

## **Alabama Rules of Professional Conduct**

### **Transactions with Persons Other Than Clients**

#### **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 document that on its face appears to be subject to the attorney-client privilege or otherwise confidential, and who knows or reasonably should know that the document was inadvertently sent, should promptly notify the sender and

(1) abide by the reasonable instructions of the sender regarding the disposition of the document; or

(2) submit the issue to an appropriate tribunal for a determination of the disposition of the document.

[Amended eff. 6-23-2008.]

#### **Comment**

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. This Rule does not apply to the subpoena of a material witness (one who has relevant information).

#### **Comparison with Former Alabama Code of Professional Responsibility**

DR 7-102(A)(1) provided that a lawyer shall not “take... action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.” DR 7-108(D) provided that “[a]fter discharge of the jury... the lawyer shall not ask questions or make comments to a member of that jury that are calculated merely to harass or embarrass the juror....” DR 7-108(E) provided that a lawyer “shall not conduct... a vexatious or harassing investigation or either a venireman or a juror.” DR 7-108(F) further provided that all restrictions imposed in DR 7-108 “also apply to communications with or investigations of members of a family of a venireman or a juror.”

**Note from the reporter of decisions:** The order amending Rule 1.8, the Comment to Rule 1.8, Rule 1.10(a), the Comment to Rule 1.10, Rule 1.12, Rule 1.14, the Comment to Rule 1.14, the Comment to Rule 3.2, Rule 3.6, the Comment to Rule 3.7, Rule 3.9, and Rule 4.4 is published in that volume of *Alabama Reporter* that contains Alabama cases from 983 So.2d.