

The Nebraska State Bar Association filed a petition to propose an amendment to the comment section of Neb. Ct. R. of Prof. Cond. § 3-504.4, “Respect for rights of third persons.” The Nebraska Supreme Court invites interested persons to comment on the proposed amendment. Anyone desiring to comment on the proposed amendment should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to jill.machacek@nebraska.gov, no later than September 1, 2014.

A copy of the proposed amendment is available for review below, or a hard copy may be obtained from the office of the Clerk of the Supreme Court and Court of Appeals upon request.

§ 3-504.4. 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 promptly notify the sender.

COMMENT

[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. The duty imposed by paragraph (a) of this Rule includes a lawyer’s assertion or inquiry about a third person’s immigration status when the lawyer’s purpose is to intimidate, coerce, or obstruct that person from participating in a civil matter. When a lawyer is representing a client in a civil matter, a lawyer’s communication to a party or a witness that the lawyer will report that person to immigration authorities, or a lawyer’s report of that person to immigration authorities, furthers no substantial purpose of the civil adjudicative system if the lawyer’s purpose is to intimidate, coerce, or obstruct that person from participating in a civil matter. See, also, Rules 8.4(b) (prohibiting criminal acts that reflect adversely on a lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects) and 8.4(d) (prohibiting conduct that is prejudicial to the administration of justice or adversely discriminatory toward litigants, witnesses, lawyers, judges, judicial officers, or court personnel on the basis of race, national origin, gender, religion, disability, age, sexual orientation, or socioeconomic status).

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