

27 NCAC 02 RULE 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a writing relating to the representation of the lawyer's client and knows or reasonably should know that the writing was inadvertently sent shall promptly notify the sender.

Comment

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

[2] Threats, bullying, harassment, insults, slurs, personal attacks, unfounded personal accusations generally serve no substantial purpose other than to embarrass, delay, or burden others and violate this rule. Conduct that serves no substantial purpose other than to intimidate, humiliate, or embarrass lawyers, litigants, witnesses, or other persons with whom a lawyer interacts while representing a client also violates this rule. See also Rule 3.5(a) (prohibiting conduct intended to disrupt a tribunal) and Rule 8.4(d) (prohibiting conduct prejudicial to the administration of justice).

[3] Paragraph (b) recognizes that lawyers sometimes receive writings that were mistakenly sent or produced by opposing parties or their lawyers. See Rule 1.0(o) for the definition of “writing,” which includes electronic communications and metadata. A writing is inadvertently sent when it is accidentally transmitted, such as when an electronic communication or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a writing was sent inadvertently, then this rule requires the lawyer promptly to notify the sender in order to permit that person to take protective measures. This duty is imputed to all lawyers in a firm. Whether the lawyer who receives the writing is required to take additional steps, such as returning the writing, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a writing has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a writing that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer. A lawyer who receives an electronic communication from the opposing party or the opposing party’s lawyer must refrain from searching for or using confidential information found in the metadata embedded in the communication. See 2009 FEO 1.

[4] Some lawyers may choose to return a writing or delete electronically stored information unread, for example, when the lawyer learns before receiving the writing that it was inadvertently sent. Whether the lawyer is required to do so is a matter of law. When return of the writing is not required by law, the decision voluntarily to return such a writing or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

History Note: Authority G.S. 84-23;
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