

QUESTION 5 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

GeneriCorp is a corporate client of LawFirm. Partner and Associate are defending GeneriCorp in a civil case. The authenticity of a document is at issue, and the plaintiff filed a request for production of documents, including certain electronically stored information and the metadata (for example, document properties) within the electronic document. Thus, plaintiff seeks all electronic versions and drafts of the document at issue, as well as the final, executed paper version. After the parties litigated the issue of whether GeneriCorp was required to produce the electronic information under the discovery rules, the circuit court held that such production was required and entered an order compelling GeneriCorp to produce all electronic versions of the document, including embedded metadata.

All of GeneriCorp's electronic and paper documents relevant to this lawsuit are in LawFirm's office. Immediately after the order compelling discovery was entered, Partner received a call from GeneriCorp's Chief Executive Officer (CEO) asking for the return of the electronic files so he could substitute the "correct" version. When Partner asked for clarification, the CEO explained that the metadata would show that the critical document was actually created four days after it was purportedly executed and legally effective. This could establish plaintiff's claims and cost the company millions of dollars. The CEO told Partner he wanted LawFirm to respond to the document request and order to compel discovery without turning over the unfavorable evidence.

Partner has shared this information with Associate and directed Associate to carry out the CEO's instructions and either remove the metadata or return the electronic document to the CEO. Associate has been following blogs and articles about cases in which trial courts have imposed significant discovery sanctions for intentional and negligent failure to comply with discovery rules and orders.

Analyze whether the course of action proposed by the CEO and Partner would violate the Michigan Rules of Professional Conduct, and, if so, which lawyers would be in violation? What actions should the lawyers take, if any? Explain your answer.

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