



1928

## Conflicts

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not in his exclusive employ. All damages collected by an attorney on account thereof shall be paid (after the deduction of proper charges) direct to such party irrespective of any claim by any party not a member of the bar to any part thereof. The purpose of this rule is to preclude the handling and barter of accident claims by persons not members of the bar, and hence not subject to supervision and discipline by the Court. Attorneys are expected to cooperate in the observance of the spirit, as well as the letter, of this rule.

3. No attorney shall institute or prosecute any action or undertake the collection of a claim, for the recovery of damages for personal injuries under an arrangement with his client for a contingent fee, unless—(a) Either the basis for the fee be a proportion of the net recovery after deducting all expenses not properly payable by the attorney, or the client be assured at least a specified proportion of the gross recovery, the attorney paying all proper expenses; (b) The power of attorney embodying such arrangement shall distinctly provide that in case of the client's dissatisfaction with the amount of the fee charged, he may require the attorney to submit to the Court in which the suit was brought (or to the Court in which the contract writs are then running if no suit has been brought) the question as to what, under all the circumstances, is a fair and proper charge for the attorney's services.

4. Every attorney effecting the recovery of damages for personal injuries, whether by settlement or through litigation, shall forthwith fill out, in duplicate, a statement in substantially the form set out below, showing in reasonable detail the disposition of the amount received. One such copy shall be preserved by the attorney for six years following such settlement, subject to inspection by the client, by the Court, and by the Committee of Censors of the Law Association. Such statements accumulated by an attorney ceasing to practice may be turned over to the then Chairman of such Committee. No power of attorney in any such case shall authorize the settlement of the claim for a sum less than that expressly approved by the client.

5. No attorney engaged in handling any case (whether in suit or not) involving damages for personal injuries, shall, directly or indirectly, hold out to any medical practitioner the promise, assurance or hope of compensation contingent on the outcome thereof, nor shall any such attorney, after the successful termination thereof, pay or give to any such physician, in recognition of the services of such physician in connection with such case, whether as a gratuity or otherwise, any money or thing of value, in addition to the compensation at the specified rate agreed on by the attorney, win or lose, at the time such physician was employed by the attorney.

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## CONFLICTS?

Is it true that legal theories and economic justice sometimes conflict? In the effort to find an answer to this question, let us refer to the case of *Pfeiffer vs. Compensation Bureau*, reviewed in January Bar Briefs.

The facts as they now are established by the Court decision, are: A workman, gradually growing blind as the result of a tumor located in the little pocket where the eye nerves cross, and who, prior to the date of injury, had lost 50 per cent of the sight of one eye and 16 per cent of the sight of the other, sustained a slight blow upon the outside of

one eye. The blow was not sufficient to cause an abrasion or a discoloration. Expert surgeons found that the tumor had existed for some time, that it was not caused by the blow, but that the activity of the tumor was accelerated by the blow, thus hastening the process which the tumor had started, and which would, in all probability, have produced the same final result, without an injury. The judgment was for total loss of sight of both eyes.

The course of the decisions in these "acceleration of pre-existing disease" cases, which run back to times prior to compensation laws, has been in opposite directions. One line has denied liability. The other has allowed for full liability. From the standpoint of legal theory, either line of decisions may be justified.

From the standpoint of economic justice, both lines of decisions might be questioned. The one which denies compensation (or damages) to the injured person appears to be unfair to the workman. The one which grants full compensation appears to be unfair to industry. In this case, for example, industry did not produce or have anything to do with the origin of the tumor. The partial blindness existed at the time of the injury. Should industry, therefore, be responsible for more than its share in the final result?

Industry can guard against most accidents, even those caused by negligence of workmen, for it can formulate rules. Industry, however, can not guard against pre-existing disease. From the economic standpoint, therefore, should not the middle ground, that of apportioning the responsibility of the disease and of the accident, and compensating accordingly, be the reasonable and equitable solution?

If that should be the general verdict, then the question arises as to whether that can be done in this State without an amendment of the law. It appears to us that the Pfeiffer case goes far enough to establish that this may not be done in North Dakota without an amendment of the Compensation Act, authorizing the Bureau to thus apportion the responsibility in pre-existing disease cases.

Three courses of action are open to the people of this State. 1. Acceptance of the court decision as an expression of the ideal intent and purpose of the principle of such acts; which means the payment of losses in accordance with that viewpoint, and the collection of necessary premiums to meet them. 2. Individual employers may require physical examination of all workmen, which might result in unemployment for many who need employment. 3. Amendment of the law might be made as has been done in several states, which is bound to raise many difficult but not unsurmountable problems of practical administration.

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#### A COMPLAINT—A STATEMENT—AN EXHORTATION

"A man of some position and reasonable means is arrested on a serious charge, of which he is probably guilty, for instance, driving while intoxicated. He is approached in jail by policemen and 'advised' to get a certain attorney. Bearing in mind his guilt, his family and his health, he follows the advice and calls for the favored attorney, who arranges for a fee — say \$1,500 or more — and shortly the charge against the accused is reduced to a lesser offense carrying a light fine, or is dropped altogether. Under present conditions it appears almost impossible for