

**Administrative Determinations by the Supreme Court on the
Report and Recommendations of the Working Group on Ethical Issues
Involving Metadata in Electronic Documents
April 14, 2016**

The Working Group on Ethical Issues Involving Metadata in Electronic Documents (Working Group) considered whether a lawyer who receives an electronic document may, consistent with the rules governing attorney ethics, review metadata in that document. The Working Group also considered related issues involving metadata in the contexts of discovery and electronic filing of documents with the Judiciary.

The Working Group recommended amendments to Rule of Professional Conduct 4.4(b) and the addition of an official comment stating that lawyers who receive electronic documents may review unrequested metadata, provided that the receiving lawyer reasonably believes that the metadata was not inadvertently sent. The Group further recommended that the civil discovery rules be amended to highlight issues pertaining to metadata; that steps be taken to minimize the disclosure of metadata in documents electronically filed with the Judiciary; and that judges, lawyers, and law students be educated about metadata issues as a component of judicial education programs, continuing legal education, and law school curricula. It issued its Report and Recommendations to the Court on September 14, 2015.

The Supreme Court then sought and considered additional comment from the New Jersey legal community on the recommendations of the Working Group. The Court approved the proposed revisions to the Rules. The recommendations and the Court's determinations are discussed below.

Working Group Recommendations and Supreme Court Determinations

1. Rule of Professional Conduct 4.4(b) – Unrequested Metadata That May Be “Inadvertently Sent”

The Working Group recommended amendments to Rule of Professional Conduct 4.4(b) and the addition of an official comment stating that lawyers who receive electronic documents may review unrequested metadata, provided that the receiving lawyer reasonably believes that the metadata was not inadvertently sent.

The Supreme Court decided to adopt the Working Group recommendation on amendments to Rule of Professional Conduct 4.4(b) and an official comment on metadata.

2. Rule of Professional Conduct 1.0 – Electronic Information and Metadata.

The Working Group recommended that “electronic information” be included in the definition of “writing” in Rule of Professional Conduct 1.0, and an official comment be added to provide a

definition of metadata. It further adopted a recommendation of the Special Committee on Attorney Ethics and Admission to replace the word “email” with “electronic communication.”

The Supreme Court decided to adopt the Working Group recommendation on amendments to Rule of Professional Conduct 1.0 and an official comment.

3. **Rule 4:10-2(f) – Metadata and Discovery in Civil Cases**

The Working Group recommended that the general Civil Part discovery rule, Rule 4:10-2, be amended to specifically address metadata in electronic documents, and an official comment be added.

The Supreme Court decided to adopt the Working Group recommendation on amendments to Rule 4:10-2(f) and an official comment, and added clarifying language to the comment regarding privileged documents.

4. **Rule 4:18-1 – Production of Discovery Including Metadata in Civil Cases**

The Working Group recommended that an Official Comment be added to Rule 4:18-1 regarding metadata.

The Supreme Court decided to adopt the Working Group recommendation on an official comment to Rule 4:18-1.

5. **Metadata in Documents Electronically Filed with the Judiciary**

The Working Group recommended that steps be taken to minimize the disclosure of metadata in documents electronically filed with the Judiciary.

The Supreme Court agreed with the Working Group.

6. **Education on Metadata in the Legal Community**

The Working Group recommended that judges, lawyers, and law students be educated about metadata issues as a component of judicial education programs, continuing legal education, and law school curricula.

The Supreme Court agreed with the Working Group.