NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
ESSEX VICINAGE, LAW DIVISION,
CIVIL PART
DOCKET NO. ESX-L-4738-17

PETER H. MEISTER, legal guardian for
MARIA MOSER MEISTER, &
PETER H. MEISTER, individually

Plaintiff(s),

v.

VERIZON NEW JERSEY INC.; PSEG
SERVICES CORPORATION; NEPTUNE
HOLDING US CORP. d/b/a ALTICE USA;
NJ TRANSIT CORPORATION; JOHN DOE
(a fictitious name); MANNY MOE (a fictitious
name); and/or DEF CORPORATION
(a fictitious corporation)

Defendant(s).

David Mazie for plaintiffs (Mazie Slater Katz & Freeman, LLC)

Gregg Stone formerly counsel for plaintiffs (Kirsch Gelband & Stone, P.A.)

Alfredo Alvarado for defendant Neptune Holding US Corp. d/b/a Altice USA (Lester Schwab Katz & Dwyer, LLP)

Thomas Crino & Robert Hanlon for defendant Verizon New Jersey Inc. (Goldberg Segalla LLP)

Robert Sanchez for defendant PSEG Services Corporation (Counsel for PSEG Services Corporation)

PETRILLO, J.S.C.

BACKGROUND

This matter comes before the court by way of a motion to be relieved as counsel for plaintiffs, Peter Meister and Maria Moser Meister[1], (collectively "plaintiffs" hereinafter) filed by Mr. Gregg Stone of Kirsch, Gelband & Stone, P.A. (hereinafter "Stone"). Further, Stone seeks reimbursement of attorneys' fees once plaintiffs receive an award in connection with this matter. This motion is opposed in its entirety by plaintiffs' substitute counsel, Mr. David Mazie of Mazie Slater Katz & Freeman, LLC. (hereinafter "Mazie").

The lawsuit from which this dispute arises involves the catastrophic and tragic injury of an attorney, a wife, and a mother, who, through no fault of her own, and simply by being in the wrong place at the wrong time, was in an instant moment rendered a triplegic. The issue presented to the court in this motion, however, has absolutely nothing to do with her or those who might be liable for her suffering. Instead, this motion requires the court to address the issue of which of her attorneys should be allowed to argue in support of the fee to be awarded, if and when a fee is earned. Should it be her current attorney, Mazie, who has arrived late to the litigation, supposedly after nearly all the meaningful effort has been expended? Or should it be her predecessor counsel, Stone, who argues that only he is sufficiently able to address the issue of attorney compensation?

This unfortunate fee dispute, coming as it does in the midst of seemingly final negotiations of a settlement, should resolve, with certainty, any lingering doubt that the practice of law, that storied profession of Marshall and Jefferson and Lincoln, is really now just another capitalist enterprise.

The court should not be misunderstood on this point. The practice of law is not a hobby. Hard working and industrious counsel who take risks to advance a client's case and to maximize

[1] Peter Meister is the spouse of Maria, *per quod* plaintiff, and Maria's guardian.

a client's recovery should be rewarded; but for contingent fee retainer agreements and contingent fee litigation, countless injured and aggrieved men and women of meager or modest means would have no way of affording legal representation. These men and women would undoubtedly, at times, fall victim to scheming tortfeasors, thus leaving them with little in the way of adequate compensation. However, while lawyers may indeed make a client's life better through their advocacy and vigilant protection of that client's interests, they are uniquely able to make it seem as though they are not doing so when quarreling, as they are here, over who gets to spell out how much they should be paid from their paralyzed client's recovery and why one is more entitled to do so than another.

Stone, the first attorney now withdrawing, is essentially arguing that he has a right to participate in the hearing at which the gross fee will be set.[2] Stone also produces support for his argument as to allocation of the eventual fee, but his main and most forceful argument pertains to being heard in the proceeding which will set the underlying amount of the fees to be awarded. Stone's fear, it seems, is that Mazie, the replacement attorney now appearing, having only been involved for a limited duration and having only performed limited work, has no incentive to seek an enhanced or more ambitious fee award because any fee to Mazie is, in effect, a windfall. Stone uses a golf analogy, arguing that the ball is now on the 18th hole needing just a putt or two more in order to get it into the hole. That simple task has been taken over by Mazie, so argues Stone, and taken over against the backdrop of Stone's deteriorated relationship with his client, which had wilted in large part, according to Stone, over attorney's fees. In short, Stone worries that Mazie may not ask for a large enough fee.

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[2] The devastating nature of the injuries suffered by plaintiff make it all but certain that a hearing to approve counsel fees will be required, as per R. 1:22-7(c)(6) &(f), given the potential enormity of the verdict or settlement. Neither Stone nor Mazie dispute this.

Mazie, unsurprisingly, sees it quite differently. While he acknowledges Stone's multiyear effort, Mazie forcefully argues that Stone's withdrawal from his role as plaintiffs' counsel, for whatever reason, completely and totally eviscerates any compensation agreement, *i.e.* Stone's retainer, with the plaintiffs. In other words, Stone's decision to cease performing under the contract- the retainer- terminates any right to enforce any specific provision of that contract, *e.g.* the payment or the calculation of fees pursuant thereto. Mazie assures the court, and Stone, and one must assume the plaintiffs, that he will indeed seek a large enough fee, couching his characterization of the eventual fee to be requested as not unlike that which Stone might have sought had he continued as counsel. Stone is not convinced.

Stone responds by saying there is simply no way for the court to appreciate his monumental efforts in prosecuting plaintiffs' case, and thus ensure just compensation, without hearing directly from him. Stone further argues that the circumstances of his separation from representing plaintiffs are central to his right to be heard. Stone acknowledges that it is certainly possible that in light of his unique knowledge of the efforts that he has made he may seek a greater fee than Mazie will. Stone, in essence, wants the court to have the option of awarding a higher fee than the one that may be sought by plaintiffs' current counsel, Mazie, at the eventual fee hearing. Stone sees no problem in the conversion of that hearing from one in which the court is asked to approve the reasonableness of the award (given its size and the diminished capacity of the plaintiff) with focus on the interests of the gravely injured party (the very person that hearing is intended to protect), into one where competing versions of how large that fee should be are offered by different attorneys with diverging agendas.

Stone asserts that proceeding in this fashion is no different than in a case where a plaintiff may object to his or her own attorney's request for a fee award, and thus, his participation as a

former attorney in the hearing to set the fee is really not at all unusual and must be allowed to preserve the integrity of the fee setting process. The court disagrees.

Shortly after filing the motion to be relieved as counsel, Stone filed a second motion seeking to compel the production of plaintiffs' retainer agreement with Mazie. Mazie opposes this motion as well. For reasons set forth *infra*, no such production shall, at this time, be ordered.

This matter had a discovery end date of August 30, 2019. There is currently trial scheduled for January 27, 2020 in connection with this matter.

STONE'S MOTION TO BE RELIEVED AS COUNSEL

The underlying litigation concerns personal injuries sustained by Maria Meister, in January 2017, at which time "a severely rotted and deteriorated wood utility pole snapped at its base and struck [her] on her head and body, as she was walking to the bus stop to go to work on JFK Boulevard in North Bergen." Stone Cert. at ¶ 2. Stone asserts that he has "diligently and exhaustively litigated this matter for over 2.5 years" and has participated in multiple mediations on behalf of his former clients. Stone Cert. at ¶¶ 4-5. However, it is alleged that "Peter Meister has incessantly used ultimatums and non-physical threats" against Stone and his firm; thus, contributing to the irrevocable breakdown of their attorney-client relationship.

Due to Mr. Meister's alleged conduct, as well as his apparent refusal to enter settlement negotiations, Stone advised Mr. Meister on August 5, 2019 that he would no longer be representing him. Nonetheless, Stone requested a lien "for all costs [ ] advanced on this matter, which presently total $84,241.13," as well as a lien to collect attorneys' fees. At oral argument the court was advised this aspect of the dispute, as to costs, has been resolved.

STONE'S MOTION TO COMPEL

On August 26, 2019, Stone filed a second motion because Mazie refused to agree to a provision of a consent order which provides: "that Kirsch, Gelband & Stone, P.A. shall be permitted to apply, appear, and participate before the court at the time any settlement is approved, and attorneys' fee is awarded, to protect its attorneys' fee." Mazie has refused to sign this provision because of his belief that Stone is no longer entitled to any fee application.

Therefore, Stone now requests that this court compel Mazie's firm to produce "any and all agreement(s) . . . regarding payment for attorneys' fees, including all [r]etainer [a]greement(s), email(s), and/ or other writing(s) pertaining to fee arrangement(s), from the moment Mazie . . . was retained until the moment any application for attorneys' fee is requested." Stone asserts that: retainer agreements are not privileged[3]; the desired information could be redacted to preserve any legal advice; and since his firm is willing to provide information of same, he should be able to compel the information sought from Mazie's firm.

MAZIE'S OPPOSITION

Although Mazie does not object to Stone's motion to be relieved as counsel, Mazie contends that "New Jersey law is clear that the Kirsch Firm is not permitted to seek any attorneys' fee based on its retainer, nor entitled to make any application nor weigh in on the amount of gross attorney's fee to be awarded by the [c]ourt." Mazie Br. at 1. Mazie reiterates his objections to the provision of the consent order that would allow Stone to be notified of settlements and attorneys' fee awards. Specifically, Mazie argues that New Jersey Courts have determined that a discharged lawyer "is not entitled to recover fees . . . instead, he [ ] may be entitled to recover on a *quantum meruit* basis for the reasonable value of the services rendered." Glick v. Barclays De Zoete Wedd,

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meruit basis for the reasonable value of the services rendered." Glick v. Barclays De Zoete Wedd, Inc., 300 N.J. Super. 299, 310 (App. Div. 1997) (internal citations omitted) (emphasis added in original). See also Nostrame v. Santiago. 213 N.J. 109, 115 (2013), in which our Supreme Court held that "an attorney who is discharged is not entitled to a contingent fee, but instead is permitted to recover a *quatum meruit* award based on the value of services performed before his discharge." (citing Glick, 300 N.J. at 209-210).

In essence, Mazie argues that "[b]y voluntarily withdrawing as counsel, Stone lost any standing to make any fee application vis-à-vis the clients; thus, his only right is to apply for a portion of the ultimate fee awarded on a *quatum meruit* basis after that fee has been awarded by the [c]ourt." Mazie Br. at 3 (emphasis added in original).

As for Stone's motion to compel, Mazie asserts that this motion should be denied because Stone's firm no longer represents plaintiffs and therefore is "no more entitled to plaintiffs' new retainer agreement than defendants are . . ." Mazie Br. at 4. Again, Mazie reiterates that Stone can recover on the basis of *quatum meruit* and is not entitled to the discovery of the retainer agreement. Moreover, Mazie argues that the cases relied on by Stone are inapplicable to this litigation, because none of those cases concerned "a situation where one attorney sought to compel production of successor counsel's retainer agreement." Mazie Br. at 4.[4] Further, Mazie asserts that Stone's motion is inappropriate because he will be able to recover via *quatum meruit*, in the absence of the discovery of the retainer agreement. Finally, Mazie relies on a certification by

[4] Noting that: In re Semel, 411 F.2d 195 (3d Cir. 1969) concerned the value of a bankrupt attorney's case; NLRB V. Harvey, 349 F.2d 900, 904-05 (4th Cir. 1965) investigated who was responsible for hiring an attorney for the purposes of surveilling a union representation in connection with unfair labor litigation; United States v. Pape, 144 F.2d 778, 782-783 (2d Cir. 1994) dealt with an attorney who admitted to being retained to represent prostitutes in a criminal case); Wirtz v. Fowler, 372 F.2d 315, 332-333 (5th Cir. 1966) involved a lawyer's services in furtherance of discouraging union activity in violation of a Labor Act; and In re Wasserman, 198 F. Supp. 564 (D.C. 1961) in which the IRS inquired into the amounts paid to attorneys by people who were in violation of income tax laws. Mazie Br. at 4-5. The court again notes, that while all of these published opinions emanate from the federal circuit courts, and are thus persuasive, none constitute appellate precedent binding on this court.

plaintiff, Mr. Meister, who adamantly opposes sharing his retainer agreement with Stone because of Stone's explicit request to be relieved as counsel.

STONE'S REPLY

In reply, Stone reiterates the arguments set forth in his moving papers to argue that his firm has an absolute right to participate in attorneys' fees hearings. In support of this argument, Stone cites to La Manita v. Durst, 234 N.J. Super. 534 [*sic*], 543 (App. Div. 1984) certif. denied, 118 N.J. 181 (1989) for the proposition that "[a] superseding attorney cannot control the request for attorneys' fees in an action where he inherits the case after the work of litigation is substantially complete." Stone Reply Br. at 1. Stone asserts that allowing Mazie's firm to deny his firm of attorney's fees would allow the superseding firm "to obtain a windfall" because Stone's firm bore the risk of "time and money [spent] to develop the claim." Stone Reply Br. at 3 (quoting La Manita, 234 N.J. Super. at 543). In La Manita, the Appellate Division held that "[b]y compensating the original firm solely for time spent, the trial court does not permit that firm the benefit from the risk taken and thereby discourages firms from taking such cases." Id. at 543. Stone asserts that denying his firm the right to recover attorneys' fees would be contrary to public policy and would foster surreptitious conduct by personal injury plaintiffs. This argument is, to a great degree, hollow. Mazie has not at all indicated, suggested, stated, or implied that Stone is not entitled to a fee.

Stone objects to plaintiffs' and Mazie's assertion that his firm "quit" the litigation. On the contrary, Stone maintains that his firm was "forced to withdraw as counsel, due to a complete breakdown of the attorney-client relationship." Stone Reply Br. at 2. Stone refrains from sharing specifics of Mr. Meister's misconduct, but suggests that he will reveal emails, "with the [c]ourt's

permission," of "the nauseating nature of the incessant emails sent by Peter Meister to Stone."[5] Ibid. Moreover, Stone alleges that plaintiffs initiated communications with Mazie regarding the replacement of Stone at least one week prior to his withdrawal. Stone Reply Br. at 3.

Stone places significant weight on an unpublished appellate division case and suggests that this case stands for the proposition that he has the right to file suit against Mazie and his firm, as well as Mr. Meister individually, to recover his "fair share of the attorneys' fee based on the incredible amount of work it performed to advance the litigation." Stone Reply Br. at 2. However, Stone argues that pursuing such additional litigation after an attorneys' fee has been entered would "waste[] judicial resources and the time of all involved" and amount to "a miscarriage of justice." Stone Reply Br. at 2-3.

Finally, Stone asserts that Mazie's opposition to compelling the retainer agreement "shows that the Mazie Law Firm has agreed with Peter Meister to significantly undercut Kirsch, Gelband, and Stone's ability to request an attorneys' fee." Stone Reply Br. at 4.

DISPOSITION

R. 1:11-2(a)(2) specifically requires that, once the trial date has been fixed in a civil action,

> an attorney may withdraw without leave of court only upon the filing of the client's written consent, a substitution of attorney executed by both the withdrawing attorney and the substituted attorney a written waiver by all other parties of notice and the right to be heard, and a certification by both the withdrawing attorney and the substituted attorney that the withdrawal and substitution will not cause or result in delay.
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> [R. 1:11-2(a) (2)].

[5] These emails were discussed and reviewed *in camera* with only Stone and Mazie present, upon consent of defense counsel appearing on the motion. The substance of these communications will not be meaningfully addressed in this opinion. The court notes, in passing, that a reasonable person would no doubt find the emails caustic and unpleasant. While Stone relies on the emails as a basis for his withdrawal, the circumstances of separation from a client's representation, be it termination or voluntary withdrawal, seems to be a red herring. For reasons set forth *infra*, once counsel is out, for whatever reason, so too is any specific agreement providing a particular and specified form of compensation, though the right to compensation, in some form, is usually preserved.

Additionally, R.P.C. 11.6(b) allows a lawyer to withdraw from representation of a client if:

> (1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent; (3) the client has used the lawyer's services to perpetrate a crime or fraud; (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists.
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> [R.P.C. 11.6(b)].

R.P.C. 1.16(c) authorizes this court to order the continued representation of a client, in the absence of a showing of good cause for termination of the representation of said client. Further, R.P.C. 1.16(d) requires a lawyer to take "reasonably practicable" steps to protect the interests of their former clients, including "giving reasonable notice to the client [and] allowing time for employment of other counsel."

Here, R. 1:11-2(a) (2) has been satisfied because Mazie has agreed to replace Stone and plaintiffs have assented to same. Therefore, Stone's motion to be relieved as counsel can be appropriately resolved and granted at this time. Mazie does not contest Stone's motion and he is prepared to represent plaintiffs in their upcoming trial.

Turning to the issue of attorneys' fees, it should be noted that Stone has set forth scant case-law in support of his position. Stone has cited the aforementioned unpublished appellate division case from 2017 as one of merely two cases in support of his arguments. Reliance on the unpublished opinion so heavily is misguided, in part given that R. 1:36-3 provides that:

> No unpublished opinion shall constitute precedent or be binding upon any court. Except for appellate opinions not approved for publication that have been

> reported in an authorized administrative law reporter, and except to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel.
>
> [R. 1:36-3]

Stone has neither produced such copies for the court, nor for his adversaries. Although Stone's reliance on this particular unpublished opinion is sensible, given that it is factually similar to this dispute, Stone neglects to mention that there is a material distinction between that case and the instant dispute. Specifically, in the unpublished case the client decided to discharge her former counsel, whereas here it is alleged that Stone withdrew as counsel, thus forcing plaintiffs to find substitute counsel.[6]

However, unlike in the unpublished case, Stone represented plaintiffs significantly past the filing of the complaint. In fact, Stone represented plaintiffs throughout multiple settlement negations and mediations. The unpublished case further addressed the remedy for lawyer's services in the absence of a statutory lien, pursuant to N.J.S.A. § 2A:13-5, and determined that, in the absence of an agreement, the first law firm is left to the court's legal and equitable authority to fashion a remedy which ensures that attorney receives a *quantum meruit* recovery for the

[6] As has already been noted, whether this is a case of termination or self-directed attorney withdrawal is disputed. That dispute became more apparent at oral argument. It is telling, however, that a motion to withdraw like the kind at issue, seeking judicial imprimatur, would ordinarily not be necessary when replacement counsel stands ready (as is the case here) and when the client consents (as is the case here). The idea that a motion would be required when the requirements for substitution at this late stage are all met, bespeaks conflict that does not appear to exist at least as to the issue of new counsel assuming prosecution of the case. Client was unhappy with counsel. Counsel was unhappy with client. Client interviewed new lawyer. Client taunted first lawyer with the fact that he was interviewing new lawyer. First lawyer announced to client he is quitting. Client hired new lawyer. A substitution of attorney should have been filed and that should have been that. That this motion was filed instead, highlights that the underlying theme of this motion is not, in fact, who will represent the client going forward, but whose voice will be heard as to how much the lawyers should get paid. That latter point is a considerably different issue. All appearances indicate that the withdrawal motion is merely a means to bootstrap Stone's relief as to participating in the eventual hearing to set the fee.

reasonable value of services that were provided before litigation was assumed by a successor lawyer. When the time comes, that relief will remain available to Stone and there has been no suggestion otherwise by Mazie.

In the instant dispute, it is obvious that Stone and Mazie have not reached an agreement that would allow Stone's firm to recover, but this is not really the dispute and the two different entitlements, to be heard at the hearing setting the fee and to be awarded a *quantum meruit* fee, cannot be conflated.

As to the question of a lien in this context, N.J.S.A. § 2A:13-5 provides that:

> After the filing of a complaint or third-party complaint or the service of a pleading containing a counterclaim or cross-claim, the attorney or counsellor at law, who shall appear in the cause for the party instituting the action or maintaining the third-party claim or counterclaim or cross-claim, shall have a lien for compensation, upon his client's action, cause of action, claim or counterclaim or cross-claim, which shall contain and attach to a verdict, report, decision, award, judgment or final order in his client's favor, and the proceeds thereof in whose hands they may come. The lien shall not be affected by any settlement between the parties before or after judgment or final order, nor by the entry of satisfaction or cancellation of a judgment on the record. The court in which the action or other proceeding is pending, upon the petition of the attorney or counsellor at law, may determine and enforce the lien.

[N.J.S.A. § 2A:13-5]

Although Stone filed the complaint in this cause of action, and claims that he has taken substantial steps and incurred significant costs in pursuing plaintiffs' claims, it is uncontested that he will not be plaintiffs' counsel throughout the pendency of this litigation. Therefore, it is within this court's discretion to "determine and enforce" a lien for Stone's compensation. Regardless of the availability of N.J.S.A. § 2A:13-5 lien, the theory of *quantum meruit*, which Mazie has suggested is the appropriate remedy herein, is a viable alternative and one the court believes will eventually be the most appropriate means to ensure that Stone is fairly compensated from the attorneys' share of the client's recovery.

The court does not agree that Stone should be allowed to participate in setting the gross sum to be awarded to the attorneys. The court agrees with Mazie that Stone has lost the right to have a voice in that decision. "An attorney hired on a contingent fee basis and later discharged before completion of services is not entitled to recover fees on the basis of such contingent agreement; instead he or she may be entitled to recover on a *quantum meruit* basis for the reasonable valuable of the services rendered." Glick, 300 N.J. Super. at 310 (citing Cohen v Radio Electronic Officers Union, 146 N.J. 140 (1996); In re Estate of Poli, 134 N.J. Super. 222, 227 (Mercer County Ct. 1975)). It seems abundantly clear to this court, as noted in footnotes 4 and 5 of this opinion, that the issue of why the representation terminated does not change the meaning of the cited holdings as to the right of that attorney to his or her specific fee agreement. Indeed, the word "discharged" is used in the Glick opinion, further eroding Stone's argument that even if he was, in fact, terminated (which Mazie says is not the case) the outcome should be different. Lending even more weight to the idea that "discharged' was not used carelessly in Glick, that same term was adopted by the Supreme Court, as recently as 2013, in Nostrame v. Santiago. 213 N.J. 109, 115 (2013) (citing Glick, 300 N.J. at 209-210). It thus seems beyond clear that the "quit" versus "fired" dichotomy addressed in Stone's papers, and animated more vigorously at oral argument, is a difference without a distinction for present purposes.

The second case that Stone relies on is La Manita v. Durst, 234 N.J. Super. 534, 537 (App. Div. 1984) certif. denied, 118 N.J. 181 (1989), which enumerates the framework of *quantum meruit* for fashioning the appropriate recovery for successive representation based upon "the fair value of the services rendered before the discharge." *Quantum meruit* simply means "as much as he deserves," therefore, any distribution of a contingency fee award between two law firms is by its very nature a fact sensitive decision. La Manita, 234 N.J. Super. at 537. Prior to La Manita,

New Jersey lacked precedential authority on the successive representation issue that the court must address herein. La Manita, 234 N.J. Super. at 539. The La Manita factors for *quantum meruit* recovery include:

> (1) the length of time each of the firms spent on the case relative to the total time expended to conclude it; (2) the quality of representation by each firm; (3) the viability of the claim at the time of the file's transfer; (4) the amount of recovery realized in the underlying lawsuit; and (5) any pre-existing partnership agreements.
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> [La Manita, 234 N.J. Super. at 540-541]

Although La Manita concerned a lawyer who left his law firm, while taking a client's file with him, the same principles of fair compensation logically apply to situations concerning the replacement of prior counsel. La Manita extensively cites to case-law to illustrate each of the aforementioned factors and highlight that these determinations are extremely fact-specific. "There should, in any event, be a record developed together with findings of fact, so as to assure that there is both a fair accommodation of client interests and recognition of the true worth of the inception and preparation phase of a litigated matter." La Manita, 234 N.J. Super. at 543.

In Anderson v. Conley, 206 N.J. Super. 132 (Law Div. 1985) the court determined that the first firm "contribute[d] to the resolution of the case. However, in light of the short period in which the firm actually handled the case, the court found that reasonable compensation in *quantum meruit* could be easily calculated by multiplying their time spent on the case by their normal hourly rate." La Manita, 234 N.J. Super. at 538. Moreover, La Manita recognized that "[e]very firm faces the possibility that one of the individual attorneys assigned to a matter could leave with a substantially prepared case. This risk is unavoidable since clients have unfettered discretion to obtain or release counsel." La Manita, 234 N.J. Super. at 542.

Here, in considering the La Manita factors, it is clear that Stone's firm represented plaintiffs for a significant portion of the litigation, and that Mazie's firm may only represent plaintiffs for

the conclusion of their case. However, based on the facts before the court at this stage, there is an insufficient record to determine the quality of the representation by either firm. It also remains unclear whether plaintiffs will definitively recover with Mazie's representation and if so, what that recovery will be. Finally, absent an agreement between Stone and Mazie, it is anyone's guess what the respective attorneys' fees should be in this case. Will Stone be compensated? The answer is very likely yes. The degree of that compensation will be resolved another day. This is not the time and is not the issue presented here.[7]

More apropos of the extant request for relief is this: there is nothing in the case-law that supports Stone's assertion that he is entitled to participate in attorneys' fee hearings. On the contrary, the case-law seems to emphatically support the opposite view, that is Mazie's argument that Stone will be entitled to a *quantum meruit* recovery – nothing more and nothing less - if and when plaintiffs resolve their underlying litigation or after a jury returns a verdict. It would be an abuse of discretion to allow Stone a voice in a hearing over the setting of the gross fee amount, especially if that argument would rely upon a formula that was contained within his agreement with his former client. That agreement no longer bears on the issue of calculation of the gross contingency fee. It would also be legal error to decide that Stone has an absolute right to a lien in a certain amount, especially in the absence of sufficient facts to support this requested form of relief. As noted, the quantum of Stone's share of any recovery will no doubt be decided in a future hearing. Similarly, even if discovery of the new retainer agreement is necessary for the fact-specific *quantum meruit* determination, or an attorneys' fee lien pursuant to N.J.S.A. § 2A:13-5, there is no basis for compelling Mazie and plaintiffs to produce the agreement at this time.

[7] At oral argument it was essentially conceded by both Mazie and Stone that the quantum of compensation to be calculated from the corpus of the fee award was not really the issue before the court that day.

At present, it is clear that Stone has been replaced by Mazie as plaintiffs' counsel and that Mazie is preparing the case for trial and continuing negotiations with defense counsel. The resolution of this case remains uncertain. Finally, it is well-settled that clients hold the unfettered discretion to obtain or release counsel. La Manita, 234 N.J Super. at 538 ("Every firm faces the possibility that one of the individual attorneys assigned to a matter could leave with a substantially prepared case. This risk is unavoidable since clients have unfettered discretion to obtain or release counsel."). Accordingly, this court notes that plaintiffs' desire that Stone no longer be allowed to participate in their lawsuit should be given significant weight and supports denying Stone's requests for relief. It does not appear to be disputed that Stone is entitled to a lien or *quantum meruit* recovery for attorneys' fees and a share of the settlement proceeds. The specifics of this calculation is an issue which will be addressed on a later day, once plaintiffs' litigation has been resolved.

Although this court appreciates Stone's concerns that forcing him to revisit this issue in a plenary suit he might be compelled to bring against plaintiff and Mazie for some presently unknown tort or breach of contract may be "a waste of judicial resources and the time of all involved," it is premature to afford him a statutory lien, or any relief, at this stage of the litigation. Stone Reply Br. at 2-3. Stone's request that he be allowed to seek a counsel fee larger than that which Mazie might seek is wholly unsupported by law. Mazie is now counsel of record. If Mazie and plaintiffs conspire to deprive Stone in some form or fashion of what he thinks he is due, there is ample legal recourse for Stone to vindicate his interests. Stone's recourse is not an imposition of the bargain set forth in his retainer agreement with plaintiffs who, either by choice or consequence, are no longer bound by any compensation formula set forth in that agreement.

CONCLUSION

Accordingly, for the reasons already stated, Stone's motion to be relieved is hereby **GRANTED**; Stone's motion to compel the discovery of the retainer agreement; his motion to be granted a lien for compensation and attorneys' fees; and his motion seeking to be present in the hearing (not yet scheduled) at which time gross counsel fees will be set (which hearing shall follow a jury verdict or trial) are hereby **DENIED**.