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## Minimum Fee Schedules

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## **April Meeting of Denver Bar Association Was Junior Bar Day**

The April 1, 1946 meeting of the Denver Bar Association was devoted to a program arranged by the Junior Bar Section of the Colorado Bar Association. Sidney E. Shuteran, chairman of the section, presided. In introducing the program chairman Shuteran said that ten years ago junior members of the bar were members in name only. However, since the organization of the Junior Bar Section, junior members have become quite active, and many of the present important committees of the association were nurtured by the Junior Bar Section. The Junior Bar is vitally interested in all matters affecting the interest of the young lawyers. Many of them who served in the war are now back in active practice and are very much interested in the activity of the bar association. They know that this association will represent their interests.

William F. Dwyer, chairman of the Public Information Committee of the Junior Bar Section discussed the public information program of the Junior Bar Conference of the American Bar Association and the plans of the Colorado Junior Bar Section to develop a local public information program. It will be the purpose of the program to inform the public on the services which lawyers can render.

T. Raber Taylor discussed the On-the-Job Lawyer-Veteran Training Program and William R. Newcomb discussed Minimum Fee Schedules. Both of these addresses are published in this issue of DICTA.

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## **Minimum Fee Schedules<sup>†</sup>**

BY WILLIAM R. NEWCOMB\*

The subject which I have been given to discuss, Minimum Fee Schedules, is at the present time a very live question among the members of the Denver Bar Association. Recently a committee was selected by the president of our association to consider and to make recommendations for a schedule of minimum fees in this city. We have had two meetings in the past two weeks and I think I may say that progress is being made.

In my remarks today, however, I am not speaking as a member of this committee. I am speaking as a young lawyer who faces a future of practising law in Denver and who has wondered from time to time whether or not his bar association is willing to and can meet problems that are common to all lawyers. As I view the question of minimum fee schedules I see it as only one aspect of a many-sided problem. For instance, there is the

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<sup>†</sup>An Address Before the Denver Bar Association, April 1, 1946.

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practice of law in Denver by unauthorized persons. In how many cities does the legal profession allow real estate agents to prepare land contracts? Certainly the preparation of a contract, involving as it does the disposition of a most important form of property and involving numerous purely legal questions, is the practice of law. Yet in our city the legal profession apparently sanctions this dangerous and unwarranted custom. In too many cases a contract prepared by a real estate agent does not state the intention of the parties and ultimately leads to litigation between the vendor and the vendee, and, in every case, some lawyer is deprived of a real estate transaction, a piece of business which is rightfully his by virtue of this special training and his license from the state. Annually we are innocent spectators to the income tax phenomenon. The so-called "income tax experts" descend like a swarm of locusts, without permanent offices, with no responsibility, and in far too many cases without training or ability, and eke from the public thousands of dollars in fees each year for services of doubtful value. Needless to say income tax work can best be performed only by the attorney and by the registered or certified public accountant. It is, of course, true that this situation has been caused to a great extent by the increased magnitude of the job in recent years, and by the physical inability of the profession to cope with it. But, we must also admit to ourselves that the situation has partly been caused by the unwillingness of many lawyers to burden themselves with the task of filling out income tax forms or with the knowledge which such a job entails.

Minimum fee schedules it seems to me are particularly, although not exclusively, the concern of the younger lawyer. There are at least three reasons for this. First, the young lawyer is generally in a predicament as to what to charge a client for his services. Often he consults with an older attorney for advice, but even that older attorney in many cases plucks a figure from nowhere and attaches to it the label of "reasonable." How much easier it would be for everyone concerned and how much more satisfactory to the client were that lawyer able to take a printed fee schedule from his desk drawer and say to his client, "This is the fee which has been approved by the Denver Bar Association in conformity with the canons of legal ethics of the profession. If your case is the routine matter which it might be, I will charge you the fee shown on the schedule; if it turns out that your case has complications or entails a greater amount of effort than is now foreseeable I shall reserve the right to charge you a higher fee, because this schedule says only what the *minimum* fee is to be in cases involving routine effort on my part."

The second reason why a minimum fee schedule is particularly (although certainly not exclusively) the concern of young lawyers is the economic uncertainty which they face in practising law in Denver. I suppose that all

of you have seen Bill Robinson's remarkable survey which appeared in DICTA in the December 1945 issue. If there are any of you who have not, I recommend that you do so in order to appreciate the gravity of this phase of the problem. Certainly, this condition has been caused to some extent because prevailing fees have been much too low. Minimum fee schedules, therefore, should have a primary objective of raising the fees for many types of work. The most current illustration of too low a charge involves abstract examination. Few of us will disagree that the prevailing charges for this type of work are fantastically low. No one seems to know how the figure of \$15.00 began but certainly it is a hangover from the days of few entries on an abstract and low office overhead and living costs for the attorney. The value of real estate in Denver may have more than doubled in the past few years, but the attorney's task, even though increasingly difficult and responsible receives the same compensation in the amount of \$15.00. On every hand one hears the lawyer complain about this situation and yet individually he can do nothing without the risk of being called at worst a "shyster" or at least a "high charger" by the public. Only through unity and collective action can the attorneys remedy their plight, if it is remedy we desire.

The third and final reason why a proposal for a minimum fee schedule is particularly the concern of the younger members of the Bar, is the failure to date of our elder members to solve the problem. I do not say this as criticism, but as simple fact. I believe that attempts have been made in the past to establish minimum fees and, I have heard, they have failed. As to whether or not a minimum fee schedule can "succeed" in the future depends to some extent upon one's definition of "success." In my mind if such a schedule merely furnishes protection to the lawyer in making his charges, knowing that he has the considered opinion of the organized bar behind him, it is a success. The schedule has justified its existence. Another measure of "success," of course, is the uniformity of application of the fee schedule by Denver lawyers. I believe that enlightened self-interest would cause the great majority to charge accordingly. There would be under cutting, of course, in an attempt by some lawyers to build a larger clientele; but I don't believe that the reputable lawyer would be frightened particularly by that sort of competition. That doesn't seem to have been the result in other cities where attorneys have satisfactorily established minimum fee schedules.

In the last analysis, however, the successful accomplishment of this task, will represent far more than an effort to achieve the limited objectives which are directly involved. It will be a decisive movement toward effective unity and cooperation among the members of the bar. Collective action taken this time for the common good can emphasize the need for greater unification of lawyers in a whole-hearted effort to raise the profession in public esteem, once again, to the heights which have been its glory in the past.