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Harold Brown

SOME OBSERVATIONS ON LEGAL FEES

by

*Harold Brown**

ALTHOUGH the economics of law practice are now more generously being discussed, for the most part such analyses are directed to the fact that the ordinary lawyer has 1,300 productive hours annually and that a minimum hourly rate of twenty-five dollars is not likely to produce a net income comparable to that in other professions. Aside from rising costs for rent, secretaries, telephones, and supplies, neophytes from leading law schools are being offered $18,000 yearly salaries by Wall Street firms, and are counter-demanding twenty per cent release time for social law practice, and a sabbatical year's leave of absence.[1] All of these factors point in the direction of increasing legal fees. However, according to the inflammatory message of Murray T. Bloom's book, *The Trouble With Lawyers*,[2] tort lawyers annually collect far in excess of $1 billion in contingent fees, and probate specialists obtain hundreds of millions, often with little effort or risk. Although Mr. Bloom indulges in indictment by statistics and guilt by association, obviously there is much merit in his decrying of certain abuses, and his work would seem to presage a flood of criticism. Perhaps such painful attacks may serve a useful purpose if they evoke frank and open discussion of the real problems that confront attorneys in designing effective procedures for establishing both the proper amount of fees and security for their collection.

I. The Proper Fee

It is, of course, established law that fair and reasonable compensation for an attorney should not be limited solely to the number of hours of work, but that "many considerations are pertinent, including the ability and reputation of the attorney, the demand for his services by others, the amount and importance of the matter involved, the time spent, the prices usually charged for similar services by other attorneys in the same neighborhood, the amount of money or the value of the property affected by controversy, and the results secured."[3] Transmuting such standards to

* B.A., Yale University; LL.B., LL.M., Harvard University. Attorney at Law, Boston, Massachusetts.

[1] The revolutionary concept of a sabbatical year has much to commend itself both to professionals and business executives. Aside from the captious allure of a free year every seventh year, while one is young enough to enjoy it, the vistas unlocked by such an opportunity are literally endless, whether it be a year of study, teaching, writing for professional or other purposes; donation of effort to governmental, legislative, or charitable causes; tasting of other geographic areas, or even "sailing around Good Hope." The spill-over of such projects into the six "barren" years should provide the impetus for substantial rut-ridding. The economics of such a program are readily available in any group practice, provided plans are made well in advance and strictly adhered to. In its immediate impact, partners would be less possessive of selected clients, thus encouraging younger men to assume responsibility often denied them for years. With a determined effort, even single practitioners could loosely associate for implementation of such a program as well as for mutual aid in covering for annual vacation and sickness plans.

[2] M. Bloom, The Trouble with Lawyers (1968).

[3] Cummings v. National Shawmut Bank, 284 Mass. 563, 569, 188 N.E. 489, 492 (1933); *see*

a dollar figure has been subject to such wide variations that bar associations have attempted to establish minimum fees for the guidance of attorneys and as information for clients. Such minimum fee schedules have become increasingly prevalent not only on a statewide basis, but also in various specialized associations, such as the Commercial Law League and the Conveyancers Association.[4] Aside from the use of persuasion to see that attorneys adhere to such schedules, in states having a unified bar it is possible that violations could be subject to stronger penalties.[5]

It is rather astonishing that the bar has failed to recognize that such minimum fee schedules constitute minimum price fixing and are in direct violation of federal antitrust laws.[6] Subscribing to such schedules operates as an express "contract, combination, or conspiracy" in restraint of trade.[7] In situations in which attorneys are subject to reprimand or censure if they charge less than the prescribed fees, the violation seems even clearer. While some legal matters might not come within the purview of the federal antitrust laws because they do not affect interstate commerce, they would nevertheless be subject to state antitrust laws in those jurisdictions which have adopted the federal antitrust laws directly or through a so-called "Baby" Federal Trade Commission Act.[8]

Except in major law offices, the hourly charge is hardly standard practice. In most instances, the attorney will arbitrarily select a fee, often without any sound foundation and frequently without reference to that most exacting factor of all, the time spent on the case. Even more damaging is the prevailing custom of paying a referral fee to another law firm.[9] If such a referral fee be one-third, counsel would be left with a net fee of approximately twenty-seven per cent of the gross charge to the

Angoff v. Goldfine, 270 F.2d 185 (1st Cir. 1959); Elbaum v. Sullivan, 344 Mass. 662, 183 N.E.2d 712 (1962); Annot., 56 A.L.R.2d 18 (1957).

[4] Generally, for commercial accounts, the minimum fee is 15% on the first $1,000, and 10% on the excess.

[5] *See* Walker Estate, 26 Pa. D. & C.2d 315, 320 (Orphans' Ct. 1962), where the court stated: "In our opinion, a presumption arises when counsel fees are requested in accordance with the suggestions contained in a Minimum Fee schedule adopted by the bar association of the locality, that such fees are fair and equitable and the burden of establishing that such fees are excessive rests upon the person who is objecting thereto."

[6] *See* United States v. Parke, Davis & Co., 362 U.S. 29 (1960); Dr. Miles Medical Co. v. John D. Park & Sons, 220 U.S. 373 (1911). The proscription of a "clearly excessive fee" in the ABA CODE OF PROFESSIONAL RESPONSIBILITY, DR 2-106(A), at 9 (Final Draft, July 1969), would appear equally offensive to the antitrust prohibition of maximum price maintenance. Albrecht v. Herald Co., 390 U.S. 145 (1968).

[7] Sherman Antitrust Act § 1, 15 U.S.C. § 1 (1964); *cf.* United States v. Prince George's County Bd. of Realtors, Inc., 5 TRADE REG. REP. (1969 Trade Cas.) ¶ 45,069, at 52,740 (D. Md., Dec. 18, 1969) (institution of governmental injunction suit against real estate brokers' association and members, where latter agreed not to accept listing of property except at recommended commission rates); United States v. Cleveland Real Estate Bd., 5 TRADE REG. REP. (1970 Trade Cas.) ¶ 45,070, at 52,774 (D. Ohio, July 29, 1970) (suit alleging similar conspiracy in violation of the Sherman Antitrust Act); *A Thorn in the Fee Schedule Field*, 10 LAW OFFICE ECON. & MGM'T 310 (1970).

[8] *See, e.g.*, MASS. GEN. LAWS ANN. ch. 93A, §§ 1-10 (1967).

[9] The American Bar Association Code of Professional Responsibility, which was adopted in 1969 and became effective on January 1, 1970, effectively prohibits the paying of a referral fee to another lawyer. ABA CODE OF PROFESSIONAL RESPONSIBILITY, DR 2-107, at 25 (Final Draft, July 1969). However, the Code of Professional Responsibility is not effective for disciplinary purposes in most states until affirmative action is taken to adopt the Code by the appropriate state authorities. *See* Sutton, *The American Bar Association Code of Professional Responsibility: An Introduction*, 48 TEXAS L. REV. 255, 256 (1970).

client, after deduction of, for example, a forty per cent overhead factor. For most litigated cases, both by custom and by seeming necessity, the contingent fee has come to prevail. Although frowned upon in many states and even outlawed in Canada and England, such fees have long been recognized under the Canons of the American Bar Association as long as they are subject to judicial supervision.[10] Such approval does not necessarily mean that contingent fees are proper, that they are not subject to abuse, nor that sufficient judicial procedures exist to supervise their use. Even in minority stockholders' class actions, where the law itself provides that the fee for plaintiff's counsel is contingent upon recovery and is to be set by the court, the arrangement has been the subject of some judicial intransigence.[11] And only recently have such states as Massachusetts formally recognized their legitimacy by rules of court.[12] Although the Massachusetts rule requires a written agreement and provides for judicial review, no fee schedules are prescribed. However, even the prescription of a percentage schedule would not necessarily provide effective control over the percentages which are appropriate in particular categories of cases.

Under some federal statutes, specific fees are prescribed. For example, for property seizure claims arising from World War II, a specific fee of ten per cent is prescribed.[13] Contingent fees are severely restricted in income tax cases,[14] and in tort claims against the United States.[15] In antitrust proceedings, where fees are to be assessed against a defendant, the courts have imposed a maximum of fifty per cent of single damages, and the national average is said to be in the range of twenty to twenty-five per cent of such single damages.[16] A similar pattern has evolved in the minority stockholders' class action. In most of these cases, however, recovery has been quite substantial so that such comparatively moderate percentage allowances have in fact been generous in amount.

Perhaps the most significant complaint of clients emanates from the growing prevalence of fifty per cent contingent fees for automobile torts and similar personal injury claims. In many states, such excessive percentages are further aggravated by being applied to the gross recovery, rather than after deduction of out-of-pocket legal costs. Where there have been substantial expenses for depositions or appeals, a fifty per cent contingent fee based on the gross recovery may leave the client with forty to forty-five per cent of the gross recovery. Although such a result would

[10] ABA CANONS OF PROFESSIONAL ETHICS No. 13. Under the Code of Professional Responsibility, contingent fee arrangements are authorized in civil cases, except "a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fee . . . ." ABA CODE OF PROFESSIONAL RESPONSIBILITY, EC 2-20, at 18 (Final Draft, July 1969).

[11] *See* Angoff v. Goldfine, 270 F.2d 185, 192 (1st Cir. 1959).

[12] MASS. SUP. JUD. CT. R. 3:14.

[13] 50 U.S.C. § 20 (1964).

[14] Unconscionable fees are prohibited under U.S. Treasury regulations. 31 C.F.R. § 10.28 (1970).

[15] 28 U.S.C. § 2678 (1964) provides a maximum fee of 10% for amounts up to $2,500, and a maximum fee of 20% in certain other cases.

[16] *See* Milwaukee Towne Corp. v. Loew's Inc., 190 F.2d 561 (7th Cir. 1951); Webster Motor Car Co. v. Packard Motor Car Co., 166 F. Supp. 865 (D.D.C. 1955), *cross-appeal dismissed*, 243 F.2d 418 (D.C. Cir.), *cert. denied*, 355 U.S. 822 (1957).

appear incongruous, agreements for thirty-three per cent for personal injury claims and twenty-five per cent for property damage claims have usually been found acceptable. Oddly enough, the almost standard fee of ten per cent charged for property damage claims under fire insurance policies has met with little resistance, even though the elements of risk for both recovery and coverage are usually minimal. Under all contingent fee arrangements, the courts have prescribed that legal costs must be borne by the client,[17] a requirement that has unfortunately been almost completely ignored in practice, except where recovery has been accomplished. The advent of oral discovery in many state courts has, however, created a financial necessity that the hundreds of dollars involved in such procedure be provided for, preferably in advance. And rapidly rising overhead costs have led to a growing trend of requiring a minimum cash retainer, often in consideration of a lesser percentage in case of recovery.

Although much criticism has been heaped on attorneys because of the contingent fee, little attention has been directed to the plight of counsel who has accepted a claim on a purely contingent basis, waits three to five years for trial, then finds himself dismissed by an impatient client just when trial is imminent. More exasperating is the case in which the attorney negotiates a good settlement, then finds his client adamant or even engaged in some ruse to circumvent the lawyer's fee by entering into direct negotiations or engaging a new attorney. One method of guarding against such abuse by the client is to prescribe in the contingent fee agreement that the fee shall be considered earned if a fair and reasonable offer has been obtained for the client. Another alternative is to make generous provision for a specific fee or for compensation at a prescribed hourly rate if the client declines to accept such an offer or unjustifiably dismisses the attorney.

Although the contingent fee arrangement has been forced on attorneys because of the financial inability of numerous classes of clients to pay on a standard hourly or daily rate basis, it inherently involves social and psychological problems. The client who loses his case is delighted to avoid the need for paying counsel. The client who wins obviously feels that he is bearing the burden for others whose cases were lost. After the victory, the client also becomes convinced that the risks of obtaining a verdict and collecting the judgment were in fact minimal. Technical niceties aside, the attorney does have a direct interest in the litigation with the risk of preference of self and overtones of champerty and maintenance.

The difficulty in prescribing the appropriate percentage fee is almost insurmountable, depending as it does on the numerous variables in winning the case and obtaining collection. Supervision of the prescription of percentages, often a matter of hindsight, offers further complications. But if the courtroom doors are to be kept open to those of middle or modest means, the only alternative to the contingent fee is some form of socialized practice, be it sponsored by private or public funds. A whole variety of

[17] *See, e.g.*, MASS. SUP. JUD. CT. R. 3:14(5)(f).

risks, including cost of counsel, is now covered by private insurance, and there is an incipient movement to provide miscellaneous private legal services through salaried attorneys in such groups as labor unions.[18]

Aside from contingent fees, the area most subject to abuse and apparently the most difficult to control lies in the field of probate. In almost all jurisdictions, statutes, rules of court, or deeply imbedded custom, call for percentage fees based on the size of the estate. Even fees of three to six per cent can become grotesque when applied to substantial estates where compensation may grossly exceed the amount of effort involved, particularly where the assurance of both result and payment is complete.[19] Adding to such abuse the nepotism in appointment by judges and the gross allowances often made for perfunctory services of appraisers and guardians ad litem, it is not surprising that a whole segment of the judicial system has been excoriated. In this area, the active participation of the probate judge, whose actions in this field are for all practical purposes beyond review, geometrically compounds all efforts to reach a solution.

II. Collection, Security, and Fee Procedures

Although frustrations attendant in obtaining clients, securing a meritorious case, and collecting a judgment are the normal expectancies of practice, these are exacerbated when the lawyer cannot collect his fee without further litigation. Security for that fee is even harder to come by, since the common law and statutory liens are ill-defined, strictly construed, and generally addressed only to narrow situations. Yet without the sustenance of collecting his fee, the lawyer can hardly function efficiently or pay his own bills.

Even when the amount of the fee is undisputed, lawyers are notoriously lax in the extension of credit for their services. Few businesses could survive without reliance on credit reporting procedures, as well as deliberate attention to the aging of accounts receivable and strict collection practices. Yet most attorneys will seldom use such procedures, will wait endlessly to collect, and would hardly dream of charging interest on delinquent payments. Instead of adopting proven business practices, most attorneys will resort to simple protective devices, such as collection of the fee in advance (by installments if necessary) or provision that payment of settlements or judgments be made by check payable to the order of the attorney or jointly to the attorney and his client, the latter procedure being somewhat standard where an insurance company is the source of payment. An infrequent procedure is to require the client to execute a promissory note and pledge some form of collateral as security.

Lawyers are nevertheless victimized by grossly negligent extension of credit for valid services rendered and the complicated task of providing

[18] UMW v. Illinois State Bar Ass'n, 389 U.S. 217 (1967); Brotherhood of R.R. Trainmen v. Virginia, 377 U.S. 1 (1964); NAACP v. Button, 371 U.S. 415 (1963); *cf.* ABA Code of Professional Responsibility, DR 2-103(D)(5), at 8 (Final Draft, July 1969).

[19] *Cf.* Rauch Estate, 44 Pa. D. & C.2d 674, 677 (Orphans' Ct. 1968) (giving "considerable weight" to the Philadelphia Bar Ass'n minimum fee schedule in allowing a 6% fee for an executor's attorney).

security for the collection of fees. Except in aggravated cases, most attorneys are reluctant to sue for their fees.[20] Some practitioners boast that they have never sued a client. If such be the case, they must have forfeited or compromised their invoices or consistently undercharged. In the normal course of events, it necessarily follows that some clients will dispute fee charges, unduly delay payment, or bluntly take advantage of the known reluctance of attorneys to pursue such claims by litigation. With fifty per cent of all litigants usually losing their cases, resentment can easily breed recalcitrance in paying the attorney an agreed fee. If the amount of a fee be disputed by the client or the attorney, or if the attorney cannot obtain voluntary payment by the client, it is a source of much distress to resort to standard litigation procedures to settle the dispute. Many attorneys are loathe to interfere in such fee matters between a client and his erstwhile attorney. Wholly aside from the discomforts of further litigation and its attendant expense, such reluctance is often a substantial obstacle to an aggrieved client because of the difficulty in obtaining a new attorney to handle the fee case. As for the aggrieved attorney, although the direct expense of such secondary litigation may be more moderate, he is confronted with the loss of valuable time as well as the risk of a tarnished reputation in the community, particularly if such litigation is of substantial frequency.

Quite recently it has been suggested that attorneys could obtain the advantages of supervised credit reporting, collection of fees, and the transposition of interest for credit extension by utilizing third-party banking facilities.[21] The format for such arrangements falls within the well-established use of credit card facilities operated by banks or similar institutions. Stated inversely, clients seeking legal services on credit would be offered the use of such credit card systems under which the attorney might pay a modest percentage for the discounting service and the client would then make his installment payment to the lending institution at published interest rates. Certainly the advantages of such charge account systems are well established in the American economy.

It is difficult to see why legal services should not be purchased in the same manner as a television set or an automobile. By spreading payments over a period of time acceptable both to the client and the lending institution, the impact of substantial legal fees could be moderated not only for those with middle income, but more probably even for those with modest income. As for the attorney, the advantage of cash payment at a moderate discount would be economically sound and would free him from time-consuming collection functions directed toward his own clients. By elimi-

[20] ABA CANONS OF PROFESSIONAL ETHICS No. 38 permits lawyers to sue clients for fees to prevent injustice, fraud, or imposition by the client. The new Code of Professional Responsibility discourages such suits "unless necessary to prevent fraud or *gross* imposition by the client." ABA CODE OF PROFESSIONAL RESPONSIBILITY, EC 2-23, at 17 (Final Draft, July 1969) (emphasis added).

[21] The ABA Committee on Professional Ethics has ruled that such a payment method would be unethical. ABA COMM. ON PROFESSIONAL ETHICS, OPINIONS, No. 1120 (1969). However, the use by lawyers of the special version of BankAmericard has been approved by the Oregon State Bar Association. OREGON STATE BAR BULLETIN, Feb. 1970, at 11.

nating the risk of non-payment, the attorney need not attribute bad-debt expenses to the fees charged to paying clients. Of greatest importance, such a system would open the doors of the law office to those large segments of the public which have been forced to forego the benefits of legal services except in matters of extreme distress. In spite of the obvious need for competent legal services for numerous problems in today's sophisticated society, great segments of the population have come to attorneys only in case of criminal charges or possibly to handle a tort claim or the transfer of real property. In the medical profession, the need to make its services available to the major portion of the population has been met in part through advance payment programs and more recently through medical charge-account plans operated by banks or special credit entities.

Aside from the collection of fees, matters of security can be difficult both for clients and attorneys. As pointed out in *The Trouble With Lawyers*,[22] the legal profession is one of the few remaining businesses in which those who are entrusted with substantial funds of others are not required to be bonded. Attorneys not only handle clients' funds in transit, but often hold substantial funds in escrow arrangements or as trustees for estates. While ethical standards require that such trust funds be handled with extreme care and not even be commingled with the attorney's own funds, the fact remains that neither the threat of punishment, nor the procedures for enforcing it, will provide restitution for the client whose funds have been misappropriated by counsel.

Several remedies have been tried and suggested. One such alternative would require all attorneys in a particular jurisdiction to make periodic contributions of fixed amounts to a clients' security fund administered by the local bar association. Such self-insurance plans have three obvious shortcomings. First, they seldom provide truly adequate funds to cover the embezzlement of large sums. The administration of such a plan may prove ineffective because of insufficient publicity. And the determination of claims can be both time-consuming and embarrassing to the very legal profession whose own funds are being used to pay amounts found to have been mishandled. Another system involves the actual auditing of all attorney's accounts. Such procedure is standard practice in England and has been tried in the United States. In Toronto, such auditing has been established on a so-called "blitz" basis, with auditors making unannounced spot investigations. Although such audit systems might be effective, on a nationwide basis, they would prove extremely expensive, cumbersome, and subject to wide opposition.[23] Compared with either of such plans, the simplest solution would involve bonding of attorneys. If it be thought that compulsory bonding would be too drastic and possibly expensive, an alternative would be to make bonding voluntary and to allow representation of that fact to be stated on legal stationery. With such notice, clients

[22] M. BLOOM, *supra* note 2, at 48-49.

[23] The ABA Special Committee on Evaluation of Disciplinary Enforcement has recommended that records pertaining to clients' funds and property be audited annually by a certified public accountant. ABA SPECIAL COMMITTEE ON EVALUATION OF DISCIPLINARY ENFORCEMENT, FIRST REPORT, Recommendation XXXII (Jan. 1970); *see* M. BLOOM, *supra* note 2, at 33-47.

could make a knowledgeable choice as to whether their funds should be entrusted to a bonded or unbonded attorney. The real advantages of bonding would lie in the complete protection afforded, as well as its independent administration.

If clients have cause for complaint, so do attorneys. Perhaps to discourage resort to suit for the collection of fees, most jurisdictions provide some kind of lien to protect legal fees. In some states, as in Massachusetts, the courts have denied the existence of a common law lien on the proceeds of litigation,[24] and have limited the statutory lien to instances in which litigation was actually instituted in the client's behalf.[25] The comparatively recent allowance of contingent fee agreements by rule 3:4 of the Massachusetts Supreme Judicial Court[26] raises the interesting question as to whether such an agreement creates an equitable lien on the proceeds of the case, regardless of whether suit was instituted.[27] Although many states acknowledge a common law lien, this attaches only to actual judgment and is often limited to costs.[28] Where the common law lien covers the fee as well, it is regarded as an equitable assignment of an actual judgment subject to review to prevent overreaching, and binding on the principal defendant only after notice.[29]

Perhaps the most basic existing protection is the attorney's lien on his clients' papers so long as they are in the attorney's possession.[30] Unfortunately, such a lien usually means merely that the client cannot obtain from his erstwhile attorney evidence which may be essential for the assertion of rights. Such a possessory lien, of eighteenth century origin, is regarded as security for all debts to the attorney, regardless of the amount due in the particular matter for which possession may have been obtained, and the lien will even preclude the client's right to inspect the documents.[31] If the papers are summoned for use in trial by the former client, and if the parties consent, the court may determine the appropriate fee in summary proceedings and, after payment, require production.[32] If such papers contain documents of inherent value, such as a promissory note,[33] stock

[24] Elbaum v. Sullivan, 344 Mass. 662, 183 N.E.2d 712 (1962); Check v. Kaplan, 280 Mass. 170, 182 N.E. 305 (1932).

[25] Elbaum v. Sullivan, 344 Mass. 662, 183 N.E.2d 712 (1962).

[26] *See* note 12 *supra*, and accompanying text.

[27] *See* Delval v. Gagnon, 213 Mass. 203, 99 N.E. 1095 (1912); Coram v. Davis, 209 Mass. 229, 95 N.E. 298 (1911); Black, *Attorneys Liens in Massachusetts*, 24 B.U.L. REV. 224 (1944).

[28] *See, e.g.*, Tyler v. Rhode Island Super. Ct., 30 R.I. 107, 73 A. 467 (1909).

[29] Everett v. Alpha Portland Cement Co., 225 F. 931 (2d Cir. 1915); *In re* Stronge & Warner Millinery Co., 33 F.2d 1001 (D. Minn. 1929); Norrell v. Chasan, 125 N.J. Eq. 230, 4 A.2d 88 (Ct. Err. & App. 1939); Prichard v. Fulmer, 22 N.M. 134, 159 P. 39 (1916); Roxana Petroleum Co. v. Rice, 109 Okla. 161, 235 P. 502 (1935); Weed Sewing Mach. Co. v. Boutelle, 56 Vt. 570 (1884).

[30] Cobb v. Tirrell, 141 Mass. 459, 5 N.E. 828 (1886); Reynolds v. Warner, 128 Neb. 304, 258 N.W. 462 (1935); Pennsylvania Fire Ins. Co. v. Rinaolo, 108 N.J. Eq. 167, 154 A. 528 (Sup. Ct. 1931); *In re* Cooper, 291 N.Y. 255, 52 N.E.2d 421 (1943); Burns v. Pratt, 167 Okla. 546, 31 P.2d 106 (1934); *cf.* Torphy v. Reder, 257 N.E.2d 435 (Mass. 1970) (lien on client's funds undecided).

[31] Bulk Oil Transports v. Robins Dry Dock & Repair Co., 277 F. 25 (2d Cir.), *cert. denied*, 257 U.S. 657 (1921). *See generally* 111 A.L.R. 487 (1943).

[32] 7 C.J.S. *Attorney and Client* § 233 (1937).

[33] Davis v. Davis, 90 F. 791 (C.C.D. Mass. 1898).

certificate,[34] or savings bank book,[35] the attorney may have a lien of substantial value, since it has been held that the former client cannot defeat the lien by requiring production in response to a subpoena duces tecum. Unfortunately, however, the possessory lien has been generally regarded as a "passive lien and cannot ordinarily be actively enforced either at law or in equity."[36] Although not universally followed, the general rule would appear to allow a court to order the delivery of the client's papers either upon payment or on substitution of security in a sufficient sum to cover the attorney's demand, particularly where allowing retention would unduly delay the former client's litigation.[37]

III. Conclusion

These problems would seem to indicate the need for prompt, efficient, impartial, and inexpensive procedures to handle fee disputes between attorneys and their clients. Neither established court procedures nor bar association intervention provides an answer to all of these requirements, although the voluntary submission of such disputes to binding arbitration could suffice. Perhaps such voluntary submissions could be encouraged by the adoption of bar association rules, procedure, lists of arbitrators (not necessarily all lawyers), and discreet publicity as to their availability. In all probability, the bar association could appropriately exact an undertaking by all of its members to subscribe to the use of such procedures.

At least one solution has the benefit of successful application, patterned on the procedure employed in Ontario. All disputed legal fees are there handled through summary process before a court-appointed assessing officer with authority comparable to that of a U.S. Referee in Bankruptcy. A petition may be filed either by the attorney or the client, based on a simple presentation of the issues involved. Hearings are held within a few days and somewhat informally, with a rarely used right of appeal on questions of law. The determination is legally binding, with judgment and execution to issue. The very availability of such impartial, inexpensive, and speedy justice, tends to eliminate the need for resorting to it. In most cases, the assessing officer can amicably mediate the dispute.

While it would be foolhardy for a single attorney to prescribe solutions to these many fee questions, it is equally ridiculous for any attorney to believe that the problems can be swept under the carpet. It is rather mandatory that prompt measures be taken not only to maintain the dignity of each attorney, but to restore that confidence in counsel which is the cornerstone of the administration of justice.

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[34] Smyth v. Fidelity & Deposit Co., 326 Pa. 391, 192 A. 640 (1937).
[35] *In re* Cooper, 291 N.Y. 255, 52 N.E.2d 421 (1943).
[36] *Id.*
[37] Morse v. Eighth Jud. Dist. Ct., 65 Nev. 275, 195 P.2d 199 (1948); Robinson v. Rogers, 237 N.Y. 467, 143 N.E. 647 (1924).