

**KENTUCKY BAR ASSOCIATION
RULES OF THE SUPREME COURT OF KENTUCKY**

PRACTICE OF LAW

SCR 3.130(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 document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall:

- (1) refrain from reading the document,
- (2) promptly notify the sender, and
- (3) abide by the instructions of the sender regarding its disposition.

HISTORY: Amended by Order 2009-05, eff. 7-15-09; adopted by Order 89-1, eff. 1-1-90

SUPREME COURT COMMENTARY

2009:

(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) Paragraph (b) recognizes that lawyers sometimes receive documents or other communications that were mistakenly sent or produced by opposing parties or their lawyers. If it is clear from the circumstances that the document was not intended for the receiving lawyer, that lawyer must avoid reading the substance of the communication, notify the sender of the mistake, and comply with any reasonable request of the sender, allowing for protective measures (e.g. returning to sender, deleting or otherwise destroying the communication). The question whether the privileged status of such a document has been waived is a matter of law beyond the scope of these Rules. Similarly, this Rule does not address the legal duties of a lawyer who received a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.