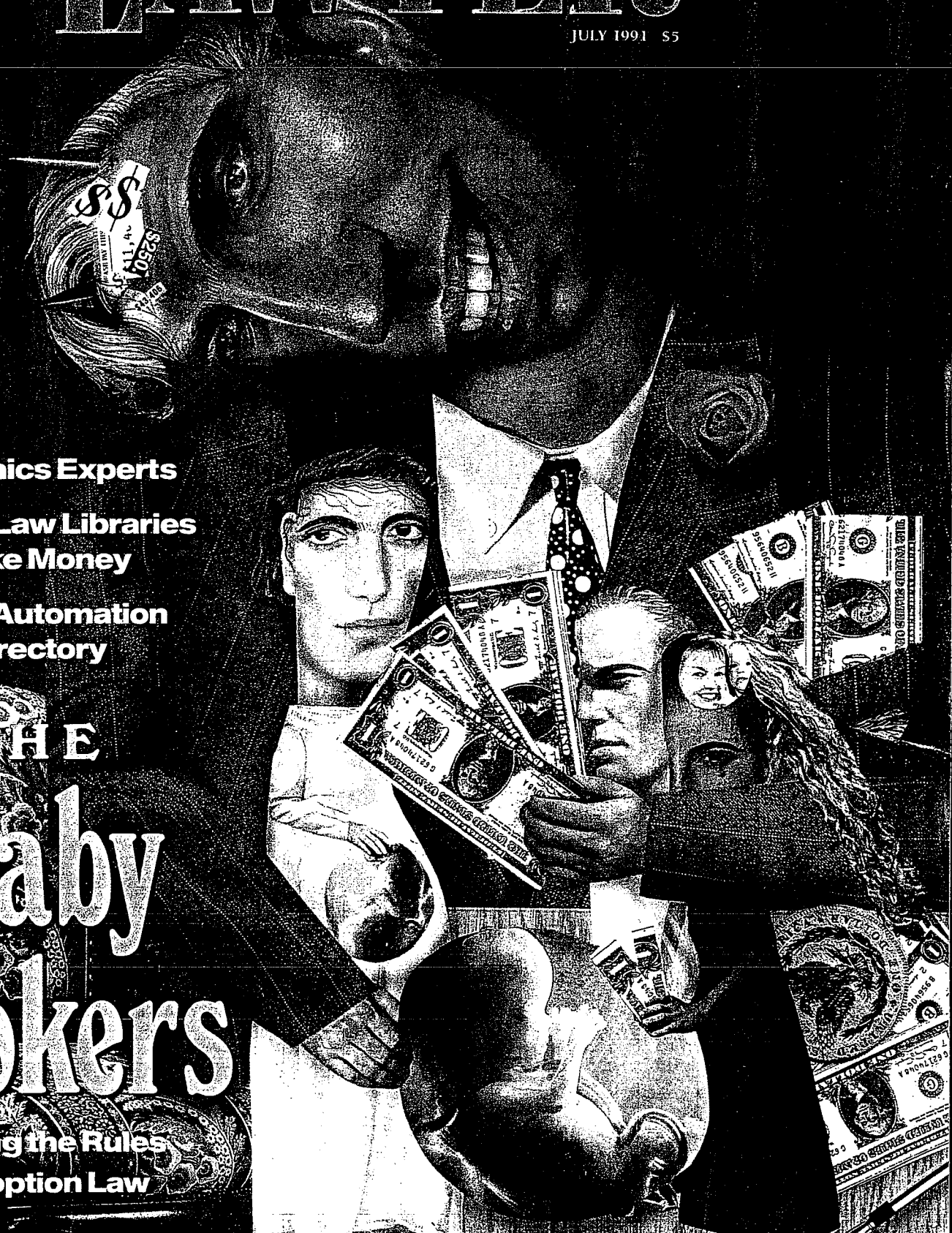


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ATTORNEY, HEAL THYSELF

Ethics 'doctors' offer firms preventive and emergency care • By Richard A. Zitrin

Preventive legal ethics is still in its embryonic stage at many firms. But some now realize that by increasing their ethics awareness and anticipating ethical problems before they occur, the biggest pitfalls of modern legal practice can be avoided.

Los Angeles's Haight, Brown & Bonesteel, a 150-lawyer litigation defense firm, has a 20-lawyer legal malpractice unit that has fostered a keen awareness of ethical issues firmwide. The unit's conflicts of interest committee has spawned a new ethics committee with a broader focus. An in-house training program dubbed "the little red schoolhouse," required for first- and second-year associates, includes a substantial ethics component. The partners also schedule occasional ethics lectures that all associates are required to attend.

Other firms rely on a single ethics guru to monitor their practices. Attorney Peter Jarvis provides this service for Portland's Stoel, Rives, Boley, Hones & Grey, the largest firm in Oregon. He distributes monthly "consciousness-raising memos" and is "always available as a resource" to anyone in the firm with an ethics problem. His interest in ethics developed into a specialty that takes up to 40 percent of his time providing advice to other firms in the state.

Jarvis says even small firms of five or six lawyers should designate someone to be the ethics expert, though Professor Stephen Gillers of New York University School of Law warns that too often the in-house guru is "just a guy named Joe" with no background in legal ethics. Lori Behar, a malpractice partner at Haight Brown, says she knows of few mid-sized firms that have either formal ethics training or an ethics committee.

Lack of ethics expertise has led firms to seek out consultants for both general and case-specific advice. Gillers frequently lectures at firm retreats and seminars simply to increase "ethics awareness." Donald Weckstein, former dean of the University of San Diego's law school, offers similar lectures focused on a firm's practice area.

Some ethics experts engage in more case-specific and interactive consultation, particularly in emergency situations. Conflict of interest crises are the most frequent: A small firm representing both driver and passenger in an accident, a mid-sized firm representing both a parent corporation and a subsidiary separating from the company, or a megafirm that discovers a conflict between clients represented by different offices.

Increasingly, conflict of interest emergencies involve law firm personnel. Firms that have gone through a recent merger or dissolution, or simply hired a new lateral partner, discover conflicts between old and new clients. The firms might be concerned about attorney-client business relationships. Sometimes corporate counsel find it difficult to determine just who their client is—regional management, the board of directors or stockholders.

Countless other ethics questions defy easy answer: When is a paralegal engaged in the unauthorized practice of law? What is the line between giving a client advice about the law and suggesting how to evade it? Must an attorney tell

a client about his own possibly negligent act?

Some questions arise from the client's conduct: What should a lawyer do when a client is about to commit a crime or publish a misleading financial report? How should a lawyer deal with a client who presents the fruits of a crime, or says he is about to do harm to another, or himself?

Aside from in-house experts and ethics consultants, bar hotlines are the only places to call for help in emergencies such as these. The State Bar ethics hotline, opened in 1983, receives more than 14,000 inquiries a year. Some county bars offer a similar service. But Jarvis points out that with no opportunity to either investigate or review documents, hotlines are severely limited in their ability to tailor solutions to individual cases. Hotline staffers are the first to point out that they do not give advice or even render opinions. Rather, they provide attorneys with resource materials to help them make decisions.

Since ethical problems may not ripen until years after the seeds are planted, an ethical emergency frequently arises when it's too late for a complete cure. A number of ethics "doctors," however, are now helping firms to evaluate practice areas and identify potential problems, minimizing the likelihood of an emergency. Here are questions every firm should ask during a basic ethics physical exam:

- Is there a fail-safe system beyond mere name checking to identify *all* potential conflicts of interest? Does this include a review when new lawyers enter the firm?
- Are there written materials for waivers of such potential conflicts that discuss all ramifications of a conflict, the effect of a waiver on confidential communications, the attorney's role in the event the conflict ripens and precautions that a waiver be used only where the client will not be disadvantaged?
- Is there complete integrity of files, including computerized data, to preserve absolute client confidentiality?
- Do intake procedures protect client rights? If they involve nonlawyers, do they avoid the unauthorized practice of law?
- Are there well-defined procedures and documents to protect the client adequately when a firm declines or withdraws from representation?
- Are fee contracts complete, including discussion of the scope of representation, the effect of the type of fee on the case and, if relevant, the effect of a nonclient paying the fee?
- What are the firm rules on restricting business relationships between attorneys and clients?
- In public law, government service or corporate law departments, are there clear, established ground rules defining who is the client?
- Are advertisements and all other communications with the public clear, unambiguous and in no way misleading?
- Is there an administrative procedures manual covering these and other matters, such as written memoranda, client communication and continuing legal education?

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