

Professional Email Protocol

By Erin E. Rhinehart

Email has fundamentally changed the way we conduct business, communicate with clients, and manage cases. Email allows us to quickly and efficiently share our thoughts, to respond to our clients' needs, and to communicate with one another. Email, however, is not without its disadvantages.

Lawyers spend weeks agonizing over sentence structure, word choice, and punctuation placement in motions and briefs; yet, lawyers often give little thought to drafting an email. Email requires the same attention to detail given to anything filed with a court or a letter sent to opposing counsel. (Ever had one of your letters attached as an exhibit to a motion to compel or placed in front of your client at a deposition?) Granted, not all emails are created equal—compare an email requesting dates on which you may depose an opposing party with an email memorializing the terms of a settlement agreement—but all communications are important. While most of us understand the importance of following certain rules when writing a business letter, we often forget these rules when composing an email message. The following are a few reminders.

1. Identify the purpose of the communication. Are you asking for a professional courtesy from opposing counsel or granting one? Are you asserting objections to discovery requests? Are you negotiating the terms of a protective order or a settlement agreement? Early identification of the purpose of your email will dictate, or, at least, guide, the following considerations.

2. Identify the tone of the communication. For example, is your email adversarial, informative, or friendly in nature? If you are asking for an extension to file a motion for summary judgment, then the tone of your email should not be aggressive or curt. Conversely, if you are asserting objections to a request for documents, then the email should have an adversarial, but professional, tone. Also, evaluate your use of capital letters for emphasis. The use of all capitals in an email indicates yelling.

3. Evaluate (and refine) your writing style. Emails are often treated as casual communications. Although it is refreshing to remove some of the outdated, formalistic legal customs, you must maintain your professionalism. For example, there is a time and place for humor and sarcasm; rarely is that time when you are engaged in a professional communication. Also, avoid personal stories. Keep professional communications separate from personal communications.

4. Identify all recipients of the communication. Who will be or should be copied on the email? If your client is copied on the email, then will you adjust your tone or style? Avoid routine copying of the same recipients for each case. Force yourself to think about who should receive a copy of each piece of correspondence. For instance, copying your client on

certain communications helps to keep that client informed. Copying your client on every communication can be annoying or upsetting. Also, when evaluating who should receive your email, avoid overuse of the “cc” and “reply all” features. If you copy someone on an email, make sure that person is aware of his or her role in the communication and why he or she was copied. In addition, use of the reply-all feature may result in inadvertent disclosures of privileged or confidential material. Before you hit “send,” review all listed recipients of an email and evaluate whether each of those individuals should receive a copy.

5. Avoid sending emails prematurely. Avoid sending an email before it is complete or has been reviewed for content, spelling, and grammar by filling in all recipients' email addresses last. If you are replying to an email, delete the email addresses, enter the substance of your reply and re-enter the recipients' email addresses. If you have a lengthy or an important email that requires significant review or revision, consider drafting the email as a Microsoft Word document and cutting and pasting the text into the email once complete. Always maintain control over the substance of your emails, as well as the recipients of your emails.

6. Draft a useful subject line. The subject line of an email is often more important than the “re:” line in a letter. Failing to include a subject line, or drafting a generic subject line, may cause your email to get deleted without ever getting read or to get pushed to the bottom of the recipient's inbox. The subject line is your first opportunity to introduce the recipient to the purpose of the email, as well as indicate the priority of the email.

7. Preserve privilege and confidentiality. Be conscious of privileged and confidential information. Forwarding an email string and copying individuals may be an efficient way of conveying a large amount of information to several people; however, that same email string may contain an email between you and your client, or one of the individuals copied on the email may break any privilege that would otherwise be associated with the communication. Further, the casual nature of email may relax your sense of what is appropriate to share with opposing counsel or your client. Always be thoughtful of what you are emailing and to whom you are emailing.

8. Evaluate the format and necessity of all attachments. The ability to share documents electronically with your partners, associates, clients, co-counsel, and opposing counsel makes your job easier and more efficient. Depending on to whom you are sending such attachments, consider the following:

In which format should the document be attached (e.g., Word, PDF)? If you are forwarding a document to opposing counsel that you do not want him or her to be able to alter, then PDF is more appropriate.

Be careful of forwarding attachments that you did not create or that you received from an unfamiliar source. Viruses are

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ubiquitous and damaging.

Evaluate whether you should scrub the metadata from the document that you are sending. Lawyers should review the law in their jurisdiction regarding metadata. A recent flurry of scholarly articles, ethics opinions, and case law has emerged regarding this topic.¹ Often, jurisdictions make a distinction between documents transmitted outside the scope of discovery and documents produced as part of discovery.² Be aware of the rules regarding your obligations as both a sender and recipient of electronically transmitted documents.

9. Review and revise. Lawyers are often (and most frequently) judged by their written word, including emails. Misspelled words, poor grammar, and incorrect punctuation are easy errors to make, but such mistakes are also easy to correct. Sloppy drafting, overly familiar language, and abbreviations are also inappropriate. For example, “OMG” and emoticons (smiley faces, winks) should rarely appear in a professional email. The same goes for casual language such as “yikes” and “oops.” Overstatements are easy to write but hard to explain later.

10. Be professional. Always be professional and civil. It is too easy to email someone in the heat of the moment. Keep emotions

out of professional correspondence. Avoid name-calling, threats, and the use of expletives. Review your state’s rules of professional conduct. To date, California is the only state that has not adopted some version of the ABA’s Model Rules of Professional Conduct.³ Also, remember that courts have the inherent power to sanction counsel for inappropriate behavior.⁴

Email is an efficient and useful tool for lawyers. Email is also an opportunity to make an impression and establish or maintain professional relationships. Remember that the same rules of legal writing and standards of professionalism apply.

Endnotes

1. See Norman C. Simon, *Coming to Terms on Mining Metadata*, N.Y. L. J., (Oct. 28, 2008).

2. *Id.*

3. American Bar Association, Center for Professional Responsibility, *ABA Model Rules of Professional Conduct*, available at www.abanet.org/cpr/mrpc/model_rules.html (last accessed March 9, 2009).

4. *Toon v. Wackenhut Corrections, Corp.*, 250 F.3d 950, 952 (5th Cir. 2001) (“When a party’s deplorable conduct is not effectively sanctionable pursuant to an existing rule or statute, it is appropriate for a district court to rely on its inherent power to impose sanctions.”) (internal quotations and citation omitted); *Cannon v. Cherry Hill Toyota, Inc.*, 190 F.R.D. 147, 161–63 (D.N.J. 1999) (sanctioning attorney for use of inflammatory language and personal attacks on opposing counsel).