

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 purpose other than  
3 to embarrass, delay or burden a third person, or use methods of obtaining evidence that violate the legal  
4 rights of such a person.

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

8       Comment

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

14       [2] Paragraph (b) recognizes that lawyers sometimes receive ~~documents~~ a document or electronically  
15 stored information that ~~were was~~ mistakenly sent or produced by opposing parties or their lawyers. A  
16 document or electronically stored information is inadvertently sent when it is accidentally transmitted, such  
17 as when an email or letter is misaddressed or a document or electronically stored information is  
18 accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably  
19 should know that such a document or electronically stored information was sent inadvertently, then this  
20 Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective  
21 measures. Whether the lawyer is required to take additional steps, such as returning or deleting the  
22 ~~original~~ document or electronically stored information, is a matter of law beyond the scope of these Rules,  
23 as is the question of whether the privileged status of a document or electronically stored information has  
24 been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document  
25 or electronically stored information that the lawyer knows or reasonably should know may have been  
26 ~~wrongfully inappropriately~~ obtained by the sending person. For purposes of this Rule, "document or  
27 electronically stored information" includes in addition to paper documents, e-mail ~~or other electronic~~  
28 ~~modes of transmission~~ and other forms of electronically stored information, including embedded data  
29 (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in  
30 electronic documents creates an obligation under this Rule only if the receiving lawyer knows or  
31 reasonably should know that the metadata was inadvertently sent to the receiving lawyer.

32       [3] Some lawyers may choose to return a document or delete electronically stored information  
33 unread, for example, when the lawyer learns before receiving ~~the document it~~ that it was inadvertently  
34 sent ~~to the wrong address~~. Where a lawyer is not required by applicable law to do so, the decision to  
35 voluntarily return such a document or delete electronically stored information is a matter of professional  
36 judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

37