

Oregon Law Practice Management

Practice Management Tips for Oregon Lawyers



Oregon Adopts Metadata Opinion

In an e-mail blast sent today, the [Oregon State Bar](#) announced the approval of five new ethics opinions. Among them, [Formal Opinion No. 2011-187 “Competency: Disclosure of Metadata.”](#)

This opinion discusses the following questions:

1. Does a Lawyer have a duty to remove or protect metadata when transmitting documents electronically?
2. May a Lawyer use the metadata information that is readily accessible with standard word processing software?
3. Must a Lawyer who receives a document containing metadata inform the sending attorney?
4. Must a lawyer who receives a document containing metadata acquiesce to the sending lawyer’s request to delete the document without reading it?
5. May a lawyer use special software to reveal metadata in a document?

Here are the answers from the [opinion](#):

Duty to Remove Metadata

A lawyer is responsible for acting competently to safeguard information relating to the representation of a client in communications with others. Competency means ... maintaining at least a basic understanding of technology and the risks of revealing metadata or obtaining and utilizing adequate technological support.

A lawyer must use reasonable care to avoid the disclosure of confidential client information, particularly where the information could be detrimental to a client. With respect to metadata, reasonable care includes taking the following steps:

- Preventing the inadvertent disclosure of metadata
- Limiting the nature and scope of the metadata revealed
- Controlling to whom the document is sent

What constitutes reasonable care will change as technology evolves.

Lawyer's Use of Received Metadata

If the receiving lawyer could reasonably conclude that metadata was intentionally left in a document, there is no duty to inform the sender of the presence of metadata and the receiving lawyer may use the metadata.

If the receiving lawyer knows or reasonably should know that metadata was inadvertently included, Oregon RPC 4.4(b) requires notice to the sender. It does not require the receiving lawyer to return the document unread or to comply with a request by the sender to return the document.

Before deciding what to do with an inadvertently sent document, the receiving lawyer should consult with the client about the risks of returning the document versus the risks of retaining and reading the document and its metadata.

Using Special Software to Reveal Metadata

Searching for metadata using special software when it is apparent that the sender has made reasonable efforts to remove the metadata may be analogous to surreptitiously entering the other lawyer's office to obtain client information and may constitute 'conduct involving dishonesty, fraud, deceit, or misrepresentation.' in violation of Oregon RPC 8.4(a)(3).

Read the full opinion [here](#).

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