

Hinderks Provides Guidance On Inadvertent Communication by Opposing Counsel in *The Legal Intelligencer*

In the News
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Stinson LLP's [Mark Hinderks](#) authored a column for *The Legal Intelligencer*, "What Do I Do When I Receive a Communication That Appears to Be Inadvertently Sent to Me by an Opposing Lawyer?"

Hinderks examines ABA Model Rule 4.4(b), which says an attorney must promptly notify the sender upon receipt of a document or electronically stored information relating to the representation of the attorney's client that the attorney knows or reasonably should know was inadvertently sent.

With no requirement in the rule for the receiving attorney to stop reading the document or abide by any instructions of the sender, Hinderks says what happens next is left to law outside the Model Rules. He notes that, "Comment 3 to the rule suggests that the lawyer may, but is not required to, return the document or delete an electronically stored document as 'a matter of professional judgment ordinarily reserved to the lawyer' under Rule 1.2, where the lawyer is not otherwise required by applicable law to do something else."

"It is important to examine the version of Rule 4.4(b) in effect and any other law of the jurisdiction applicable to your situation, and to promptly provide the Rule 4.4(b) notice to your opponent," Hinderks emphasized. "That notice gives your opponent the opportunity to confirm the inadvertent disclosure, to seek protection of the information before you disclose it if there is a basis to do so, and to raise with you any consequences that may ensue."

Hinderks leads the firm's Legal Ethics & Professional Responsibility practice. He is the author of *Dear Ethics Lawyer*, a twice-monthly newsletter with questions and answers concerning legal ethics, and a co-founder and presenter of "Ethics for Good," a twice-annual stage show which uses humor, skits and real-

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world scenarios to teach legal ethics to lawyers. Hinderks has presented more than 125 programs on legal ethics over the past 30 years, has authored many articles and handbook chapters on legal ethics, and has been deeply involved in professional organizations with legal ethics and professional responsibility as their focus.

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