

# CHICAGO LAWYER

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## CLIFFORD'S NOTES

**A**s I write this column for deadline, I realize there is perhaps no greater watershed for lawyers' ethics than Watergate. 2017 marked the 45th anniversary of the break-in at that Washington, D.C., hotel/office complex that would ultimately bring down the presidency of Richard M. Nixon.

It also was a sad era for lawyers who once had enjoyed great respect and prestige in the American way of life. So many lawyers were involved in that cover-up. So many lawyers never stopped to properly think of the ethical issues involved with the result being that law licenses were lost and some even went to prison.

Although only some readers are old enough to remember those daily front-page headlines in 1972, but what happened 45 years ago impacted all lawyers, young and old, for their entire professional lives. These events nearly a half century ago led to professional ethics becoming a required class in law schools and passage of a professional responsibility test that is part of every bar examination.

Specific rules may have changed over the years, but that deep down feeling of doing what is right has not. Technology certainly has introduced a whole new set of ethical issues for lawyers young and old, including the requirement in Illinois that all lawyers must have a familiarity with pertinent technology in order to properly serve their clients, by requiring lawyers to keep abreast of the benefits and risks of relevant technology. Illinois Rules of Professional Conduct Rule 1.1, Comment 8.

Another issue of concern involves lead generation companies that market heavily to lawyers without clarity on issues such as safeguarding client funds, fee-splitting and referral of cases. The Virginia State Bar Association's Standing Committee on Legal Ethics petitioned the Virginia Supreme Court in November to adopt a rule that prohibits online legal referral services due to problems involving paying for referrals, concerns about the attorney's duty to safeguard client funds and improper fee sharing with non-lawyers. The link to the Standing Committee's Petition to the Virginia Supreme Court on Proposed Legal Ethics Op. 1885 can be found at [vsb.org/docs/LEO1885\\_SCV\\_petition111717.pdf](http://vsb.org/docs/LEO1885_SCV_petition111717.pdf)

Virginia's proposed rule comes after similar opinions in New York, New Jersey, Ohio, Pennsylvania and South Carolina. They are all struggling with the activities of companies such as Avvo Legal Services that directly charges the client a flat rate for a defined legal service and holds the



## WATERGATE A WATERSHED

The future of legal ethics, 45 years after the break-in

By **BOB CLIFFORD**

fee until the potential client selects a lawyer from a list of participating lawyers in a certain geographical area.

Avvo then passes the fee along to the attorney after the legal work is completed, charging what it calls a "marketing fee" in a separate transaction that some states have characterized as inappropriate client fee-splitting.

At its December midyear meeting, the Illinois Bar Association Assembly adopted changes to the comments regarding Illinois Rules of Professional Conduct Rules 1.5(b), 1.18 and 504(a). Although the Illinois rules do not expressly prohibit a lead generator from holding a client fee, the comments to the rules preserve the traditional limitations on fee-sharing with non-lawyers and identify a number of lawyer obligations with respect to holding fees that must be considered before a lawyer participates in any lead generation service.

The comments also highlight clarifying potential conflicts and the need for proper fee disclosures.

Questions involving confidentiality, privilege and work product, conflicts of interest, contacting non-clients, dealing with experts, disclosure obligations, social media and electronic discovery have left lawyers today in a state of flux because of the new technologies and sometimes even new players in the equation.

All lawyers could use a refresher on these important issues. Therefore, Clifford Law Offices will

examine "The Changing Ethical Landscape of Litigation" in a free webinar Feb. 19. I will moderate a discussion with a respected panel using hypotheticals" Lawrence Fox, ethics professor at Yale Law School; Jayne Reardon, executive director of the Illinois Commission on Civility; and retired judge Deborah Dooling who served on the bench of the Cook County Circuit Court for decades.

For two hours, we will explore those difficult situations in which you want to do the right thing while also ensuring you are zealously advocating the rights of your client.

To find out more information or to register for this free program, go to [cliffordlaw.com/CLE2018](http://cliffordlaw.com/CLE2018).

What has led to the need to teach ethics? The extreme demands of the profession? The economics of it? The stiff competition? Over-zealousness? The desire to win? Perhaps, a combination of these factors.

"Fighting fair" is imperative in today's courtroom, and it is up to each lawyer to ensure that the rules are followed and standards are met because once one fully grasps legal ethical issues, the focus can remain on the challenges of the litigation itself. CL

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