

1 Rule 4.4. Respect for Rights of Third Persons.

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

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

8 Comment

9 [1] Responsibility to a client requires a lawyer to subordinate the interests of others
10 to those of the client, but that responsibility does not imply that a lawyer may disregard
11 the rights of third persons. It is impractical to catalogue all such rights, but they include
12 legal restrictions on methods of obtaining evidence from third persons and unwarranted
13 intrusions into privileged relationships, such as the client-lawyer relationship.

14 [2] Paragraph (b) recognizes that lawyers sometimes receive documents that were
15 mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or
16 reasonably should know that such a document was sent inadvertently, then this Rule
17 requires the lawyer to promptly notify the sender in order to permit that person to take
18 protective measures. Whether the lawyer is required to take additional steps, such as
19 returning the original document, is a matter of law beyond the scope of these Rules, as
20 is the question of whether the privileged status of a document has been waived.
21 Similarly, this Rule does not address the legal duties of a lawyer who receives a
22 document that the lawyer knows or reasonably should know may have been wrongfully
23 obtained by the sending person. For purposes of this Rule, "document" includes e-mail
24 or other electronic modes of transmission subject to being read or put into readable
25 form.

26 [3] Some lawyers may choose to return a document unread, for example, when the
27 lawyer learns before receiving the document that it was inadvertently sent to the wrong
28 address. Where a lawyer is not required by applicable law to do so, the decision to
29 voluntarily return such a document is a matter of professional judgment ordinarily
30 reserved to the lawyer. See Rules 1.2 and 1.4.