

Comments on Legislation Concerning the Unlawful Practice of the Law

Frank Gioeli

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

In the past, in dealing with criminals, the tendency has always been to give the accused the benefit of every doubt, in order that an innocent person may not be unjustly convicted. However, the primary purpose is after all to safeguard the general public welfare, and, to do so, it is becoming increasingly necessary to tighten the net around the criminal, shifting the emphasis from protection of the accused to protection of the public. The public has gradually come to a realization of the necessity for a remodeling of our crime laws in order to cope with the situation, and the changes mentioned above are probably only the beginning of a program of such changes.

ALICE FRIEDMAN.

COMMENTS ON LEGISLATION CONCERNING THE UNLAWFUL PRACTICE OF THE LAW.—For the first time in the history of our state jurisprudence, the Appellate Division in seeking to exercise its supervisory powers over the legal profession, ordered a general investigation of the conduct of its members in regard to a particular line of professional work—to wit, the Negligence Practice.¹ This investigation placed the entire profession on the block of public contempt, and although the stems of this illicit practice were cut by disbarment, the roots of the evil remained intact. These evil roots were the acts of unscrupulous individuals who solicited the cases. If the attorneys retaining cases from these so-called solicitors, better known as “ambulance chasers,” were apprehended by justice, under our penal laws then existent,² the counselors-at-law were disbarred³ while the real wrongdoer was permitted to continue his paltry business. According to certain reports⁴ written after the investigation, the general opin-

crowding him, or by placing a hand in the proximity of such person's pocket, pocketbook or handbag); and unlawfully possessing or distributing habit-forming narcotic drugs. N. Y. CODE OF CRIM. PROC. §552, subd. 3b.

¹ *Ambulance Chasing*, N. Y. L. J., Oct. 8, 1928.

² N. Y. PENAL LAW §274, before amended by N. Y. Laws of 1935, cc. 577, 578.

³ *Matter of Marlow*, 225 App. Div. 252, 232 N. Y. Supp. 578 (2d Dept. 1929); *Matter of Littack*, 225 App. Div. 247, 232 N. Y. Supp. 571 (2d Dept. 1929). (Here the respondent was accused of splitting the fees on a number of negligence cases brought by one Fabricant. The respondent's contention was that the money given to Fabricant was for his fidelity in working with the respondent. But the damaging evidence against the respondent was the testimony given by a law-school graduate, who stated that in answer to an advertisement for a clerk's position, the respondent told him that there would be no salary, but if he brought in cases the fee would be split with the applicant. The court was not unanimous in its decision, for Rich, J., held that the respondent was not guilty of the offense of “splitting fees” with Fabricant, but that Fabricant received a salary.) *Matter of Katzka*, 225 App. Div. 250, 232 N. Y. Supp. 575 (2d Dept. 1929).

⁴ *Nationwide War on “Ambulance Chasers”* (1929) 15 A. B. A. J. 325-6; *Investigations of “Ambulance Chasers,” The Source of the Evil* (1928) 32 LAW NOTES 101.

ion was that the investigation which took place throughout the entire country would be fruitless in its purpose unless the "ambulance chaser," not a member of the legal profession, could be penalized for his wrongdoing.

The remedy for this has now become law in New York State under the new article of the Civil Practice Act,⁵ which provides that the Attorney-General may upon his own information,⁶ or complaint of a private person, or duly authorized Bar Association maintain an action against any person,⁷ partnership,⁸ corporation⁹ or association, or any employe, officer or director connected with such partnership, corporation or association, for the unlawful practice of the law. This article further provides that a duly authorized Bar Association¹⁰ may maintain an action against the aforementioned persons upon application to the Supreme Court of New York, or Justice thereof, after showing that twenty days have elapsed since a written request was submitted to the Attorney-General and his refusal to act thereupon. Another section of the article provides for the granting of an injunction¹¹ which will perpetually or temporarily restrain the defendant from rendering legal services prohibited by law. The third section¹² of the above-mentioned article entitles the plaintiff to the examination of the defendant and witnesses before the trial, so that only the material and necessary evidence will be submitted to the court at the trial.

⁵ N. Y. Laws of 1935, c. 387, adding art. 75-A to N. Y. CIVIL PRACTICE ACT.

⁶ N. Y. CIVIL PRACTICE ACT, art. 75-A, §1221a, subd. 1.

⁷ Matter of Marlow, 225 App. Div. 252, 232 N. Y. Supp. 578 (2d Dept. 1929); Matter of Littack, 225 App. Div. 247, 232 N. Y. Supp. 571 (2d Dept. 1929); Matter of Katzka, 225 App. Div. 250, 232 N. Y. Supp. 575 (2d Dept. 1929).

⁸ Matter of Newman, 172 App. Div. 173, 158 N. Y. Supp. 375 (2d Dept. 1916); Matter of Du Bois, 221 App. Div. 769, 223 N. Y. Supp. 864 (2d Dept. 1927). (These cases held that fee-splitting was wrong, but the attorney was the only one punished.)

⁹ Wollitzer v. Nat'l Guaranty Co., 148 Misc. 529, 266 N. Y. Supp. 184 (1933). *Addresses* by P. J. Crosby, A. G. Bailey, P. M. Carey on the *Unlawful Practice of the Law* (1929) CALIF. S. B. 124-133. (These articles stressed the fact that trust companies and realty companies overstepped their rights to render legal services, thus diverting legal business from other lawyers.)

¹⁰ N. Y. CIVIL PRACTICE ACT, art. 75-A, §1221a, subd. 2.

¹¹ Wollitzer v. Nat'l Guaranty Co., 148 Misc. 529, 266 N. Y. Supp. 184 (1933). (This case was an action to restrain defendant from the granting of legal services, stating that such legal services rendered were not in the power of the defendant. The plaintiff contended that such practice was an infringement of the plaintiff's franchise to practice law. However, the court held that such practice granting injunction was not prevalent in New York. The plaintiff showed that injunctions of the nature he was seeking were granted in Ohio, citing Dworken v. Department House Owner Ass'n, 28 Ohio Nisi Prius [N. S.] 115, *aff'd*, Dworken v. Apartment House Owners Ass'n, 38 Ohio App. 265; Dworken v. Title Guaranty & Trust Co., Dworken v. Land Title Abstract Co., Dworken v. Cuyahoga Abstract Title & Trust Co., reported in the Daily Legal News of Cleveland, Ohio [Aug. 29, 1932].) N. Y. CIVIL PRACTICE ACT, art. 75-A, §1221b.

¹² N. Y. CIVIL PRACTICE ACT, art. 75-A, §1221c.

All that has been heretofore stated is the procedure to be followed in cases that come before persons duly authorized to prosecute such violations of statutes constituted to be the unlawful practice of the law. These new statutes amending the penal law prohibit:

- (1) The solicitation of business on behalf of an attorney.¹³
- (2) The entering of a hospital for the purpose of negotiating¹⁴ a settlement or securing a general release unless a certain stipulated time^{14a} has elapsed.
- (3) The aiding, assisting or abetting the solicitation of¹⁵ persons, or the procurement of a retainer for or on behalf of an attorney.
- (4) The employment by an attorney of persons to aid, assist or¹⁶ abet in the solicitation of business, or the procurement through solicitation of a retainer to perform legal services.
- (5) The sharing of compensation by an attorney and a layman.¹⁷

To say that these new laws will put an end to the illicit practice of the law would be folly, for as long as individuals refuse to adhere to the Ten Laws¹⁸ which mankind received through Divine Revelation, such evils as are existent in the world of the legal profession will continue to prevail. However, the new legislation should completely arrest the commission of unlawful acts in the practice of the law, for with the power of injunction the legal profession holds a trump card.

FRANK GIOELI.

¹³ N. Y. Laws of 1935, c. 578, adding §270a to N. Y. PENAL LAW; Matter of Marlow, Matter of Katzka, both *supra* note 7.

¹⁴ Laws of 1935, adding §270b to N. Y. PENAL LAW; *Ambulance Chasing*, N. Y. L. J., Oct. 8, 1928. (Very often, policemen, doctors, nurses, court clerks, etc., were in the employ of attorneys.)

^{14a} (Fifteen days after injuries are sustained.)

¹⁵ N. Y. Laws of 1935, c. 578, adding §270c; Matter of Marlow, *supra* note 7.

¹⁶ Matter of Katzka, Matter of Marlow, both *supra* note 7; N. Y. Laws of 1935, c. 578, adding §270d to the N. Y. PENAL LAW; *Ambulance Chasing*, N. Y. L. J., Oct. 8, 1925; N. Y. Laws of 1935, adding §270b to N. Y. PENAL LAW.

¹⁷ *Philadelphia Bar Investigates Contingent Fee Scandals* (1929) 12 AM. JUD. SOC. 144-50, 157-8; N. Y. Laws of 1935, c. 577, adding §275-a to the N. Y. PENAL LAW.

¹⁸ The Holy Bible, "Ten Commandments," Book of *Exodus*, Douay Edition.