
§ 3.4**Digital Communication***Email, Social Media, Text Messages*

Every law firm now communicates with clients, witnesses, opposing counsel, and employees via email. It is, therefore, disturbing that so little attention has been paid to proper methods of communication and modes of conduct in the electronic domain. It seems to be assumed by many that the rules of professionalism are somehow less precise when communicating digitally. That is a misconception.

Whether concerning email, text messages, or social media accounts, every firm will have its own policies, the following is presented as advice on how to be professional in your digital correspondence. Also, just because others in a firm correspond in a casual, less than professional manner does not mean that you are required to mimic that behavior. Follow these rules of *email etiquette*.

1. *Identify the subject matter*

Never send an email without the subject matter provided. To fail to do so makes it difficult for the recipient to know whether to open the email and makes searching for the email at a later time more difficult.

2. *Identify yourself*

There are few things more frustrating than receiving an email from someone whom you do not know, who then does not identify him or herself by name. Even for those with whom you correspond on a regular basis, sign your name, or at least initials. Think of it this way. If you wrote a letter to your boss, or a coworker, you would still sign it. An email is the digital equivalent of a mailed letter.

3. *Keep your email format simple*

Adding flowery or colored wallpaper and a bright pink font to your emails will not only make the document more difficult to read, but it will also be viewed as unprofessional.

4. *Use appropriate capitalization and punctuation*

It is often easier, or even considered "cool," to leave out capital letters at the beginning of sentences when text messaging over a cell phone. Unfortunately, this habit has now spilled over into the emailing techniques of many individuals. It is, quite simply, annoying, and exposes you to the possibly unfair judgment of the recipients of your emails.

5. *Keep messages short*

Due to the number of emails many individuals receive in a given day, you will be noticed and appreciated if you keep your emails brief and to the point.

6. *Limit use of abbreviations*

Some people overuse abbreviations, or even make up their own. Avoid this. It makes you look unprofessional.

7. *Avoid using emoticons :(*

Sometimes using a “smiley face,” or other emoticons, can help clarify when something you’ve written is in jest. As a rule, though, emoticons are not considered an appropriate means of communication within a professional setting. If you feel a “smiley face” is needed, consider rewriting the passage to better convey your intentions.

8. *Never YELL in your email*

Some email users attempt to demonstrate frustration or urgency by placing entire sentences or paragraphs all in capital letters. This not only makes the email harder to read, it is every bit as rude as raising your voice to someone in public.

9. *Be polite, patient, and appropriate*

Whether you are aware of it or not, you will develop a reputation through the tone and professionalism of your emails. This is true, of course, in all areas of communication. As the saying goes, you catch more flies with honey than vinegar. So be courteous and polite. Be patient in terms of your expectations for response. The person on the other end is not required to be on your schedule. If something is urgent, make sure you indicate as much in your communications. In addition, even if you become frustrated, keep the level of your anger in context and at an appropriate level. Ask yourself whether an email with an angry tone will get any more results than a more urgent sounding, yet polite, reminder that a response is urgently needed.

10. *You may be called to account for your emails*

There is an old legal tenet that is often forgotten, even by some lawyers: *Never, ever, put something in writing that you don’t have to*. Keep this in mind every time you create an email. While email may be used to help you document certain actions and communication, remember that whatever you write may also be used against you.

HOW TO DESTROY AN EMAIL

If you need to permanently erase an email, follow these steps:

1. Go into your *email folder* and select the email to be erased
2. *Right click* on the email in question
3. Click on *Delete*
4. Go into your *Recycle Bin*
5. Select *Delete all Files*
6. Detach the *casing* from the back of your computer
7. Remove the *hard drive*
8. Strike the hard drive a *minimum of 30 times* with a hammer
9. Place the battered hard drive in an *incinerator*
10. *Bury* the charred remains
11. *Repeat steps 1-10* on the computers of each recipient of the email as well as any servers through which the email passed.

In other words, it is virtually impossible to get rid of an email, or other forms of digital communication. Many legal cases and investigations are now focused on computer forensics, including emails, text messages, and social media files. Thus, anything you put in digital form may be used against you not only in terms of your office etiquette, but your legal liability as well.

ADDITIONAL CONSIDERATIONS

Privileged matters

There is little precedent indicating whether emails between a law firm and client are considered privileged. It is assumed that emails would be protected from disclosure, but only if the emails are between the attorney, paralegal, and the client without copying any other individuals. Make sure to check firm policy on email communication with clients.

Provide the context of the content

To avoid misunderstandings or misinterpretations, when responding to an email, don't respond without either referring to the context or, alternatively, including the content of the email to which you are responding. For example, consider the following email response:

We are fine with your recommendation. Thanks.

Without context, there is no way to know what it is that is being agreed to. Be specific as to what is being approved, agreed to, disagreed to, or commented upon. A better response would have been:

Regarding your suggestion that the deposition now scheduled for 10:00 am, on December 19, 2020 be changed to 4:00 pm, December 22, 2020, we are fine with that recommendation.

Email disclaimers

Many firms use disclaimers on the bottom of faxes and emails, declaring that if the email is received in error, the recipient is to destroy it and not read or use the contents of the document. The problem is that the disclaimer is virtually useless legally. If an opposing lawyer or party accidentally sees such a document, it is most likely fair game. In addition, it may void any privilege regarding that document. A perfect example is what occurred about three weeks prior to the start of the O.J. Simpson criminal trial.

The prosecutor's office accidentally sent a trial strategy memo to one of the defense attorneys. The fax number for the defense was on the speed dial of the fax machine (bad idea) and was dialed by accident. The defense filed a motion to prevent the defense from using the contents of the document. The court ruled that the defense had every right to use the document and view its contents since it had been voluntarily disclosed. In a civil case, such an error could result in a malpractice suit. Do not rely on disclaimers to protect the contents of an important or privileged document. Such disclaimers may make the sender feel a bit more secure, but it is a false sense of security.

It is hard to believe the two lead prosecution attorneys in the O.J. Simpson case were named "Lawyers of the Year" by the California Bar Association. Really?

Someone is watching. Always watching.

A law firm has the right to review any emails you send or receive. You should assume they are watching. Such communications are not private. Do not get too comfortable with your communications from work. The same rule applies to instant messaging. In fact, the content of any electronic communication from your work (or when using firm-supplied cell phones) may be scrutinized by the firm. In addition, your Internet browsing habits can be scrutinized at any time by the firm. Be sure to check law firm policies on these topics.