

COMMITTEE: Ethics Committee

DATE: June 10, 2009

7. CHAPTER 11, RULE 7: IMPLICATIONS OF LAWYER SENDING A BLACKLINED DOCUMENT

The Committee considered the implications of a lawyer sending a blacklined document to another lawyer where the document illustrates changes that have been made to the document from an earlier draft. The following would be an example of such a situation and the questions raised by it:

Lawyer A and Lawyer B represent clients opposed in interest. Lawyer A proposes changes to a document (version 1) (either one drafted by Lawyer B or already reviewed by Lawyer B) and sends version 2 in clean and with a blackline to version 1 to Lawyer B. In doing so (without expressly undertaking anything in relation to the document), does Lawyer A do either of the following?

- impliedly undertake that the blacklined version is an accurate blackline showing the changes between version 2 and version 1, or
- represent that the blacklined version is an accurate blackline showing the changes between version 2 and version 1,

In the Committee's opinion a lawyer who sends a blacklined document to another lawyer in these circumstances, in the absence of language to the contrary, neither undertakes nor represents that the blacklined document accurately shows the changes made to it. A lawyer in such circumstances simply represents that he or she believes, in good faith, that the blacklined version correctly describes proposed changes to the document. It would be prudent for a lawyer sending a blacklined document to another lawyer to so advise.

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