prevailing party may be awarded attorney's fees when the fees are agreed to by contract, however, this exception is limited by equity and even when such fees are mandated by a contractual provision, a court has discretion to decline to award attorney's fees to a prevailing party if the court believes that an award of attorney's fees would be inequitable and unreasonable); *Deleon Guerrero v. Commonwealth Dep't of Pub. Safety*, 2013 MP 17 ¶ 23 (the United States has long rejected the English Rule, preferring each party pay his or her own costs which is known as the American Rule and based on a desire to encourage "liberal" access to courts for righting wrongs) (citations omitted).

1 Court to award a prevailing party attorney's fees when the payment of attorney fees is provided for
2 in the contract). Plaintiff's Counsel requests attorney fees and costs in the total amount of \$2,313.61
3 based on the underlying Note and Settlement Agreement (as opposed to requesting attorney fees
4 and costs based on NMI R. Civ. P. Rule 54(d) or a CNMI Statute).

5 To be clear, \$1,250.00 of the total amount requested is based on what Counsel suggests is a
6 "mandatory" Superior Court fee schedule, and the remaining \$1,063.61 is for additional fees and
7 costs. Awarding attorney fees and costs in the manner suggested by Plaintiff's Counsel is
8 problematic and reveals a subtle dysfunction found within CNMI jurisprudence on how attorney
9 fees are to be awarded (compelling the issuance of this detailed opinion).

10 **2. Amended Notice to Counsel and the 1992 Fee Schedule**

11 In support of the \$1,250.00 portion of requested attorney fees, Plaintiff's Counsel presents a
12 replicated version of a Superior Court document entitled the "Amended Notice to Counsel" which is
13 suggested to be a "mandatory" attorney fee schedule and is at the heart of the confusion on how fees
14 are to be granted. The Amended Notice to Counsel was signed by then Presiding Judge Pedro M.
15 Atalig in 1991 and sets out an award schedule for attorney fees in default civil actions that is a
16 sliding-scale of fees based solely on the amount of the default judgment (the "1992 fee schedule").
17 The Amended Notice to Counsel has been utilized by the Superior Court and the legal community
18 over the past twenty-plus years (and at some point in time, expanded into standard use in small
19 claims cases as well).⁴

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22 ⁴ Use of the Amended Notice to Counsel fee schedule in the small claims context was recently considered and rejected
23 in *Atom's Co., Ltd. v. Mallari*, Case No. 15-0237 (NMI Small Claims Court June, 7, 2017) (Written Decision Following
24 Evidentiary Hearing Awarding Costs in the Amount of \$55.00 and Attorney's Fees in the Amount of \$187.00). In short,
the *Atom's* decision found that the 1992 Amended Notice to Counsel's sliding scale of attorney's fees lacked lawful
authority and that when a contract or other legal basis allows for an award of attorney fees in small claims cases –
determining "reasonable" fees and other costs requires a court to follow the two-step process as set out by the CNMI
Supreme Court in *In re Malite*, 2016 MP 20 ¶ 17 (citing *In re Malite*, 2010 MP 20 ¶ 45).

1 Plaintiff's Counsel also filed supporting documents on the remaining \$1,063.61 in attorney
2 fees and costs he requested. However, it is unclear why additional attorney fees and costs should be
3 awarded if, as argued, there exists a "mandatory" fee schedule which a court is required to follow.
4 Counsel has provided no legal basis or specific explanation as to why these additional attorney fees
5 and costs should be allowed to increase what is referenced as the mandatory fee schedule.

6 The failure to set out such a legal basis is, to a certain extent, understandable, given the
7 Superior Court's long-standing practice of using the 1992 fee schedule to award attorney fees in
8 default civil actions (and in small claims cases). Use of the 1992 fee schedule is convenient and has
9 stream-lined the responsibility and work of the Superior Court Judge in awarding attorney fees and
10 costs.⁵ However, on closer examination of the practice, use of the 1992 fee schedule is subject to
11 abuse and does not conform to what is required under the law as set out by the CNMI Supreme
12 Court for the reasons discussed below.

13 3. Supreme Court's Rule Making Process

14 First, the 1992 fee schedule did not comply with the formal rule-making procedures set out
15 for the Judiciary in art. IV, § 9(a) of the CNMI Constitution. Moreover, this Court finds no
16 obligatory instruction requiring it to follow the 1992 fee schedule as set out in CNMI Judicial
17 Administrative Orders.

18 Under the CNMI Constitution, the Chief Justice may propose rules governing civil and
19 criminal procedures, judicial ethics, admission to and governance of the bar of the Commonwealth,

20 ⁵ See Geoffrey C. Hazard, Jr., *The Law and Ethics of Lawyering* 522-28 (3d ed. 1999) for a discussion of the American
21 Rule and court-awarded attorney fees.

22 Determining attorney's fees is difficult and tends to be hotly contested. A great deal of wasted effort-
23 peripheral litigation not involving the merits-is involved in making attorney fee award in every case
24 unless, as in most foreign countries, relatively arbitrary amounts are awarded automatically. . . .
Calculation of a "reasonable fee" has consumed innumerable hours at the trial court level, generated a
formidable number of appellate court decisions and occasioned much comment in legal journals.

Id. at 523.

1 and other proper matters of judicial administration of the Superior Court. CNMI Const. art. IV, §
2 9(a). In order for the proposed rules to become effective, however, the Chief Justice must first
3 submit them to the Legislature for approval.⁶ *Id.* There are no records indicating that the 1992
4 Amended Notice to Council went through this rule-making procedure. Further, the 1992 fee
5 schedule conflicts with, and is contrary to, controlling CNMI Supreme Court instruction on how
6 attorney fees are to be awarded.

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8 **4. Reasonableness, Model Rules of Professional Conduct and Basic Lodestar
Information**

9 Instead of following an arbitrary schedule that awards attorney fees based only on the
10 amount of a judgment, controlling CNMI Supreme Court precedent in the *Malite* decisions noted
11 above sets out the lawful manner in which attorney fees are to be awarded.⁷ Determining an
12 attorney's fees award is a two-step process. *In re Malite*, 2016 MP 20 ¶ 17 (citing *In re Malite*,
13 2010 MP 20 ¶ 45). CNMI courts must first consider whether the amount of the attorney fees
14 requested fees is "reasonable" by comparing it with the fee customarily charged in the locality for
15 similar legal services and weighing the relevant MRPC Rule 1.5 factors.⁸ Typically, this starts by
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17 ⁶ In 1997, the CNMI Constitution was amended to require the Chief Justice to submit proposed judiciary rules for
18 approval by the Legislature prior to them becoming effective. The submitted rules become effective sixty (60) days
after submission unless disapproved by the Legislature. *See* H.L.I. 10-3, HS1, HD1, 10th Leg., 2nd Spec. Sess. (N. Mar.
I. 1997).

19 ⁷ Although the *Malite* decisions involved a contingency attorney fee agreement, the decisions do not mention any
20 exception for default civil judgments nor do they reference the Amended Notice to Counsel fee schedule as an
alternative method by which attorney fees are to be awarded. Accordingly, and until advised otherwise, this Court takes
our Supreme Court instruction on awarding attorney fees to apply not only to contingency fee arrangements, but also to
cases in which attorney fees are to be awarded based on a provision in a contract, statute or court rule.

21 ⁸ The MRPC factors for determining the reasonableness of fees include: (1) the time and labor required, the novelty and
22 difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if
apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
23 (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results
obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the
24 professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing
the services; and (8) whether the fee is fixed or contingent. Depending on the circumstances in a given case, some
factors may be weighed more heavily than others. *In re Malite*, 2016 MP 20 ¶ 17.

1 considering basic lodestar information (i.e., an attorney's hourly rate multiplied by the number of
2 hours worked) to allow the court to ascertain a prevailing market rate.⁹ Ultimately, if the requested
3 fees are deemed reasonable, they may be awarded. *Id.* What is crucial in making this determination
4 is not only how the awarding court balances the MRPC Rule 1.5 factors, but also that the awarding
5 court considers more than only time billing. *In re Malite*, 2010 MP 20 ¶ 44.

6 If the requested fees are deemed unreasonable, the Court must then determine the
7 appropriate remedy (meaning a fee award of either a higher or lower amount).¹⁰ *Id.* at 45. The party
8 seeking attorney's fees has the "burden" of showing that the fees incurred were allowable,
9 reasonably necessary to the conduct of the litigation and reasonable in amount. *See Ishimatsu v.*
10 *Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 68 (the party seeking the award of attorney fees bears the
11 burden of proving the reasonableness of the amount it requests) (citing *Ferreira v. Borja*, 1999 MP
12 23 ¶ 12). Simply following or relying on a graduated attorney fee schedule based on the amount of
13 the judgment does not meet this burden.¹¹

14 //

15 ⁹ In adjudicating an attorney's fee award, a court first calculates a "lodestar" fee by multiplying the reasonable number
16 of hours expended on the case by the reasonable hourly rates for the participating lawyers. *See Hensley v. Eckerhart*,
461 U.S. 424, 433 (1983).

17 ¹⁰ Awarding attorney fees in the method set out and required by the CNMI Supreme Court is in full accord with the
18 guidance found in seminal United States Supreme Court precedent. The starting point in determining awards of attorney
19 fees begins with utilizing the lodestar method which is calculated by multiplying the number of hours reasonably
20 expended by the reasonable hourly rate for work performed by similarly situated attorneys in the community. *Hensley v.*
Eckerhart, 461 U.S. 424, 433 (1983).

21 This calculation provides an objective basis on which to make an initial estimate of the value of a
22 lawyer's services. The party seeking an award of fees should submit evidence supporting the hours
23 worked and rates claimed. Where the documentation of hours is inadequate, the district court may
24 reduce the award accordingly.

Id.

22 In other words, and employing the MRPC factors noted above, the lodestar fee is determined before the court analyzes
23 whether any portion of this fee should be adjusted upward or downwards. *See also Pennsylvania v. Delaware Valley*
Citizens' Council for Clean Air, 478 U.S. 546, 564-66 (1986).

24 ¹¹ Furthermore, following the two-step process to determine attorney fee awards is in accordance with Rule 53(d) of the
new NMI R. Civ. P., effective January 9, 2019.

1 **B. Application to Counsel's Request for Attorney Fees and Costs**

2 Under the proper line of analysis, this Court now considers Plaintiff's total request for
3 attorney fees and additional costs in the instant case. First, because the underlying Note and the
4 Settlement Agreement signed by the Defendant explicitly provide for an award of reasonable
5 attorney's fees and costs to enforce their provisions, this Court must determine whether the total
6 amount of attorney fees and costs requested are reasonable.

7 **1. Counsel's Submission**

8 In support of his request for \$2,313.61 in fees and costs, Plaintiff's Counsel submitted a
9 basic accounting of the time spent by himself, his support staff and various other
10 administrative/overhead costs related to the underlying Complaint. (Pl.'s Mem., Ex. 2, 3). The
11 accounting reveals \$1,250.00 in attorney fees based on the 1992 fee schedule and \$587.36 in other
12 fees and costs. Counsel also submitted an "estimate" accounting of \$476.25 in additional attorney
13 fees and costs related to the Motion for Default Judgment. (Pl.'s Mem., Ex. 4).

14 **2. Lack of Information Necessary for the Court to Exercise Discretion**

15 Significant issues become apparent upon review of Plaintiff Counsel's submissions which,
16 taken together, suggest a finding that the requested total amount is not reasonable. This is primarily
17 because essential information concerning the number of hours worked by Counsel—and at what
18 hourly rate his work is billed—is simply not provided. Without this fundamental lodestar
19 information, it is impossible to accurately consider whether the total amount of attorney fees
20 Plaintiff is asking this Court to award is reasonable as required by *Malite*.

21 Another issue relates to the qualifications of the attorney submitting the request for attorney
22 fees. Here, Counsel has provided no information (such as a brief biography of the billing attorney's
23 professional background and legal experience) to assist the Court in analyzing the experience,
24 reputation and ability of the attorney involved in order to determine whether the requested fees are

1 reasonable.¹² There is also no information provided to consider the novelty and difficulty of the
2 questions involved or the skill requisite to perform the legal service properly. Further, there is no
3 information which would assist the Court in determining the prevailing rates in the community for
4 similar services by lawyers of reasonably comparable skill, experience and reputation. Without all
5 this information, it is this Court's conclusion that Plaintiff's Counsel has failed to meet the burden
6 of proving the reasonableness of the amount requested.

7 **3. Duplicative, Estimated Entries**

8 An additional justification for denying the total amount requested relates to Plaintiff's
9 request for additional costs and expenses in the amount of \$467.25. In support of this request,
10 Plaintiff submits Exhibit 4, titled "Estimate for the Motion for Default Judgment." (Pl.'s Mem., Ex.
11 4). This Court finds serious deficiencies with Plaintiff's exhibit. First, there is no explanation on
12 how this amount was calculated. Many of the undated entries in Exhibit 4 appear similar to the
13 entries in Pl.'s Mem., Exhibit 3. Second, the undated entries in Exhibit 4 are, as noted above, simply
14 an "estimate" of additional work carried out for the default judgment and lack specific information.
15 For example, the undated entries do not differentiate or explain the exact work completed or the
16 exact cost for each attorney or paralegal performing that work.

17 Further, this Court already awarded Plaintiff \$230.50 in "Court Fees" related to the present
18 case on April 11, 2018. (Order Granting Mot. for Default J. as to the Principal, Post J. Interest
19 Amount, and Costs; and Withholding J. as to Att'ys Fees and Costs Pending Mem. to Ct., at 2).
20 Plaintiff now requests \$476.25 in "additional attorney's fees and costs" without supporting evidence
21 that distinguishes the breakdown of these costs from those that were already awarded to Plaintiff.

22 ¹² Plaintiff's Counsel is a well-respected member of the CNMI Bar Association with great experience and a former
23 Attorney General of the Northern Mariana Islands. As the CNMI Superior Court moves toward a more uniform process
24 of assessing the reasonableness of requested attorney fees and costs (by updating its attorney fee award policy in CNMI
Sup. Ct. Action 2018-0001), it is this Court's opinion that a brief biography or curriculum vitae included with the
detailed billing would provide enough information on the performing attorney for the Court to conduct its
reasonableness inquiry.

1 Without a differentiation between costs, or a proper explanation of what additional costs and
2 expenses are justified (or that were not included in the \$230.50 amount already awarded), portions
3 of the requested “additional” fees and costs appear duplicative and repetitive of those that were
4 previously granted. Some of the attorney and paralegal work described in the two exhibits, with
5 respect to the drafting and reviewing of the underlying Complaint as initially filed—and also with
6 respect to the default judgment—appear duplicative as well.

7 **4. Overhead Costs**

8 Finally, Counsel’s submission does not provide a legal basis or a satisfactory description as
9 to why more than \$100.00 in copying should be specifically awarded as costs. There is no
10 description as to what was being copied, the cost per copy or any other details related to these
11 charges. More fundamentally, Counsel’s submission fails to inform the Court of any special
12 circumstances which would justify or explain why the expenses for copying, and the charges for
13 Lexis Nexis, for administrative services, and for paralegal services should be considered as
14 anything other than general office overhead.

15 As explained by the State Bar of California’s Committee on Mandatory Fee Arbitration, a
16 lawyer’s hourly fee should include consideration for overhead items like rent, support staff wages,
17 telephone service, internet fees, office supplies, library charges, seminars, continuing legal
18 education charges, malpractice insurance, and a whole host of expenses a lawyer will incur every
19 day to keep his/her practice operating. State Bar of Cal. Comm. on Mandatory Fee Arbitration,
20 Arbitration Advisory 2016-02, Analysis of Potential Bill Padding and Other Billing Issues 11
21 (2016). Consideration for such expenses explains why lawyers located in urban cities, like
22 downtown Los Angeles and San Francisco, may generally charge higher hourly rates than their
23 colleagues who rent much less expensive office space in the suburbs and outlying farming
24 communities. Overhead expenses are a cost of doing business that should be reflected in a

1 professional's hourly rates. Therefore, those expenses should not be passed on to a client unless that
2 client has agreed otherwise in a fee agreement. *Id.*

3 **5. Unreasonable Fees**

4 In sum, the Court is without specific and necessary evidence and other information
5 regarding Counsel's hourly rate, the total number of hours worked, the tasks completed and exactly
6 why the costs should be awarded as something other than overhead as described above. Further,
7 Exhibit 4 is merely an "estimate" of attorney fees and expenses related to the default judgment and
8 Counsel requests payments for many items that are duplicative. Considering all these issues and the
9 MRPC Rule 1.5 factors, this Court finds that the requested amount is unreasonable and that a
10 reduction in the total amount of fees and costs is therefore appropriate.¹³

11 **C. Reasonable Award of Attorney Fees and Costs**

12 As to what would be reasonable fees and costs in the present case, the Court does give
13 weight to the fact that the underlying amount in controversy was \$10,698.07, and that Counsel
14 obtained a positive result in favor of Plaintiff with minimum efforts and maintains an on-going
15 professional relationship with the client. Moreover, this Court will not penalize Counsel for his
16 good faith inclusion and use of the 1992 fee schedule which has been used as a measure of
17 reasonable attorney fees in this jurisdiction for some time.

18 However, the Court must also acknowledge and give considerable weight to the fact that
19 there is no "mandatory" attorney fee schedule to factor into a requested award of attorney fees. The
20 underlying case was a relatively simple breach of contract matter and the result was achieved

21 ¹³ First, the underlying collection action was not particularly complicated, novel or difficult so as to require an
22 exceptional amount of time or labor and was obtained through default. Second, acceptance of the case does not appear
23 to preclude other employment opportunities by the lawyer involved in this matter who continues to represent this same
24 client in other matters before this Court. Third, neither the fee customarily charged in the locality nor the amount
involved—or the results obtained—are factors which would support extraordinary fees and the instant request for
attorney fees and costs does not set out any of this information. Finally, time limitations imposed by the client (or by the
circumstances of the case upon Counsel—including the nature and length of the professional relationship Counsel has
with the client); the experience, reputation, and ability of the lawyer or lawyers performing the services; and whether
the fee is fixed or contingent are not at issue under the particular circumstances of the case.

1 through default. Further, this case does not preclude other employment opportunities for the
2 Counsel who continues to represent this same client on a regular basis in front of this Court and
3 therefore some reduction in fees and costs seems appropriate. Moreover, the additional fees and
4 costs in the amount of \$476.25 outlined in Exhibit 4 are simply an estimate and appear to be
5 duplicates of the more detailed entries contained in Exhibit 3. Accordingly, this Court concludes
6 that subtracting the \$476.25 amount of estimated work and costs from Plaintiff's total request of
7 \$2,313.61 will result in reasonable attorney fees and costs in the instant matter. The amount of
8 \$1,837.36 fee is a reasonable award to Plaintiff under the total specific circumstances of this case.

9 **D. Superior Court Action No. 2018-0001**

10 The Court takes this opportunity to inform Plaintiff's Counsel that, as set out in the Superior
11 Court's recent Action No. 2018-0001, submissions for requests for attorney fees and costs should
12 contain the legal basis for the award and the other required and relevant information to enable the
13 Court to verify that the requested fee is *reasonable*. See Attachment 1.

14 It is suggested that such a submission toward compliance could be achieved by filing a
15 motion containing a declaration or attestation signed by Counsel that indicates the actual number of
16 hours spent working on the case, the hourly rate for those hours billed and background information
17 regarding an attorney's qualifications (and other relevant billing considerations). This information is
18 to be included as baseline requirements upon which future requests for attorney's fees will be
19 based. Adequate descriptions and other records in support of the requested fees and costs could also
20 be attached to the submission to better enable the Court to consider the requested amount under the
21 factors set out in MRPC Rule 1.5 and confirm that the amount of requested attorney fees and costs
22 is *reasonable*.

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V. CONCLUSION

For the foregoing reasons, the Court hereby **AWARDS** Plaintiff \$1,837.36 in reasonable attorney's fees and costs.

IT IS SO ORDERED this 25th day of January, 2019.



Wesley M. Bogdan, Associate Judge



SUPERIOR COURT

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, U.S.A.
Guma' Hustisia, Iimwal Aweewe, House of Justice
P.O. BOX 500307, SAIPAN, MP 96950-0307



NOTICE TO COUNSEL

On November 8, 2018, the Commonwealth Superior Court issued CNMI Superior Court Action No. 2018-0001, In Re: The 1992 Attorney's Fee Schedule in Civil Default Cases. Court Action No. 2018-0001 provides the Policy Guidelines of the Superior Court on awarding attorney's fee in Civil Default cases.

If you have any questions, please contact Clerk of Court Patrick V. Diaz at telephone numbers (670)236-9766 or email at Patrick.diaz@justice.gov.mp.

Issued this 26th day of December, 2018.

A handwritten signature in blue ink, appearing to read "Naraja", written over a horizontal line.

Roberto C. Naraja, Presiding Judge

ATTACHMENT 1



ROBERTO C. NARAJA
Presiding Judge

SUPERIOR COURT

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, U.S.A.
Guma' Hustisia, Iimwal Aweewe, House of Justice
P.O. BOX 500307, SAIPAN, MP 96950-0307



Phone: (670) 236-9750
Fax: (670) 236-9742
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CNMI Superior Court Action No. 2018-0001

In Re: The 1992 Attorney's Fee Schedule in Civil Default Cases

WHEREAS, in January 1992, then Presiding Judge Pedro M. Atalig put in place an Attorney's Fee Schedule¹ to be used in the CNMI Superior Court;

WHEREAS, the 1992 Fee Schedule is unchanged since it was issued 26 years ago;

WHEREAS, the Superior Court Judges unanimously consider the 1992 Fee Schedule to be superseded by *In re Estate of Malite*, 2010 MP 20 & 2016 MP 20;

NOW, THEREFORE, by our signatures below, the CNMI Superior *rescinds* the 1992 Fee Schedule (or any iteration of the Schedule);

FURTHER, by our signatures below, it is the Policy Guideline of the Superior Court that:

- (1) the standard for awarding attorney's fees was set forth in *In Re Malite*, 2010 MP 20 ¶ 45 and reiterated in *In re Estate of Malite*, 2016 MP 20 ¶ 17;
- (2) the awarding of attorney fees for all types of cases requires² a determination of whether or not the requested fees are reasonable using the Model Rules of Professional Conduct Rule 1.5 factors;
- (3) Parties seeking an award for attorney's fees shall submit a request for the award containing the legal basis for the fee and the relevant information to prove that the requested fee is reasonable.

This policy is effective immediately and will apply to all active cases and shall not be applied retroactively to cases that have already been adjudicated.

¹ The document is titled "Amended Notice to Counsel: Effective January 10, 1992 reasonable attorney's fee in default civil cases will be as follows." A copies of this fee schedule are attached for reference.

² Stipulated attorney's fees agreements will also be subject to the two-step process under *In re Estate of Malite*.

CNMI Superior Court
Action No. 2018-001
In Re: The 1992 Attorney's Fee Schedule in Civil Default Cases

Dated this 8th day of November, 2018.



ROBERTO C. NARAÑA
Presiding Judge



KENNETH L. GOVENDO
Associate Judge



JOSEPH N. CAMACHO
Associate Judge



TERESA KIM-TENORIO
Associate Judge



WESLEY M. BOGDAN
Associate Judge



of the
Commonwealth of the Northern Mariana Islands
 SAIPAN, NORTHERN MARIANA ISLANDS 96930

TELEPHONES: 234-6401/6402
 234-6403/6404

AMENDED NOTICE TO COUNSEL

Effective January 10, 1992 reasonable attorney's fee in default civil cases will be as follows:

<u>Principal Amount</u>		<u>Fees Allowed</u>	
Under	\$75.00		\$25.00
\$ 75.00 to	\$ 150.00		\$50.00
\$ 151.00 to	\$ 300.00		\$75.00
\$ 301.00 to	\$ 400.00		\$100.00
\$ 401.00 to	\$ 500.00		\$150.00
\$ 501.00 to	\$ 750.00		\$175.00
\$ 751.00 to	\$1,000.00		\$250.00
\$ 1,001.00 to	\$1,500.00		\$350.00
\$ 1,501.00 to	\$2,000.00		\$425.00
\$ 2,001.00 to	\$2,500.00		\$475.00
\$ 2,501.00 to	\$3,000.00		\$550.00
\$ 3,001.00 to	\$3,500.00		\$600.00
\$ 3,501.00 to	\$4,000.00		\$650.00
\$ 4,001.00 to	\$4,500.00		\$725.00
\$ 4,501.00 to	\$5,000.00		\$800.00
\$ 5,001.00 to	\$7,500.00		\$875.00
\$ 7,501.00 to	\$10,000.00		\$1,000.00
\$10,001.00 to	\$15,000.00		\$1,250.00
\$15,001.00 to	\$20,000.00		\$1,500.00
\$20,001.00 or	\$25,000.00		\$2,000.00
\$25,001.00 or	more		\$2,000.00 plus 5% of the amount in excess of \$25,000.00

Pro se schedule fee schedule

Dated this 30th day of December 1991.

Pedro M. Atalig
 Pedro M. Atalig
 Presiding Judge

*the face value of the
 each exceeds \$150.00 after
 multiplying 3X, take
 the \$150.00 maximum.*

Tribal Damage - max. of \$750.00

Amended Notice to Counsel

Effective January 10, 1992, reasonable attorney's fee in default cases will be as follows:



<u>Principal Amount</u>		<u>Fees Allowed</u>	
Under	to	\$ 75.00	\$ 25.00
\$ 75.00	to	\$ 150.00	\$ 50.00
\$ 151.00	to	\$ 300.00	\$ 75.00
\$ 301.00	to	\$ 400.00	\$ 100.00
\$ 401.00	to	\$ 500.00	\$ 150.00
\$ 501.00	to	\$ 750.00	\$ 175.00
\$ 751.00	to	\$ 1,000.00	\$ 250.00
\$ 1,001.00	to	\$ 1,500.00	\$ 350.00
\$ 1,501.00	to	\$ 2,000.00	\$ 425.00
\$ 2,001.00	to	\$ 2,500.00	\$ 475.00
\$ 2,501.00	to	\$ 3,000.00	\$ 550.00
\$ 3,001.00	to	\$ 3,500.00	\$ 600.00
\$ 3,501.00	to	\$ 4,000.00	\$ 650.00
\$ 4,001.00	to	\$ 4,500.00	\$ 725.00
\$ 4,501.00	to	\$ 5,000.00	\$ 800.00
\$ 5,001.00	to	\$ 7,500.00	\$ 875.00
\$ 7,501.00	to	\$ 10,000.00	\$ 1,000.00
\$ 10,001.00	to	\$ 15,000.00	\$ 1,250.00
\$ 15,001.00	to	\$ 20,000.00	\$ 1,500.00
\$ 20,001.00	to	\$ 25,000.00	\$ 2,000.00
\$ 25,001.00	or more		\$ 2,000.00 plus 5% or the amount In excess of \$25,000.00

For returned checks: Get total of all written check amount, add(+) to damages, Attorney's fee ranges from \$125.00 to \$225.00 multiply by the numbers of check written.

**** For damages if the amount that you multiply is less than \$750.00, you get the amount less than \$750.00.

250.00

** 3 plus Misc. exp plus ATTY of \$125.00*

only amount of the check(s) plus

Misc. exp. plus \$250 attorney's fees and costs.