Supreme Court of the State of New York

NEW YORK COUNTY

IN THE MATTER

of

The Investigation ordered by the Appellate Division of the Supreme Court in and for the First Judicial Department, by order dated February 7, 1928, upon the petition of THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, NEW YORK COUNTY LAWYERS ASSOCIATION and BRONX COUNTY BAR ASSOCIATION, for an inquiry by the Court into certain abuses and illegal and improper practices alleged in the petition.

REPORT TO APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT

by

MR. JUSTICE WASSERVOGEL

September 26, 1928.

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Report.

To the Appellate Division of the Supreme Court of the State of New York in and for the First Judicial Department:

Pursuant to direction in the order above named, I submit herewith a report of the investigation into the abuses complained of in the petition for said order, which was conducted before me at Special Term, Part VI, of the Supreme Court in New York County. Appended hereto are the proposed changes in and additions to statutes and rules of practice which are discussed below.

I. CONDUCT OF THE INVESTIGATION

The inquiry was opened on February 20, 1928, the date fixed in the order of the Appellate Division. From that date

until June 29th, from July 9th to July 24th, and again on August 29th, hearings were held before me in chambers and in open court. These hearings were conducted by Isidor J. Kresel, Esq., who had been designated as counsel by the petitioners herein, and by a staff of legal assistants. Quarters for counsel were assigned to them in the County Court House. 5,465 pages of testimony were taken at the public hearings and 5,315 pages at the private hearings. A total of 1,100 witnesses were examined at the hearings in the court room and in chambers. All the testimony is submitted herewith.

II. PROCEEDINGS CONSEQUENT UPON THE INVESTIGATION

The investigation led to several proceedings which should be briefly noted.

Shortly after the commencement of the inquiry one Alexander Karlin, a member of the bar, refused to be sworn as a witness and to answer questions which might be put to him, upon the ground that the Appellate Division had no power to make the order directing the investigation. I thereupon ordered him committed for contempt. A writ of habeas corpus, secured by him to test such commitment, was dismissed. Both the order of commitment and the dismissal of the writ were unanimously affirmed by the Appellate Division and the Court of Appeals (see *People ex rel. Karlin* v. *Culkin,* 223 App. Div. 822; 248 N. Y. 465). Thereupon the said Karlin appeared and testified herein, and was discharged from custody.

During the course of the investigation one Joseph Plastik, a person in whose behalf twenty-six actions for injuries to person and to property were brought in one year, persistently answered "I don't remember" to questions which were put to him by counsel in regard to the alleged accidents. Since the questions concerned matters which must obviously have been within the knowledge and recollection of the witness, and as his memory appeared to be otherwise good, I concluded that the witness was

deliberately trying to avoid answering the questions, and that his plea of lack of memory was tantamount to a refusal to answer. Under those circumstances I ordered the witness committed for contempt. A writ of habeas corpus issued in his behalf was dismissed; and the witness, having subsequently answered the questions propounded to him, was discharged.

One Louis Moses was interrogated as to whether or not he had solicited negligence cases for attorneys during the years 1924 and 1925, and, if so, who such attorneys were. The witness refused to answer the questions upon the ground that his answers might tend to incriminate him. It seemed to me that the only crime with which those answers might connect the witness would be that of soliciting employment for an attorney, which is a misdemeanor under Section 270 of the Penal Law. Since Section 142 of the Code of Criminal Procedure provides that an indictment for a misdemeanor must be found within two years after its commission, and since it appeared that no indictment had been found against this witness, I advised him that to answer the questions would not tend to incriminate him. On his continuing to refuse to answer, I ordered him committed for contempt. A writ of habeas corpus which he sued out was dismissed. Thereafter Moses answered the questions above referred to, and was discharged.

One George Smisko, a client of Thomas J. O'Neill, an attorney, applied to the Supreme Court in Westchester County to vacate a subpoena which had been served on him, upon the ground that the investigation should be confined to matters in the First Department. Smisko had been involved in an accident in Westchester County, he had engaged O'Neill through the latter's White Plains office, all business between the two had been transacted there, and the suit had been brought in Westchester County. The motion to vacate the subpoena was heard by Mr. Justice Morschauser and was denied, it being held that since O'Neill had an office in New York County his activities in Westchester County were within the scope of the inquiry.

III. CONDITIONS FOUND RESPECTING PLAINTIFFS AND REMEDIES SUGGESTED THEREFOR

The evidence adduced before me bears out the truth of the allegations contained in the petition of the three bar associations, to the effect that there exists in this Judicial Department a practice commonly known as "ambulance chasing."

Personal injury cases have, in the main, come into the hands of relatively few lawyers, some of whom have conducted their practice purely as a business, to the detriment of the public and the profession. This condition is aptly summarized in the opinion of Mr. Presiding Justice Dowling (*Matter of Bar Association of City of New York*, 222 App. Div. 580, 581-2):

> "Lawyers engaged in the practice referred to, by themselves or through their agents who are sometimes laymen, promise or give to persons sustaining personal injuries some valuable consideration to induce them to employ such lawyers to prosecute claims for damages for their injuries. Such lawyers, through their agents, in some instances, maintain a well-organized and effective system of solicitation by which they obtain prompt information of accidents resulting in personal injuries, from hospital employees, ambulance drivers, taxicab drivers and others who are so situated as to have early knowledge, and they pay them compensation for such information. Solicitation for such business frequently takes place immediately after an injury has been received, often on the same day, in hospitals, in homes and at the bedsides of injured persons, while they are in pain or otherwise distressed on account of their injuries."

I may add that some of the "runners" who solicit such personal injury claims have even found it profitable to set up shop on their own account, and have operated a service by which they obtain from the injured person the retainer with the name of the attorney left blank, and then proceed to peddle these opportunities for employment to the highest bidder.

My impression of a large number of the claimants who have been examined before me is that they were not able to exercise calm or reasoned judgment when they signed retainers. While

still unnerved by injuries recently received, they were cajoled and pestered by all the devices of high-powered salesmanship. Newspaper clippings and photographs of checks indicating large recoveries were exhibited to them. They were told that bringing suit would involve no obligation on their part, and that if they would allow the attorney to sue, the recovery would be "split fifty-fifty."

I find that many persons who thus sign retainers have not had any contact, prior to the occurrence of the accidents in which they were involved, with members of the profession who engage in this practice. They are, therefore, easily imposed upon. A number of claimants testified that they had no desire to retain the attorneys who subsequently represented them, but finally agreed to do so because of the sales pressure brought to bear upon them. At times they did not even know the names of the attorneys until they were asked to call at the offices of such attorneys for a physical examination or to discuss settlement.

As already indicated, these methods have concentrated actions for personal injuries in the hands of comparatively few lawyers. Several lawyers have testified that they had as many as 750 to 1,000 such cases a year. The records disclose that there are a number of attorneys who average more than 500 cases a year. Many of them have admitted that they had no intention of ever bringing the cases to trial, and that their efforts were directed solely towards effecting settlement. An examination of a large number of such settlements, when compared with the injuries sustained, convinces me that these attorneys work on the basis of small profit per case, but large volume, with the result that they have repeatedly negotiated settlements which are grossly inadequate.

Meritorious cases are frequently neglected or are improperly handled by these attorneys. At times they fail to serve a complaint or to file a note of issue, and rely upon a few threatening letters and the service of a summons to force some payment by

defendants. After a case has been placed on the calendar, it is not pressed to trial, but is delayed when reached, if settlement has not yet been effected. Clients are treated discourteously, and are put off with vague promises for long periods until the attorney can obtain a settlement. Because of the state of uncertainty thus created, and because of their necessitous circumstances, clients are often constrained to accept inadequate settlements. In some instances these attorneys defraud their own clients by withholding moneys rightfully due the clients, or by disregarding court orders fixing fees in infants' cases.

Cases without merit have been placed upon the calendar for their nuisance value, and have contributed to the congestion of the trial term calendars in this Department. Furthermore, a comparison of the amounts for which cases were settled with the amounts sued for indicates that many actions were brought in the Supreme Court which properly belonged in the City or Municipal Court.

Pre-legal Training

I do not think that the practice of "ambulance chasing" and its attendant evils can be attributed to any single factor in the early training of attorneys. The evidence before me does not justify any recommendations in regard to requirements for pre-legal education in addition to those recently laid down by the Court of Appeals.

Remedies Under Penal Law

No change is necessary in the statutes against champerty and maintenance. Sections 270 and 274 of the Penal Law are adequate, if properly enforced, to punish "runners" and the attorneys who employ them.

Contingent Fees

The contingent fee should not be prohibited. Such a prohibition would result in a denial of justice to many poor claim-

ants who have meritorious causes of action. I have, however, come to the conclusion that all contingent retainers in actions for personal injuries should be placed under the supervision of the courts, in order adequately to protect claimants in their relations with attorneys, and to eradicate the abuses which have been practised upon the courts by attorneys. This added burden on the courts is necessary to remedy the situation disclosed by this investigation. I think that most adult personal injury claimants are in the same position as infant claimants when it comes to dealing with attorneys, and require the same protection from the courts. I therefore recommend that Section 474 of the Judiciary Law be amended (see Appendix, pp. 23-25), so as to embrace within its terms the cases of adults who have claims for personal injuries. This will require attorneys, who secure contingent retainers from all such claimants, to apply for an order fixing their compensation.

There are, I think, at least two classes of cases in which courts should refuse compensation to lawyers. First, where they unjustifiably bring suits in higher courts which properly belong in inferior courts; and secondly, where attorneys have secured retainers through solicitation.

The proposed amendment limits the attorney's compensation to one-third of the amount recovered, such compensation to be inclusive of the lawyer's disbursements unless special circumstances are shown which justify an additional allowance for disbursements. I believe that the customary fifty per cent retainer gives attorneys altogether too large a share of the recovery.

In my opinion the statute in its new form is constitutional. Attorneys, who are officers of the court and have always been subject to its control, may properly be required to obtain the approval of the court for the fees they propose to charge under a contingent retainer. Extending this requirement, which the present Section 474 prescribes in infants' claims, to claims of adults for personal injury, is shown by the evidence submitted herewith to be reasonable and necessary.

The foregoing amendment to Section 474 also provides for a more thorough supervision by the justices who pass upon attorneys' applications for compensation than has heretofore been exercised. It appears that some justices of the inferior courts in this Department have disregarded the plain requirements of the present Section 474, by failing to fix the attorneys' fees when signing orders in infants' cases. If the changes proposed herein are to be of any value, it is important for the justices of all courts to realize that their supervisory task is more than a perfunctory one, and that they must charge themselves with the responsibility of seeing that personal injury claimants are properly protected.

It will be noted that Section 474 as proposed requires that the plaintiff be present in court, or that his absence be satisfactorily accounted for, when the attorney's application for compensation is determined. This is necessary because there have been flagrant instances of disobedience by attorneys of the orders for compensation in infants' cases which are required by the present Section 474.

As to infants' actions, it is not necessary to await the passage of the suggested amendment. Infants can be protected under the present statute, if the justices in this Department adopt the practice of having the guardian present when the order fixing the attorney's fee is signed.

Judicial Supervision of Retainers

With a view to prevent a recurrence of the improper practices by which attorneys secure retainers from injured persons, I recommend an addition to the Judiciary Law, to be entitled Section 474-a (Appendix, pp. 25-26). This new section provides that all oral contracts of retainer to prosecute personal injury claims shall be void, and that written contracts of retainer, obtained while the injured person is in a hospital, or within fifteen

days after the occurrence of the accident, shall be void unless made with the approval of the court.

In my opinion the proposed statute is constitutional. The supervision suggested is within the court's inherent power of control over the conduct of its officers in securing professional employment.

As a means of keeping the court informed of the manner in which retainers are secured, I recommend that a Rule of Civil Practice (Appendix, pp. 30-32) be adopted by the Justices of the Appellate Division in this Department, pursuant to Section 82 of the Judiciary Law. This Rule provides that at the time a note of issue in an action for personal injuries is filed, there shall be filed therewith a copy of the retainer by which the attorney for the plaintiff was engaged, and also an affidavit by such attorney stating that the case was not solicited directly or indirectly, and setting forth how the retainer was obtained. To provide for the situation where the case is not brought to trial, this Rule also requires the submission of such affidavit and a copy of such retainer to the justice who passes on the attorney's application for a fee, or on a motion for substitution of attorneys.

I do not think that any change is necessary in Rule 56 of the Rules of Civil Practice, governing substitution of an attorney. The court's power to investigate all the circumstances concerning the employment of the attorney who is sought to be displaced will enable it properly to dispose of the matter. I would suggest that an attorney who has solicited a retainer should not be allowed any lien upon the substitution of another attorney in his place.

The investigation has disclosed that in many cases attorneys have failed to apply for court orders fixing their allowances in infants' cases, as required by the present Section 474 of the Judiciary Law. In order to give full effect to the proposed change in that Section, and to the proposed new Section 474-a, I recommend that Section 750 (3) of the Judiciary Law be amended (see Appendix, p. 29), so that it shall be a

criminal contempt (a) for an attorney, who has secured a contingent retainer from an adult personal injury claimant or from the guardian of an infant, to fail to present to the court his application for compensation; and (b) for an attorney to secure a retainer from an injured person while such person is in a hospital, or within fifteen days after the occurrence of the accident, without an order of the court.

False Claims and Perjury

The evidence submitted shows a number of instances wherein claims were made for fictitious accidents. Other instances have been disclosed where persons were in an accident but sustained no injury. Attorneys, without authorization, prosecuted claims for such persons, and if successful in obtaining settlements, the alleged clients were not averse to accepting a share. To prevent such unwarranted actions, I suggest that Rule 45 of the Rules of Civil Practice be amended by adding thereto a requirement (see Appendix, p. 30) that the plaintiff in a personal injury action subscribe his name and address to the summons. I also recommend an addition to the Civil Practice Act, to be entitled Section 248-a (Appendix, p. 29), which shall require that, in an action for personal injuries, the complaint is to contain the address of the plaintiff and must be verified. If this suggestion be followed, then, by virtue of Rule 116 of the Rules of Civil Practice, the bill of particulars in such a case would also have to be verified.

The ease with which persons who commit perjury in courts escape punishment therefor is responsible for part of the litigation instituted. Trial justices are reluctant, except in the most flagrant cases, to hold witnesses who commit perjury for the action of the Grand Jury, because of the difficulty experienced in obtaining indictments, and of obtaining convictions by juries after indictments have been found.

Prominent lawyers who testified before me expressed the opinion that the crime of perjury should be made a misdemeanor.

I agree with this view, and believe that if the change were effected, the commission of perjury would be followed by speedy prosecution, conviction and punishment. Although the penalty for a misdemeanor, in the absence of specific provision to the contrary, is imprisonment in a penitentiary or county jail for not more than one year, or a fine of not more than $500, or both, nevertheless I believe that the probability of such a penalty would serve as a far greater deterrent than a threat of imprisonment for a longer term, which threat is seldom carried out.

The recommendation suggested is embodied in the proposed amendment of Section 1633 of the Penal Law (see Appendix, p. 32).

IV. CONDITIONS FOUND RESPECTING DEFENDANTS AND REMEDIES SUGGESTED THEREFOR

The recommendations heretofore made, if adopted, would, I believe, go a long way towards stamping out the reprehensible conduct which has been characteristic of a certain group of attorneys for claimants in personal injury actions. The evidence before me shows that casualty companies, transportation companies and other corporate defendants have engaged in practices equally reprehensible. Frequently the insurance adjuster races with the "ambulance chaser" to the bedside of the injured person to obtain a release from him while he is overwrought and in pressing need of money. If a release cannot be obtained, the injured person is asked to sign a statement of the circumstances of the accident, or is plied with questions. The oral or written statements thus extracted do not present a fair or complete picture. Nevertheless, they are used against the plaintiffs at trials with exaggerated and harmful effect.

Furthermore, representatives of some corporate defendants have not hesitated to effect settlements directly with claimants whom they knew to be represented by attorneys. This practice is

unfair to such attorneys and deprives the clients of the benefit of their advice.

Judicial Supervision of Settlements

I think that settlements of all personal injury claims, whether in suit or not, should be under the supervision of the courts. An addition to the Judiciary Law, to be entitled Section 474-b (Appendix, pp. 26-29), will accomplish that result. It provides that all proposed settlements of claims for personal injuries must be presented to a court for approval, and that the court shall have the injured person or a competent representative of such person before it, and shall satisfy itself as to the adequacy of such settlement. It provides further that where a defendant attempts to settle directly with a claimant after the latter has engaged an attorney, such attorney shall be present when the settlement is passed upon.

I believe it necessary for the courts to undertake this task in order to prevent defendants from overreaching ignorant persons or those unfamiliar with the intricacies of the law, as has happened in the past. If the courts are to assume a large measure of control over the relations between injured persons and their attorneys, they should also be required to protect such claimants from imposition by defendants. The evidence shows that a great many personal injury cases are settled out of court. We have, at great labor and expense, erected judicial machinery to safeguard the rights of litigants during trial and after verdict. That machinery is altogether unfitted to our present needs, unless it be adjusted to function as well in the large number of cases which are never brought to trial.

The pendency of this investigation is in part responsible for a substantial decrease in the number of cases placed on the trial term calendars in this Department, as shown by the figures hereinafter set forth. If the recommendations thus far made are carried out, I believe that much of the decrease will be permanent.

Under such circumstances, the courts can well afford the time necessary to exercise the suggested supervision over settlements.

In my opinion the proposed Section 474-b of the Judiciary Law is constitutional. The interference with freedom of contract between claimant and defendant is justified by the inequality of bargaining power between the parties in the situations to which the statute applies. The evidence taken in this investigation shows the reasonableness of placing personal injury claims in a separate class.

An important consequence of the proposal embodied in Section 474-b, requiring the attendance of the injured person in court when the settlement is made, is that the attorney for such person will no longer be able to withhold money due to the client. Many instances of persons who have been thus defrauded by their own attorneys have been revealed by the investigation. In other cases, attorneys have retained the money for a time, for their own purposes. If this recommendation be adopted, the client will know exactly what he is entitled to and when he is to receive it.

With a view to the further protection of the client, I recommend the adoption of a Rule of Civil Practice in this Department (Appendix, p. 32), which shall require an attorney who represents a personal injury claimant to pay over to the client any moneys due the latter within ten days after the receipt thereof by such attorney, or if the client cannot conveniently be reached, to deposit the same to the credit of the client in the office of the Chamberlain of the City of New York.

In this connection, it is suggested that, as an added means of safeguarding personal injury claimants, defendants be requested to make checks payable to the client *and* the attorney, instead of to the client *or* the attorney, so that the client's endorsement shall be required.

In order to make these recommendations effective, I suggest further that a disregard of any of the provisions of Section

474-b by representatives of defendants shall be deemed a criminal contempt. The proposed amendment to Section 750 (3) of the Judiciary Law (see Appendix, p. 29), already referred to, is broad enough to carry out this suggestion.

When infants' actions for personal injuries are settled for less than $150, many casualty companies make payment to the attorneys representing such infants without requiring a court order allowing the compromise and approving or dispensing with the guardian's bond. The court, by virtue of its inherent duty to protect infants as its wards, has the right to require that every settlement in infants' actions shall be submitted for its approval. Rule 41 of the Rules of Civil Practice specifically provides that a guardian shall not be permitted to receive money until his bond has been approved, or the giving of a bond dispensed with, by the court. By the practice above described, casualty companies assist guardians and their attorneys to avoid their responsibilities towards infants. The proposed new Section 474-b, if adopted, will meet this situation. In the meantime, attorneys for such companies, as officers of the court, should see to it that the companies which they represent discontinue this practice.

Negligence actions brought in behalf of infants, where neither the guardian nor the infant is represented by counsel, are at times allowed to be compromised under Rule 294 of the Rules of Civil Practice, upon the affidavit of an attorney engaged and paid by the defendant in the action, the attorney setting forth his relation to the defendant, as required by the Rule. These compromises are permitted upon the theory that the plaintiff is saved expense by not being compelled to employ an attorney. As a matter of fact, the attorney for the infant, in most of these cases, obtains the data upon which his affidavit is based from the defendant's files, and makes no independent investigation. Even if such attorney does make an independent investigation, he cannot wholeheartedly represent the interests of the infant, since his contact with the plaintiff is limited to the particular

case, whereas he looks to the defendant for further business of this nature. As a result, it often happens that the rights of the infant are not properly protected. Rule 294 provides that, upon such application for leave to compromise—

> "If the court or judge deem it necessary, a full examination may be had into all the facts regarding the reasonableness and propriety of such settlement."

I recommend that in these cases the court require the attendance of the infant and his natural guardian, and, if necessary, appoint a special guardian or designate an official referee to investigate and report upon the reasonableness and propriety of such settlement before granting its approval. The court should not hesitate in a proper case to assign an attorney to represent the infant, in place of the attorney engaged for the plaintiff by the defendant, and to provide for the compensation of such attorney. If the proposed Section 474-b of the Judiciary Law be enacted, the procedure therein provided will replace the practice under Rule 294.

To meet the evils incident upon the interviewing of injured persons by representatives of defendants shortly after an accident, I suggest that the Civil Practice Act be amended by adding Section 353-a (Appendix, pp. 29-30), which will give the courts the right to exclude from evidence statements obtained in behalf of a defendant from an injured person while the latter is in a hospital, or within fifteen days after the occurrence of the accident.

Responsibilities of Defendants' Attorneys

It should be made clear to attorneys for corporate defendants that they will not be allowed to evade their responsibilities as members of the bar by deliberate and disingenuous blindness concerning the operations of the claim departments of their companies, usually located in the same building and in intimate association with the legal departments. Representatives of the claim departments obtain releases from or statements of injured per-

sons under circumstances in which it would be highly improper for attorneys to do so. For example, Canon 9 of the Canons of Professional Ethics declares that a lawyer shall not communicate upon the subject of controversy with a party represented by counsel, yet claim agents are constantly doing that very thing. Canon 16 of the Canons of Professional Ethics would require that the attorneys for such defendants see to it that their clients do not indulge in practices in which attorneys may not properly engage, or else that the attorneys sever their connection with such clients.

For these reasons, I recommend that attorneys for defendants be subject to disciplinary action if they plead releases, or attempt to introduce in evidence statements, which have been procured by claim departments in a manner which violates the Canons of Professional Ethics.

V. COMPENSATION INSURANCE

The extraordinarily large number of personal injury cases, attributable to the ever-increasing use of automotive vehicles, naturally prompts one to consider whether the remedy for many of the evils revealed in this investigation does not lie in the enactment of a compensation law, similar to the Workmen's Compensation Acts, for persons injured by such vehicles. Certainly in densely populated centers such a law might be a boon. What the effect would be in other parts of the State, the investigation before me has not revealed; nor is the evidence adduced sufficient to enable me to estimate the sum total of advantages of such legislation and to compare them with the cost to the public and the State of such a supplement to existing law.

Consideration of this problem will be greatly aided by the reports made by a sub-committee of the New York County Lawyers Association, by the legislation suggested therein, and by the discussion of this subject in the second report of the Special Calendar Committee appointed by the Appellate Di-

vision. I fully agree with the observations made by the latter Committee in its communication to the Governor in Appendix "B" of said report, and in the recommendation that a commission be authorized by the Legislature to study this subject.

The enactment of an automotive vehicle compensation law would permanently and substantially reduce the number of cases on the trial term calendars in this Department. Part of the commercial litigation now brought in the Federal court in the Southern District of New York would in all probability then be attracted to the State courts, and some measure of relief would thus be afforded to the congested calendars of the Federal courts.

Even if such legislation were enacted, the recommendations heretofore made would still be necessary. An automobile compensation act should give injured persons the right, under specified conditions, to sue, instead of to accept compensation. Furthermore, such an act would not cover the numerous cases of accidents due to other causes.

VI. MISCELLANEOUS RECOMMENDATIONS

(a) The pendency of this investigation, as well as the increased Supreme Court filing fee in effect since the June 1927 term, has substantially reduced the number of notes of issue filed in the trial terms of the Supreme Court in this Department, and of the City Court in New York County, as is shown by the following table:

Notes of Issue Filed in All Actions

1927	Supreme Court		City Court		Total
	New York	Bronx	New York	Bronx	
January	1,567	336	909	106	2,918
February	2,185	421	931	199	3,736
March	1,562	333	1,084	355	3,334
April	1,461	359	1,015	424	3,259
May	3,349	570	968	434	5,321
June	1,077	165	881	474	2,597
Total, January to June, 1927...	11,201	2,184	5,788	1,992	21,165

1928	Supreme Court		City Court		Total
	New York	Bronx	New York	Bronx	
January	422	65	991	616	2,094
February	486	84	911	577	2,058
March	402	65	820	659	1,946
April	396	78	743	588	1,805
May	533	85	903	613	2,134
June	479	83	870	406	1,838
Total, January to June, 1928...	2,718	460	5,238	3,459	11,875

Notes of Issue Filed in Personal Injury and Loss of Service Actions

1927	Supreme Court		City Court		Total
	New York	Bronx	New York	Bronx	
January	959	310	632	73	1,974
February	1,654	366	627	148	2,795
March	1,144	297	616	261	2,318
April	1,046	318	706	324	2,394
May	2,874	512	636	330	4,352
June	800	136	593	383	1,912
Total, January to June, 1927...	8,477	1,939	3,810	1,519	15,745
1928					
January	214	47	696	510	1,467
February	237	64	627	490	1,418
March	183	49	591	521	1,344
April	196	64	522	480	1,262
May	263	66	365	500	1,194
June	240	64	465	307	1,076
Total, January to June, 1928....	1,333	354	3,266	2,808	7,761

The increase in litigation in the City Court, Bronx County, can be taken care of under the provisions of the Act reorganizing the City Court (Laws of 1926, Ch. 539). Section 7 of that Act allows the Chief Justice of the Court to designate one or more of its justices, elected in New York County, for service in Bronx County, as occasion may require.

The number of negligence cases brought in the Municipal Court for the Boroughs of Manhattan and The Bronx was reduced as follows:*

	1927	1928
May	5,466	4,156
June	4,590	3,644
Total	10,056	7,800

The recent amendments to Section 7 of the Municipal Court Code, providing for a central court house for the trial of jury cases, and giving greater administrative powers to the President Justice, will in all likelihood enable that Court to dispose of its business more expeditiously.

I am of opinion that the courts as now manned can readily cope with present calendar conditions, and that additional justices are not required in any of the courts of civil jurisdiction in this Department.

(b) In order to provide a continuous check upon illegal practices of attorneys, I recommend that a justice be assigned to whom such matters may be submitted as occasion requires. This justice could undertake the work in addition to his regular duties, or if this be found not feasible, the justices assigned to Special Term, Part II, of the Supreme Court might be designated for this purpose with the powers set forth in the order directing this investigation. The bar associations, if requested, will in all likelihood be willing to appoint counsel to co-operate with the court whenever called upon.

For the purpose of meeting any situation that may arise in connection with the matters dealt with in this report, the present investigation is kept open until further order by the Appellate Division.

(c) In the course of the investigation many attorneys, who were questioned regarding personal injury claims which they had

*Figures for the Municipal Court for the first four months of 1927 are not available.

handled, stated that they had no recollection of the matters inquired about, and had no means of obtaining the information sought, because their records had been destroyed. It is worthy of note that in most instances this was done at or about the time when the petition of the bar associations herein was under discussion. It seems to me that, in view of their obligations towards their clients and the courts, attorneys should be required to keep the papers and records in all cases, and a docket of cases in litigation. Members of the bar should be advised that failure to preserve such records for at least five years will subject them to discipline.

(d) The evidence taken in this investigation shows that policemen have frequently acted as "runners" for negligence lawyers. The existing regulations of the Police Department, if properly enforced, are adequate to prevent this practice.

(e) A close connection is frequently found between the physician and the "ambulance chasing" lawyer. In a great many cases the physician recommended the lawyer, and occasionally the lawyer suggested the physician. In some instances the testimony or certificate of the physician was used to bolster up claims for injuries which were never sustained, or were grossly exaggerated.

Existing laws are ample to reach the dishonest physician. Aside from the provisions of the Penal Law, the recently enacted addition to the Education Law, entitled Article 48, gives the State Education Department control over the practice of medicine. By the terms of this Article, the license of an offending physician to practice medicine may be revoked or other punishment imposed by the Department, upon the presentation of charges by the Grievance Committee created by that Act. Justices should promptly bring to the attention of this Grievance Committee, or of the public prosecutors, any improper conduct on the part of physicians.

VII. PROCEEDINGS AGAINST INDIVIDUALS

(a) I find that a large number of attorneys have engaged in the practice of soliciting cases, despite the clear warning laid down in *Matter of Levine* (1924) 210 App. Div. 8. Others were guilty of more serious misconduct. Upon the testimony taken before me, I recommend that disciplinary proceedings be instituted against seventy-four attorneys. Their names and the charges against them are set forth in Exhibit "A" to this report, submitted herewith. The records respecting each attorney named, together with statements, exhibits, and a resumé of the evidence, are also submitted.

(b) A number of the more flagrant offenses by attorneys were referred to the District Attorneys of New York and Bronx Counties.

(c) Instances of misconduct by physicians were referred to the proper authorities.

VIII. CONCLUSION

It must not be assumed from this report that the abuses revealed in the "ambulance chasing" investigation affect the profession in its entirety. Nothing could be further from the truth. The malign activities which were disclosed by this inquiry involve a relatively small part of the bar. My confidence in lawyers remains unimpaired. On the whole, their integrity is beyond reproach.

I cannot close this report without placing on record my appreciation of the work done by Isidor J. Kresel, Esq., from the commencement of and throughout this investigation, entirely without compensation other than the conviction that he was performing a necessary public service. Mr. Kresel put aside the many matters requiring attention in his private practice to undertake the task of obtaining information which would lay

bare the situation with respect to the conditions complained of by the petitioners herein. The volume of testimony taken shows the thoroughness of his work, and confirms the judgment of the petitioners in selecting him as their counsel.

In the conduct of the legal proceedings which arose in the course of the investigation, valuable aid was rendered by Bernard Hershkopf, Esq., who also acted without compensation.

I wish to express my appreciation to the members of the legal staff. It is impossible to give a detailed account of the service rendered by each assistant, but I feel that all have earned the thanks of the profession and the public. The staff consisted of Robert E. Manley, Chief Assistant Counsel, Conn Cohalan, Joseph Henry Cohen, Irving Ben Cooper, Charles H. Friedrich, Lloyd K. Garrison, Abraham Green, Sidney Handler, Edward T. Harrington, Herbert A. Jacob, Julius Kahn, Leon Leighton, James Harte Levenson, Ben A. Matthews, Francis A. McGurk, Chester W. McNally, Sophia A. Olmsted, Harold I. T. Schnurer, Clarence J. Shearn, Jr., Charles L. Sylvester, Albert A. Verrilli and William J. Wissbach.

Respectfully submitted,

ISIDOR WASSERVOGEL,
Justice of the Supreme Court
of the State of New York.

September 26, 1928.

APPENDIX

Proposed Changes in and Additions to Statutes and Rules of Practice

JUDICIARY LAW

§ 474. COMPENSATION OF ATTORNEY OR COUNSELLOR. (See Report, pp. 6-8.)

(1) The provisions of this section shall apply to all claims or suits in which infants are claimants or plaintiffs, but where adults are claimants or plaintiffs, the provisions of this section shall be confined to claims or suits for personal injuries, and to claims or suits for loss of services as a result of personal injuries.

(2) The compensation of an attorney or counsellor for his services is governed by agreement, express or implied, which is not restrained by law, except that no agreement made hereafter between an attorney and an adult, or between an attorney and a guardian of an infant, for the compensation of such attorney, dependent upon the success of the prosecution by said attorney of a claim belonging to said adult or said infant, or by which such attorney is to receive a percentage of any recovery or award in behalf of such adult or such infant, or a sum equal to a percentage of any such recovery or award, shall be valid and enforcible unless made as hereinafter provided. An attorney may contract with an adult, or with the guardian of an infant, to prosecute, by suit or otherwise, any claim for the benefit of such adult or such infant, for a compensation to said attorney dependent upon the success of the prosecution of such claim, subject to the power of the court, as hereinafter provided, to fix the amount of such compensation, which shall in no event be greater than thirty-three and one-third per centum of the amount recovered upon a trial or by way of settlement, and out of which compensation the attorney shall pay the disbursements, except that if special circumstances are shown, an additional allowance for disbursements may be made.

(3) Such a contract as is described in sub-section (2) must be in writing. Whenever such a contract shall have been entered into between an attorney and an adult, or between an attorney and a guardian of an infant, upon the recovery of a judgment, or the obtaining of an award in behalf of said adult or said infant, or upon any compromise or settlement of such claim (whether before or after suit has been instituted), the attorney must apply, upon notice to the adult client or to the guardian of the infant client, to the judge or justice before whom the said action or proceeding was tried, in case the said action or proceeding was tried at a court held within this state; or to a special term of said court, in case the said action or proceeding was tried before some person other than a justice thereof, or in case of the death or disability of the judge or justice before whom the action was tried, or in case said claim was compromised or settled after said action was begun; or to special term of any court of competent jurisdiction in the county where the claimant resides, in case the recovery, award, compromise or settlement was not had in any court of this state, or in case said claim was compromised or settled before suit was instituted. Such application shall set forth briefly the contract and the services performed by the attorney, and pray that there be awarded to him a suitable amount out of the recovery, award, compromise or settlement obtained through his efforts as attorney on behalf of said adult or said infant. The court to which such application is made, upon having the said adult or the guardian of said infant present before it, or upon being satisfied that due notice of said application has been given to the said adult or to the said guardian and that he cannot with due diligence be produced in court, shall proceed summarily to determine the value of the services of said attorney, taking such proof from the attorney and the adult claimant or the guardian of the infant claimant, by affidavit, reference, the examination of witnesses before the said court, or otherwise, as to the said court may seem to be necessary and proper; and shall thereupon make an order determining the suitable compensation, if any, for the attorney for his services

therein, which sum shall thereafter be received by said attorney for his services in behalf of the said adult or of the said infant. This sum shall be inclusive of the attorney's disbursements, and no other compensation shall be paid by said adult for such services, or shall be paid or allowed by said guardian for such services out of the estate of said infant, except that where special circumstances are shown, an additional allowance may be made by the court for disbursements, as hereinbefore provided.

(4) If a copy of the order described in sub-section (3), with notice of entry thereof, be thereafter served by the said attorney upon the adverse party to the said litigation or the person making such compromise or settlement, and upon the custodian of the funds recovered in case there be such custodian, such award shall become and constitute a lien to the amount thereof on behalf of the said attorney upon such recovery, award, settlement or fund.

(5) Nothing herein contained shall be deemed to dispense with the necessity for the appointment of a guardian *ad litem* as elsewhere provided.

§ 474-a. Retainers to Prosecute Claims for Personal Injuries or for Loss of Services as a Result of Personal Injuries. (See Report, pp. 8-9.)

(1) An oral contract of retainer to prosecute, by suit or otherwise, any claim for personal injuries, or for loss of services as a result of personal injuries, shall be void.

(2) A written contract of retainer to prosecute, by suit or otherwise, any claim for personal injuries, or for loss of services as a result of personal injuries, obtained by or in behalf of an attorney at law from a person injured in an accident, or from the natural guardian or personal representative of such injured person, while the injured person is confined in a hospital, or within fifteen days after the occurrence of said accident, shall be void, unless made as provided in this section. In case any reasons exist for securing such retainer while the injured person is in a hospital, or within fifteen days

after the occurrence of the accident, the attorney may present such reasons to a special term of a court of competent jurisdiction within the county where the injured person resides, or if the injured person is confined in a hospital, within the county where the hospital is located, and pray that he be allowed to accept a contract of retainer at that time. The court to which such application is made, upon having the injured person or his personal representative and, where the injured person is an infant, the natural guardian of such infant, present before it; or if the injured person or his personal representative and, where the injured person is an infant, the natural guardian of such infant, cannot be produced in court, upon such other evidence of his or their desires as to said court may seem to be necessary and proper; and upon the court being satisfied that good and sufficient reasons exist for the employment of the attorney while the injured person is in a hospital, or within fifteen days after the occurrence of the accident, and that the injured person or his personal representative desires of his own free will to employ such attorney upon the terms of the contract proposed, or, if the injured person is an infant, that the natural guardian of such infant is competent to represent the infant, and desires of his own free will to employ such attorney upon the terms of the contract proposed, then the court may, by order, allow such contract to be made within such time, or while the injured person is in a hospital, or may provide for making the contract upon such conditions and with such modifications as to the court may seem just.

(3) Nothing herein contained shall be deemed to dispense with the necessity for the appointment of a guardian *ad litem* as elsewhere provided.

§ 474-b. Settlements with and Releases from Persons Having Claims for Personal Injuries or for Loss of Services as a Result of Personal Injuries. (See Report, pp. 12-13.)

(1) In every case where settlement of a claim for personal injuries, or for loss of services as a result of personal injuries,

is effected, whether before or after suit has been instituted, and whether with the injured person or, where the injured person is an infant, with his natural guardian or guardian *ad litem,* or with an attorney representing such injured person or such guardian, application must be made to a special term of the court where the action or proceeding is pending; or, in case no action has been instituted in any court of this State, to a special term of any court of competent jurisdiction within the county where the plaintiff resides, or if the plaintiff is confined in a hospital in the State, within the county where the hospital is located, for approval of such settlement. This application may be made by the attorney for the injured person or the guardian, upon notice to such injured person or such guardian, but if said attorney fails to make such application, then the party against whom the claim was brought *must* make such application, upon notice to the injured person or, if the injured person is an infant, to the guardian of such person, and to the attorney for such injured person or such guardian. The court to which such application is made, upon having the injured person and, where the injured person is an infant, the guardian of such person present before it, or if such injured person or such guardian is unable to attend, upon such other evidence of the physical condition of the injured person, and of the circumstances of the accident, as to the court may seem to be necessary and proper, shall proceed summarily to determine whether the settlement proffered is adequate, considering the nature of the liability and the extent of the injuries, taking such proof from the party against whom the claim is made, and from the injured person and, where the injured person is an infant, from the guardian of such person, and from the attorney for such injured person or such guardian, and also from persons competent to give medical testimony, by affidavit, reference, or the examination of witnesses before the said court, or otherwise, as to the said court may seem to be necessary and proper, and the court shall thereupon make an order allowing or disallowing such settlement. Any settlement made, and any release obtained, without such approval by a court as described in this section, shall be void.

(2) A release or settlement of a claim for personal injuries, or for loss of services as a result of personal injuries, executed by or made with an injured person or, where the injured person is an infant, with the guardian of such person, after such injured person or such guardian has engaged an attorney, and after such attorney has either served the defendant or his representative with a summons, or has notified the defendant or his representative in writing that said attorney has been retained in the case, shall be void, unless executed under the terms of this section. In case any reasons exist why a settlement should be effected with an injured person or, where the injured person is an infant, with the guardian of such person, without the intervention or consent of the attorney employed by such injured person or such guardian, the party against whom the claim is made may present such reasons to a special term of the court where the action to recover such claim is pending, or, in case no action has been instituted, to a special term of any court of competent jurisdiction within the county where the plaintiff resides, or if the plaintiff is confined in a hospital in the State, within the county where the hospital is located, and pray that a settlement directly with the client be allowed. The court to which such application is made, upon having the injured person and, where the injured person is an infant, the guardian of such person present before it, and also having the attorney for such injured person or such guardian present before it, or being satisfied that such attorney cannot with due diligence be produced in court, and upon being satisfied that good and sufficient reasons exist for settling the claim with the injured person or, where the injured person is an infant, with the guardian of such person, without the intervention or consent of the attorney for such injured person or such guardian, and upon being further satisfied, as provided in sub-section (1) herein, that the settlement is adequate, shall thereupon make an order approving such settlement and allowing it to be made. The court at the same time shall, by order, fix the fee, if any, of the attorney representing the claimant or plaintiff.

(3) Nothing herein contained shall be deemed to dispense with the necessity for the appointment of a guardian *ad litem* as elsewhere provided.

§ 750. Power of Courts of Record to Punish for Criminal Contempts. (See Report, pp. 9-10, 13-14.)

A court of record has power to punish for a criminal contempt a person guilty of either of the following acts, and no others:

* * * (3) Wilful disobedience to its lawful mandate; or the doing wilfully and knowingly of an act without the mandate or authority of the court, where a statute requires such mandate or authority to be procured before such act may be done.

Civil Practice Act

§ 248-a. Verification of Complaint in Action to Recover Damages for Personal Injuries or for Loss of Services as a Result of Personal Injuries. (See Report, p. 10.)

In an action to recover damages for personal injuries, or for loss of services as a result of personal injuries, the complaint must state the address of the plaintiff, and must be verified. The original complaint in such cases must be filed in the office of the clerk of the court wherein the action is pending, within five days after written demand therefor. Upon failure to comply with this demand, a motion may be made in behalf of defendant to dismiss the complaint.

§ 353-a. Evidence in Actions to Recover Damages for Personal Injuries or for Loss of Services as a Result of Personal Injuries. (See Report, p. 15.)

(1) If a signature to a statement be obtained from an injured person or, where the injured person is an infant, from the natural guardian of such person, by or in behalf of a party alleged to be responsible for the injuries sustained, while the injured person is confined in a hospital as a result of such

injuries, or within fifteen days after such injuries were sustained, such statement may be suppressed and excluded from evidence, in the discretion of the court or justice before whom the trial of the action for damages for such personal injuries, or for loss of services as a result of such personal injuries, is then pending.

(2) If a conversation be had with an injured person or, where the injured person is an infant, with the natural guardian of such person, by or in behalf of a party alleged to be responsible for the injuries sustained, while the injured person is confined in a hospital as a result of such injuries, or within fifteen days after such injuries were sustained, the proof of such conversation may be excluded from evidence, in the discretion of the court or justice before whom the trial of the action for damages for such personal injuries, or for loss of services as a result of such personal injuries, is then pending.

Rules of Civil Practice

Rule 45. REQUISITES OF SUMMONS. (See Report, p. 10.)

* * * Whenever an action to recover damages for personal injuries, or for loss of services as a result of personal injuries, is commenced by the service of a summons without a verified complaint, the summons is to be subscribed by the plaintiff, or one of the plaintiffs, with his name and the address of each plaintiff, as well as by the attorney for the plaintiff. In such case the original summons is to be filed in the office of the clerk of the court within three days after written demand is served upon plaintiff's attorney. Upon failure to comply with this demand, a motion may be made in behalf of defendant to dismiss the action.

Rules of Civil Practice in the First Judicial Department

Rule I. FILING OF RETAINERS IN ACTIONS TO RECOVER DAMAGES FOR PERSONAL INJURIES OR FOR LOSS OF SERVICES AS A RESULT OF PERSONAL INJURIES. (See Report, p. 9.)

(1) The trial term clerks of all courts in this Department shall not accept for filing, in behalf of a plaintiff, a note of issue

in an action to recover damages for personal injuries, or for loss of services as a result of personal injuries, unless there be filed therewith a copy of the retainer by which the attorney of record for the plaintiff has been employed, and also the affidavit of such attorney required by this Rule.

(2) A justice sitting at a special term of any court in this Department shall not entertain an application by an attorney to fix his compensation under Section 474 of the Judiciary Law, unless the attorney file therewith a copy of the retainer under which he was employed, and also the affidavit required by this Rule. The justice who hears a motion for substitution under Rule 56 of the Rules of Civil Practice, where the party requesting such substitution is a plaintiff in an action for personal injuries, or for loss of services as a result of personal injuries, shall require that the attorney whom it is desired to replace, and the attorney who is to be substituted for him, each submit a copy of the retainer by which he has been or is to be employed, and also the affidavit required by this Rule.

(3) The affidavit required by this Rule shall be made by the attorney of record for the plaintiff, or the attorney whom the plaintiff proposes to employ, and shall state:

(a) That the retainer by which such attorney has been or is to be employed was not secured, directly or indirectly, through solicitation by or in behalf of said attorney, and that no consideration or thing of value was paid, given or promised therefor;

(b) When the accident occurred out of which the personal injuries arose;

(c) When, where and by whom the attorney was retained for the plaintiff;

(d) If such retainer was the result of recommendation by a third party, the name and address of such third party;

(e) If such retainer was not procured as a result of recommendation by a third party, in what manner the attorney became acquainted with the client.

Rule II. Recoveries on Claims for Personal Injuries or for Loss of Services as a Result of Personal Injuries. (See Report, p. 13.)

An attorney for a person who has a claim for personal injuries, or for loss of services as a result of personal injuries, shall pay over to such claimant, or to his guardian or personal representative, any moneys due to such claimant, guardian or personal representative, within ten days after the receipt thereof by said attorney; or, if such claimant, guardian or personal representative cannot conveniently be reached within said ten days, such attorney shall deposit the moneys to the credit of said claimant, guardian or personal representative, in the office of the Chamberlain of the City of New York, within three days thereafter, subject to the order of the court.

Penal Law

§ 1633. Punishment of Perjury and Subornation of Perjury. (See Report, pp. 10-11.)

(1) Perjury is a misdemeanor, punishable as prescribed in section nineteen hundred and thirty-seven of this chapter.

(2) Subornation of perjury is a misdemeanor, punishable as prescribed in section nineteen hundred and thirty-seven of this chapter.

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