

**LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**

ORDER

Pursuant to Rule 2.16 of the Rules of Lawyer Disciplinary Procedure, the Lawyer Disciplinary Board has the authority to issue Legal Ethics Opinions. Based upon a review of current Opinions affected by the changes made to the Rules of Professional Conduct, which were effective January 1, 2015, the Lawyer Disciplinary Board hereby vacates the following previously issued Legal Ethics Opinions:

1. LEO 2010-01 GHOSTWRITING:

Opinion required disclosure of attorney's representation for preparation of any pleading or other document (with exception of court forms) to be filed with a court or tribunal, or with a state or federal agency once the case becomes contested. Disclosure was not required when document is not intended to be filed with a tribunal or when providing aid in filling out forms adopted by and/or used by tribunals or federal or state agencies. This was changed by comment 9 to Rule 1.2 and comment 3 to Rule 3.3 which both specifically allow ghostwriting without disclosure of attorney's representation.

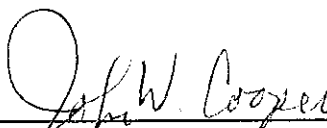
2. LEO 2009-01 WHAT IS METADATA AND WHY SHOULD LAWYERS BE CAUTIOUS?:

Opinion put burden on an attorney to take reasonable steps to protect metadata in transmitted documents and burden on a lawyer receiving inadvertently provided metadata to consult with the sender and abide by the sender's instructions before reviewing such. This was changed by comment 2 and 3 to Rule 4.4. Those comments indicate that a lawyer who "knows or reasonably should know" the documents were inadvertently sent electronically is required to promptly notify the sender so they may take protective measures. Whether the lawyer is required to take additional steps is a matter of law because there is a question of whether the privileged status of the document has been waived. Further, Rule 4.4 does not address the legal duties of lawyers who receive information that they "know or reasonably

should know” may have been inappropriately obtained. The determination of whether to voluntarily return or delete the unread information is a matter of professional judgment of the lawyer.

It is further directed that this Order vacating the above-listed Opinions shall be published in *The West Virginia Lawyer and Bar Blast*.

APPROVED by the Lawyer Disciplinary Board on the 30th day of January, 2015, and **ENTERED** this 27th day of February, 2015.



John W. Cooper, Chairperson
Lawyer Disciplinary Board