ATTORNEYS' FEES

The rule that each party to a suit normally must pay its own attorney's fees is the proper foundation upon which the system in the Federated States of Micronesia should be built. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 1986).

Forced disclosure of arrangements for payment of attorney's fees intrudes, in some degree, upon the attorney-client relationship and can be an "annoyance" within the meaning of the FSM Civil Rule 26(c) provisions concerning protective orders. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

Unless the questioning party is able to show some basis for believing there may be a relationship between an attorney's fee and the subject matter of the pending action, objections to efforts to discover the attorney's fee arrangement may be upheld. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

Information concerning the source of funds for payment of attorney's fees of a particular party normally is not privileged information. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

When there is no statutory or contractual basis for a request for attorney fees, each party will normally bear its own attorney's fees. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 18 (Yap 1999).

Even if the post-judgment motion for attorney's fees had been made within ten days of the judgment, it would not have been efficacious to extend the time for filing the notice of appeal. An attorney's fees motion is not one of the motions enumerated in Rule 4(a)(4) which changes the benchmark time extending the time for filing the notice of appeal. O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A motion for attorney's fees is unlike a motion to alter or amend a judgment. It does not imply a change in the judgment, but merely seeks what is due because of the judgment. It is, therefore, not governed by the provisions of Rule 59(e). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

When no authority has been given for the court to appoint private counsel already retained by a defendant or to require that the Public Defenders' Office compensate that private counsel at his prevailing hourly rate and when appointed counsel usually serve pro bono, the request will be denied. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

When the movants have not been convicted of any charges, no assets have been ordered forfeited, no payments to movant's counsel have been identified as coming from forfeitable assets, and the government has not committed itself to seeking disgorgement of counsel's fees, and the record shows that the movants have sources of income and assets that the government has not alleged are forfeitable and from which attorney's fees might be paid, it is too speculative

for the court to consider whether the possible forfeiture of attorney's fees will affect an accused's right to retain counsel of his choice and to effective assistance of that counsel. FSM v. Kansou, 12 FSM R. 637, 641 (Chk. 2004).

Concerns about the affect of possible forfeiture of defense counsel's attorney's fees do not apply to a defendant who is represented by a salaried employee of the Public Defenders' Office and who is only charged with one offense and forfeiture of assets is not a penalty that the court can impose for the conviction of that offense. FSM v. Kansou, 12 FSM R. 637, 641-42 (Chk. 2004).

Generally, a party bears its own attorney's fees, and this rule is the proper foundation upon which the system in the FSM should be built. An exception to this general rule is that attorney's fees have been awarded for a breach of fiduciary duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

Yap statutory provisions that no attorney representing a party against the State or public entity can charge, demand, receive or collect attorney's fees from the State or public entity and that an attorney, in suits against Yap, cannot, unless a court orders otherwise, charge, demand, receive or collect" fees higher than 30% of any judgment rendered or any award, compromise, or settlement, are clearly intended to protect both the people who, under the Yap Constitution and statute, have a right to sue Yap for redress and compensation and Yap from unscrupulous or avaricious attorneys and impose criminal penalties of a fine up to $2,000, or imprisonment for not more than one year, or both on an attorney for violating these provisions. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 324 (Yap 2017).

A sanction award, even when calculated by determining a party's reasonable attorney's fees, is not the payment of that attorney's fees or a payment of fees to that attorney. An attorney fee award is not an award to an attorney because a fee award is the client's, not the attorney's. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 318, 324 (Yap 2017).

– Court-Awarded

Procedural statute 6 F.S.M.C. 1018, providing that the court may tax any additional costs incurred in litigation against the losing party other than fees of counsel, applies only to Trust Territory courts and not to courts of the Federated States of Micronesia, and therefore does not preclude the FSM Supreme Court from awarding attorney's fees as costs. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 205 (Pon. 1986).

Recognizing that courts in most of the world normally do award attorney's fees to the prevailing party, the rule allowing a prevailing party to obtain an award of attorney's fees should perhaps be applied more liberally in the Federated States of Micronesia than in the United States. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 1986).

There is flexibility to modify the normal rule that each party pays its own attorney's fees when justice requires, and thus attorney's fees may be assessed for willful violation of a court order, when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when the successful efforts of a party have generated a common fund or extended substantial benefits to a class. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 1986).

There is no established market for legal services in Kosrae which could be used to determine a reasonable hourly rate for attorneys in civil rights cases. Tolenoa v. Alokoa, 2 FSM R. 247, 254 (Kos. 1986).

As a general rule, attorney's fees will be awarded as an element of costs only if it is shown that such fees were traceable to unreasonable or vexatious actions of the opposing party, but where the basic litigation flows from a reasonable difference of interpretation of a lease, the court is disinclined to attempt to sort out or isolate particular aspects of one claim or another of the parties and to earmark attorney's fees awards for those specific aspects. Salik v. U Corp., 4 FSM R. 48, 49-50 (Pon. 1989).

The clerk's office only has authority to grant default judgments for a sum certain or for a sum which can by computation be made certain. Any award of attorney's fees must be based upon a judicial finding and thus is not for a sum certain and cannot be granted by the clerk. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

Any award of attorney's fees must be based upon a showing, and a judicial finding, that the amount of the fees is reasonable. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

In the absence of statutory authority there is a general presumption against attorney's fees awards, and they should not be awarded as standard practice. Bank of Guam v. Nukuto, 6 FSM R. 615, 617 (Chk. 1994).

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM R. 615, 617-18 (Chk. 1994).

Where attorney's fees are to be paid out of funds collected and deposited with the court, motions for fee awards will be denied without prejudice when no funds have yet been collected. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 528 (Pon. 1996).

When allowing attorney's fee awards courts have broad discretion based on a standard of reasonableness in light of the case's circumstances. A trial court has an obligation to see that the attorney's fee awards that it approves are reasonable even if the awards are made pursuant to contract or statute, and it should provide reasons on the record to explain its exercise of discretion in awarding the figure it selects. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 673 (App. 1996).

It is an abuse of the trial court's discretion to award attorney's fees and costs without first determining their reasonableness. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 673 (App. 1996).

Each party normally bears its own attorney fees. This flexible rule allows for the imposition of attorney's fees where a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a

common fund or extended substantial benefits to a class. Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

When at the early juncture of the parties' cross motions for summary judgment it appears that the defendant's writing of bad checks may have been in bad faith or it may have been negligent, an attorney's fees award is not appropriate in the absence of a finding that defendant's conduct was vexatious or in bad faith. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

The fact that a defendant prevails in a motion for summary judgment in such a way as to defeat a significant portion of a plaintiff's claim is a fact that a court should consider relative to the plaintiff's claim for attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

Attorney's fees are not recoverable as costs under Appellate Rule 39. Santos v. Bank of Hawaii, 9 FSM R. 306, 307 (App. 2000).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Attorney's fees awarded as an element of costs are not to be confused with the award of attorney's fees recoverable as a part of damages pursuant to either statute or contract. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Attorney's fees are not a part of recoverable costs under the common law. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

When the election law lacks a statutory definition of costs either specifically including or excluding attorney's fees, the court can only conclude that the Legislature did not intend to use the term "costs" in other than its usual and familiar sense, which does not include attorney's fees. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

In fashioning a fee award, it has always been the court's function to determine what attorney's fees are reasonable and to award no more than that. When necessary, the court will reduce an attorney fee request to an amount it determines reasonable instead of denying any fee recovery at all. Udot Municipality v. FSM, 10 FSM R. 498, 500 (Chk. 2002).

An attorneys' fee award of $120 per hour is reasonable when there have been other fee awards of $120 per hour in the FSM, when the attorneys' work was of high quality, the case was a difficult one, and novel issues were presented and the relief sought was ultimately achieved. Udot Municipality v. FSM, 10 FSM R. 498, 500 (Chk. 2002).

Any post-judgment charges for attorney's fees and costs – any attorney's fees and costs beyond those awarded in the judgments themselves – must first be determined as reasonable and awarded by the court before the judgment-creditors are entitled to these amounts. In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

Attorney fee awards in the FSM Supreme Court are generally limited to those authorized either by statute or by contract. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

Since for every hour in-house counsel spent on the plaintiff's successful motion to compel his employer lost an hour of legal services that could have been spent on other matters, it is therefore appropriate to award the employer reasonable attorney's fees under Rule 37. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455 (Chk. 2004).

To award a party its attorney fees based upon its in-house counsel's salary prorated for the time spent on a successful motion to compel would be to confer a benefit on the non-prevailing party because the prevailing party choose to use in-house, rather than outside, counsel to do the work. There is no reason in law or equity that the non-prevailing party, or in the case of sanctions, the wrongdoer, should benefit from this choice. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455 (Chk. 2004).

The entitlement to reasonable attorneys' fees is that of the client, not of his attorney. The amount the client actually pays his attorney is irrelevant, since the determination of what is a "reasonable" fee is to be made without reference to any prior agreement between the client and its attorney. The appropriate lodestar rate is thus the community market rate charged by attorneys of equivalent skill and experience for work of similar complexity. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 455-56 (Chk. 2004).

An attorney's fees award for in-house counsel will be no different than if the party had retained outside counsel for the work. FSM Dev. Bank v. Kaminanga, 12 FSM R. 454, 456 (Chk. 2004).

The court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

When no statute or contractual provision has been put forth to support an attorney's fees award to a prevailing party, the basis for an award must be found in some exception to the general rule that the parties must pay their own attorney's fees. Such an exception is where attorney's fees are awarded as an element of costs when it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, or when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

In a narrowly drawn exception to the general rule that the parties will bear their own attorney's fees, attorney's fees have been awarded as part of costs when a defendant has breached her fiduciary duty to the plaintiff. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

As a general rule, the parties bear their own attorney's fees unless a contract between them provides otherwise, or they are awardable under a statute or court rule. In addition, attorney's fees may be assessed against a litigant for vexatious and oppressive litigation practices. Civil Procedure Rule 37 provides a specific mechanism for sanctioning vexatious discovery conduct. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

When, pursuant to Rule 37, the court has already assessed attorney's fees, as well as liability on the underlying cause of action as a sanction for a party's willful, bad faith discovery conduct, the court will award no further fees based on a claim of that party's generally vexatious conduct in the trial court. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

The trial court has no jurisdiction to award attorney's fees as a sanction for frivolous appeals under FSM Appellate Rule 38. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

The general rule is that absent bad faith, a plaintiff is entitled to attorney's fees in a collection case in an amount not to exceed 15% of the principal and interest of the amount sought to be collected. The 15% is not a guaranteed minimum by any means, but it does operate, in the absence of bad faith on the part of the party against whom the fees are sought, as a ceiling. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 646 (Pon. 2004).

A client may contract with a firm of attorneys for specified legal services, and commit itself to pay the amounts billed in accordance with the terms of the contract. But with respect to the court's determination of a reasonable fee amount, what the client agrees to pay is irrelevant, since the reasonableness determination is arrived at without referring to any fee agreement that may be in place between the parties. Adams v. Island Homes Constr., Inc., 12 FSM R. 644, 647 (Pon. 2004).

When awarding attorney's fees, a court has broad discretion based on a standard of reasonableness in light of the case's circumstances. A fee application must be based on detailed supporting documentation showing the date, the work done, and the time spent on each service provided. The court must determine the amount of a reasonable fee and award no more than that. Where required, the court will reduce the amount of the award sought as opposed to denying the request altogether. The reasonableness determination is arrived at without referring to any fee agreement that may be in place between the parties. AHPW, Inc. v. FSM, 13 FSM R. 36, 39 (Pon. 2004).

A plaintiff has waived any claim for attorney's fees when it submitted a form of judgment for a sum certain for the clerk's signature under FSM Civil Rule 55(b)(1). Attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

A trial court retains jurisdiction to issue an order assessing fees and costs even if issued after an appeal has been filed. Pohnpei v. AHPW, Inc., 13 FSM R. 159, 161 (App. 2005).

While a prevailing plaintiff is entitled to the costs of suit as of course, a prevailing plaintiff is not automatically entitled to an attorney's fees award because the court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision

allowing recovery of such fees. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277 n.1 (Chk. 2005).

Attorney fee awards in the FSM Supreme Court are generally limited to those authorized either by statute or by contract. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

The court is without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees, so that when the plaintiff has not presented any evidence of a statutory or contractual provision which would allow him to recover his attorney's fees from the defendant, his request for the recovery of attorneys' is without merit and must be denied. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

When a request for attorney's fees contained no points and authorities to support its request and was not argued at the hearing, the request is deemed waived and abandoned. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

A trial court's request for clarification of the attorneys' fee request documentation was not a grant of relief from judgment or analogous to relief from judgment, and a trial court's permitting the submission of the attorney fee request one day late was within its discretion. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 (App. 2006).

Attorney's fees are not part of recoverable costs under the common law. DJ Store v. Joe, 14 FSM R. 83, 86 (Kos. S. Ct. Tr. 2006).

A party's statement that the lawyer should assume responsibility for technical and legal tactical issues and its assertion that it was not involved in the discovery disputes, only its counsel was, is not enough for an appellate court to say the trial court abused its discretion in not applying the attorney's fees sanctions against the party's former attorney himself rather than against the party. FSM Dev. Bank v. Adams, 14 FSM R. 234, 254 (App. 2006).

Attorney's fees are awarded to the prevailing party only if authorized by contract or by statute. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

The court will not award attorney's fees of $200 an hour, counsel's usual hourly rate on Guam because FSM court awards of reasonable attorney's fees are based on the customary fee in the locality in which the case is tried. One hundred ten to one hundred twenty dollars an hour would be in the range reasonable for a case tried on Pohnpei. Amayo v. MJ Co., 14 FSM R. 355, 361 (Pon. 2006).

The court's power to award attorney's fees for vexatious conduct, will usually be exercised to include an attorney's fees award as a part of damages in a final judgment, not to impose sanctions at a pretrial stage. Amayo v. MJ Co., 14 FSM R. 355, 364 (Pon. 2006).

The usual method of determining reasonable attorney's fees awards is based on the fair hourly rate in the locality where the case was tried. Since any attorney's fees award must be based upon a showing and a judicial finding, that the amount of fees is reasonable, the plaintiffs must therefore submit detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

No attorneys' fees can be awarded to plaintiffs that have acted pro se. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Attorney fee awards are generally limited to those authorized either by statute or contract. Otherwise, parties bear their own attorney's fees. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

When an attorney's fee award has been requested, matters concerning attorney's fees are generally not privileged and a blanket refusal to disclose to opposing counsel any supporting documentation showing the date, the work done, and the amount of time spent on each service for which a compensation claim was made, goes far beyond any possible assertion of attorney-client or work-product privilege. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

It is error and a due process violation for a trial court to award attorney's fees without giving the opposing party (who will be paying the fee award) notice and an opportunity to challenge the proposed award's reasonableness. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

The party seeking an attorney's fees award always bears the burden of providing sufficient evidence to prove its claim. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

An appropriate fee consists of reasonable charges for reasonable services. Thus, to justify a fee, more must be presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client since this type of data, without more, does not provide the court with sufficient information as to their reasonableness – a matter which cannot be determined on the basis of conjecture or conclusions of the attorney seeking the fees. Rather the fee request must specify the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor. Because of the importance of these factors, it is incumbent upon the requester to present detailed records maintained during the course of the litigation concerning facts and computations upon which the charges are predicated. Without itemization, a court will not approve any attorney fee claims. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

A summary of the total hours worked by the attorneys and their individual billing rates and a lawyer=s affidavit that the summary was correct, is inadequate to support an attorney fee award. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

A client may contract with an attorney for specified legal services and commit itself to pay the amounts billed in accordance with the contract's terms, but what the client has agreed to pay is not relevant to the court's determination of a reasonable fee since the court makes its reasonableness determination without reference to any prior fee agreement between the attorney and client. This is because the entitlement to a reasonable attorneys' fees award is that of the client, not of his attorney. The amount the client actually pays his attorney is irrelevant. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 63 (Yap 2007).

A class action fee award should not be based solely on a percentage of the recovery, since

the court should consider several other factors in order to decide what is an appropriate fee. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

When the court is making its reasonableness determination for a plaintiffs' attorney fee award, it must disregard the contingent fee agreement's terms. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

The court will give no weight to a contention that there was no contingent fee agreement in place because the fee agreement states that the clients are the Municipalities of Rull and Gilman and the plaintiff class is composed of Rull and Gilman residents when neither municipality is a corporate body or has an established municipal government and these municipalities exist as social constructs and when the court=s decisions must conform to Micronesia=s social configuration. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 n.3 (Yap 2007).

Since any attorney's fees award must be based upon a showing and a judicial finding that the amount of fees is reasonable, the court must require the submission of detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made, so that the opposing party will have notice and an opportunity to challenge the reasonableness of the fee claim. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

In determining an attorney fee award's reasonableness, the appellate division has considered two different, but similar sets of factors. One involving twelve factors, is drawn from civil rights caselaw, and the other, involving eight factors, is drawn from the FSM Model Rules of Professional Conduct Rule 1.5(a) and is thus used to determine whether a fee is unreasonable and unethical. The only real differences between these two tests is that the twelve-factor test includes consideration of the case's undesirability and awards in similar cases and the eight-factor test makes consideration of whether the acceptance of the particular employment will preclude other employment by the lawyer dependent upon whether that preclusion was apparent to the client and limits the fee to the customary fee in the case=s locality. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

The twelve-factor attorney-fee test considers: 1) the time and labor required; 2) the novelty and difficulty of the questions; 3) the skill requisite to perform the legal service properly; 4) the preclusion of other employment by the attorney due to acceptance of the case; 5) the customary fee; 6) whether the fee is fixed or contingent; 7) time limitations imposed by the client or the circumstances; 8) the amount involved and the results obtained; 9) the attorneys' experience, reputation, and ability; 10) the case's "undesirability"; 11) the nature and length of the professional relationship with the client; and 12) awards in similar cases. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

The whether-the-fee-is-fixed-or-contingent factor in the twelve-factor and eight-factor tests, does not contradict the court's statement that a reasonable attorney fee award is determined without reference to any fee agreement's terms because this factor considers the risk the attorney undertook that he might not have a fee to collect – that is, whether the fee was contingent – not what the actual terms of the (contingent or fixed) agreement were. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 n.4 (Yap 2007).

The eight-factor attorney-fee test considers: 1) the time and labor required, the novelty and 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; 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 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. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

For an attorney fee award, the fair hourly rate in the locality is used, and the starting point of a reasonable attorney's fee calculation is done by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. This is the lodestar approach. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 65 (Yap 2007).

A difficulty with using time as the lodestar is that there is an incentive to maximize the time devoted to the case. The court can guard against this by disallowing hours deemed unnecessary or performed in a grossly inefficient fashion. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 n.5 (Yap 2007).

It does not follow that the time an attorney actually expended is the amount of time reasonably expended. To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours which were duplicative, unproductive, excessive, or otherwise unnecessary. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

Redundant, or otherwise unnecessary hours must be excluded from the amount claimed because courts are charged with deducting for redundant hours. Redundant hours generally occur where more than one attorney represented a client. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

The test for attorney fee compensation is whether a given step was necessary to attain the relief afforded. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

Time devoted to intra-office consultations between attorneys that duplicated the other=s time will be reduced. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66 (Yap 2007).

Hours spent researching governmental liability for navigational aids will be disallowed when no governmental entity was ever a party to the case or ever held liable because fees are to be recovered only from the party against whom liability has been established, and only for hours reasonably devoted to establishing that liability. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 66-67 (Yap 2007).

Defendants who are found liable are not required to compensate the plaintiffs for attorney hours spent against others who were not found liable. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67 (Yap 2007).

In determining a reasonable attorney's fees award, time devoted to travel is not included. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67 (Yap 2007).

Time spent on review of "unrelated" cases, which also involved oil spill damage and were thus relevant, will not be disallowed and whether the lead plaintiffs in a class action can receive "incentive" payments, although an issue not tried, is one which may eventually need to be addressed during any fairness hearing on the as yet unproposed distribution plan so those hours will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67 (Yap 2007).

Since different rates of compensation are awarded dependent on the litigation task performed and not strictly according to the position of the person performing it, when most of the preparation of the fee request was in the nature of bookkeeping or accounting, the court will reduce the 17.7 hours at the attorney fee rate to 2 hours at the attorney fee rate to achieve the same result instead of having to determine what should be a proper rate for the bookkeeping tasks. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 67-68 (Yap 2007).

Time spent conferring between attorneys and to respond to a plaintiff's inquiry concerning this case's status after it had been submitted to the court and the parties were awaiting the court's decision, were essentially conferences about whether the court had issued a decision yet and thus unnecessary. Those hours will be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

Since settlement discussions that took place before the end of trial may have helped to materially advance the litigation, those hours will not be disallowed except for those hours that appear excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When the punitive damages issue was not tried and appears to apply only to a former party against whom no liability was found, time spent on that claim will be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When the time spent on the issue of piercing the corporate veil was not tried, but the research advanced the litigation and was needed to frame litigation strategy, those hours will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When PCB contamination claims were not tried and were abandoned early on after the plaintiffs determined that the facts did not warrant such a claim, the hours devoted to PCB claims will be disallowed since a PCB contamination claim is factually different from an oil contamination claim. Where the claims do not share a common basis in fact or are not legally related, the court need not award fees if the claims prove unsuccessful. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 68 (Yap 2007).

When attorneys invoiced hours for conferring with one or more other attorneys in the same firm, the duplicate hours will be disallowed and when the other law firm's lead attorney invoiced time for conferencing with an attorney from the first firm for which that attorney also invoiced time, the first firm's time will be reduced by 50%. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 69 (Yap 2007).

When an attorney invoiced a half hour for delivering case materials for the lead plaintiff to a hotel, this is delivery work, and delivery work is valued at delivery service rates, not attorney rates, regardless of whether an attorney preformed the task. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 69 (Yap 2007).

While a party may legitimately oppose the admission *pro hac vice* of opposing counsel, when the time spent on opposing the admission was excessive and without any sound basis, the court will disallow the hours spent on this. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Time spent on an attorney's education so that he may competently handle the case may be excluded from an attorney fee award. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

The hours an attorney spent, not on the attorney's continuing legal education, but on research into scientific areas about which the defendants' experts would testify at trial, will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Time spent to warn the attorney's clients not to comment to the press will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Administrative work is considered part of overhead, and the court will disallow hours devoted to administrative, instead of legal, tasks. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70 (Yap 2007).

Finding and retaining co-counsel and making his fee arrangements or the hiring of needed staff is not compensable as attorneys' fees even if needed only to prosecute a particular case. When the search for co-counsel ultimately resulted in the retention of eminently qualified co-counsel whose participation materially advanced the litigation, those hours will be reduced since non-legal tasks must be compensated at lower rates or the hours reduced to achieve the same results. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 70-71 (Yap 2007).

The essentially bookkeeping portion of the fee request will not be computed at the full attorney fee rate, but the hours that appear to be legal work will. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

Compensation for time and expenses in a state court can only be sought (if at all possible) in that state court. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

When time spent on anthropological research and on research into the ability of Yap municipalities to sue materially advanced the litigation and was necessary for the plaintiffs to frame their pleadings and arguments concerning the nature of the plaintiffs' rights to the resources affected by the oil spill and the hours spent do not appear excessive, they will not be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

When time spent on investigation into Compact of Free Association, FSM limitation of liability legislation, FSM maritime lien statute, P & I coverage is necessary background information for a proceeding in admiralty *in rem*, and materially advanced the litigation, it will not

be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

Time spent on work done to establish the liability of one against whom no liability was found will be disallowed and time spent on professional responsibility research that is unexplained, will also be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

There is no basis in law or fact to require the defendants to compensate the plaintiffs for drafting or lobbying for legislation even if such legislation was to assist the plaintiffs by legislative means. Therefore all hours devoted to legislative work will be disallowed. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 71 (Yap 2007).

Although the court can take the across-the-board percentage reduction of the attorneys= invoiced time approach to eliminate redundant, excessive, and unnecessary hours if the attorney fee records are voluminous, when the attorney fee records, while voluminous, are not so large as to preclude the court's entry-by-entry examination, it will not. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

When a law firm has attorneys who are admitted before the FSM Supreme Court and the lead attorney has an office in the FSM, the attorneys must expect to be considered local FSM attorneys whose fee award would be measured by the prevailing local rates and whose legal expertise must also be considered as available in the FSM. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

When the one private attorney in Yap now averages $110 per hour and when, in 2002, $120 per hour was found to be a reasonable fee for a difficult case in which novel issues were presented and the relief sought was ultimately achieved, $125 per hour is an appropriate lodestar rate in Yap for this case. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

In determining a fee award, the plaintiffs' success is to be measured qualitatively as well as quantitatively so that when the plaintiffs succeeded on their central claim – damage to Yap's natural marine resources – their attorneys' fees award will not be reduced because of their initial, overly-optimistic estimation of part of their damages claim. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 72 (Yap 2007).

After a determination of what would be a normal fee for the services of each attorney, adjustments should be made upwards or downwards to reflect special considerations such as contingency, complexity, amount of recovery, relative recovery to members of the class, inducement to counsel to serve as private attorneys general, duplication of services, public service considerations, etc. However, even in contingency cases, a fee enhancement is the exception, and not the rule. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

When one co-counsel shouldered the expense of funding the litigation and thus bore the bulk of the risk involved and when that co-counsel provided needed and otherwise unavailable (in the FSM or the Western Pacific) legal expertise, that co-counsel's time should be enhanced by a multiplier. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap

2007).

When a fees and costs order was hand carried, along with some other papers, by a traveler to Yap and those other papers were received, as expected, by the court staff in Yap on the next day, March 23, 2007 and an inquiry the next day satisfied the court that the papers had been received and dealt with, but the fees and costs award did not come to the clerk's attention, or into her possession, until June 5, and was then entered on June 6, 2007, the court can direct that the order awarding fees and costs be entered *nunc pro tunc* as of March 23, 2007, the day the court expected the order to be, and thought it had been, entered because a court may issue an order *nunc pro tunc* to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134 (Yap 2007).

When an attorney=s fee award is sought, the retainer agreement is not relevant; it is not even discoverable because there is generally no relationship between the attorney's fees and the subject matter of a pending action. The retainer agreement will therefore not be considered in deciding an attorney fee request. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

Attorney's fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. George, 15 FSM R. 270, 275-76 (Kos. S. Ct. Tr. 2007).

Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees because the usual rule is that each party pays its own attorney's fees. George v. George, 15 FSM R. 270, 276 (Kos. S. Ct. Tr. 2007).

When an attorney's fee award is sought, the retainer agreement is not relevant; it is not even discoverable because there is generally no relationship between the attorney's fees and the subject matter of a pending action. The retainer agreement will therefore not be considered in deciding an attorney fee request. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Attorneys fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees because the usual rule is that each party pays its own attorney's fees. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

To determine the legal fees' reasonableness, the court would need evidence of the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor because an appropriate fee consists of reasonable charges for reasonable services. When there is nothing, other than the client's affirmation of debt while he was seeking counsel for a pending criminal appeal, to prove the reasonable value of the services rendered, the affirmation is insufficient. Merely because a client affirmed that a specified amount was due

is not enough to prove the services' reasonable value. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

Attorneys' fees are not costs. Lewis v. Rudolph, 16 FSM R. 278, 280 (Chk. S. Ct. App. 2009).

Generally, a party bears its own attorney's fees, and this rule is the proper foundation upon which the system in the FSM should be built. An exception to this general rule is that attorney's fees have been awarded for a breach of fiduciary duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

Attorney's fees will not be awarded to the plaintiff insurer when the conversion arose as part of the insurer's agents' efforts to address customer concerns about the time it took for policy holders to receive their checks for loans taken out on their policies or for their policies' partial or full surrender value when a substantial amount of the cash obtained from the premium checks was distributed to policy holders and when, once the problem was identified, the current agent was cooperative in helping the insurer determine what sums were missing. Nor will attorney's fees be awarded against the business that cashed the checks, since it acted in reliance on the insurer's agents' representations when its employees cashed the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

A court may award attorney's fees against a party when that party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices. Jano v. Fujita, 16 FSM R. 502, 503 (Pon. 2009).

When the plaintiff failed to present at trial any evidence on two elements of his causes of action; when the plaintiff alone testified and his testimony itself was speculative, conclusory, and lacking in foundation; when given the testimony's overall lack of credibility, as well as the lack of other evidence presented at trial to sustain the plaintiff's burden of proof, the court can conclude that the plaintiff brought the lawsuit vexatiously and in bad faith, and, accordingly, the defendant may be awarded his attorney=s fees incurred in the course of the lawsuit. Jano v. Fujita, 16 FSM R. 502, 504 (Pon. 2009).

The usual rule is that the parties are responsible for their own attorney's fees. Generally, a prevailing party will be awarded attorney's fees only if they are authorized by contract or by statute, or when the opposing party has acted vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

The prevailing plaintiff will not be awarded attorney's fees when the defendant did not act vexatiously or in bad faith, or press frivolous claims, or employ oppressive litigation practices and when no statute or contractual provision authorized attorney's fees in the case. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

Whether a defendant is liable to the plaintiff for an attorney's fee award is properly part of the matters that must be heard at trial and decided before judgment. The amount of the attorney's fees to be awarded will, however, be determined in response to a post-judgment motion. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. For a case tried on Pohnpei, the court will award fees on the basis of $125 an hour. FSM v. GMP Hawaii, Inc., 17 FSM R. 86, 89 (Pon. 2010).

When making an attorney fees award, the court will award reasonable attorney's fees based on the customary fee in the locality in which the case is, or will be, tried. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 101 (Yap 2010).

When a review of the billing attachment reveals that 3.6 hours were spent obtaining the order to compel a deposition, the court will award sanctions at $125 an hour for a total of $450. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 101 (Yap 2010).

A Guam gross revenue tax or a GRT equivalent cannot be included in a court-awarded attorney=s fee or as a sanctions expense since it is levied on the attorney and not on the client, and it is thus already included in an attorney's hourly charge. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 100, 102 (Yap 2010).

While a prevailing plaintiff is entitled to the costs of suit as of course, a prevailing party is not automatically entitled to an attorney's fees award because the court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees since attorneys' fees are not costs under Rule 54(d) or the common law. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

When a defendant was successful in having an action against him in the FSM Supreme Court dismissed without prejudice to any Yap State Court adjudication on the merits of the plaintiff=s claims against him, he is not entitled to an attorney fee award under FSM Civil Procedure Rule 54(d). When he does not seek any other expenses that might be considered costs and since he does not cite a statutory or contractual provision that would entitle him to an attorney=s fee award, his attorney's fee application must be denied. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

When a defendant's dismissal was without prejudice, if the plaintiff pursues the matter in the Yap State Court some of the defendant's fees may be recoverable there if he prevails on the merits since some of his attorney's work involved the merits, which the FSM Supreme Court did not consider, but, on the other hand, if the plaintiff were to prevail in the state court on the merits, an award of fees in the FSM Supreme Court might then be inequitable. FSM Dev. Bank v. Ayin, 18 FSM R. 190, 192 (Yap 2012).

To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours that were duplicative, unproductive, excessive, or otherwise unnecessary. Unnecessary hours and expenses are not compensable or awardable. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

A court has an obligation to see that the attorney's fee awards that it approves are reasonable even if the awards are made pursuant to statute. The test for attorney fee compensation is whether a given step was necessary to attain the relief afforded. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

One difficulty with using time as the lodestar is that there is an incentive to maximize the time devoted to the case, but the court can guard against this by disallowing hours deemed unnecessary. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Pro se litigants are not entitled to attorney's fees awards. Jacob v. Johnny, 18 FSM R. 226, 234 n.2 (Pon. 2012).

It is error for a trial court to make a $5,000 award for attorney's fees without citing a contractual provision or a statute that would authorize such an award, especially when the FSM civil rights statute cited in the plaintiff's complaint would not apply to the case since the case is not a civil rights case but is a property dispute. Phillip v. Moses, 18 FSM R. 247, 252 (Chk. S. Ct. App. 2012).

Since the Chuuk eminent domain statute specifically prohibits an award for the expenses of litigation for either side in an eminent domain case, no attorney's fees or other costs of litigation can be awarded in an eminent domain case. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

A prevailing party is not automatically entitled to attorneys' fees because the court is generally without authority to award such fees in the absence of a specific statute or contractual provision allowing recovery. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

Each party normally bears its own attorneys' fees. This flexible rule allows for the imposition of attorneys' fees when a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices. In the absence of a statute to the contrary, a court will normally proceed on the assumption that the parties will bear their own attorney's fees. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

In the absence of statutory authority, there is a general presumption against attorney fees awards and they should not be awarded as standard practice. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

Costs are always available to the party who ultimately prevails, but attorney's fees are not available for pro se litigants even if they prevail. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

When an unlawful detention was a violation of the plaintiff's right to due process, it was a civil rights violation, which under 11 F.S.M.C. 701(3) entitles him to reasonable attorney's fees and costs. Inek v. Chuuk, 19 FSM R. 195, 200 (Chk. 2013).

Generally, a court will award attorney's fees only when such fees are provided for by statute or in a contract between the parties. But if the defendant acts vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices, the trial court may award attorney's fees to the prevailing party even when no statute or contractual provision authorizes attorney's fees. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

The mere non-payment of a judgment does not constitute the vexatiousness or bad faith needed to entitle a judgment creditor to an attorney's fees and costs award. There must be something more. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

A party seeking an attorney's fee award must submit supporting documentation showing the attorney's hourly rate, the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

When the record is adequate to show that the judgments did not go unpaid because of the appellees' bad faith or vexatious behavior, the trial court's denials of attorney's fees requests may be affirmed. George v. Sigrah, 19 FSM R. 210, 218 (App. 2013).

Even though no opposition was filed to an appellate bill of costs, it still must be considered by a judge when it asks for attorney's fees since attorney's fees can only be determined by a judge, not a clerk. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

A request for attorney's fees sought as costs must be denied because attorney's fees are not recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. Nena v. Saimon, 19 FSM R. 393, 395 (App. 2014).

A request for attorney's fees sought as costs must be denied since attorney's fees are not recoverable as costs under Appellate Rule 39. Attorney's fees are traditionally not considered part of costs. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

6 F.S.M.C. 1017 does not grant the court power to award attorney's fees. It only refers to court fees and the like. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Although, as a general rule, attorney's fees can be awarded as an element of costs only if it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, but, even if attorney's fees could be awarded under Appellate Rule 39, they would not be when no such vexatious actions were shown during the course of the appeal. In re Sanction of Sigrah, 19 FSM R. 396, 398 (App. 2014).

Attorney's fees are awarded to the prevailing party only if authorized by contract or by statute. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

The court, when making an attorney's fee award, can only award reasonable attorney's fees based on the customary fee in the locality where the case is, or will be tried. In re Contempt of Jack, 20 FSM R. 452, 467 (Pon. 2016).

The FSM Development Bank may recover an attorney's fee award under Rule 37. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

If, and when, a party is awarded its expenses under Rule 37, and if that party is not paid those expenses reasonably promptly, that expense award will, at final judgment, be deducted from any money judgment awarded to the opposing party or added to any money judgment awarded to the party. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

In general, in debt collection cases, reasonable attorney's fees are limited to not more than 15% of the principal amount due. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 174 (Pon. 2017).

The starting point of a reasonable attorney's fee calculation is done by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238 (Pon. 2017).

When the market rate is not one set figure but a range from $100 to $125 an hour; when the court is confident that with its large presence and large volume of legal work, the bank, if it were to contract out its legal work to the private bar, could negotiate a favorable rate; but when the litigation involved some novel issues beyond the usual run-of-the-mill collection work, the court will set $112 an hour as the reasonable rate to be awarded to the bank this time. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238 (Pon. 2017).

To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours which were duplicative, unproductive, excessive, or otherwise unnecessary. Redundant, or otherwise unnecessary hours must be excluded from the amount claimed because courts are charged with deducting for redundant hours. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238 (Pon. 2017).

Attorney's fees for travel time are not allowed. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238 (Pon. 2017).

It is settled law that an attorney's fee award cannot be made to a pro se litigant regardless of whether the litigant is a lawyer or a lay person. Attorney's fees are not available to pro se litigants even when they prevail. Berman v. Pohnpei, 22 FSM R. 377, 382 (Pon. 2019).

Any claim including attorney's fees is not one for a sum certain, because attorney's fees may only be awarded upon a judicial finding that the fees sought are reasonable. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

When a plaintiff requests a default judgment that includes $1,200 in legal fees (attorney's fees), the default judgment it requests is not for a sum certain, and the clerk cannot grant it. Only the court can grant it. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

A stipulation in a promissory note for attorney=s fees is valid and will be enforced, but only to the extent it is reasonable. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

Except in an unusual case (such as vexatious litigation tactics by a judgment-debtor), 15% is the upward limit for, the court, in a debt collection case, to deem an attorney's fee reasonable when it is awarded pursuant to a contractual agreement to pay attorney's fees. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

Creditors must establish that the attorney's fees, that are to be charged to a debtor pursuant to a promissory note provision, are reasonable in relation to the amount of the debt as well as to the services rendered. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

The requirement, that attorney's fees awards will be included in a judgment only after the court has determined that the fees sought are reasonable, applies regardless of how the

attorney's fees are characterized – whether the fees are to be added on to the debt in the judgment, or capitalized as part of the debt's principal, or are the sole subject matter of the lawsuit. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

A creditor plaintiff cannot, by adding its attorney's fees to the debt's principal, circumvent the court's duty to first determine those fees' reasonableness before imposing them on a debtor defendant. It is an abuse of the trial court's discretion to award attorney's fees without first determining their reasonableness. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

Any party seeking attorney's fees always bears the burden of providing sufficient evidence to prove its claim. Pacific Islands Dev. Bank v. Sigrah, 22 FSM R. 495, 497 (Pon. 2020).

When, because the court referred the matter for administrative review, the plaintiff had an opportunity to vindicate its rights and the Secretary reevaluated his previous decisions and reversed himself, the error was corrected through the administrative review process, which is consistent with the procedure's purpose. The court thus cannot find a reason to award the plaintiff damages or attorney's fees, especially when the plaintiff waited a year before exercising its rights under the statute, which greatly increased its attorney's fees due to the need to obtain injunctive relief. New Tokyo Medical College v. Kephas, 22 FSM R. 625, 634-35 (Pon. 2020).

The civil rights statute, 11 F.S.M.C. 701(3), does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement) because the statute only authorizes an attorney's fee award for actions (court cases) brought under 11 F.S.M.C. 701(3). New Tokyo Medical College v. Kephas, 22 FSM R. 625, 635 (Pon. 2020).

– Court-Awarded – Common Fund

There is flexibility to modify the normal rule that each party pays its own attorney's fees when justice requires, and thus attorney's fees may be assessed for willful violation of a court order, when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when the successful efforts of a party have generated a common fund or extended substantial benefits to a class. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 208 (Pon. 1986).

Each party normally bears its own attorney fees. This flexible rule allows for the imposition of attorney's fees where a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. Normally, in the absence of a statute to the contrary, a court will proceed on the assumption that the parties will bear their own attorney's fees. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

Attorneys fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. George, 15 FSM R. 270, 275-76 (Kos. S. Ct. Tr. 2007).

Attorneys fees are allowable against the opposing party if a party acts vexatiously, in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when a party's successful efforts have generated a common fund or extended substantial benefits to a class. George v. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

While the lodestar method, which multiples the number of attorney-work hours reasonably expended by an hourly rate appropriate for the FSM and the lawyer's experience, is the proper method in statutory (or in contractual) fee-shifting cases, the percentage-of-recovery method is generally used in common fund cases on the theory that class members would be unjustly enriched if they did not adequately compensate the counsel responsible for generating the fund, although it is within a trial court's discretion to use the lodestar instead of the percentage-of-recovery method to calculate attorney's fees in a common fund case. When the percentage-of-recovery method is used, the court must specify the percentage it has utilized in determining the fee award. There is no set standard, however, for determining a reasonable percentage. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 203-04 (Yap 2010).

The court has general equitable powers to award fees out of a settlement fund to those attorneys who have brought benefit to class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

Although courts are reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties, an attorney's contingent fee must still be reasonable or the court may reduce it. This is especially true when the contingent fee sought is in a class action. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

The trial court in a class-action settlement is not bound by the parties' agreement as to the amount of attorney fees. A thorough judicial review of fee applications is required in all class action settlements. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

In the context of a class-action settlement, when determining whether plaintiffs' counsel is in fact entitled to fees, and if so, in what amount, the court must be sensitive to the potential conflict of interest between plaintiffs and their counsel, and must be particularly careful to insure that the ultimate division of funds is fair to absent class members. This is because, even if the court finds, under Rule 23(e), that the settlement is fair and reasonable to absent class members, the court still has an unbending duty to ensure that counsel is not unreasonably benefited by the award of an exorbitant fee, and therefore must scrutinize attorney fee applications with a jealous regard for the rights of those who are interested in the class action settlement fund since the divergence in financial incentives always creates the danger that the lawyers might urge a class settlement at a low figure or on a less-than-optimal basis in exchange for red-carpet treatment on fees. Thus, under Rule 23(e), a trial court must scrutinize any fee agreement that would be enforced as part of the agreement, because those agreements necessarily put counsel and clients in an adversary relationship. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

When a contingent fee contract is to be satisfied from a settlement fund approved by the trial judge pursuant to Rule 23(e), the court has an even greater necessity to review the fee arrangement for this rule imposes upon it a responsibility to protect the interests of the class members from abuse. In such circumstances, the attorneys' role is drastically altered; they then

stand in essentially an adversarial relation to their clients who face a reduced award to the extent that counsel fees are maximized. Moreover, because of the nature of class representation, the clients may be poorly equipped to defend their interests against those of their attorneys. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

The court's fee application review must consider not only just compensation for attorneys but also the necessity to protect the rights of the class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

In a common fund case where the attorneys' fees and the clients' award stem from the same source and the fees are based on a percentage amount of the clients' settlement, the trial court should consider: 1) the size of the fund and the number of persons benefitted; 2) the presence or absence of substantial objections by members of the class to the fees requested by counsel; 3) the skill and efficiency of the attorneys involved; 4) the litigation's complexity and duration; 5) the risk of nonpayment; 6) the amount of time plaintiffs' counsel devoted to the case; and 7) the awards in similar cases. These factors need not be applied in a formulaic way since each case is different. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

As a general rule, as the size of a fund increases, the appropriate percentage to be awarded to counsel decreases although sometimes the increase in the recovery is merely due to the size of the class and has no direct relationship to counsel's efforts. And a fund size may be so large as to require the court to decrease the percentage award. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

The brevity of the litigation before settlement (for instance, a case in which no formal discovery has been conducted before a quick settlement) would require a reduction in attorney fees. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).

Courts generally use lodestar calculations to "cross-check" percentage-of-recovery fee awards. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

Class action counsel in common fund cases are entitled to reimbursement for expenses adequately documented and reasonably and appropriately incurred in the prosecution of the class action. The litigation expenses that may be allowed in such cases are thus more extensive than the costs routinely taxed and awarded to prevailing parties under Rule 54(d). People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 206 (Yap 2010).

– Court-Awarded – Contractual

It is especially important for the court to scrutinize carefully and strictly construe contractual provisions which relate to the payment of attorney's fees. Bank of the FSM v. Bartolome, 4 FSM R. 182, 185 (Pon. 1990).

The FSM Supreme Court will consider an unambiguous provision in a promissory note for the payment of reasonable attorney's fees in debt collection cases as valid in the Federated

States of Micronesia. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

Provisions in promissory notes for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. Bank of Hawaii v. Jack, 4 FSM R. 216, 219 (Pon. 1990).

It is necessary for each creditor to establish that attorney's fees to be charged to a debtor pursuant to an agreement in a promissory note are reasonable in relation to the amount of the debt as well as to the services rendered. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM R. 216, 220 (Pon. 1990).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not in excess of fifteen percent of the outstanding principal and interest. Bank of Hawaii v. Jack, 4 FSM R. 216, 221 (Pon. 1990).

Where a debtor/account receivable to an insolvent corporation is liable to the corporation's creditors the debtor cannot challenge the arrangement for attorney's fees made between the creditors, counsel, and the court for collection of the insolvent corporation's accounts receivable. Creditors of Mid-Pac Constr. Co. v. Senda, 6 FSM R. 140, 142 (Pon. 1993).

In collection cases, creditors must establish that the attorney's fees to be charged are reasonable in relation to the amount of the debt as well as to the services rendered. Generally, plaintiff's attorney's fees in a debt collection case, barring bad faith on the defendant's part, will be limited to a reasonable amount not to exceed fifteen percent of the outstanding principal and interest. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

An FSM court may reduce the amount of attorney's fees provided for under a foreign judgment, where that judgment is unenforceable as against public policy to the extent that the attorney fees in excess of 15% of debt are repugnant to fundamental notions of what is decent and just in the FSM. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

When a plaintiff's interest and attorney's fee claim rests on a paragraph on the bottom left portion of each invoice and none of the invoices bears the defendant's signature, an issue of fact exists as to whether this pre-judgment interest and fee clause ever formed a material part of the open account agreement between the parties. Summary judgment is therefore denied on the issue. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 79 (Kos. 1999).

An attorney's fee must be reasonable, and the court must make such a finding. Except in

unusual circumstances, an attorney's fee in debt collection cases will be limited to a reasonable amount not to exceed 15% of the amount due on the loan at the time of default. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

The rationale for limiting attorney's fees in collection cases, whether the attorney's fees result from a loan agreement or a stipulated judgment, to a reasonable percentage of the amount collected is so that a debtor is not ultimately faced with an obligation far in excess of that originally anticipated, and to provide certainty to debtors and creditors alike. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

An award of attorney's fees, depending as it does upon a finding of reasonableness, is an exercise in equity. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

When a debtor has engaged in the unreasonable conduct that he has no further liability on the judgment, it is equitable to award an attorney's fee of 30% of the remaining amount due on the loan for work done to collect on the judgment, rather than the 15% allowed in Bank of Hawaii v. Jack. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

When a debtor's unreasonable conduct occurred in opposing the collection of the remainder of a judgment after the bulk of it had been paid and the creditor is entitled to reasonable attorney's fees, it is equitable to award the creditor reasonable attorney's fees not to exceed 15% for work done in collecting the bulk of the judgment, and reasonable attorney's fees not to exceed 30% of the judgment's remainder, rather than attorney's fees not exceeding 15% of the total judgment. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103-04 (Kos. 2001).

Contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 523, 526 (Kos. S. Ct. Tr. 2002).

The court must first determine the reasonableness of a plaintiff's claim for attorney's fees and costs. Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable based on detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which compensation is claimed. Jackson v. George, 10 FSM R. 523, 527 (Kos. S. Ct. Tr. 2002).

An attorney's fee must be reasonable, and the court must make such a finding. Therefore, contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM R. 531, 532-33 (Kos. S. Ct. Tr. 2002).

The court must first determine the reasonableness of the plaintiff's claim for attorney's fees and costs. Any attorney's fees award must be based upon a showing and a judicial finding, that the amount of fees is reasonable based on detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Jackson v. George, 10 FSM R. 531, 533 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court will adopt the 15% limitation established in Bank of Hawaii v. Jack, and when the total amount of the plaintiff's attorney fees claim is excessive, but the plaintiff's

claim for trial preparation, representation at trial and preparation of the written summation is reasonable, a 15% attorney fees award is reasonable and just. Jackson v. George, 10 FSM R. 531, 533 (Kos. S. Ct. Tr. 2002).

It is an abuse of the trial court's discretion to award attorney's fees without first determining their reasonableness, and it is especially important for the court to scrutinize carefully and to strictly construe contractual provisions which relate to the payment of attorney's fees. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

The court is the final arbiter of whether an attorney fee award it orders is reasonable. Merely because an attorney has billed his client for a certain amount does not make that amount reasonable for a court-ordered award. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

Except for unusual circumstances, 15% is the upward limit for an attorney's fee to be deemed reasonable when it is awarded pursuant to a stipulation for the payment of attorney's fees in a debt collection case. LPP Mortgage Ltd. v. Maras, 12 FSM R. 112, 113 (Chk. 2003).

Attorney's fees that are awarded on the basis of contract become part of the plaintiffs' damages in its case. When the one party's wrongful act has involved him in litigation with another, and the other must pursue a legal remedy, then the attorney's fees so incurred should be treated as damages that flow from the original wrongful act. Adams v. Island Homes Constr., Inc., 12 FSM R. 541, 543 (Pon. 2004).

Attorney's fees will not be awarded in a default judgment when nowhere in the pleadings does it allege or indicate that any contract between the parties makes the defendant liable for attorney's fees. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

Even when attorney's fees awards are made pursuant to contract or statute, a trial court has an obligation to see that any award it approves is reasonable, and it is an abuse of the trial court's discretion to award fees without first determining their reasonableness. The court must carefully scrutinize and strictly construe contractual provisions relating to the payment of attorney's fees. The court is the final arbiter of whether a court-ordered attorney fee award is reasonable. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

Except in unusual circumstances, the amount awarded pursuant to a stipulation for the payment of attorney's fees in debt collection cases in the FSM will be limited to a reasonable amount not to exceed fifteen percent of the outstanding principal and interest. Fifteen percent is not an amount an attorney is automatically entitled to as a fee in debt collection case. It is the upper limit, or ceiling, on what the court can consider to be reasonable and beyond which a fee is presumed to be unreasonable. Albatross Trading Co. v. Aizawa, 13 FSM R. 380, 382 (Chk. 2005).

Fifteen percent is the usual maximum allowed for attorney's fees in a collection case under FSM Supreme Court caselaw. FSM Dev. Bank v. Adams, 14 FSM R. 234, 244 n.4 (App. 2006).

When the trial court awarded attorney's fees against a defendant based on 15% of the judgment against him and a co-defendant was jointly and severally liable for only part of that judgment, if the co-defendant were liable for attorney's fees, its liability would be limited to 15% of the part of the judgment it was liable for. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 n.8

(App. 2006).

A contract's intended third-party beneficiary can recover attorney's fees under a contract providing for attorney's fees if it has to sue to enforce its third-party beneficiary rights and prevails. Similarly, a prevailing party can recover attorney's fees from an intended third-party beneficiary litigant if that beneficiary could have recovered attorney's fees from that party under the contract. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

When it was the appellees' contract with another that provided for attorney's fees for a successful litigant and the appellant was not an intended beneficiary of that agreement; and when the trial court declined to shift the attorney fee burden to the appellant based on its vexatious conduct, no contract or statute authorized the fees the appellant was awarded. When the trial court, in awarding these attorney's fees after the trial on damages, made no finding that attorney's fees were damages in the contemplation of both parties as the probable result of the breach at the time they made the contract, the fees could not have been awarded as consequential damages. The fee award thus must be reversed. FSM Dev. Bank v. Adams, 14 FSM R. 234, 256 (App. 2006).

Generally, parties must bear their own attorney's fees unless otherwise authorized by law or by contract between the parties. Thus, when the sales contract provides that the buyer will pay the seller's attorney's fees and costs if an attorney is hired to collect the debt, the court will determine and award the seller its reasonable attorney's fees, which, except in unusual circumstances involving bad faith and vexatious litigation, will not exceed 15% of the outstanding principal and interest. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

A sales contract provision that the buyer "agrees to pay all attorney's collection and court fees and an additional 33% of the principal amount and accrued interest in the event this invoice is referred to an attorney or collection agency for collection" appears, since it is included in the same sentence as "all attorney's collection and court fees," to not only constitute "double-dipping" or double recovery of attorney's fees, but it would also award attorney's fees greatly in excess of the 15% maximum usually allowed in collection cases, and will therefore not be awarded. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

A summary of the total hours worked by the attorneys and their individual billing rates and a lawyer=s affidavit that the summary was correct is inadequate to support an attorney fee award, and the party seeking an attorney's fees award always bears the burden of providing sufficient evidence to prove its claim. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

The starting point of a reasonable attorney's fee calculation is done by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. To determine the number of hours reasonably spent, the court must first determine the number of hours actually spent and then subtract from that figure hours which were duplicative, unproductive, excessive, or otherwise unnecessary. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Redundant, or otherwise unnecessary hours must be excluded from the amount of

attorneys' fees claimed because courts are charged with deducting redundant hours, which generally occur when more than one attorney represents a client. Time devoted to intra-office consultations between attorneys, which duplicated the other's time will be reduced. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Since the test for attorney fee compensation is whether a given step was necessary to attain the relief afforded, the court will disallow the hours spent negotiating a lien release with an attorney who did not represent any party in the litigation, concerning a matter unrelated to obtaining a money judgment against the defendants in the case. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

File maintenance and reorganization and an intra-office conference with staff about it is administrative work. Administrative work is considered part of overhead and attorney time devoted to administrative, instead of legal, tasks will be disallowed. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Going to the airport to find a passenger to hand-carry a package to Chuuk or running to find someone to hand-carry documents to Chuuk for filing and the like is courier or delivery work, and delivery work is valued at delivery service rates, not attorney rates, regardless of whether an attorney performs the task. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470 (Chk. 2009).

Unexplained time that does not appear to be related to the relief sought or attained by the litigation will be disallowed from an attorney fee request. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 470-71 (Chk. 2009).

An award of reasonable attorney's fees to the prevailing party is based on the customary fee in the locality in which the case is tried. Thus when the case was filed in and decided in Chuuk and the customary fee in Chuuk currently ranges from $100 to $125 an hour, the court will award attorneys' fees at $125 per hour. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

A "business privilege tax" that is part of the cost of being in business on Guam and is either part of a law firm's overhead, which cannot be taxed as a cost, or an increase in or part of the attorney's hourly rate and thus already considered under the reasonable attorney fee award. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

Even if a law firm client has agreed to compensate the law firm for its gross receipts tax liability on income received from the client, the court will not award it because what the client has agreed to pay is not relevant to the court's determination of a reasonable fee. The court makes its reasonableness determination without reference to any prior fee agreement between the attorney and client since the entitlement to a reasonable attorneys' fees award is the client's, not his attorney's, and the amount the client actually pays his attorney is irrelevant. Bank of the FSM v. Truk Trading Co., 16 FSM R. 467, 471 (Chk. 2009).

The FSM Development Bank can be entitled to reasonable attorney's fees even when it uses in-house counsel. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 173 (Pon. 2017).

When the borrowers promised to pay to the bank all reasonable attorney's fees, expenses, and costs of collection, the borrowers were liable for the costs of collecting from them, but they

were not liable for the bank's attorney's fees either defending against a third party's claims against the bank or reviewing the litigation between the third party and the borrowers since those fees are not part of the cost of collecting from the borrowers. Those hours will be disallowed. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238 (Pon. 2017).

Attorney's fees in collection cases ordinarily should not exceed 15% of the outstanding principal and interest, and an award will be reduced accordingly. FSM Dev. Bank v. Gilmete, 21 FSM R. 236, 238-39 (Pon. 2017).

– Court-Awarded – Private Attorney General

The "private attorney general" theory for an award of attorney's fees whereby a successful party is awarded attorney's fees when it has vindicated an important public right that required private enforcement and benefitted a large number of people has never been applied in the FSM. Damarlane v. United States, 8 FSM R. 45, 55 (App. 1997).

The "private attorney general" theory has never been judicially applied in the FSM, nor has it been judicially prohibited. Udot Municipality v. FSM, 10 FSM R. 354, 361 (Chk. 2001).

When the prevailing party has vindicated and enforced an important right affecting the public interest that will potentially benefit the general public and a large number of people, which required private enforcement, and which was of societal importance and the cost to prevailing party appears to outweigh the potential benefits it achieved, the case is a suitable one for the equitable application of the "private attorney general" doctrine and it is proper to adopt the principle. Udot Municipality v. FSM, 10 FSM R. 354, 361-62 (Chk. 2001).

The private attorney general theory permits government reimbursement of a party's attorney fees when it must hire its own attorney to enforce a right shared by a large number of people, when it is in the public interest. The theory recognizes that the government does not always adequately protect the rights of citizens, and that people who successfully defend the rights of the public at their own cost deserve to have their attorney fees paid for, as if they had been provided the services of a "private attorney general." FSM v. Udot Municipality, 12 FSM R. 29, 36 n.4 (App. 2003).

The private attorney general theory should be available for prevailing litigants to recover their attorney fees in bringing an action if they meet the criteria because when government officials' acts are contrary to the Constitution, and these same officials have access to the significant resources of the national government to defend their actions, there is a danger that the courts may become inaccessible to members of the public. The government does have finite and scarce resources, but these are not wasted on litigation that benefits the public interest and vindicates important societal rights. FSM v. Udot Municipality, 12 FSM R. 29, 55 (App. 2003).

The standards for application of the private attorney general theory are rigorous, and only in cases where a litigant is successful in pursuing a case that confers a substantial benefit on the public will the government be liable for attorney fees. FSM v. Udot Municipality, 12 FSM R. 29, 55 (App. 2003).

The private attorney general theory should apply in the FSM, provided that the criteria are

strictly met. FSM v. Udot Municipality, 12 FSM R. 29, 55 (App. 2003).

A party seeking attorney's fees under the private attorney general theory must demonstrate that it vindicated a right that benefits a large number of people, that the right sought to be enforced required private enforcement, and it must prove that the right is of societal importance. FSM v. Udot Municipality, 12 FSM R. 29, 56 (App. 2003).

A prevailing municipality may recover its attorney's fees under a private attorney general theory when the case addressed significant constitutional and other issues of public importance; when the whole population of the FSM benefitted from requiring greater accountability in the use of public project funds and requiring the Congress to legislate within constitutional limitations, especially when the legislation involves appropriation of large sums of funds intended for public projects; and when the case required private enforcement, as municipal governments in the FSM do not have the resources or facilities to maintain legal offices on the same scale as the state or national governments and, when the rights of a municipality=s residents are affected, they must spend municipal funds to hire a private attorney. FSM v. Udot Municipality, 12 FSM R. 29, 56 (App. 2003).

Although a case of first impression, equity favors the party that has successfully established all of the factors to meet the test for application of the private attorney general theory. When it has undertaken to litigate an important case of vital interest to the nation and has expended resources which are substantial in proportion to its gain, it should be reimbursed for its reasonable expenses in litigating. FSM v. Udot Municipality, 12 FSM R. 29, 57 (App. 2003).

The equitable private attorney general doctrine allows a prevailing party to recover attorneys' fees where the party vindicates an important right that affects the public interest, confers a significant benefit upon the general public or a large number of people, and requires private enforcement. FSM v. Udot Municipality, 12 FSM R. 622, 624 n.1 (App. 2004).

When the appellate court has already held that the private attorney general doctrine will apply in the FSM, provided that the criteria are strictly met and when it has concluded that the criteria were met and upheld the trial court's award of attorneys' fees based on the private attorney general theory, and when the appellate level dealt with the same case, criteria, and circumstances as the trial court, the appellate court may conclude that attorney's fees for the appeal should be awarded based on the private attorney general theory and remand the case to the trial court for a determination of the amount of attorney's fees and costs to be awarded. A trial court attorney=s fees award based on the private attorney general theory would be diminished if the party could not also defend the case at the appellate level. FSM v. Udot Municipality, 12 FSM R. 622, 624-25 (App. 2004).

The general rule is that when there is no statutory or contractual basis for a request for attorney fees, each party will normally bear its own attorney's fees. One exception to this rule is the private attorney general theory. A party seeking attorney's fees under the private attorney general theory must demonstrate that it has vindicated a right that benefits a large number of people, that the right sought to be enforced required private enforcement, and it must prove that the right is of societal importance. The private attorney general theory applies in the FSM, provided that these criteria are strictly met. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

When a class action has vindicated rights that benefit a large number of people; when these rights required private enforcement since the State of Yap was not in the position to vindicate the private rights of the people of Rull and Gilman; when, considering Yapese society's heavy reliance on the inner lagoon's marine resources, the rights enforced were of great societal importance; and when Yapese society's dependence on the resources of the shoreline, inner reefs, and mangrove stands is a salient feature of Yap's social and geographical configuration; the use of the private attorney general theory conforms to the Constitution's Judicial Guidance Clause that court decisions are to be consistent with the social and geographical configuration of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

When an order awarded attorneys' fees on the private attorney general theory and those fees are added to the judgment to be borne by the defendants, the issue of whether the fee award under the private attorney general theory will also stand as the fee award to plaintiffs' counsel in a final distribution is an issue that is not now before the court and will not be before the court until a proposal for a final distribution is before the court. Until then, anything the court might say would be in the nature of an advisory opinion, and the court does not have the authority to issue advisory opinions. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134-35 (Yap 2007).

An attorney's fees award under a private attorney general theory can only be made, if at all, at the litigation's conclusion. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161-62 (Yap 2007).

The private attorney-general doctrine makes no distinction in the award of attorney's fees based upon the overall amount of damages that are awarded, nor does it differentiate between an award of monetary damages from injunctive relief. Attorney's fees not otherwise awardable, may be awarded under the private attorney general doctrine only when the lawsuit has met certain requirements, including vindicating rights that benefit a large number of people, when the private parties were required to file suit to enforce those rights because a government authority was unable to do so, and when the rights enforced are of great social importance. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

When private citizens are pursuing purely civil claims – the tort of negligence – against other private citizens and the Yap government could not have undertaken any action to vindicate the plaintiffs' rights pursued, an award of attorney's fees under the private attorney-general doctrine is erroneous. It is thus an abuse of discretion for the trial court to award attorney's fees and costs under the private attorney-general doctrine in a case in which the government could not have taken any action to vindicate the rights of the people affected. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

The private attorney general theory permits government reimbursement of a party=s attorney fees when it must hire its own attorney to enforce a right shared by a large number of people, when it is in the public interest. The theory recognizes that the government does not always adequately protect the rights of citizens, and that people who successfully defend the rights of the public at their own cost deserve to have their attorney fees paid for, as if they had been provided the services of a "private attorney general." M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

A private party cannot seek an award under a private attorney general theory when it is suing for purely civil claims involving money damages that only vindicate the rights of just one plaintiff. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

A party will not be entitled to a private attorney general fee and cost award when it is a private party suing for purely civil claims involving money damages which will only vindicate the rights of just one plaintiff, itself. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 591 (Pon. 2011).

The elements for a private attorney general fee award are that the prevailing party has vindicated and enforced an important right affecting the public interest that will potentially benefit the general public and a large number of people, which required private enforcement, and which was of societal importance. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

No award of attorney's fees and costs can be made under the private attorney general principle when the plaintiff has not yet prevailed in its pursuit of the declaratory judgment. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

A respondent in an eminent domain action cannot recover attorney's fees under a private attorney general theory since the court's ruling monetarily benefits only him. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

– Court-Awarded – Statutory

Because the social and economic situation in the Federated States of Micronesia is radically different from that of the United States, rates for attorney's fees set by United States courts in connection with civil rights actions there are of little persuasive value for a court seeking to set an appropriate attorney's fee award in civil rights litigation within the Federated States of Micronesia. Tolenoa v. Alokoa, 2 FSM R. 247, 255 (Kos. 1986).

Attorney's fee awards to prevailing parties in civil rights litigation should be sufficiently high at a minimum to avoid discouraging attorneys from taking such cases and should enable an attorney who believes that a civil rights violation has occurred to bring a civil rights case without great financial sacrifice. Tolenoa v. Alokoa, 2 FSM R. 247, 255 (Kos. 1986).

Despite the fact that some of the arguments made by plaintiff in successful civil rights litigation were rejected by the court, time devoted by counsel to these issues may be included in the civil rights legislation attorney's fee award to the plaintiff where all of the plaintiff's claims in the case involved a common core of related legal theories. Tolenoa v. Alokoa, 2 FSM R. 247, 259 (Kos. 1986).

Where an action is brought pursuant to 11 F.S.M.C. 701(3), allowing civil liability against any person who deprives another of his constitutional rights, the court may award reasonable attorney's fees to the prevailing party based on the customary fee in the locality in which the case is tried. Tolenoa v. Kosrae, 3 FSM R. 167, 173 (App. 1987).

In an action brought under 11 F.S.M.C. 701(1) forbidding any person from depriving another of his civil rights, where it is shown that the attorney for the prevailing party customarily charges attorney's fees of $100 per hour for legal services in the community in which the case is

brought, and when this is at or near the hourly fee rate charged by other attorneys in the locality, the court may award the prevailing party an attorney's fee based upon the $100 hourly rate. Tolenoa v. Kosrae, 3 FSM R. 167, 173 (App. 1987).

11 F.S.M.C. 701(3) is comprehensive and contains no suggestion that publicly-funded legal services are outside the clause or should be treated differently than other legal services. Plais v. Panuelo, 5 FSM R. 319, 320-21 (Pon. 1992).

The government does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once – as a violator of civil rights. Its role as a provider of public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. Plais v. Panuelo, 5 FSM R. 319, 321 (Pon. 1992).

A taxpayer who owes social security taxes to the government as employer contributions under the FSM Social Security Act is liable for reasonable attorney's fees if the tax delinquency is referred to an attorney for collection; however, the court may exercise discretion in determining the reasonableness of the fees assessed in light of the particular circumstances of the case. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232 (Pon. 1993).

Among the factors which the court may consider in determining the amount of attorney's fees recoverable in an action brought under 53 F.S.M.C. 605 is the nature of the violation, the degree of cooperation by the taxpayer, and the extent to which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232-33 (Pon. 1993).

A taxpayer is liable to the Social Security Administration for reasonable attorney's fees and costs when unpaid taxes are referred to an attorney for collection to the extent which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 447 (Pon. 1996).

A trial court may, pursuant to 53 F.S.M.C. 605(4), award attorney's fees and collection costs, including fees for a successful appeal, to the Social Security Administration. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 134 (App. 1997).

A successful plaintiff under the civil rights statute, 11 F.S.M.C. 701(3), is entitled to an award for costs and reasonable attorney's fees. Davis v. Kutta, 8 FSM R. 218, 220 (Chk. 1997).

The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Davis v. Kutta, 8 FSM R. 218, 220 (Chk. 1997).

In determining the amount of attorney's fees to award the prevailing party in a civil rights suit the court should consider United States civil rights decisions without being bound by them. Davis v. Kutta, 8 FSM R. 218, 221 (Chk. 1997).

An hourly fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

When a party has entered into a contingent fee agreement reasonable under FSM MRPC Rule 1.5 and the contingent recovery is more than a fee calculated by an hourly rate times the hours expended, a court, in awarding civil rights attorney's fees, may award a reasonable fee pursuant to the agreement's terms. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

The purpose of the FSM civil rights fee provision is to permit an FSM civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to him or herself. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

Because the point of departure for determining a reasonable fee in civil rights litigation is to look at the amount of time spent, counsel should maintain careful records of time actually spent, notwithstanding the existence of a contingency fee agreement. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

Civil rights attorney fee awards and awards of costs may be entered against multiple defendants in the same proportions as those in the original judgment. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

Interest on a judgment is payable under 6 F.S.M.C. 1401 at nine percent a year. 11 F.S.M.C. 701(3), which provides for an award of attorney's fees in a civil rights action, should be construed to permit interest on an unpaid fee award. Davis v. Kutta, 8 FSM R. 338, 341 n.2 (Chk. 1998).

In determining a reasonable attorney's fees award, the fair hourly rate in the locality is used; time devoted to travel is not included; and time records for intra-office consultations between attorneys, which duplicated the others time were reduced. Bank of Guam v. O'Sonis, 9 FSM R. 106, 110 (Chk. 1999).

In any civil rights action the court may award costs and reasonable attorney's fees to the prevailing party. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Judicial immunity does not apply against the imposition of prospective injunctive relief. The right to attorney's fees applies when prospective relief is granted against a judge pursuant to the civil rights statute. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages, and liability for attorney's fees will be assessed among the defendants in proportion to their responsibility for the judgment. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees

for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, when the pendent claims arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 10 FSM R. 123, 124 (Chk. 2001).

When the election law lacks a statutory definition of costs either specifically including or excluding attorney's fees, the court can only conclude that the Legislature did not intend to use the term "costs" in other than its usual and familiar sense, which does not include attorney's fees. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

Plaintiffs may recover all of their attorney's fees although the bulk of the damages was awarded on the state law claim and even though the entitlement to those fees arises from the civil rights statute because for attorney fee purposes in such an instance, it is sufficient that the non-fee claims (i.e., the state law claims) and the fee claims (i.e., the civil rights claims) arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 11 FSM R. 535, 537-38 (Chk. 2003).

When both the civil rights claim and the wrongful death claim arose from a common nucleus of operative fact, for purposes of enforcing the judgment, and to be consistent with the principle that plaintiffs are entitled to all of their attorney's fees under 11 F.S.M.C. 701 even though they prevailed on a state law claim as well as a civil rights claim, the court will treat the judgment as though it is in its entirety based on a civil rights claim. Estate of Mori v. Chuuk, 11 FSM R. 535, 538 (Chk. 2003).

When the plaintiff has requested supplementary attorney's fees and the defendant has not objected and when this goes to an issue that is not subject to the pending appeal, the trial court has jurisdiction to grant the motion. Estate of Mori v. Chuuk, 12 FSM R. 3, 13 (Chk. 2003).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. The usual method is to award fees based on the hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

While a continency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

When plaintiffs are awarded reasonable fees and costs as compensatory damages under 11 F.S.M.C. 701(3), the liability for this will be assessed upon the defendants in proportion to their total liability on the rest of the judgment. Herman v. Municipality of Patta, 12 FSM R. 130, 137-38 (Chk. 2003).

Any person who proves a violation of 32 F.S.M.C. 302 or 32 F.S.M.C. 303 may recover reasonable attorney's fees. AHPW, Inc. v. FSM, 13 FSM R. 36, 39 (Pon. 2004).

A court may award a plaintiff reasonable attorney's fees in litigating a statutory cause of action that provides for award of attorney's fees to the prevailing party even though the plaintiff obtains only nominal damages. The fact that only nominal damages are awarded however may be considered in determining the amount of the attorney's fees. AHPW, Inc. v. FSM, 13 FSM R. 36, 39-40 (Pon. 2004).

When a statute provides for attorney's fees to the prevailing party, a plaintiff need not receive all of the relief that he seeks in order to be eligible for attorney's fees so long as he prevails on a significant issue. AHPW, Inc. v. FSM, 13 FSM R. 36, 40 (Pon. 2004).

A fee application must be supported by detailed supporting documentation showing the date, the work done, and the amount time spent on each service. AHPW, Inc. v. FSM, 13 FSM R. 36, 40 (Pon. 2004).

In Micronesia, an attorney's fee of $120 an hour has been found to be reasonable where there have been other fee awards of that amount and the attorney's work was of high quality, the case was a difficult one, and novel issues were presented. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

When the court is unaware of any FSM case in which a fee of greater than $120 an hour was awarded and no authority has been provided to support the contention that in the current economic climate of the FSM, an attorney's fee of more than twice the hourly rate previously recognized as reasonable may be found to be reasonable, the fee award will be reduced to $120 an hour. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

When the lack of details provided in an attorney's fee affidavit is problematic, but Congress felt that the policy concerns underlying 32 F.S.M.C. 301 *et seq.* were strong, because a successful plaintiff may recover both reasonable attorney's fees and treble damages and the plaintiff has successfully vindicated an interest protected by this statute and when the case presented complex, novel issues and the relief sought was ultimately achieved, in lieu of denying a fee request altogether, the court may reduce the amount of the fee claimed. AHPW, Inc. v. FSM, 13 FSM R. 36, 41 (Pon. 2004).

An hourly fee of $75 is reasonable and is well within the limits that have been recognized in the FSM. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

Even though the parties stipulated to the amount of attorney's fees and to the judgment the court must still make a determination of reasonableness for fees to be entered in a judgment. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 170 (Kos. 2005).

A contingency fee agreement in a civil rights case acts as neither a floor nor a ceiling on attorney's fees awarded under the statute. Such a rule serves the purpose of helping to insure that an attorney will not be undercompensated where important civil rights have been vindicated, and increases the likelihood that a plaintiff who has a meritorious claim will have access to the courts. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

An hourly rate of $120 is a reasonable hourly rate for trial time in civil rights action, and a rate of $100 per hour is a reasonable hourly rate for the out-of-courtroom time in a civil rights

case. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

When, in a civil rights case had all of the plaintiff's witnesses been deposed in advance of trial, the trial time would have been shortened, since the questioning of the plaintiff's undeposed witnesses was conducted in the manner of a discovery deposition, the court will estimate the reduction in trial time at 20 percent, and will treat 20 percent of the court time as research time that could have been spent deposing witnesses and award the research rate of $100 an hour for that time instead of the $120 an hour rate for trial time. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526-27 (Pon. 2005).

The anticompetitive practices statute itself provides the basis for the plaintiff to recover damages together with reasonable attorneys' fees and the costs of suit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

Even assuming the pro se plaintiff had successfully prosecuted his discrimination claim and sought attorney=s fees under the civil rights statute, the attorney's fees claim would still have been denied. A prevailing pro se litigant is not entitled to an award of attorney's fees even if he is an attorney or legal practitioner. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701(3) is entitled to reasonable attorney fees and costs of suit as part of compensatory damages. The court must first determine the reasonableness of any claim for attorney's fees and costs. The usual method of determining reasonable attorney's fees awards is based on an hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Walter v. Chuuk, 14 FSM R. 336, 340-41 (Chk. 2006).

Any award of attorney's fees must be based upon a showing and a judicial finding, that the amount of fees is reasonable. The plaintiffs must therefore submit detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Walter v. Chuuk, 14 FSM R. 336, 341 (Chk. 2006).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, if the pendent claims arise out of a common nucleus of operative fact as the civil rights claim. Lippwe v. Weno Municipality, 14 FSM R. 347, 354 (Chk. 2006).

A plaintiff who is awarded nominal damages is a prevailing party. As prevailing parties in a civil rights action, the plaintiffs are entitled to their fees and costs. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

When the defendant state court judge's actions upon which the plaintiffs base this suit were judicial in nature and the state court is a court of general jurisdiction, which would have had the jurisdiction to consider a motion for relief of judgment if one had been filed, the judge did not act in complete absence of jurisdiction. But when he did clearly act grossly in excess of his jurisdiction and when the plaintiffs obtained permanent prospective relief against him in this

case, they are entitled to their expenses including attorney's fees and costs under 11 F.S.M.C. 701(3) for bringing this action and are thus entitled to judgment as a matter of law on their civil rights claim for attorney's fees and costs. The costs and fees allowed will be for work in this case and not that for work in the related state court cases. Ruben v. Petewon, 15 FSM R. 605, 608-09 (Chk. 2008).

A ship captain will be awarded his attorney's fees and costs incurred in successfully bringing his counterclaim for civil rights violation and may submit his affidavit in support of his claim for fees and costs, which should meet the specificity standard. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

A prevailing party in a civil rights lawsuit is, under 11 F.S.M.C. 701(3), entitled to costs and reasonable attorney's fees even when the attorneys are from a non-profit legal services corporation since the right to a reasonable attorneys' fees award is the client's not the attorney's, and the amount that the client actually pays (or whether the client actually pays) his attorney is irrelevant. Sandy v. Mori, 17 FSM R. 92, 96-97 (Chk. 2010).

When a plaintiff has prevailed on its civil rights claim, the court may award it costs and reasonable attorney's fees. Since any attorney's fees award must be based upon a showing and a judicial finding that the amount of fees requested is reasonable, the plaintiff may file and serve detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which it makes a compensation claim so that the defendant may have notice and an opportunity to challenge the reasonableness of the fees and costs sought by the plaintiff. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

When the plaintiff prevailed on its civil rights claims against one defendant but did not prevail on its civil rights claims against the other two defendants (although it did prevail on a trespass claim against them), the one defendant that the plaintiff prevailed against on civil rights claims should not be liable for the plaintiff's attorney's fees incurred in prosecuting its claims against the other two defendants or for fees incurred in its defense of claims that other two defendants prosecuted against the plaintiff. This is because 11 F.S.M.C. 701(3) allows civil liability against any person who deprives another of his constitutional rights, which includes an award of reasonable attorney's fees to the prevailing party, but otherwise the general rule is that the parties bear their own attorney's fees. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 (Pon. 2010).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. ' 1983 and ' 1988 for guidance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 148, 150 n.2 (Pon. 2010).

In a civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party when a review of the relevant case law and the statute's permissive language indicate that such an award is merited. Higgins v. Kolonia Town, 17 FSM R. 254, 263 (Pon. 2010).

There are sound policy reasons for a rule denying a pro se litigant, whether a lay person or an attorney, an attorney fee award: 1) the statutory language makes any other construction unlikely because the phrase "reasonable attorney's fees" presupposes the existence of an

attorney-client relationship; 2) a pro se litigant (whether a lawyer or a lay person) will not have the expense of compensating another for legal representation; 3) if the FSM Congress had intended that a pro se litigant be granted a fee award, it could easily have said so, but it did not; 4) awarding "attorney's fees" to pro se litigants may unwholesomely encourage the creation of a "cottage industry" of filing lawsuits with little merit in the hope of a fee award; 5) attorneys representing themselves might be tempted to protract litigation for their own financial betterment; 6) it would discourage pro se litigants from employing an independent and detached professional who is not emotionally involved in the case and who could make sure reason, not emotion, dictated the litigation strategy and tactics; and 7) the public would see the FSM justice system as unfair and one-sided if prevailing pro se lawyer plaintiffs were treated more favorably and are eligible to receive an additional award beyond what a pro se lay person would be granted. Berman v. Pohnpei, 17 FSM R. 360, 375-76 (App. 2011).

Granting pro se non-lawyers an attorney fee award would raise the concern of the difficulty in valuing the non-attorney's time spent performing legal services, *i.e.*, the problem of overcompensating pro se litigants for excessive hours spent thrashing about on uncomplicated matters. Berman v. Pohnpei, 17 FSM R. 360, 375 n.6 (App. 2011).

An attorney's fee award should not be made to pro se litigants regardless of whether they are lawyers or lay persons. Berman v. Pohnpei, 17 FSM R. 360, 376 (App. 2011).

When the plaintiffs have not alleged facts from which the court can make out a claim against Pohnpei for civil rights violations and when they have not prevailed in their requests for injunctive relief, the court must deny their request for attorney's fees under 11 F.S.M.C. 702(8). Berman v. Pohnpei, 18 FSM R. 67, 73 (Pon. 2011).

A civil rights fee award statute controls what the losing defendant must pay, not what the prevailing plaintiff must pay his lawyer. What a plaintiff may be bound to pay and what an attorney is free to collect under a fee agreement are not necessarily measured by the "reasonable attorney's fee" that a defendant must pay pursuant to a court order. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Subsection 701(3) is a fee-shifting statute that shifts the liability for attorney's fees from the client, the party usually liable under a fee agreement, to a non-prevailing party. In an FSM civil rights case, the court "may award costs and reasonable attorney's fees to the prevailing party." But it does not follow that the time an attorney actually expended on the case is the amount of time reasonably expended or that the hourly rate is reasonable. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

An $100 hourly rate is certainly a reasonable rate for attorney work in a civil rights case when attorney's fees are awarded under 11 F.S.M.C. 701(3). Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Time expended on a rehearing petition that was summarily denied was thus completely unproductive and otherwise unnecessary and did not afford any relief and the 3.4 hours spent on it must be disallowed. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

A prevailing party must be one who has succeeded on any significant claim affording it some of the relief sought. At a minimum, to be considered a prevailing party within the meaning of the civil rights fee-shifting statute, the plaintiff must be able to point to a resolution of the

dispute which changes the legal relationship between itself and the defendant. Beyond this absolute limitation, a technical victory may be so insignificant as to be insufficient to support prevailing party status. Kaminanga v. Chuuk, 18 FSM R. 216, 220 (Chk. 2012).

Nevertheless, that a plaintiff has once established prevailing party status does not make all later work compensable. Compensability is subject to several limitations. These limitations are: 1) the fee award should take into account the plaintiff's success in the case as a whole; 2) an earlier established prevailing party status extends to post judgment work only if it is a necessary adjunct to the initial litigation, and 3) plaintiffs cannot over-litigate. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

Postjudgment litigation, like all work under the fee-shifting statutes, must be reasonable in degree, and in analyzing a fee request for protracted litigation, it is helpful to divide the time period into phases. Kaminanga v. Chuuk, 18 FSM R. 216, 221 (Chk. 2012).

When the plaintiff has pled civil rights violations and the court has found a violation of the plaintiff's due process rights, the plaintiff can be awarded his attorney's fees and costs. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

In a civil rights case, a prevailing plaintiff is entitled to an award of costs and reasonable attorney's fees as part of compensatory damages. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The FSM civil rights statute's purpose is to allow a civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to herself, particularly when the damages are small or uncertain and would not otherwise induce an attorney to pursue the matter. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

The civil rights statute provides that in an action brought under it, the court may award costs and reasonable attorney's fees to the prevailing party. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

The court determines what is a reasonable fee without reference to any fee agreement between the client and the attorney and without reference to what the attorney is actually paid. This determination is based on the customary fee in the locality in which the case is tried. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

$100 an hour rate is reasonable for an attorney's fee award in a civil rights case. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

Since the FSM civil rights statute was patterned after U.S. civil rights statutes, the FSM Supreme Court may consider U.S. jurisprudence under 42 U.S.C. ' 1983 and ' 1988 to help determine the intended meaning of 11 F.S.M.C. 701(3) and governmental liability thereunder. Poll v. Victor, 18 FSM R. 402, 404 (Pon. 2012).

When the FSM civil rights statute is not as expansive as 42 U.S.C. ' 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for

administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Attorney's fees and expenses are not recoverable under 11 F.S.M.C. 701(3) in an eminent domain case filed by the petitioner state since it is not a civil rights case and the respondent is receiving the process due him under the Chuuk statute and Constitution and thus his civil rights have not been violated In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

A wrongfully discharged employee is entitled to the equitable remedy of reinstatement to his former position. Reinstatement is appropriate even if the position has been filled by another employee since, if a replacement's existence constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Manuel v. FSM, 19 FSM R. 382, 392 (Pon. 2014).

In an action brought under the civil rights statute, the court may award costs and reasonable attorney's fees to the prevailing party. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

Under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney's fees to the prevailing party in a civil rights case. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 82 (Pon. 2015).

Since the FSM civil rights statute is not as expansive as 42 U.S.C. ' 1988 because it allows an attorney's fee award only in an "action" brought under 11 F.S.M.C. 701(3) and since an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees incurred for administrative proceedings, even for administrative proceedings that are a prerequisite to a later court action (the exhaustion of administrative remedies requirement). Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83 (Pon. 2015).

Since the statute authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3), fees for attorney time spent preparing for, participating in, and reviewing administrative proceedings before an agency and before the Governor will be disallowed. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 83-84 (Pon. 2015).

When the defendant is not liable for the attorney's fees incurred in the plaintiff's litigation against other parties against whom the plaintiff did not have a viable civil rights claim, the court will disallow an attorney fee request for work solely in response to motions filed by those other defendant parties. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

The court will allow fees for attorney time spent reviewing the appellate court's mandate as that was part of the process leading to trial on civil rights damages. Carlos Etscheit Soap Co. v. McVey, 20 FSM R. 81, 84 (Pon. 2015).

In an action brought under 11 F.S.M.C. 701(3), the court may award costs and reasonable attorney=s fees to the prevailing party. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

– Paid by Client

A client is free to contract with counsel along any lines reasonable under FSM MRPC Rule 1.5, and such a fee, if it is reasonable, is enforceable against the client regardless of the fee awarded by the court. Davis v. Kutta, 8 FSM R. 218, 224 (Chk. 1997).

The first step in resolving a fee dispute between an attorney and a former client is to consult the written fee agreement between the parties, if there is one. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Construction of a contract for an attorney's compensation is governed by the same rules that apply to contracts generally and interpretation of contract terms are matters of law to be determined by the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

When the attorney-client contract is at an end without liability for breach on either side, the attorney remains entitled to compensation according to the contract terms for the services performed to date. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

An attorney fee contract term for "20% of the gross amount henceforth collected by the client" was reasonable when every attorney who takes cases on a contingency basis runs the risk that he will be paid little or nothing for his work, when the 20% fee is lower than many contingent fees, but the attorney's contractual obligations (pursue to judgment) were also less than usual, when the delinquent loans had been charged off because the bank had done all that it could to collect the loans, and when the cases were not promising. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

When an attorney is recovering his fees under the contract's terms and not under quantum meruit, he may enforce a common law charging lien in the original case instead of having to seek his fees in a separate lawsuit. Generally, an attorney is entitled to a common law lien for his fees upon his client's cause of action and the funds it recovers. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

An attorney's charging lien is not created by statute, but has its origin in the common law, and is governed by equitable principles and is based on the equitable doctrine that an attorney should be paid out of the proceeds of the judgment secured by that attorney. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

A counsel's fee must be reasonable. The Rules strongly suggest that a fee arrangement be made in writing and given to the client. This makes the fee arrangement clear and reduces the possibility of confusion. Ittu v. Palsis, 11 FSM R. 597, 598 (Kos. S. Ct. Tr. 2003).

The Rules allow a counsel to require advance payment of a fee by the client, but the counsel is required to return any portion which has not been earned. Ittu v. Palsis, 11 FSM R. 597, 598 (Kos. S. Ct. Tr. 2003).

In order for a law firm to prevail on a summary judgment motion on an account-stated claim for attorney's fees, it has to show that, as a matter of law, the defendant personally was the

client for whom all the legal services were performed or that he had agreed to pay for all such services rendered. But that does not end the inquiry. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

Although fee suits appear from a distance to be basically suits to recover on a breach of contract or, in some instances, to recover for the reasonable value of personal services, on closer inspection, the law is clear that lawyers suing clients are not treated as are merchants suing former trading partners. The procedural landscape is much narrower and more tightly regulated. The burden is on the lawyer to present detailed evidence of services actually rendered. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

There are two principal ways in which attorney-fee suits differ from other kinds of collection suits between commercial strangers. One is that the court, exercising its supervisory powers over lawyers, can reduce the amount charged, and the other is that the defenses available to clients are expanded. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

An attorney seeking to recover unpaid attorney fees on the theory of account stated must prove the reasonable value of the services rendered if the fee agreement was entered into during the course of the attorney-client relationship. This is because when the account stated is for legal services, there is a presumption of undue influence when entered between an attorney and client during their fiduciary relationship. The attorney has the burden of showing that the transaction was fair and regular and entered voluntarily by the client with full knowledge of the facts. Saimon v. Wainit, 16 FSM R. 143, 147 (Chk. 2008).

Although a written agreement may provide for a specified attorney fee, the courts may inquire into the reasonableness of the fee. Thus, even when enforcing a fee contract, the attorney's fee must still be reasonable or the court may reduce it because the fee charged under the fee contract is always subject to reduction by the court in the exercise of a supervisory power over lawyers. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

Just like any plaintiff, any party seeking attorney's fees, including a plaintiff law firm suing for the fees it claims to have earned, always bears the burden of providing sufficient evidence to prove its claim. More must be presented than bills issued to the client (or a mere compilation of hours multiplied by a fixed hourly rate) since this type of data does not provide the court with enough information about their reasonableness – a matter which the court cannot determine on the basis of conjecture or conclusions of the attorney seeking the fees. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

When an attorney failed to perform his duties as the plaintiffs' appellate lawyer, he breached the contract because he did not complete what he stated he would do which was to provide legal representation, the "handling of an appeal," since he never filed a brief and because of this, the FSM appeal case was dismissed. The attorney thus breached his contract. The services promised were not performed and because no brief was filed, the attorney cannot bill the plaintiffs for hours he worked on the brief as there was no brief filed or evidence of work. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

When an attorney cannot provide any proof of his hours of work, he cannot prove his fees and his client should not have been charged for these and since the court cannot find evidence to prove the attorney's breach of contract counterclaim based on a preponderance of the

evidence, his counterclaim for attorney's fees will be dismissed. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 646 (Kos. S. Ct. Tr. 2009).

A court may order the refund of an unearned portion of any retainer fee, even a fee designated as "nonrefundable." Nonrefundable retainers are disfavored on public policy grounds. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 647 (Kos. S. Ct. Tr. 2009).

The court has general equitable powers to award fees out of a settlement fund to those attorneys who have brought benefit to class members. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

The civil rights statute itself does not interfere with the enforceability of an attorney-client fee contract, even one such as an hourly rate agreement. Kaminanga v. Chuuk, 18 FSM R. 216, 219 (Chk. 2012).

Rule 1.5(b) of the FSM-adopted Model Rules of Professional Conduct states a preference for written representation agreements. Damarlane v. Damarlane, 19 FSM R. 519, 523 n.2 (Pon. 2014).

Since, when interpreting the meaning of the ambiguous term "share of the costs," the court will look to the course of performance between the parties and since throughout the course of attorney's representation and for more than a decade since, the client did not offer the attorney any compensation and the attorney did not demand compensation until the clients= unrelated activities raised her ire, the court may infer that, based on this course of performance between the parties, the client's share of the costs under the 1991 verbal contract is zero dollars. Damarlane v. Damarlane, 19 FSM R. 519, 525 (Pon. 2014).

– Paid by Client – Contingent

A contingency fee, like any attorney's fee, must meet the requirements of Rule 1.5 of the Model Rules of Professional Conduct, which provides that a lawyer's fee shall be reasonable. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

A contingent fee agreement shall be in writing and state the method by which the fee is to be determined, and upon conclusion of the matter the lawyer shall provide the client with a written statement stating the outcome and, if there is a recovery, showing the remittance to the client and the method of determination. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

Contingency fees are prohibited in both domestic relations and criminal matters. Davis v. Kutta, 8 FSM R. 218, 222 (Chk. 1997).

When a party has entered into a contingent fee agreement reasonable under FSM MRPC Rule 1.5 and the contingent recovery is more than a fee calculated by an hourly rate times the hours expended, a court, in awarding civil rights attorney's fees, may award a reasonable fee pursuant to the agreement's terms. Davis v. Kutta, 8 FSM R. 218, 223 (Chk. 1997).

A contingent fee agreement must be in writing and must state the method by which the fee is to be determined. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Contingent fee contracts, with some exceptions, are acceptable in the FSM. A contingent fee agreement is the freely negotiated expression both of a client's willingness to pay more than a particular hourly rate to secure effective representation, and of an attorney's willingness to take the case despite the risk of nonpayment. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

Courts should be reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties. Nevertheless, an attorney's fee must still be reasonable or the court may reduce it. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496 (Chk. 2002).

When a written fee agreement, freely negotiated between competent and knowledgeable parties, does not require the attorney to preform any work after judgment is entered, and expressly states that the attorney's fee is "20% of the gross amount henceforth collected by the client," not 20% of the gross amount collected by the attorney, and when the attorney has performed all of the acts that his contract required of him, the attorney is entitled to compensation according to the contract's terms. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 496-97 (Chk. 2002).

An attorney fee contract term for "20% of the gross amount henceforth collected by the client" was reasonable when every attorney who takes cases on a contingency basis runs the risk that he will be paid little or nothing for his work, when the 20% fee is lower than many contingent fees, but the attorney's contractual obligations (pursue to judgment) were also less than usual, when the delinquent loans had been charged off because the bank had done all that it could to collect the loans, and when the cases were not promising. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM R. 493, 497 (Chk. 2002).

Courts cannot deny a motion to proceed in forma pauperis because the movant's attorney is employed on a contingent fee basis. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 515, 518 (Pon. 2002).

While a continency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. Herman v. Municipality of Patta, 12 FSM R. 130, 137 (Chk. 2003).

A contingency fee agreement in a civil rights case acts as neither a floor nor a ceiling on attorney's fees awarded under the statute. Such a rule serves the purpose of helping to insure that an attorney will not be undercompensated where important civil rights have been vindicated, and increases the likelihood that a plaintiff who has a meritorious claim will have access to the courts. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 524, 526 (Pon. 2005).

When the court is making its reasonableness determination for a plaintiffs' attorney fee award, it must disregard the contingent fee agreement's terms. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 (Yap 2007).

The court will give no weight to a contention that there was no contingent fee agreement in place because the fee agreement states that the clients are the Municipalities of Rull and Gilman and the plaintiff class is composed of Rull and Gilman residents when neither municipality is a corporate body or has an established municipal government and these municipalities exist as social constructs and when the court's decisions must conform to Micronesia's social configuration. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 64 n.3 (Yap 2007).

After a determination of what would be a normal fee for the services of each attorney, adjustments should be made upwards or downwards to reflect special considerations such as contingency, complexity, amount of recovery, relative recovery to members of the class, inducement to counsel to serve as private attorneys general, duplication of services, public service considerations, etc. However, even in contingency cases, a fee enhancement is the exception, and not the rule. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 73 (Yap 2007).

Contingent fee contracts are, with some exceptions, acceptable in the FSM since a contingent fee agreement is the freely negotiated expression both of a client's willingness to pay more than a particular hourly rate to secure effective representation, and of an attorney's willingness to take the case despite the risk of nonpayment. A contingent fee agreement must be in writing and must state the method by which the fee is to be determined. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

Although courts are reluctant to disturb contingent fee arrangements freely entered into by knowledgeable and competent parties, an attorney's contingent fee must still be reasonable or the court may reduce it. This is especially true when the contingent fee sought is in a class action. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 204 (Yap 2010).

When a contingent fee contract is to be satisfied from a settlement fund approved by the trial judge pursuant to Rule 23(e), the court has an even greater necessity to review the fee arrangement for this rule imposes upon it a responsibility to protect the interests of the class members from abuse. In such circumstances, the attorneys' role is drastically altered; they then stand in essentially an adversarial relation to their clients who face a reduced award to the extent that counsel fees are maximized. Moreover, because of the nature of class representation, the clients may be poorly equipped to defend their interests against those of their attorneys. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 17 FSM R. 198, 205 (Yap 2010).