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SUPERIOR COURT  
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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN  
MARIANA ISLANDS,

Plaintiff,

vs.

JOVITA E. NABORS,

Defendant.

Civil Action No. 84-351

ORDER AND OPINION

Having reviewed the record and the pleadings and having considered the arguments of counsels, this Court GRANTS IN PART AND DENIES IN PART the motion of the Defendant, Ms. Jovita E. Nabors [hereinafter "Ms. Nabors"], for a determination of Mr. Robert Keogh's ["Mr. Keogh"] entitlement to attorney's fees.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

This case arises out of an underlying civil action involving the condemnation of land on Tinian that belonged to Ms. Nabors. The action was brought to determine the value of the property taken by the C.N.M.I. Government.

On September 22, 1983, the Defendant purportedly appointed her father, William B. Nabors, to act as her attorney-in-fact.

**FOR PUBLICATION**

1 Affidavit of Robert L. Keogh, para. 3 (Jan. 11, 1993) [hereinafter  
2 "Keogh Affidavit"]; see also Keogh Affidavit, Exhibit B. Ms.  
3 Nabors was 16 years old at the time.<sup>1/</sup> See Keogh Affidavit, para.  
4 2. The general power of attorney granted to Mr. Nabors the  
5 authority to "engage and dismiss . . . counsel . . . with respect  
6 to all or any of the matters or things herein mentioned. . . ."  
7 Keogh Affidavit, Exhibit B, para. 8.

8 On March 25, 1984, Mr. Nabors signed a retainer agreement on  
9 Ms. Nabors' behalf which provided that he and Mr. Keogh would  
10 represent her in the condemnation case. Defendant's Memorandum in  
11 Support of Motion for Determination of Entitlement to Attorney's  
12 Fees, Exhibit 1 (Dec. 2, 1992) ["Defendant's Memorandum"]. The  
13 agreement delineated the scope of the legal representation as  
14 follows:

15 It is agreed the attorneys shall be responsible for all  
16 legal representation of the interests of the  
17 landowner(s), including negotiation, lobbying,  
18 preparation of documents, conduct of litigation,  
19 coordination of related public relations or public  
information efforts, and all other matters ordinarily  
associated with representation of landowner(s) in  
connection with military land use taking.

20 *Id.* at para. 7.

21 The retainer agreement also provided that the attorneys would  
22 receive 10% of any compensation given to the Defendant which  
23 exceeded \$.85 per square meter for the property. *Id.* at para. 4.

24 In 1986, \$89,877.13 was paid to Ms. Nabors as partial  
25 compensation for the value of the property. On February 10, 1986,  
26 the Bank of Hawaii issued a cashier's check for this amount,  
27 naming the Defendant as payee. The Defendant avers that she never  
28 received the proceeds from the cashier's check. Affidavit of

29 \_\_\_\_\_  
<sup>1/</sup> Ms. Nabors was born on June 29, 1967. Keogh Affidavit,  
para. 2.

1 Jovita E. Nabors in support of Motion for Determination of  
2 Entitlement to Attorney's Fees, para. 4 (Nov. 30, 1992) ["Nabor's  
3 Affidavit"]. Ms. Nabors further asserts that the endorsement on  
4 the back of the cashier's check is not hers, *id.* at para. 5, and  
5 recognizes "the second signature on the reverse side of the check  
6 . . . to be that of [her] father, William B. Nabors," *id.* at para.  
7 6.

8 On May 17, 1990, the Defendant executed another power of  
9 attorney in which she again appointed her father as her attorney-  
10 in-fact. Keogh's Affidavit, para. 4 & Exhibit C. Unlike the  
11 first power of attorney, this power of attorney expressly  
12 mentioned the property on Tinian.<sup>2/</sup> This document also resembles  
13 the original power of attorney in that it also authorized Mr.  
14 Nabors to hire other counsel with respect to the Tinian land. *Id.*  
15 at para. 7.

16 On September 19, 1991, the Defendant sent a facsimile to Mr.  
17 Keogh informing him that the power of attorney was purportedly  
18 revoked on December 7, 1990.<sup>3/</sup> Keogh's Affidavit, Exhibit D.  
19 She also notified him that she was terminating his services as  
20 counsel. *Id.* Up to this point, however, Mr. Keogh had negotiated  
21 with the C.N.M.I. government on behalf of Ms. Nabors in an effort  
22 to obtain a settlement. Keogh's Affidavit, at para. 8. It  
23 appears that a settlement offer was pending at the time of his  
24 termination. *Id.*

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26 <sup>2/</sup> This property was the subject of the underlying action.  
27 *Id.*

28 <sup>3/</sup> Prior to receiving this letter, Mr. Keogh apparently had  
29 no knowledge or notice of the revocation. Keogh's Affidavit,  
para. 7.

1 In October of 1991, Mr. Randy Cunliff was hired as Ms.  
2 Nabors' counsel. Keogh Affidavit, para. 8. Shortly thereafter,  
3 on March 25, 1992, the C.N.M.I. Government and the Defendant  
4 entered into a settlement agreement in which Ms. Nabor would  
5 receive \$1.90 per square meter of property. In pertinent part,  
6 the agreement stated \$30,051.91 was due and owing to Ms. Nabors  
7 from the C.N.M.I. Government.

8 On December 2, 1992, the Defendant filed a motion for  
9 determination of entitlement to attorney's fees. Ms. Nabors and  
10 Mr. Keogh disagree as to whether Mr. Keogh is entitled to payment  
11 of attorney's fees. In light of the dispute, the Court ordered  
12 that all monies in excess of \$7,500 be disbursed to Ms. Nabors.

13 On January 21, 1993, the Court conducted a hearing on the  
14 Defendant's motion. The matter was taken under advisement.  
15

## 16 **II. ISSUES PRESENTED**

17 The Court will consider the following issues: (1) whether a  
18 minor has the capacity to execute a power of attorney which  
19 authorizes her attorney in fact to hire an attorney at law to  
20 render legal services to the minor; and (2) whether the minor is  
21 liable for the amount of the attorney's fees upon which the  
22 attorney in fact and the attorney at law agreed.  
23

## 24 **III. ANALYSIS**

### 25 **A. Contracts of Minors for Legal Services: Void or Voidable?**

26 Mr. Keogh contends that he should recover \$5,439.42 due to  
27 the payment she received for the value of the land pursuant to the  
28

1     retainer agreement,<sup>4/</sup> Keogh Affidavit, para. 9, and \$1,929.54 for  
2     the cost of his representation of her case, *id.* at para. 10. The  
3     Defendant asserts that she was a minor at the time she executed  
4     the 1983 power of attorney and thus did not have the capacity to  
5     do so.<sup>5/</sup> Consequently, she argues that she is not bound by the  
6     retainer agreement that her father signed on her behalf.

7             As a general rule, an infant has the capacity to appoint  
8     agents. *Restatement (Second) of Agency* § 20 cmt. c. The  
9     execution of a valid power of attorney<sup>6/</sup> is one way in which an  
10    agency relationship may be created. See, e.g., *Ulloa v. Maratita*,  
11    91-365, slip op. at 14 (Sup. Ct. Nov. 27, 1992) (citing *Kline v.*  
12    *Utah Dept. of Health*, 776 P.2d 57, 61 (Utah App. Ct. 1989)); cf.  
13    *Restatement (Second) of Agency* § 1 (1958)). This Court,  
14    therefore, finds that agency principles govern the present case.

15             Section 20 of the *Restatement (Second) of Agency* provides:

16                     A person who has capacity to affect his legal  
17                     relations by giving consent to a delegable act or  
18                     transaction has capacity to authorize an agent to do  
                    such act or to conduct such transaction for him with the  
                    same effect as if he were to act in person.

19             *Restatement (Second) of Agency* § 20.

20             \_\_\_\_\_  
21             <sup>4/</sup> 51,804 square meters times \$1.05 x 10% (10% of the  
              recovery above \$.85 per sq. meter). Keogh Affidavit, para. 9.

22             <sup>5/</sup> The Defendant also asserts that she never received the  
23             cashier's check from the Bank of Hawaii in the amount of  
24             \$89,877.13. She argues that Mr. Keogh is not entitled any  
25             attorneys fees because "former counsel for the Defendant . . .  
26             either jointly or severally, retained in excess of \$89,000."  
27             Motion for Determination of Entitlement to Attorney's Fees, at 4  
28             (Dec. 2, 1992). The Court will not address this issue in a motion  
              for attorneys fees. The Defendant must file a separate cause of  
              action alleging and ultimately proving such facts in order for the  
              Court to adjudicate this claim.

29             <sup>6/</sup> A power of attorney is "[a]n instrument authorizing  
              another to act as one's agent or attorney. The agent is attorney  
              in fact . . . ." BLACK'S LAW DICTIONARY 1055 (5th ed. 1979).

1 Comment c further clarifies this principle and enunciates the  
2 general rule that the contract of an infant is voidable. *Id.*,  
3 cmt. c; see also *Restatement (Second) of Contracts* § 14 (1981).  
4 In other words, the minor may elect to disaffirm the contract<sup>7/</sup> or  
5 to ratify it. The purpose of this rule is to shield infants from  
6 the adverse effects of improvidently entering into a contract.  
7 *Jones v. Dressel*, 623 P.2d 370, 373 (Colo. 1981); *Porter v.*  
8 *Wilson*, 209 A.2d 730, 731 (N.H. 1965).

9 Where the agent makes a contract with a third party on behalf  
10 of an infant for necessities of life, the general rule does not  
11 apply and the infant is contractually bound. *Restatement (Second)*  
12 *of Agency* § 20, cmt. c. The term "necessaries" traditionally  
13 includes "food, clothing, habitation, and education, . . ."  
14 *Fanelli v. Barclay*, 419 N.Y.S.2d 813, 814 (N.Y. Civ. Ct. 1979).  
15 Necessaries, however, encompass more than merely those things  
16 which are essential to sustaining the minor's life and includes  
17 those "articles which would ordinarily be necessary and suitable  
18 in view of rank, position, fortune, [and] earning capacity, . . ."  
19 *Caruso v. Caruso*, 141 A. 16, 18 (N.J. Ch. 1928). For instance,  
20 the services of attorneys are usually deemed to be necessities of  
21 life. *Leonard v. Alexander*, 122 P.2d 984, 986 (Cal. Ct. App.  
22 1942); see, e.g., *Epperson v. Nugent*, 57 Miss. 45 (protection of  
23 infant's property interest) (*cited in* STUART M. SPEISER, *ATTORNEY'S*  
24 *FEEES*, § 17:9, at 428 (1973) (available at Dist. Ct. Lib.)); *Roberts*  
25 *v. Vaughn*, 219 S.W. 1094 (Tenn. 1920); *Fanelli*, 419 N.Y.S.2d 813  
26 (support of minor); *Sutton v. Heinzle*, 115 P. 560, 561 (Kan.

27  
28  
29 <sup>7/</sup> Where the infant fails to avoid the contract, "the  
contracts are effective against all parties to them." *Restatement*  
(*Second*) *of Agency* § 20, cmt. c.

1 1911) (beneficial services for infant's personal relief constitute  
2 necessaries). But see *In the Matter of the Estate of Bradshaw*,  
3 606 P.2d 578, 582 (Kan. 1980) (no recovery at law for attorney's  
4 fees because legal services on behalf of estate or property do not  
5 constitute necessaries). Nonetheless, it is important to  
6 recognize that the word "necessaries" does not have a "rigid [and]  
7 inflexible definition" and its purview actually depends upon the  
8 facts of each case. *Id.* at 582, n.2.

9 In the present case, Mr. Koegh seeks attorney's fees to  
10 compensate him for his efforts to ensure that Ms. Nabors, a minor  
11 at the time, received just compensation from the C.N.M.I.  
12 Government for the condemnation of her property. This case called  
13 into question Ms. Nabor's constitutional rights under the Takings  
14 Clause, N.M.I. Const. Art. XIII, § 1, 2, and thus implicated  
15 important and essential rights held by the Defendant, see *Covenant*  
16 *to Establish a Commonwealth of the Northern Mariana Islands in*  
17 *Political Union with the United States of America* § 805; see also  
18 C.N.M.I. Const., Art. XII (1986); *Commonwealth v. Bordallo*, No.  
19 90-003, slip op. at 10 (N.M.I. 1990). Furthermore, the Court  
20 finds that Ms. Nabors had the ability and was old enough to  
21 understand the import of her actions when she executed the powers  
22 of attorney in 1983<sup>8/</sup> and again in 1990.<sup>9/12</sup> See, e.g., *Midland*  
23 *Valley R. Co. v. Johnson*, 215 S.W. 665, 667 (Ark. 1919) (17 year

24 \_\_\_\_\_  
25 <sup>8/</sup> Ms. Nabors was 16 years old at the time.

26 <sup>9/</sup> She was nearly 23 years old when she appointed her  
27 father as her attorney in fact for a second time. Furthermore, it  
28 appears that Ms. Nabors provided testimony to the United Nations  
concerning the Tinian condemnation matter. Keogh's Affidavit,  
para. 6.

29 It is also important to note that the retainer agreement was  
made for the benefit of Ms. Nabors.

1 old). Based upon the facts of this case, the Court holds that the  
2 rendering of legal services to Ms. Nabors for the purpose of  
3 protecting her constitutional right to own property constitutes  
4 necessities.<sup>10/</sup> Cf. *McAlear v. Unemployment Compensation Comm'n*,  
5 405 P.2d 219, 222 (Mont. 1965) (It is "important that litigants  
6 have counsel in civil cases . . . particularly when some state .  
7 . . . has deprived the litigant of basic rights"). Ms. Nabors is,  
8 therefore, bound by the retainer agreement and must compensate Mr.  
9 Keogh accordingly.

10  
11 **B. Amount of Compensation Due**

12 In order to determine the appropriate amount of compensation  
13 due to Mr. Keogh, one of three approaches must be adopted. The  
14 extent of an infant's liability has been based upon: (1) the  
15 reasonable value of the benefit conferred on the infant, see,  
16 e.g., *Porter v. Wilson*, 209 A.2d 730, 732 (N.H. 1965); (2) the  
17 reasonable or actual value of the legal services rendered, see,  
18 e.g., *Plummer v. Northern P.R. Co.*, 167 P. 73 (Wash. 1917); (3)  
19 the agreed upon fee, see, e.g., *Midland Valley*, 215 S.W. 665. The  
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21 <sup>10/</sup> Even if the Court held otherwise, Mr. Keogh is correct  
22 in arguing that Ms. Nabors would still be duty bound to pay him  
23 for two reasons. First, Ms. Nabors ratified the 1983 power of  
24 attorney when she executed the subsequent power of attorney. See  
25 *Restatement (Second) of Agency* §§ 82, 84 cmt. c and illus. 9,  
26 93(1) and cmts. a and c and illus. 1, 93(1), 100. Second, Ms.  
27 Nabors has benefited by Mr. Keogh's efforts to obtain a settlement  
28 from the C.N.M.I. Government. The fact that Ms. Nabors may or may  
29 not have a cause of action against Mr. Nabors and has not yet  
received the settlement money does not negate the benefit  
conferred on her by Mr. Keogh; based on the facts before the  
Court at this time, it appears that Ms. Nabors clearly has a right  
to the settlement money. Thus, she may also be bound by quasi-  
contractual obligations. *Restatement (Second) of Contract* § 14,  
cmt. b (citing *Restatement (Second) of Contracts* § 12, cmt. f;  
*Restatement of Restitution* § 139).



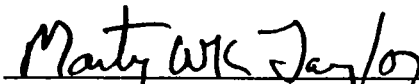
1 second approach is adopted because it is fair to all parties  
2 involved and allows the Court to examine the billings to protect  
3 minors from excessive attorney's fees. The Court, therefore,  
4 holds that Ms. Nabor's liability is limited to the reasonable  
5 value of Mr. Keogh's services.

6 Having scrutinized Mr. Keogh's itemized list of attorney's  
7 fees and the cost of representation, the Court finds that Mr.  
8 Keogh's request is eminently reasonable. The account which holds  
9 the disputed amount will, therefore, be charged to pay for Mr.  
10 Keogh's attorney's fees.

11  
12 **IV. CONCLUSION**

13 In conclusion, the Defendant's motion is GRANTED to the  
14 extent that the Court has ruled on Mr. Keogh's right to attorney's  
15 fees. The Court, however, DENIES her motion in part because it  
16 disagrees with her assertion that Mr. Keogh is not entitled to any  
17 attorney's fees. Ms. Nabors is bound by the retainer agreement  
18 into which her attorney in fact, Mr. Nabors, entered on her behalf  
19 when she was a minor. The Clerk of Court shall, therefore,  
20 withdraw \$7,368.96 from the trust account to pay Mr. Keogh. Ms.  
21 Nabors shall receive the remaining balance.

22 It is hereby ORDERED this 24<sup>TH</sup> day of June, 1993.

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24   
25 MARTY W.K. TAYLOR  
Associate Judge  
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29