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NOTES AND COMMENTS

THE ATTORNEY'S RIGHT TO SUE FOR FEES

Canon 14 of Canons of Professional Ethics of the American Bar Association alerts the attorney that controversies with clients over fees are to be avoided as far as compatible with self respect, and that a lawsuit is to be used only to prevent injustice. Canon 12 emphasizes that "it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade." However, it is obvious that there will be cases compatible with self-respect and ethics where an attorney will be forced to sue for fees. The purpose of this article is to analyze the attorney's right to sue for fees and the amount of his recovery.

THE CONTRACT

The attorney-client contract is one for personal services. The attorney promises to render a legal service in return for the client's promise to pay some reasonable value. A personal service contract may be oral or written.[1] In either case, the formation of a valid contract requires the basic essentials of any contract, an offer, an acceptance and a valuable consideration.[2] In addition, the contract may be express or implied.[3] If the fiduciary relationship of attorney and client arises without any express agreement as to compensation, the law will imply an agreement to pay a reasonable amount for services performed by the attorney.[4]

The relationship of attorney and client is fiduciary.[5] A fiduciary relation arises by law out of the relation between attorney and client and requires the parties to act in unmost good faith and with all due regard for the interests of the one reposing the confidence.[6] This relationship can be created only by mutual assent.[7]

In the event no express contract has been entered when the attorney-client relation arises, a contract to pay the reasonable value of the attorney's services will be implied by law.[8] If, however, the attorney and client enter an express contract at some time subsequent to the formation of the implied

[1] Such an oral contract is generally one which is to be completed within one year and thus is not in violation of the Statute of Frauds. See Ill. Rev. Stat. ch. 59, § 1 (1967).

[2] See Corbin, Contracts §§ 3,11,55,110 (one Volume ed., 1952).

[3] Crocker v. Boening, 247 Ill. App. 466 (1st Dist. 1928).

[4] *Ibid.* See Chicago & S. Traction Co. v. Flakerty, 227 Ill. 67, 78 N.E. 29 (1906), where a landowner brought some information to an attorney and asked him to look into it. The court implied a contract.

[5] Ewing v. Haas, 132 Va. 215, 111 S.E. 255 (1922); Kent v. Fishblate, 247 Pa. 361, 93 Atl. 509 (1915).

[6] Neogle v. McMullen, 334 Ill. 168, 165 N.E. 605 (1929).

[7] *Supra* note 5.

[8] *Supra* note 4.

contract, the courts have been prone to view the subsequent express contract with distrust.[9]

Until recently, many courts have expressed the attitude that it is incumbent upon the attorney to establish that an express contract, entered subsequent to the formation of the fiduciary relationship and the implied contract, was fairly negotiated and not the result of fraud or undue influence.[10] In *Sokel v. Mortimer*,[11] the court negated the requirement that the attorney prove the contract was fairly negotiated. The defendant-client claimed he was under duress when a written contract for $10,000 was entered after the attorney had already performed a good portion of the work to be completed. The court made it clear that the attorney bore no burden of proving the absence of fraud. It stated:

> We do not think that any greater duty devolves upon an attorney seeking collection of his fees once he has established, by going forward with the evidence, the fairness and reasonableness of that fee with the attendant circumstance. The burden of proof to establish fraud, undue influence, or lack of consideration, not unlike any other affirmative defense, must necessarily rest upon the party asserting it.[12]

The reason for the older rule apparently arose from the fact that the burden of proof to show fraud in a fiduciary relationship is much lighter than the burden where no fiduciary relation exists.[13] That is, where a fiduciary relation exists, the mere showing of hard bargaining, undue influence, overreaching, or any taking advantage of another through business shrewdness or pressure is sufficient to demonstrate a failure to maintain the utmost good faith required and is a breach of the fiduciary duty. Such a breach is paramount to fraud in an ordinary arms-length transaction, and is a sufficient basis to avoid a contract made during the existence of a fiduciary relationship.[14]

There are three different types of widely recognized methods of compensation in attorney-client contracts.[15]

[9] Woods v. First Nat'l Bank, 314 Ill. App. 340, 41 N.E.2d 235 (1st Dist. 1942). The court held that in the absence of the attorney showing his fees were fair the contract must be presumed fraudulent. See Morentin v. Vazquez, 86 Ill. App. 2d 269, 230 N.E.2d 53 (1967), where the court refused to enforce an attorney's lien on the ground that it was obtained through undue influence and overreaching. The client was able to have the lien declared invalid by showing the attorney had solicited employment and had procured the contract from a client who read no English and had no understanding of what she was signing. *Accord*, Bell v. Rameriz, 229 S.W. 655 (Tex. Civ. App. 1927).

[10] *Supra* note 9.

[11] 81 Ill. App. 2d 55, 225 N.E.2d 496 (1st Dist. 1967).

[12] *Id.* at 61, 225 N.E.2d at 500.

[13] Central Nat'l Bank v. Connecticut Mut. L. Ins. Co., 104 U.S. 68 (1881); Thomas v. Whitney, 186 Ill. 225, 57 N.E. 808 (1900).

[14] *Ibid.*

[15] 5 Okla. Stat., § 9 (1961); Note, *Attorneys: Recovering the Attorney's Fee*, 16 Okla. L. Rev. 91 (1962).

(1) The first type provides a set fee for particular legal services to be performed, and is agreed on by the parties in advance.[16]

(2) The second type is the contingent fee provision, which provides for the fee to be a percentage of the recovery in the lower court, perhaps increasing to a greater percentage if an appeal is required, and for no fee at all if there is no recovery.[17]

(3) The final type provides for a reasonable consideration in light of the services to be performed and the time and effort required.[18]

It is important to be aware of these different provisions when considering the following sections.

THE BREACH

It is clear that in ordinary employment contracts where the employee is dismissed without cause the employer has breached the contract and the employee is allowed to sue for damages caused by the breach.[19] In attorney-client contracts, where the attorney has fully performed his contract and the client refuses to pay the fee, all courts agree that the client has breached the contract and the attorney may sue for damages.[20]

However, where the client terminates the relationship before the attorney has substantially performed his obligations under the contract, there is a diversion of judicial opinion as to whether the contract has been breached, enabling the attorney to sue for damages. In most jurisdictions, this situation is treated no differently than ordinary employment contracts or cases in which the attorney has fully performed. The client is found to have breached the contract and the attorney may sue for damages for the

[16] Sokol v. Mortimer, 81 Ill. App. 2d 55, 225 N.E.2d 496 (1st Dist. 1967).

[17] Ewing v. Haas, 132 Va. 215, 111 S.E. 255 (1922). See also Stevens, *Our Inadequate Attorney's Lien Statutes*, 31 Wash. L. Rev. 1 (1956).

[18] Colburn v. Bast, 83 Ill. App. 2d 384, 227 N.E.2d 797 (4th Dist. 1967).

[19] Mutter v. Burgess, 87 Colo. 580, 290 Pac. 269 (1930). As to whether the employee may recover after he breaches the contract, see *Britton v. Turner*, 6 N.H. 481 (1834). This case now represents a substantial majority view. The court allowed recovery to a laborer in quantum meruit after he had breached a one year employment contract after 9½ months. The court held that such a contract is severable, the same rationale as used by the minority of states which support the view that the attorney may recover in quantum meruit only. For a complete discussion of *Britton v. Turner* see Corman, *The Partial Performance Interest of the Defaulting Employee*, 38 Marq. L. Rev. 61 (1954); see also Laube, *The Defaulting Employee, Britton v. Turner Re-viewed*, 83 U. Pa. L. Rev. 825 (1936).

[20] Caplow v. Hershen, 331 Ill. App. 182, 72 N.E.2d 869 (1st Dist. 1947); Rector v. Duntley Mfg. Co., 189 Ill. App. 562 (1st Dist. 1914). These cases hold that if a written contract exists, the burden rests on the one alleging its existence to introduce it and prove its existence and the performance of the required services. But that an oral contract is a somewhat greater problem. The attorney must prove not only the existence of the contract, but that the contract called for performance of those services for which the attorney is suing. This burden is not met by the uncorroborated statements of the attorney.

breach.[21] In addition, these jurisdictions give the attorney the option to rescind the contract and sue in quantum meruit for the reasonable value of the services he has performed.[22]

In a minority of jurisdictions, led by New York, the termination of the employment by the client before the attorney has fully performed is not considered a breach of contract.[23] The theory in these jurisdictions is that there is an implied condition in the contract that the client at any time and for any reason may discharge the attorney. This condition is implied from the personal and confidential relation which the attorney-client contract calls into existence. The attorney in the minority states is not completely remediless. He may recover in quantum meruit for the reasonable value of the services he had performed to the time of termination. However, even the jurisdictions which follow the New York view do not limit the attorney's recovery on a general retainer contract to quantum meruit because it is felt the confidential relation has not yet fully arisen.[24]

Illinois is a jurisdiction which allows the attorney the option of suing on quantum meruit for the reasonable value of the services performed or to sue for damages for breach of contract. An early case, *Mt. Vernon v. Patton*,[25] permitted recovery on the contract where an attorney had been properly employed to perform legal services for a town but was prevented from performing by the officers of the town, even though he was ready, willing, and able to perform. More recently, the court allowed quantum meruit recovery in a case in which two attorneys were employed under a written agreement by a sanitary district to take charge of all legal work, including the defense of several special assessments.[26] Two months later, according to the complaint, the plaintiff-attorneys were discharged after performing $25,000 worth of services. The court held they were entitled to treat the contracts as at an end and recover upon quantum meruit so far as they had performed. Nowhere did the court intimate that this was the only theory of recovery available to the plaintiffs, but rather said that where

21 Mutter v. Burgess, 87 Colo. 580, 290 Pac. 269 (1930); Allen v. Castle Farm, 151 Ohio St. 522, 86 N.E.2d 782 (1949); Bank of America v. Republic Productions, 44 Cal. App. 2d 651, 112 P.2d 972 (1941); White v. Burch, 19 S.W.2d 404 (Tex. Civ. App. 1929). See Ballantine, *Forfeiture for Breach of Contract*, 5 Minn. L. Rev. 329 (1921); Annot., 54 A.L.R.2d 617 (1957).

22 Gillham v. Metropolitan St. Ry., 282 Mo. 118, 221 S.W. 1 (1920); Myers v. Crockett, 14 Tex. 257 (1855).

23 Martin v. Camp, 219 N.Y. 170, 114 N.E. 46 (1916); Matter of Dunn, 205 N.Y. 398, 98 N.E. 914 (1913); Cole v. Myers, 128 Conn. 223, 21 A.2d 396 (1944); Lane v. Gooding, 69 Colo. 216, 193 Pac. 670 (1939); Succession of Carabajal, 139 La. 481, 71 So. 774 (1934); Bunge v. Downers Grove Sanitary Dist. 356 Ill. 531, 191 N.E. 73 (1934). See 8 C.J.S. *Attorney and Client* § 175 (1951); 34 Tex. L. Rev. 1082 (1956).

24 Greenberg v. Remick and Co., 230 N.Y. 70, 129 N.E. 211 (1920).

25 94 Ill. 65 (1879). See Eastman v. Blackledge, 171 Ill. App. 404 (1st Dist. 1912), where the court awarded the attorney the full value of his contract even though he had not completed all the required services on the basis that the attorney had constructively (substantially?) performed.

26 Bunge v. Downers Grove Sanitary Dist., 356 Ill. 531, 191 N.E. 73 (1934).

further performance of the contract is prevented by the defendants, the plaintiffs always have a right to recover in quantum meruit. Thus, even though later cases seem to follow quantum meruit recovery, by no means have these decisions foreclosed the possibility of a recovery of damages for breach of contract in Illinois.

The Theory of Recovery and Measure of Damages

The amount of recovery will vary according to the method of compensation provided for in the contract of employment and according to whether recovery will be in quantum meruit or for damages on the contract. What must next be discussed is the measure of damages for each of the three types of methods for compensation which a contract may contain.

Set Fee Contracts

If the contract is of the type providing for a set fee for the services, the termination by the client, either after the attorney has fully performed, or before the attorney has fully performed, is, in most states, a breach of contract and entitles the attorney to sue for damages for the breach.[27] The general rule as to damages in cases of a breach of a personal employment contract is that the employee can recover only the difference between what he might have received from others and the price agreed upon, providing he was able to find other employment to mitigate his damages.[28] But the attorney-client contract is an exception to this rule. The attorney is entitled to the full agreed upon price as his damages.[29] One reason is that it would be too difficult to make an apportionment between the work completed and that remaining when the attorney is discharged. Another reason is that the most difficult and valuable services are rendered to the client when the attorney advises the client of his legal rights and not later when the papers are prepared.

There is some authority for reducing the discharged attorney's recovery of damages on his contract by the reasonable value of any services performed and expenses incurred by another attorney subsequent to the discharge.[30] The courts employ the theory that the attorney is entitled to the benefit of his bargain, less the amount he saved due to the breach.[31]

In cases where the attorney is discharged before he has fully performed, most courts do not limit him to a suit for breach of contract. He is given an option to rescind the contract instead and sue for quantum meruit.[32] The

27 Eastman v. Blackledge, 171 Ill. App. 404 (1st Dist. 1912).

28 Mutter v. Burgess, 87 Colo. 580, 290 Pac. 269 (1930).

29 *Supra* note 28; *supra* note 27.

30 Bockman v. Rorer, 212 Ark. 948, 208 S.W.2d 991 (1948).

31 *Ibid.*

32 Gillham v. Metropolitan St. Ry., 282 Mo. 118, 221 S.W. 1 (1920); Myers v. Crockett, 14 Tex. 257 (1855); Lake Shore & M. S. Ry Co. v. Richards, 152 Ill. 59, 38 N.E. 773 (1894).

measure of recovery on quantum meruit is the reasonable value of the attorney's services under all the attendant circumstances.[33] The reasonable value of the services must be determined without regard to any agreement by the parties as to their value.[34] It is therefore theoretically possible for the attorney to recover more than his contract provides for, or to recover nothing at all if he has performed no services prior to his dismissal. Thus, in *Matter of Montgomery*,[35] an attorney had been employed under a written contract for five thousand dollars to settle a decedent's estate. When the attorney was discharged without cause, the court held he was entitled to ten thousand dollars, as this amount was the reasonable value of the services he had performed.

As was previously discussed, some courts, led by New York, hold that there is an implied term in the contract enabling the client to discharge the attorney without being in breach of contract. Under this view, the attorney is limited to quantum meruit only.[36]

Contingent Fee Contracts

Generally, the recovery of damages on a contingent fee contract entitles the discharged attorney to the agreed upon percentage of any judgment or settlement actually secured, either by the client himself, or by a subsequent attorney representing the client.[37] Of course, if the attorney was allowed to complete his performance and the client merely refuses to pay the fee, the attorney is entitled to the agreed upon percentage of the recovery.[38]

As in the set fee contract, the discharged attorney's recovery of damages on a contingent fee contract may be reduced by the reasonable value of any services performed or expenses incurred by another attorney subsequent to the discharge. For example, in *Tonn v. Reuter*,[39] the contract called for a 25 percent contingent fee. Just prior to trial the plaintiff was discharged and another attorney substituted who obtained a settlement. The court awarded the plaintiff 25 percent of the settlement, per his contract, but, less the reasonable value of the substituted attorney's services.

It is interesting to note that recovery of damages under the contingent fee contract entails the presumption that the discharged attorney would have done as well as the substituted attorney.[40] Thus, there is some authority that where the attorneys are of unequal skill and experience and a

[33] Viles v. Kennebee Lumber Co., 118 Me. 148, 106 Atl. 431 (1919).

[34] Smith v. Bliss, 44 Cal. App. 2d 171, 112 P.2d 30 (1941).

[35] 272 N.Y. 323, 6 N.E.2d 40 (1936).

[36] Martin v. Camp, 219 N.Y. 170, 114 N.E. 46 (1916); Matter of Dunn, 205 N.Y. 398, 98 N.E. 914 (1913).

[37] Tonn v. Reuter, 6 Wis. 2d 498, 95 N.E.2d 261 (1959).

[38] Colburn v. Bast, 83 Ill. App. 2d 384, 227 N.E.2d 797 (4th dist. 1967).

[39] 6 Wis. 2d 498, 95 N.E.2d 261 (1959).

[40] Berry v. Nichols, 227 Ark. 297, 298 S.W. 40 (1957).

contingent fee contract is involved, the court might allow only a quantum meruit recovery.[41]

Another theory by which the discharged attorney may attempt to recover damages on his contingent fee contract is the so-called "value of a lost chance" theory. It may be utilized in the following special situations: First, the discharged attorney may claim that he could have recovered more than the subsequent attorney or the client were able to recover. Second, the discharged attorney may claim that he could have recovered, whereas the subsequent attorney was not able to make any recovery at all. Finally, if the suit for damages is brought by the discharged attorney immediately upon the client's breach, before the client's case is closed, there is no recovery on which to base a contingent fee. In these three types of cases, the measure of damages may be the value of the contract right at the time of the breach. The theory is stated aptly as follows:

> Where the contract right is conditional upon the happening of some uncertain event and a breach by the promisor makes it impossible to determine with reasonable certainty whether or not the event would have occurred if there had been no breach, the promisee can recover damages measured by the market value of the conditional right at the time of the breach.[42]

It is doubtful that recovery would be allowed under this concept in many jurisdictions. Most of the support for the doctrine is found in textual material.[43]

Just as in the set fee contract, the attorney in most states is not limited to a suit for damages, and therefore to his agreed upon contingent fee. He may rescind the contract and sue for quantum meruit.[44] Of course, under the New York view he is limited to quantum meruit.[45]

Reasonable Fee Contracts

The third type of contract calls for a reasonable fee in light of the services to be performed. If the client breaches the contract either before or after the attorney has fully performed, the attorney is entitled to recover

41 *Supra* note 37.

42 5 Corbin, Contracts § 1475 (1951).

43 See Restatement, Contracts § 332 (1932) and 2 Colum. L. Rev. 76 (1928), both of which agree with the theory presented. See also 1960 Wis. L. Rev. 156 (1960).

44 In Lake Shore & M. S. Ry. Co. v. Richards, 152 Ill. 59, 67, 38 N.E. 773, 777 (1894), where the court said:

> It is well settled that where one party repudiates the contract, and refuses no longer to be bound by it, the injured party has an election to pursue either of three remedies: He may treat the contract as rescinded, and recover upon quantum meruit so far as he has performed: or he may keep the contract alive for the benefit of both parties, being at all times himself ready and able to perform, and, at the end of the time specified in the contract for performance, sue and recover under the contract; or he may treat the repudiation as putting an end to the contract for all purposes of performance, and sue for the profits he would have realized if he has not been prevented from performing.

45 Martin v. Camp, 219 N.Y. 170, 114 N.E. 46 (1916); Matter of Dunn, 205 N.Y. 398, 98 N.E. 914 (1913).

as damages the reasonable value of services actually performed plus the reasonable value of services which would have been performed but for the breach.[46] However, if the attorney exercises his option and rescinds the contract and sues for quantum meruit, he will receive only the reasonable value of the services he actually performed, and will not recover the value of services which would have been performed but for the breach.[47] This will also be the result under the New York view permitting quantum meruit recovery only.[48]

Even though the amount of recovery will differ, the criterion by which to determine what is a reasonable value will be the same whether recovery is on quantum meruit or on the contract for damages. The reason is that recovery upon quantum meruit allows the plaintiff the reasonable value of the services he has performed. This reasonable value is necessarily the same as the recovery of the reasonable value of services which would be received as damages on the contract.

How Is the Reasonable Value of Services to Be Measured

In determining what constitutes a reasonable amount to be given the attorney as a reasonable value of his services, the majority of courts consider the same elements as are set forth by Canon 12 of the American Bar Association's Canons of Professional Ethics.[49] Canon 12 sets forth the criteria to be used by the attorney to determine what a reasonable fee would be in a particular case.

Element number one of Canon 12 provides that in determining the amount of the fee it is proper to consider "the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to properly conduct the cause." The only real questions presented are what type of case is involved and what is the extent of the experience of the attorney handling the case. A recent Illinois case illustrates the point aptly.

[46] Lake Shore & Michigan S. Ry. Co. v. Richards, 152 Ill. 59, 38 N.E. 773 (1894). The attorney need merely prove that he was ready, willing, and able to perform his part of the contract in order to recover the total contract price agreed upon by the parties. However, if he is unable to prove he either performed or was ready and willing and able to perform, but for the client's breach, he is not entitled to any damages. Richland Co. v. Millard, 9 Ill. App. 396 (4th Dist. 1881).

[47] Bunge v. Downers Grove Sanitary Dist., 356 Ill. 531, 191 N.E. 73 (1934); Lake Shore & M.S. Ry. Co. v. Richards, 152 Ill. 59, 38 N.E. 773 (1894).

[48] *Supra* note 45.

[49] Canon 12 provides, in part, as follows:

In determining the amount of the fee, it is proper to consider:

(1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause;

(2) whether the acceptance of employment in the particular case . . . will involve the loss of other employment while employed in the particular case . . . ;

(3) the customary charges of the Bar for similar services;

(4) the amount involved in the controversy and the benefits resulting to the client from the services;

(5) the contingency or certainty of the compensation.

In *Colburn v. Bast*,[50] the court upheld an award of $48,625 attorney's fees by the Circuit Court, Menard County. The plaintiff, C. G. Colburn, had practiced law in Illinois for thirty years. He was hired by the defendants to determine their interest in 200 acres of farm land. After five years of work on a difficult property question, including the overturning of a landmark case in the Illinois Supreme Court,[51] attorney Colburn succeeded in obtaining $145,875 by a partition sale after securing a ruling awarding the defendants the real estate in question. The defendants had agreed by a written contract to pay "a reasonable, fair and customary fee based on the recommended fees and charges as set forth in the schedule of the Bar Association of Menard County, Illinois. . . ." The Bar Association schedule of minimum fees provided for $25 per hour for office work and 33 1/3 percent of the recovery in the trial court for contingent fees.

Attorney Colburn asked for one-third of the proceeds of the partition sale, $48,625, based on the alleged contingent fee arrangement. The clients refused, offering a far lesser amount as a reasonable hourly compensation. The lower court awarded the plaintiff one-third of the proceeds, upholding the contention that a contingent fee was agreed upon.

In determining how much the award to Colburn should be, the Appellate Court approvingly followed Canon 12. The full $48,625 was awarded, but on the basis that this amount was reasonable for the services performed and not simply because it was a contingent fee. In fact, the court at no time construed the contract as being of any particular type.

The court, in awarding the reasonable value of the services performed by Colburn, employed Canon 12 in deciding what criteria to use for determining reasonable value. Apparently feeling that since attorney Colburn had employed his age and experience to solve a difficult question, he was entitled to the highest fee consistent with the facts of the case. The court stated:

> [A]ttorney Colburn served the plaintiffs as their counsel in a manner which demonstrated professional services of the highest order.[52]

However, what is reasonable as to time and labor required in a case may often be determined by what the average attorney would do in the same situation. In *Crocker v. Boening*,[53] the court held that twenty-six days research on a relatively easy special assessment problem was outrageous. The court awarded $25 per hour for a half-day's work, the amount of time

50 Colburn v. Bast, 83 Ill. App. 2d 384, 227 N.E.2d 797 (4th Dist. 1967).

51 See Hofing v. Willis, 31 Ill. 2d 365, 201 N.E.2d 852 (1964), overruling Drury v. Drury, 271 Ill. 376, 111 N.E. 140 (1916), involving the question of alternative contingent remainders.

52 83 Ill. App. 2d 384, 387, 227 N.E.2d. 797, 800 (4th Dist. 1967).

53 247 Ill. App. 466 (1st Dist. 1928).

which an attorney of average ability in the community would spend on the same project. Thus, in applying element one of Canon 12, the court may look beyond the time spent and labor expended by the attorney. The court will inquire as to what other attorneys of similar or of average experience would do in a similar case in order to determine what is reasonable.

Element two of Canon 12 asks "whether the acceptance of employment in the particular case . . . will involve the loss of other employment while employed in the particular case . . . ." The answer in the *Colburn* case, as undoubtedly it will be in the majority of cases where the attorney is experienced, is yes. It is beyond the pale of reason to expect an attorney with years of experience and well established in the community, as was attorney Colburn in the *Colburn* case, to spend three and one-half months of his billable time on a single matter and not suffer any loss of other income.

Points four and five of Canon 12 provide that "the amount involved in the controversy and the benefits resulting to the client from the services" and "the contingency or certainty of the compensation" should be considered in determining a reasonable fee. In short, the larger the amount involved in the client's case, the larger the fee the attorney is justified in claiming, especially when he is successful in securing the client's interests. In the *Colburn* case, $175,000 was at stake. The court felt that an attorney entrusted with this sort of responsibility deserves a fee commensurate with his efforts, especially when the case involved such uncertainty of success.

Probably the controlling guideline used by the court to determine what is a reasonable fee is point three of Canon 12, involving "the customary charges of the Bar for similar services." In *Elliot v. Brown*,[54] the court remarked that the usual and customary fees of local attorneys doing the same work are satisfactory to demonstrate what a reasonable fee would be. The most apt statement of policy is in *Louisville, N.A. & C. Ry. Co. v. Wallace*.[55]

> The value of legal services will oftentimes depend upon a variety of considerations, such as the skill and standing of the person employed, the nature of the controversy, the character of the questions at issue, the amount or importance of the subject-matter of the suit, the degree of responsibility involved in the management of the cause, the time and labor bestowed. For such services there can be no established market price. There is no fixed standard by which their value can be determined . . . . What is a fair and reasonable compensation for the professional services of a lawyer cannot in many, if not in most cases be otherwise ascertained than by the opinions of members of the bar, who have become familiar by experience and practice, with character of such services. "Practicing lawyers occupy the position of experts as to questions of this nature."

But, it seems that each case will be decided on its own particular cir-

54 349 Ill. App. 428, 111 N.E.2d 169 (1st Dist. 1953).
55 36 Ill. 87, 93, 26 N.E. 493, 495 (1949).

cumstances, and special cases deserve special attention.[56] Thus, in *Bishop v. Busklin*,[57] the court heard testimony by several local attorneys to the effect that 25 percent was a reasonable fee for the work done by the plaintiff in defeating a special assessment. It was held, however, that 25 percent was too high in light of the fact the plaintiff represented several different clients having individual interests in the same matter. It was also held the charges for the work which the plaintiff performed should be distributed among the several clients proportionately. The court noted that the amount of the attorney's fee is totally within the court's discretion.[58] Thus, the attorney-client contract is afforded special treatment not required in other personal service contracts.

CONCLUSION

In view of the increased volume of activity in the court system a proportionate rise in litigation over fees can be expected. Probably the most equitable theory of recovery for both attorney and client is the New York view. The majority rule allows the attorney to punish the client with damages for abandoning his attorney.[59] The New York view allows the client to dismiss the attorney, in whom the client has perhaps lost his confidence, without penalty. Nor is the attorney required to suffer any loss, because he can recover the reasonable value of the services he has performed. In addition, the New York decisions tend to strengthen the attorney-client relation. The attorney, knowing he may be discharged by the client at any time and receive as compensation only the value of the services he has performed, will do his utmost to secure his client's interests.

It would appear, however, that if more attention were given to drafting an unambiguous provision for consideration, there would be less litigation. It is of vital importance to make the client fully aware of what type of fee will be expected in view of the services to be performed. In any case, a well kept time record listing the services performed will suffice to preserve for the attorney both peace of mind and a reasonable fee should the occasion arise in which he must litigate for his due compensation.

ALLYN A. BROOKS

[56] Arutt, *Denial of Compensation to Out-of-State Attorneys: A Judicial Dilemma*, 71 Com. L.J. 245 (1966). This article deals with the attorney's inability to collect fees for services rendered in a state in which the attorney is not licensed to practice. The attorney usually loses his suit for fees because he is not entitled to fees while practicing law without a license even though he gives only advice and makes no court appearances.

See Spanos v. Skouros Theaters Corp., 34 U.S. Law Week 2530 (2d Cir. 1956).

[57] 390 Ill. 176, 60 N.E.2d 872 (1945).

[58] Central Standard Life Insurance Co. v. Gardner, 36 Ill. App. 2d 292, 183 N.E.2d 881 (1st Dist. 1962).

[59] This idea is of great value to the client who loses confidence in his attorney but certainly deprives the attorney of the benefit of the bargain. This view also would seem to promote raiding—that practice which consists of another attorney stealing the client of the plaintiff-attorney by claiming that he, the other attorney, can obtain a larger recovery for the client.