“Lawyers and Their Fees Under Existing Conditions”

By

William G. Graves

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Foreword

By

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A man walks into a lawyer’s office and asks to see the lawyer about an important matter. He’s ushered into the office and sits in a chair across from the lawyer’s desk which is bare except for two books resting on a corner, one a slender paperback, the other a large, clothbound book.

He begins his story. The lawyer listens and takes notes. Suddenly the man stops. “Wait! How much is this going to cost me?”

“From what you’ve told me, I’ve a good idea of what’s involved,” the lawyer replies. “My fee will be $100.”

“$100!” the man exclaims. “That’s an awful lot for my simple case. I mean I don’t have a lot of money.”

The lawyer nods and, patting the two books, says, “I understand. And so I’ll make this proposal: it will be $100 if the answer comes out of the big book. Out of the little book, it’ll be $75.”

- Olde lawyer’s story -

The perennial problem of how to set fees in a particular case was the subject of a paper delivered by William G. Graves at the annual convention of the Minnesota State Bar Association in St. Paul in August 1920.

What concerned Graves was the ineptitude of lawyers in conducting the business side of their practices. He asserts, “That the average lawyer does not make as good a living as he would make if he employed the same talents in business is a matter of common observation.” Because many lawyers charge low fees, they do not earn enough to support their families, they are tempted to neglect less remunerative cases, or they may leave the profession, to the detriment of the public. One solution is the adoption of “minimum fee bills” which standardize — i.e., raise — fees in certain types of cases at levels that will compensate the lawyer for his skill and experience, and permit him to make a decent living. Both the Hennepin County and the Ramsey County Bar Associations had recently adopted resolutions favoring minimum fee schedules.

The Ramsey County Bar Association recommended that its schedule be “binding” upon its members and that “intentional and habitual deviation therefrom should be considered as unfairness, not only to lawyers in their individual interest, but also to the profession of the law as such.” Graves does not favor this strict approach because “there is grave doubt whether the profession can be made to regard as unethical or unmoral or dishonest that which may not in fact be unethical, unmoral or dishonest.”

Graves urged lawyers to talk to each other about their fees with the aim of reaching a consensus about the appropriate level (“A proper fee in a particular case is a matter of opinion among attorneys. Opinion cannot be crystallized unless the lawyers talk frankly with each other and educate each other.”). As a practical matter, therefore, the only way to encourage lawyers to charge at least the minimum fee was pressure from their brethren.

An example of disciplinary action by the bar against a lawyer who charged low fees is the “trial” of Abraham Lincoln by the Eighth Circuit bar before Judge David Davis in the early 1850s. Though he was in partnership with William Herndon, Lincoln formed a local

association with Ward Hill Lamon in Danville, Illinois, a stop on the Eighth Circuit, in 1852. Judge David Davis's biographer describes the bar's prosecution of its most prominent member:

> One of their earliest cases has become a part of the Lincoln legend. A man named Scott had a demented sister for whose $10,000 estate a conservator had been appointed. A suitor of dubious character designing to marry her for her money, hired lawyers to have her conservator discharged. Through Lamon, her brother employed Lamon & Lincoln to resist this action, agreeing to pay them $250 if successful. After only twenty minutes of argument by Lincoln, Judge Davis denied the petition to remove the conservator. Scott paid Lamon the agreed fee and went his way exulting.
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> "What did, you, charge that man?" Lincoln asked. Informed of the amount, he branded the fee excessive and demanded that Lamon refund half of it. Lamon pleaded that the charge had been fixed in advance and that their client was satisfied. Lincoln was insistent, however, and Lamon, reluctantly, paid back half the fee to Scott.
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> The lawyers, hearing this argument, sympathized with Lamon. Davis called Lincoln to the bench and said in a rasping whisper, "Lincoln...You are impoverishing this bar by your picayune charges of fees. You are now almost as poor as Lazarus and if you don't make people pay you more for your services, you will die as poor as Job's turkey." That night, in the Judge's room at the tavern, the lawyers tried Lincoln before what Davis called the "Orgmathorial Court." Lincoln was found guilty of ruining the legal profession and was ordered to pay a fine.[1]

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[1] Willard L. King, *Lincoln's Manager - David Davis* 88-9 (Harvard Univ. Press, 1960) (citing sources).

"Lawyers and Their Fees Under Existing Conditions"[2]

By

William G. Graves

THE PRESIDENT [Albert R. Allen]: I will leave Mr. Graves to come to the platform without an escort. Gentlemen, there is nothing you are so much interested in, if you would own up to it, as the question of fees. And you are going to hear that matter now discussed, "Lawyers and Their Fees Under Existing Conditions." Gentlemen, I have the pleasure of introducing to you Mr. William G. Graves of the City of Saint Paul.

MR. GRAVES:

LAWYERS AND THEIR FEES UNDER EXISTING CONDITIONS.

This subject must be approached with reluctance. No broad and easy highway lies ahead. Boulders, ruts and here and there a washout are plainly in view; we'll have to proceed in low gear and trust that the machine has power enough to plow through.

Lawyers profess learning. They profess learning in many different ways and on varied and sundry occasions. They profess it to the client, to the court, and be it said, on the Fourth of July and in the Halls of Congress, to the public. Almost no subject escapes. The rights of the abused wife seeking a divorce are learnedly discoursed upon. Abraham Lincoln and George Washington on their annually recurring birthdays come in for the learned meed of praise. The Four Minute Men, largely lawyers, spread the gospel of patriotism most learnedly during the war to the public ignorant of the truths needed to guide a great people to victory. Most profound can be the dissertation upon the Rule in Shelley's case or the distinction between the corporation *de facto* and the corporation *de jure*. "Whereases," "notwithstandings," and "provided, neverthelesses" fall from the learned lips with the ease of dry leaves from the tree in autumn. "Learned in the law," is a phrase with a happy ring to him who is entitled to have it applied.

[2] Proceedings, Minnesota State Bar Association, 100-111 (1920).

Yet ask the lawyer, learned in the law, what principles there are governing the compensation which he may fairly expect from his practice and "he knoweth not." He is up the tree of ignorance. The learning he professes avails him not He does not know any principle except that which his own experience has taught him. If he be of one type the sole principle he knows is that which applies to a very different kind of business, namely, what the traffic will bear. If he be of another type the sole principle he knows is that, be his loss what it may, no fee shall be charged which shall in any degree offend the client. He may lose the client!

Make the question specific and ask three or four or half a dozen lawyers what a proper charge is in a given case. You will get three or four or half a dozen different answers, depending upon the number of those interrogated. In the speaker's own experience one example of instantaneous expansion and contraction of the currency stands forth vividly. A little way out of law school, in practice alone for but a few months, an early client had requested the amendment of a certificate of incorporation so as to increase the authorized capital stock from $10,000 to $50,000. The job was one of no mean importance. The statutes were consulted and read and consulted again. The resolution was drawn with utmost care. The stockholders met and the resolution passed. Proudly the Secretary of State and the Register of Deeds were requested to perform their official duties and a newspaper was entrusted with the publication. The tremendous task was ultimately concluded to the satisfaction of all parties after much gray matter and very much more time had been devoted to it.

Then for the fee. Nothing in previous experience furnished any criterion. What more simple, easy and natural than to consult those who knew about fees. The case was put to attorneys of about equal skill, experience and standing in the profession. The first of them answered fifty dollars; the second, that in a case quite parallel his firm had just charged one hundred and twenty-five dollars. The spread between fifty dollars and one hundred and twenty-five meant much in the existing state of the exchequer. The case was put to a third brother, also learned in the law. He laid down the principle applicable to the case in the following language: "I could dictate that amendment in fifteen minutes. The matter is simple. A charge of twenty-five dollars is ample."

I made a charge of forty dollars. To this day I do not know whether my client received a gift of eighty-five dollars or whether he lost fifteen dollars by the transaction. There was certainly some charge which represented the fair value of the service rendered the client and which by that criterion would have been fair both to him and to me.

Many instances of the most extraordinary divergence in fees could be cited but the case just presented will serve to suggest a number of propositions worthy of consideration.

1. The young attorney is not taught, and in the very nature of things cannot in student days be taught, what fees a given service which he may render at some distant date in the future will be worth. His teachers, whose compensation comes to them in salaries are in no wise interested in fees and cannot profess to know anything about them.

2. The young lawyer should not be permitted to gauge the value of his services by the amount which he finds he can gouge his client out of. Opportunities to take advantage of the ignorant and confiding will come to him. On the other hand, he should in some way be so guided that he learns the proper standards by which to measure the value of his services and for his own sake not be permitted to give away his time and learning.

3. A given service in a given community to an average client in an average case must be a thing the value of which is determinable within reasonable limits. The lawyer is entitled as a matter of law to the reasonable value of his services. The opinions of the experts learned in the law are admissible in evidence. The jury may well ponder and doubt when it finds that one expert testifies that the value of a simple service is five times that which his brother expert, equally capable and competent to give judgment, places upon it.

4. The lawyer's relations with his clients and the attitude of the public toward him are directly affected by great divergence in fees charged by different attorneys for the same services. A client who for a certain service is charged a certain amount by one attorney and who subsequently for the same service is charged by another

attorney a fee five times as great, is to a large extent justified if he looks upon number two as a robber baron conducting a raid from his castle on the Rhine. “All lawyers are robbers” is a phrase too commonly used with reason under circumstances like these. The attitude of the public toward the profession is always a matter of concern to the profession. The cry of the client that he is over-charged is not easy to calm if he pays in one case five times what he pays in another of the same kind, and through him the public takes up the cry.

5. Finally, and of particular moment at this time under existing conditions, be it asked what charge is proper today for a service for which ten years ago a proper charge, we will say, was forty dollars? From soup to nuts at the table, from cellar to garret in the house, from stationery to stenographer in the office, the costs have doubled. The ten dollar fee today will buy what the five dollar f cc bought four short years ago. He who then examined an abstract for ten dollars, now, if he makes the same charge, does the work for five. Ten years ago the learned, highly educated (and much condemned) plumber got fifty cents per hour, four dollars per day. Today he strikes for $1.25 per hour — ten dollars per day. The coal carrier, brainily engaged in toting your diamond embedded winter’s supply from wagon to bin, the article itself selling at seventeen dollars or more per ton, will earn, by working a little overtime, from thirteen to fourteen dollars per day. Every other man than the lawyer has today made up the difference between today’s costs and the costs of yesterday.

In ancient days, in ye olden time, what the lawyer got for his services he got as a gift. The grateful client made him a present. We find it stated by the learned author of the best-known work on professional ethics that in ancient Rome:

> “In the progress of society, the business of advocating causes became a distinct profession; and then it was usual to pay a fee in advance, which was called a gratuity or present. As this was a mere honorary recompense, the client was under no legal obligation to pay it. But the result necessarily was that if the usual present was not given, the advocate did not consider himself hound in honor to

undertake the advocation of the cause before the courts." (Sharswood, *Professional Ethics*, Second Edition, p. 82.)

In England "it is the established law that a counsellor or barrister cannot maintain a suit for his fees." (Sharswood.) Attorneys attending to legal business out of court, bringing suits and conducting them up to issue are regulated by statute. Their fees are settled either by statute or settled usage.

How far a cry from the days of Rome to this when, too often, the client looks you in the face and before you take a step in his behalf, asks: "What are you going to charge me?" Putting it mildly, his attitude is that of John Doe, represented by able counsel, but convicted of arson. John kicked at a fee of $3,000 and said he thought he might have been convicted for a whole lot less.

No longer is the fee a gift. The lawyer works and works hard and is paid for what he does, and like the laborer is worthy of his hire. That the average lawyer does not make as good a living as he would make if he employed the same talents in business is a matter of common observation. To a very great extent he works for others and not for himself. Very few even among the better known members of the profession — those who are characterized as leaders of the bar — leave to their families even in normal times more than a very modest competence. And in general even the leader dies young. The law is a jealous mistress. Her rewards come late in life and then only for a comparatively short period to him who by patience and unremitting industry has built up a reputation. The earnest, faithful lawyer to whom success has come will have put in longer hours, suffered greater mental exhaustion, and drawn more heavily upon his nervous resources than any other member of the community whose rewards are equal to his.

From a broader point of view it is vitally necessary that the lawyer be provided with a living wage. He is an officer of the court, the servant of the public. Upon him falls the burden of protecting the weak and the innocent. He must be faithful to his trust and guard jealously the interests of his client. If he fails to discharge his obligations or commits a breach of his trust, it is not he who suffers but the public and his client. If he cannot gain a livelihood out of his fees, if his wife and his children cannot live decently and well, one of several things

must happen. The temptation to levy tribute by whatever means present themselves will come. Or work inadequately compensated for will be neglected for work which will be remunerative. Or the public will lose its servant.

He will seek rewards commensurate with his abilities in the field of business or he will drop out, as all of us have seen men drop out, a discouraged and a beaten man.

In this city are lawyers who, in their offices and in the dingy half light of the vaults in the court house have, by a life time of hard work, acquired the reputation of being experienced and "careful" examiners of titles. Any one of them if asked will tell you that if he did not have work more lucrative than his title work, he would not make a livelihood. The upward swing of business, the competition in business, the lawyers' adherence today to charge in vogue forty and fifty years ago when abstracts were half as long, when living conditions were as different from those of today as the East Side is from Fifth Avenue, have left the expert in title work stranded on an island barren of the cocoanut whose milk ought to sustain his life.

Is it any wonder that you bear a groan from the average lawyer when a title comes in for examination, that he feels repugnance for the job ahead of him and has a tendency to lay it aside for something of greater interest and of greater value. The slacker will not pull down the books in the office of the Register of Deeds but with feet on the table in his own office, will merely trace the chain of title and charge a fee, the charging of which in any amount robs his client.

In the long run, who but he who receives adequate compensation for his work will continue to work. A fee which is not compensatory is not a fee at all.

That the matter of their fees had become a thing of moment to the lawyers in at least two communities in this state is well illustrated by the action taken by the Bar Association in the two largest counties. The Hennepin County Bar Association appointed a committee to consider the advisability of the adoption of a minimum fee bill intended to secure greater uniformity of fees and to prepare such a fee bill if its adoption should be considered advisable. Strange to

say, at almost the same moment, not knowing that the Hennepin County Association had acted, the Ramsey County Association appointed a committee for exactly the same purposes. The committees, learning of the action taken by the other association, met together and the reports submitted to the respective associations were to a considerable extent the joint work of both. On March 4th, last, the Hennepin County Bar Association met, approved the report of its committee, and adopted a minimum fee bill. On April 14th the Ramsey County Association took similar action.

I cannot do better than to quote part of the report of the Hennepin County Committee which was incorporated in and printed as a part of the fee bill as printed and distributed.

> "An attorney at law should not charge for his services upon a uniform basis. His relation to the courts will require him to do work gratis for clients who are unable to pay, and he will have to do other work for far less than the value of the time employed. He is under a considerable expense, and, from the nature of his work, much of his time and effort cannot be charged to any particular client.
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> "The value of an attorney's services also depends upon (1) his skill and experience, (2) the time required, (3) the importance and difficulty of the questions involved, (4) the customary charge of the Bar, (5) whether the compensation is contingent or assured, (6) whether the client is a regular one, retaining the attorney in all his business.
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> "An attorney should, upon the foregoing considerations, from time to time, ascertain for himself the value of his own time."

The Ramsey County Committee reported to its Association in part as follows

> "The Committee is unanimously of the opinion that the Association will perform a service of great value to the members of the Bar if it adopts a minimum fee bill.

"The foremost consideration leading your Committee to recommend the adoption of a minimum fee bill are conditions which are found to be as follows: It is found that a material difference exists between charges made by lawyers of equal ability, experience and standing upon precisely the same matters—a most unfortunate condition for both attorney and client. Again, for some matters charges are in vogue which cannot compensate for the time and work expended upon them. It would seem to pass without argument that it is desirable that charges in simple matters be standardized and that the Association guide the members of the Bar by indicating what fees are generally regarded as the lowest fees which will compensate any attorney for skill and experience for the work which he may do. So far as the Committee can judge, there is great need of doing something to accomplish these objects and it is believed that the adoption of a minimum fee bill will tend to accomplish them.

"It may be of interest to state that it has been ascertained that fee bills have been adopted by bar associations in many different localities in many states. We are advised that fee bills have been found generally helpful, both to clients and attorneys. Some of the fee bills are quite simple, covering only conveyancers' charges, and some of them, as in Illinois, go into great detail in setting forth the method of charging and the proper amount of charges in particular cases.

"In submitting a schedule of minimum fees, your Committee desires to state some of the things which have guided it, and others which have or have not been taken into consideration.

"A proper fee in a particular case is a matter of opinion. Attorneys differ and will continue to differ in their opinions. It will be found that in many cases the schedule charge is less than the customary charge, but it will also be found that in nearly all cases some attorneys have been charging less and some more than the particular amount

set down. The Committee has attempted merely to crystallize the prevailing opinion at the lowest figure which can be regarded as compensatory.

"In some instances, as in the fees for examinations of title, the controlling elements are not the fair value of the attorney's time and skill, but the elements of competition and custom. The charges prevailing today are those, or less than those, of thirty or forty years ago when abstracts were a third as long, and when a man's time, measured in terms of the purchasing power of money, was worth half as much as today.

"Very little, if any, allowance for these changes in conditions with respect to the fees in these matters has been made, and in the opinion of your Committee, the situation as to these fees is one with which all members of the bar may properly concern themselves.

"In general, also, it may be said that the schedule frankly does not attempt to make up the difference between the living cost of yesterday and the living cost of today, for in general, precedent governs in fees as in decisions of courts.

"The schedule is not designed to state average charges. It is designed to state proper minimum charges in certain simple matters, that is to say, the lowest charges which can be regarded as compensatory.

"The Committee begs leave to submit the following further recommendations:

"(1) That the members of the bar engage in much franker discussions of fees.

"(2) That in such cases as they feel that the fees are not adequate and compensatory, they seek first to educate themselves as to proper fees; second, to educate their clients; and third, through their clients or other-wise,

> to impress upon the public the justice and the necessity properly of compensating the attorney for the sake not only of securing proper service, but also for the good of the community whose servant the lawyer is.
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> "(3) That in his own interest and in that of his client, the attorney adopt in his office some method of keeping accurate account of his time, fix a value upon his time and have and keep an accurate and complete record of the time employed in each matter, and that the charge, in all cases, take this time into consideration. Further, that he keep books of account.
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> "(4) That the practice of securing retainers be strongly favored and that in all possible cases attorneys request and obtain retainers before engaging to act for the client."

It is doubtless true as a matter of law that an agreement among the attorneys of a given community to charge certain fees in certain cases would not be unlawful. Be that as it may, I would not be one to urge the adoption of such an agreement. Aside from all practical difficulties there is enough left of the old idea that the fee is a voluntary contribution from a client, and the idea is enough worth saving, so that a fixed charge made by agreement among attorneys would seem to me to have in it something unethical and to destroy to some extent the very charming relation of trust existing between attorney and client. In the early case of *Seeley et al. vs. Crane*, 3 Green N. J. 35, Hornblower, C. J. put this idea very aptly. He said:

> "I shall be sorry to see the honorary character of the fees of barristers and physicians done away with. Though it seems to be a shadowy distinction, yet I believe it to be beneficial in effect. It contributes to preserve the idea of profession, of a class which belongs to the public, in the employment and remuneration of which no law interferes, but the citizen acts as he likes, *foro conscientiae*."

The Ramsey County Association went so far as it well could in my judgment when, to make the schedule binding, it adopted a resolution in the following language:

> "Be it Resolved That: It is the sense of the Ramsey County Bar Association that the minimum fees specified in the 'Minimum Fee Bill, adopted by the Association, should be considered as binding by its members; and that, in the absence of circumstances *requiring* contrary or different action in individual cases, it is considered as controlling on their action as members of the Bar; and that intentional and habitual deviation therefrom should be considered as unfairness, not only to lawyers in their individual interest, but also to the profession of the law as such."

That resolution, when passed in conjunction with a *minimum* fee bill, would, however, seem to be unobjectionable. For by the definition given the word "minimum" by the Committee and the Association, the meaning and intent of the fee bill is to express the opinion of Committee and Bar Association that any charges less than those stated will be unfair to lawyers in their individual interest, to the profession as such and in natural course to client and to public.

There are, it is true, certain limitations attaching to and certain dangers inherent in any fee bill which sets minimum charges and in any form binds attorneys not to charge less than the minimum.

Such a bill involves an attempt to fix fees in such a way that one attorney may be in a position to say to another: "Beneath that you shall not go without breaking faith with me and with your brothers at the bars." It attempts to make unethical or unmoral or dishonest the charging of too small a fee. And there is grave doubt whether the profession can be made to regard as unethical or unmoral or dishonest that which may not in fact be unethical, unmoral or dishonest.

Moreover, the fee bills as adopted frankly do not attempt to set up in all cases fees which are regarded by the profession as a whole as adequate or compensatory. Witness the fees charged for examinations of title. Yet its adoption is likely to have a tendency to fix the lee, whether adequate or inadequate, whether compensation or non compensatory, as the fee which will be charged in the great majority of cases and to fix it for all time.

However, whatever the limitations and the difficulties, such fee bills should tend to correct the great evil of extraordinary differences in charges made under the same conditions, and thus relieve the lawyer in the average case from some of the grief to which he has been subject. Fee bills might be drawn upon the different theory that they state the fees which the prevailing opinion of the bar regards as fair and compensatory, whether or not such fees can be obtained in all cases and under the conditions imposed by custom or competition, or by all lawyers. Such fee bills would set up a standard and at the same time guide the reputable attorney to make a fair and compensatory charge and tend to raise to the proper level such fees as are in fact generally regarded by the profession as too low. It would not be subject to the criticism that the charging of a fee less than the stated fee would carry any stigma with it but would simply attempt frankly to express the opinion of the average lawyer as to what constitutes a fair fee.

Much may be said for a fee bill of the latter kind. If on all hands the profession admits that it is being regularly underpaid for services rendered in a particular class of cases, is it wisdom for it to say: "I won't charge less than ten dollars," knowing all the time that the charge should be twenty, or shall it say: "I ought to have twenty dollars—I cannot in fairness to myself or other lawyers do that work for less." If the latter point of view is correct, the fee bill should hitch its wagon to a star and gaze not upon the fee which it distrusts because it is too low but upon the fee which is fair in every way—fair to the client, fair to him who makes the charge, and fair to the charger's next door neighbor. Those three elements of fairness are all that can enter into the fixing of any fee.

The average client to whom the average attorney says: "That fee is the fee which the lawyers of this community regard as a fair and compensatory fee" will say: "I will gladly pay what you ask." But to the average client it will sound quite different if the average attorney says: "Brother Smith would have charged you fifteen dollars but my services are more valuable than his and my charge to you will be twenty-five dollars."

Two factors and two only have served to establish such fees as have heretofore become fixed: competition and custom. Of these com-

petition may on its face seem to be the factor most difficult to deal with. No schedule fixing fees will abolish competition nor prevent him whose greed, necessity, lack of knowledge of the value of his time, or lack of respect for the opinion of other lawyers gets the best of him from cutting under the amounts fixed.

The factor custom may prove, theoretical difference to the contrary, to be a harder and more illusory not to crack than is the factor competition. The greatest difficulty is the lawyer himself. What is, is, has been and must be. “I did that yesterday, the day before, and the day before that;” “So and so in such a case did thus and so.” The very nature of his training and his experience leads him to decline to accept the innovation, the thing untried, in fees as in everything else. Existing relations with clients also interfere. If the truth be told he is timid. He hesitates before he hews as nobody has hewed before him. His salvation so far as proper remuneration is concerned, can come only if he, and all attorneys of equal standing with him, will say: “The fee I have charged you is regarded by me and by my brother lawyers as a fair fee for this service.” Crystallization of opinion to such an extent as to permit this statement to be made will take time. A proper fee in a particular case is a matter of opinion among attorneys. Opinion cannot be crystallized unless the lawyers talk frankly with each other and educate each other. The public also must be educated and that also will take time. Custom cannot be changed in a day or a month.

Whatever the difficulties are they must be met. To sit back and meekly submit to what has become established by custom will leave the lawyer in the class with the school teacher, forced to go into business to earn a living. Failure to face and recognize the decreased purchasing power of the fee of today and not to stand up to the client and to the public for compensation which is adequate, it cannot be too often repeated, will drag down not only the lawyer but the community as well.

In addition to whatever relief may be afforded by fee bills and such suggestions as have been made, other methods may be suggested. Something might be accomplished by legislation. In this state there is practically nothing in the statutes covering fees. The maximum fee which may be charged to the mortgagor are prescribed by statute.

Looking at those fees we find that they start with a fee of $25.00 for the foreclosure of a mortgage up to $500.00, and that the maximum limit for a mortgage in any amount whatsoever shall not exceed $200.00. Such fees, by any standard applicable, at least so far as they deal with the larger mortgages, shoot far beside the mark. There has been no change in these amounts since the statute was enacted in the year 1873. The attitude of one group of lawyers toward them is indicated by the naive statement in the Hennepin County fee bill that the fees on foreclosure of real estate mortgages shall be "not less than the fees prescribed by statute." In most states the fees on foreclosure of mortgages are by statute to be fixed by the Court.

A class of fees regulated by statute in many states is that of the fees in probate proceedings. In California, for example, the statute prescribes the fee both of personal representative and of attorney. You who practice in the probate courts of this state may be astonished at the way they run:

Where no compensation is provided by the will, or the executor renounces all claim thereto, the provision is that he must be allowed commissions on the amount of the estate accounted for by him as follows:

> For the first $1,000.00 at the rate of 7%;
> For the next $9,000.00 at the rate of 4%;
> For the next $10,000.00 at the rate of 3%;
> For the next $30,000.00 at the rate of 2%;
> For the next $50,000.00 at the rate of 1%;
> And for all over $100,000.00 at the rate of one-half of 1%.
>
> (Sec. 1618, Code of Civil Procedure, Cal. 1915.)

Attorneys are allowed the same amounts as executors and administrators, and in the event that they render extraordinary services or that there are sales of mortgages of real estate, or the claims against the estate are contested, or that there are litigated matters, they are entitled to additional compensation under order of the Court. (Sec. 1619, Code of Civil Procedure, Cal. 1915.)

The fees named in the schedule are subject to reduction only where the estate is distributed in kind and no labor is involved beyond the custody and distribution. The rates on amounts in excess of $20,000 are one-half those stated above. (Sec. 1618, Code of Civil Procedure, Cal. 1915.)

Of the states in this vicinity, the states of Wisconsin and South Dakota do not seem to have statutory regulation of fees in probate matters. In North Dakota, the personal representatives are allowed 5% on the first $1,000.00; 2% on the amount between $1,000.00 and $5,000.00, and 1% on all above $5,000.00. (Sec. 8822 Comp. Laws N. D. 1913.) In the State of Iowa the fees allowed the personal representative are the same as in North Dakota except that the rate on the amounts between $1,000 and $5,000 is 2½%. Presumably the attorney in these states is allowed at least as much as the personal representative.

The fee bill of the Hennepin County Bar Association specifies minimum fees in probate proceedings as follows: Where the estate has an inventory value of $50,000 or less, 2% of the inventory with a minimum charge of $50.00, and where the estate exceeds $50,000 a minimum charge of $1,000, plus 1½% on the excess over $50,000, The Ramsey County Bar Association fee bill states a fee for the uncontested probate of estates having an inventory of $10,000.00 or less at 2% of the inventory value with a minimum charge of $50.00, and on the excess above $10,000.00, a fee of 1½% of the inventory value.

The fees permitted by statute will necessarily be a maximum fee. Since human nature stands as it does, it will also become a minimum fee in the generality of cases. The statute thus sets a fixed fee and unless such fees are compensatory they have no place on the statute books. In mortgage foreclosures and probate proceedings, however, the proper fees may safely be left to legislative determination, and to secure uniformity, if for no other reason, may properly be covered by statute.

The lawyers of this state believe the practice of law by corporations, associations or unauthorized persons to be a dangerous infringement of their rights. This Association will have considered the proper

steps to take to curb this growing evil. Such legislation as may be enacted in consequence will tend to eliminate competition of a character wholly unfair to those whose exclusive privilege it is to engage in the practice of the law.

To summarize the suggestions which have been referred to as affording partial relief to the lawyer under present conditions, we would find the following helpful in some degree:

1. The adoption of fee bills, properly drawn, properly used in practice and the need of which is properly presented to client and public.
2. Continued efforts to induce a revision of such non-compensatory fees as have become established by competition or custom.
3. By free interchange of views for the members of the bar themselves to learn wherein they charge too little or too much and to concur in the general agreement of their fellows
4. Adoption of the practice of securing retainers.
5. Legislative relief in the proper cases.
6. Or greater efficacy than all of these I believe would be found the study by attorneys of more efficient methods of handling their work The lawyer should know what business he can profitably handle and what he cannot. “System in the office” will save aeons of times, conduce to quicker and more accurate thinking and dispatch of the work of the day. Books of account, real ones, are practically unknown in many, if not most, offices. The relation between overhead expense and gross income may never be determined. The recommendation that the attorney “adopt in his office some method of keeping accurate account of his time, fix a value upon this time and have and keep an accurate and complete record of the time employed in each matter, and that the charge in all cases take this time into consideration” will go further, if followed, than any other one thing to produce results. Such a record in and of itself conduces to efficiency as no other thing can. A number of very simple, easily worked records, and systems of using them, have come into use.

I leave this subject with reluctance. I would leave it less reluctantly if I felt that such observations as have been made would have the necessary effect of removing the boulders and filling up the ruts. I

would have preferred to be able to submit more that was tangible and definite, propositions that enacted into law or worked out by mathematical calculation would serve by necessary consequence to provide a living wage for all who are going to continue to practice law. I do not doubt that those of us whose businesses are established will continue to get by. I do fear that those who have not yet got far enough along to have established businesses are going to be pinched hardest. I venture to say that comparatively few in the profession are earning today ninety per cent more than they earned in the year 1915 and yet a ninety per cent increase is exactly the increase necessary to keep the red ink off the individual balance sheet of every man whose earnings in 1915 did not exceed his requirements. The average increase in the prices of all commodities from that date to this is just ninety per cent. The problem is not so serious if prices fall and fall soon for everybody can tide by for a year or two, but the indications are that the purchasing power of money is not going to increase materially for a long time to come.

This Association in my judgment owes it to its members, and particularly to its younger members, to study the problem, to reach conclusions and to instruct, advise and assist all members of the profession in advance of the time which may come when they shall actually suffer.

[*After a lengthy address such as this, it was customary for the president of the bar association to thank the speaker, who also was applauded by the audience. But Graves received no thanks, no applause. The next order of business was a motion to "extend a vote of appreciation" to the sponsors of some "entertainment and hospitality" the previous day. It passed.*]

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Afterword

A doctor and a lawyer chat at a cocktail party. The doctor complains, “When I’m here at a social gathering like this, looking to have a good time, other guests come up and tell me their ailments, wanting free medical advice. I’m tired of it. Somedays, I think I should send them a bill. What do you think?”

The lawyer shrugs and replies, “Sure, go ahead.”

Two days later, the doctor gets a bill from the lawyer:

Service rendered: $500.00

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Related Article

“The Minimum Fee Schedule of the Fillmore County Bar Association (1860).” (MLHP, 2011).

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