Superior Court
of the
State of Delaware

Jan R. Jurden
*Judge*

New Castle County Courthouse
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**RE: Ramunno& Ramunno, P.A.**
**v. Gary S. Nitsche, P.A.**
**C.A. No. 08C-03-037-JRJ**

Dear Counsel:

The Court has reviewed the parties' briefing regarding the applicable measure of compensation in this fee dispute. By way of background, Ramunno & Ramunno, P.A. ("Ramunno") sued Gary S. Nitsche, P.A. ("Nitsche") to recover attorney's fees in 12 cases Ramunno initially handled but ultimately ended up with Nitsche. When Nitsche took over the cases, it entered into standard written contingent fee agreements with the clients,[1] and reimbursed Ramunno for the costs Ramunno had advanced on the clients' behalves. According to Ramunno, when a client leaves one firm and goes to another, "fairness and logic dictate that a

[1] Nitsche declined to represent two of the 12 clients (Patterson and Wallace) listed in Ramunno's complaint and, at oral argument on another motion, Ramunno agreed there was no claim for attorneys fees in those two cases.

contingency fee be divided proportionately [between the two firms] based on the amount of work that each attorney has done."[2] In addition, Ramunno argues that Nitsche is obligated to pay Ramunno for the work it performed even when there was no recovery in the case. In opposition, Nitsche argues that *Webb v. Harleysville Ins. Co.*[3] controls and thus the appropriate measure of damages is *quantum meruit.* For the reasons below, the Court finds *Webb* to be controlling.

In *Webb*,[4] attorneys sought a contingency fee of 35% of a settlement offer received before the clients discharged them. The clients hired another attorney and, after a three day jury trial, were awarded an amount equal to the settlement offer. Defendant argued that while the discharged attorneys were entitled to reasonable compensation for the legal services they provided, the fee should be based on the amount of time they actually worked on the case. The issue before the Court in *Webb* was whether a charging lien for legal services rendered by the discharged attorneys should be determined on a *quantum meruit* basis or a contingency basis. Before the *Webb* Court addressed that issue, it made a factual determination that the clients had no "just cause" to terminate the contingent fee agreement and discharge their attorneys: "The record clearly shows that the…[discharged attorneys] acted with reasonable diligence and to expedite the litigation. The client was kept informed of progress through letters and telephone

[2] Pl. Op. Br. at 2, Docket Item ("D.I.") 29; Pl. Reply Br. at 3, D.I. 32.
[3] 1995 WL 716757 (Del. Super. Oct. 23, 1995) (Ridgely, Pres. J.).
[4] *Id*.

calls."[5] Turning to the *quantum meruit* issue, the *Webb* Court noted, "[t]he prevailing rule in a contingent fee case where an attorney is discharged without cause is that recovery for attorney fees is limited to *quantum meruit*,"[6] and the *quantum meruit* recovery is limited in an amount not to exceed the contingency fee.[7] The *Webb* Court identified ten factors to be considered in determining reasonable attorneys fees based on *quantum meruit*:

> 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 substance of the particular employment will preclude other employment by the lawyer;
> 3) The fees 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 to perform the services;
> 8) Whether the fee is fixed or contingent;
> 9) The employer's ability to pay; and
> 10) Whether claimant's counsel has received or expects to receive compensation from any other source.

[5] *Id*. at *2.
[6] *Id*. at *3. (emphasis added).
[7] *Id*.

The *Webb* Court added that additional compensation might be warranted in those instances where "novel or difficult" issues are involved, "the outcome doubtful," or the "result significant."[8]

In the case *sub judice*, there is evidence in the record to suggest that the clients discharged Ramunno "for cause," *i.e.* Ramunno failed to return their calls and failed to keep them advised as to the status of their cases.[9] According to Nitsche, the reason it was unwilling to agree to the one-third "referral fee" requested by Ramunno after Ramunno was discharged was the clients "all contend that the Plaintiff, for the most part, did little or no work on their cases; rarely kept them apprised of the status of their cases; and left those clients dissatisfied with Plaintiff's representation."[10] Ramunno disputes this. Ultimately, Nitsche maintains Ramunno may not be entitled to any fee whatsoever because the parties never entered into an agreement for compensation. And, to the extent Ramunno is entitled to a fee based on *quantum meruit*, Nitsche avers such a fee would be nominal given the *de minimus* work Ramunno performed and because he was discharged for cause.[11] Ramunno concedes there is no agreement between the parties regarding compensation, but argues:

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[8] *Webb v. Harleysville Ins. Co.*, 1995 WL 716757, at *3 (Del. Super. Oct. 23, 1995).
[9] *See* Def.'s Ans. Br. at 4, D.I. 31. ("Defendant can represent that all of the former clients at issue advised the Defendant that they were discharging the Plaintiff because they were unhappy with their representation and the handling of their cases."); *see also* Exhs. C-F to Def.'s Ans. Br.
[10] Def. Ans. Br. at 5 (citation omitted).
[11] *Id*. at 6.

> There has always been an implied, if not expressed, agreement in the personal injury Bar that the ultimate fee is divided proportionately by the 2 attorneys regardless of whether a percentage split is simply agreed to or whether there is a real analysis of the time and service of each attorney. The established practice between attorneys is that when the case is concluded, the attorneys will work out a fair and reasonable proportionate division of fees. It is generally accepted, however, that 1/3 of the fee is considered standard or acceptable and most attorneys simply agree to pay 1/3 of their fee at the very outset.[12]

Assuming *arguendo* that the clients did not have just cause to fire Ramunno, the Court will follow *Webb* and the appropriate measure of compensation will be *quantum meruit*. Ramunno will not be entitled to a fee based on *quantum meruit* if there was no recovery.[13] If it is determined by the trier of fact that Ramunno was discharged for cause, Ramunno will not be entitled to any fee.[14]

**IT IS SO ORDERED**.

Jurden, J.

[12] Pl. Op. Br. at 6.
[13] *See Milton Kelner, P.A. v. 610 Lincoln Road Inc.*, 328 So. 2d 193 (Fla. 1976).
[14] *See* GEORGE L. BLUM, LIMITATION TO QUANTUM MERUIT RECOVERY, WHERE ATTORNEY EMPLOYED UNDER CONTINGENT-FEE CONTRACT IS DISCHARGED WITHOUT CAUSE 56 A.L.R. 5th 1, § 2b (2008); *See e.g. Casper v. Lew Lieberbaum & Co., Inc.*, 182 F. Supp.2d 342 (S.D.N.Y. 2002).