

Rule 4.4: Duties Concerning Inadvertently Transmitted Writings

(Commission's Proposed Rule – Clean Version)

A lawyer who receives a writing that obviously appears to be privileged or confidential or subject to the work product doctrine, and where it is reasonably apparent that the writing was inadvertently sent or produced, shall promptly notify the sender.

required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

COMMENT

- [1] The purpose of this Rule is to prevent unwarranted intrusions into privileged or confidential relationships.
- [2] Paragraph (b) recognizes that lawyers sometimes receive documents that are obviously privileged or confidential and were inadvertently sent or produced by opposing parties or their lawyers. If a lawyer knows or where it is reasonably apparent that such a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived. See *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th 807, 818 [68 Cal.Rptr.3d 758]. Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person.
- [3] A lawyer may choose to return a document unread, for example, when the lawyer learns before receiving the document that it was inadvertently sent to the wrong address. Where a lawyer is not