

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

IN THE MATTER OF THE AWARDING)	GENERAL ORDER 2005-001
OF ATTORNEY'S FEES)	
)	THE AWARDING OF REASONABLE
)	ATTORNEY'S FEES
)	
_____)	

The Supreme Court held in Anitok v. Binejal, 2 MILR 114, 117 (RMI S.Ct. 1998) that the awarding of attorney's fees in the Republic of the Marshall islands shall be governed by the common law American Rule. That is, attorney's fees are not taxable as costs against the losing party, nor are they directly recoverable by a claimant as an element of damages, although they may be recovered indirectly in effect when the plaintiff is awarded punitive damages. To this general rule there are three general exceptions:

- (1) a valid contractual provision for the allowance of reasonable attorney's fees;
- (2) the equitable power of the court to make awards in addition to regular statutory costs, including a reasonable attorney's fee. This power has been exercised most often in cases involving the creation, protection, or distribution of a fund within the jurisdiction of the court, but is broad enough to permit the award of fees and expenses in certain rather restricted circumstances [e.g., where an unfounded action or defense is brought or maintained in bad faith, vexatiously, wantonly, or for oppressive reasons and where there is an abuse of procedure]; and
- (3) a valid statutory or rule provision.

In cases where attorney's fees are authorized by contractual provision, the requesting attorney shall submit an accompanying affidavit attaching a true and correct copy of the pertinent agreement. in cases where attorney's fees may be awarded under equitable principles, the requesting attorney shall set forth in a memorandum of points and authorities the basis for an award. In cases where attorney's fees are authorized by statutory or rule provision, the requesting attorney shall cite the applicable provision.

If in a particular case the award of attorney's fees is authorized, the attorney shall not request nor shall the Court award fees in excess of reasonable attorney's fees. "Factors to be considered as guides in determining the reasonableness of a fee include the following: (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 result obtained. (5) The time limitations imposed by the client or by the circumstances. (6) The nature and length of professional relationship with the client. (7) The experience, reputation, and ability of the lawyer or lawyers performing the services. (8) Whether the fee is fixed or contingent." ABA Disciplinary Rule 2-106.

Where the fee is contingent, the award of attorney's fees shall not exceed the following limits:

- (a) 30% on the first \$5,000.00 awarded in general damages;
- (b) 20% on the next \$20,000.00 awarded in general damages;
- (c) 15% on the next \$75,000.00 awarded in general damages;
- (d) 7.5% on the next \$400,000.00 awarded in general damages;
- (e) 5% on the next \$500,000.00 awarded in general damages; and
- (f) 2.5% on any amount awarded in general damages over \$1,000,000.00.

The Clerk of the Courts is ordered to reject from filing any requests for attorney's fees not complying with this order.

High Court General Order 1996-1 and any prior orders contrary to the above are vacated.

Dated: May 30, 2005

/S/
Carl B. Ingram
Chief Justice, High Court