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### Legal Form, Style, and Etiquette for Email

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# LEGAL FORM, STYLE, AND ETIQUETTE FOR EMAIL

EDITED AND COMPILED BY GEORGE W. KUNEY\*

## INTRODUCTION

Email, texting, and similar forms of communication (discussed collectively as “email” in this document) are still in their developmental stages as far as matters of form, style, and etiquette go. The following guidelines are worth considering when using email to communicate.

## GUIDELINES

### 1. Should I Send an Email?

Do you want to write something down in the first place, creating a permanent record of the communication that may be misinterpreted at some point in the future?<sup>1</sup> If nothing else, this consideration should provide incentive to carefully contemplate the words used and the subjects addressed in the email.<sup>2</sup>

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<sup>1</sup> “Pick up the phone. When a topic has lots of parameters that need to be explained or negotiated and will generate too many questions and confusion, don’t handle it via e-mail. Also, e-mail should not be used for last minute cancellations of meetings, lunches, interviews, and never for devastating news. If you have an employee or a friend you need to deliver bad news to, a phone call is preferable. If it’s news you have to deliver to a large group, e-mail is more practical.” Lindsey Silberman, *25 Tips for Perfecting Your E-mail Etiquette*, INC. (June 14, 2010), <http://www.inc.com/guides/2010/06/email-etiquette.html> (quoting Peggy Duncan, personal productivity expert and author of *Conquer Email Overload with Better Habits, Etiquette, and Outlook 2007*).

<sup>2</sup> “Only discuss public matters. We’ve all heard the stories about a ‘private’ e-mail that ended up being passed around to the entire company, and in some cases, all over the Internet. One of the most important things to consider when it comes to e-mail etiquette is whether the matter you’re discussing is a public one, or something that should be talked about behind closed doors. Ask yourself if the topic being discussed is something you’d write on company letterhead or post on a

Send an email to your client asking them to call you if wish to speak to them about something sensitive.<sup>3</sup> Records are frequently discoverable and you do not want to be embarrassed by what you have said, give away important strategic information, or reveal something you would rather not. Phone calls, generally, leave no trace other than a possible record of the call itself. This is particularly so with cell phones—but that is a topic for another piece.

There is some information that simply should not be memorialized in writing. For example, if opposing counsel sends you a document that is absolutely terrible, you do not want to send your client an email saying, “This is the worst document I have ever seen.” Unless your client is at a significant advantage or disadvantage because of the poor drafting of a document, you may not need to convey this information to your client at all.<sup>4</sup> A personal, informal policy of mine is not to disparage other attorneys to clients unless it is absolutely necessary. Ultimately, we are all in this together and we need to work together to close deals, and if you think your client is at an advantage or disadvantage because of how terrible a document is, you will want to convey that information to the client. Communicating that information via email or telephone will allow you to clarify your tone and your strategy moving forward. However, memorializing that type of comment in an email is dangerous territory. The situation often unfolds as follows: you have a long email exchange with a client. Much later, the client sends information to the other side. Unfortunately, buried deep in the email string is your negative comment about opposing counsel’s drafting abilities. As a result, you have automatically lost credibility, which is crucial in legal practice. You must always assume that everything you put in writing will eventually be read by the other side—whether by accident, intentionally, or by court order—so it is important to act accordingly.

## 2. Using Adverbs and Adjectives

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bulletin board for all to see before clicking ‘send.’” *Id.* (quoting Judith Kallos, author of *E-Mail Etiquette Made Easy*, *E-Mail: The Manual*, and *E-Mail: A Write It Well Guide*).

<sup>3</sup> “Briefly introduce yourself. Do not assume the person receiving your e-mail knows who you are, or remembers meeting you. If you are uncertain whether the recipient recognizes your e-mail address or name, include a simple reminder of who you are in relation to the person you are reaching out to; a formal and extensive biography of yourself is not necessary.” *Id.* (quoting Peggy Duncan).

<sup>4</sup> “Chain Letters..[sic] It is becoming more common, as more people use email for more varied purposes for it to be used for multilevel marketing, chain letters, pyramid schemes and other dubious purposes. . . . Most people, myself included, find these email practices particularly annoying.” David Tuffley, *Email Etiquette (Netiquette)*, GRIFFITH UNIVERSITY (June 23, 2009), [http://www.ict.griffith.edu.au/~davidt/email\\_etiquette.htm](http://www.ict.griffith.edu.au/~davidt/email_etiquette.htm).

Question the need for any adverbs and adjectives in the message. Just like in a brief, contract, or formal letter correspondence, the law presumes that all words are used for a purpose and will endeavor to assign a meaning to each, whether that meaning was intended or not. Excise words and phrases like “random,” “IMHO,” and the like.<sup>5</sup> Remember, sarcasm and humor are often difficult to explain in court from a cold record removed from the emotional and cultural context in which they were born.<sup>6</sup>

As lawyers, we tend to be argumentative and think quickly on our feet. As such, we often feel the need to get the last word in situations. When our clients tempt us with funny responses, we want to have a laugh with them and respond; however, we must walk a fine line between communicating with our clients and impropriety. Your clients are paying your exorbitant hourly rate because they believe that you add substantive value to a deal—not to entertain them. If you lose credibility by trying to be funny or inadvertently offend your clients by responding sarcastically, they may wonder if you are truly adding value to the deal.

### 3. Confining Subject Matter

In all business email, try to confine the email message to a single subject<sup>7</sup> or group of related sub-subjects.<sup>8</sup> In other words, a single question or response or even a single subject matter that involves, say, three sub-questions or

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<sup>5</sup> “Avoid using abbreviations, such as IMHO (in my humble opinion) or TTYL (talk to you later), not everyone is familiar with them.” *Business and Workplace Email Etiquette*, LETTERS FROM HOME ROOM (July 8, 2011), <http://www.lettersfromhomeroom.com/emails/business-and-workplace-email-etiquette>.

<sup>6</sup> “Use exclamation points sparingly. The maximum number of exclamation points in a business e-mail? One. Otherwise, you risk looking childish and unprofessional.” Silberman, *supra* note 1 (quoting Lindsey Pollak, career and workplace expert, e-mail etiquette consultant, and author of *Getting From College to Career*).

<sup>7</sup> “Keep the subject line current. If an email’s subject diverges over the course of a long thread from the original topic, it’s okay to change the subject line.” Dave Johnson, *9 Keys to Email Etiquette*, MONEYWATCH, (Apr. 11, 2012, 7:15 AM), [http://www.cbsnews.com/8301-505143\\_162-57411851/9-keys-to-email-etiquette](http://www.cbsnews.com/8301-505143_162-57411851/9-keys-to-email-etiquette).

<sup>8</sup> “Answer all questions. A favorite email trick is to cherry-pick a long email and only respond to the easy questions, or the issues you want to deal with, as if the sender will somehow forget that there are other questions left unresolved. Deal with each question or issue, even if it means acknowledging you don’t know the answer. But don’t make people re-ask the same questions over and over because you chose to ignore half the email.” *Id.*

responses. Email is such a quick form of communication that readers are often loath to wade through more than one screen's worth of questions.

Some clients will send you an almost "stream of consciousness" email that addresses various topics. It is important to focus the correspondence when you respond. You can do that with paragraph and sentence structure. For the more visual client, you can use bullet points or an outline format. It is important to focus the client, so that you can both be on the same page and you can better serve the client. If a client sends you an email about one issue and then sends you a separate email about another issue, respond to each of those emails separately rather than mixing ideas or concepts into one email. You will have to use your judgment on this, but try to minimize the concepts in each email.<sup>9</sup>

#### 4. Paragraph Construction

Short paragraphs are important.<sup>10</sup> Do not feel constrained to include an introductory or topic sentence, body sentences, and a conclusion sentence. Be brief, to the point, and separate each subject into a separate paragraph to focus the client's attention. These are not so much English composition paragraphs as they are bulleted talking points or inquiries.<sup>11</sup>

Do not be afraid to use a one-sentence paragraph when conveying important information.

#### 5. Tone

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<sup>9</sup> "Summarize long discussions. Scrolling through pages of replies to understand a discussion is annoying. Instead of continuing to forward a message string, take a minute to summarize it for your reader. You could even highlight or quote the relevant passage, then include your response. . . . If you are forwarding or reposting a message you've received, do not change the wording. If you want to repost to a group a message that you received individually, ask the author for permission first." Laura Stack, *12 Tips for Better E-mail Etiquette*, MICROSOFT OFFICE OUTLOOK SUPPORT, <http://office.microsoft.com/en-us/outlook-help/12-tips-for-better-e-mail-etiquette-HA001205410.aspx>.

<sup>10</sup> "Bottom line up front. . . . [D]on't waste your recipient's time. Be direct and clear about the point of the email right away, then give additional context. Don't make people wade through 300 words of back-story before they reach the action item or primary request." Johnson, *supra* note 7.

<sup>11</sup> "Use a sensible email signature. . . . [D]on't cram your email signature with quotes from your favorite TV show, motivational speaker or witty friend. Do include your name, email address, telephone number and postal address (where appropriate)—obviously, your company may have some guidelines on these. It makes it easy for your correspondents to find your contact details: they don't need to root through for the first message you sent them, but can just look in the footer of any of your emails." Ali Hale, *Email Etiquette*, DAILYWRITINGTIPS, <http://www.dailywritingtips.com/email-etiquette>.

Take care with tone.<sup>12</sup> Email is truly written on a blank screen. Unlike face-to-face communication, there is no visual body language feedback to allow us to see how our message is being received and whether we need to adjust it accordingly. Unlike correspondence on old-fashioned letterhead, there is no context that suggests to us that we ought to mind our P's and Q's. Just as people tend to act more informal when dressed in jeans and t-shirts rather than suits and formal wear, so too with email: the relative context-less environment and informal forms that have been adopted seem to encourage less restrained choice of words and phrasing. They also provide little contextual clues for interpretation, meaning that the recipient may not “get” what you mean and take offense or umbrage.

There is nothing that makes an attorney more paranoid than wondering if they have offended their client. Be careful. If you have any doubt about sending a substantive email, set it aside and address it with fresh eyes. If you have any doubt about sending a non-substantive email, do not send it.<sup>13</sup>

## 6. Making a Record

Remember your contracts cases involving offer and acceptance? Many of the best ones come from the pre-telephone era, when offers and acceptances were transmitted by telegraph or telex. After the telephone was in wide use, these cases devolved into “he-said/she-said” testimonial battles involving the credibility of witnesses. Email has changed all that. We are back to a state of affairs from the late 1800's, with email chains that, subject to later editing and modification, reflect the exact communications between the parties. You are making a record; you are being recorded; you will be hard pressed to contradict what you write down and send.

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<sup>12</sup> “Be careful about your tone. It’s hard to read tone in an email, which is why emoticons were invented. [But see *infra* note 20], referencing emoticons. Be careful not to inject attitude or sarcasm into your replies, and give emails that you think have ‘an attitude’ the benefit of the doubt. Also be really careful when trying to be funny—it’s easy to misinterpret humor in email. Bottom line: No matter how you feel about the people you’re communicating with or the contents of the message, go out of your way to always be upbeat and polite.” Johnson, *supra* note 7.

<sup>13</sup> “Use sentence case. USING ALL CAPITAL LETTERS LOOKS AS IF YOU’RE SHOUTING. Using all lowercase letters looks lazy. For emphasis, use asterisks or bold formatting to emphasize important words. Do not, however, use a lot of colors or graphics embedded in your message, because not everyone uses an e-mail program that can display them.” Stack, *supra* note 9.

Be careful when you are sending your proposed revisions to opposing counsel. You might consider including a caveat such as, “These drafts are subject to my client’s review and comment in all respects.” Such a statement gives the client time to review the drafts without holding up the redlining process, and it also gives the attorney and the client some flexibility in terms of other revisions that may become necessary.

## **7. Review Email Fields**

Make it a habit to review the “to,” “cc,” “bcc,” and “from” fields before pressing send. Make this automatic; there have been many inadvertent communications of confidential and strategic matters to opposing counsel and clients through “reply all”—including ones from “bcc” parties to the original message who have blown their cover on systems that allow this!

Some would go further than the paragraph above and advise counsel to never “cc” a client on a message to the opposing party—whether in the litigation or the transactional context. Rather, send the message to the opposing party, then go to “Sent Mail,” and then forward it to your client. That takes the risk out of your client hitting “reply all” and including the opposition in your client’s reply. This did not happen in the days of paper correspondence. A “cc” on an email message is far different than a “cc” on a paper letter. If you are on the “cc” line, do not reply; you are on the “cc” line for a reason: the message is for your information *only*.

Also, be careful with auto-fill email addresses. Many of us are in the habit of simply typing a few letters of a client’s name and having the client’s email address auto fill into the “to” field. This can be a huge problem when you have multiple clients and contacts with the same name, like “Williams” or “Barbara.” Always double-check the recipients before sending.

## **8. Be Wary of the Forwarding Client**

In the world of transactional work, presume that your client will simply forward your message to the opposing side. That is, if you send an analysis of a document via email or even as an attachment to an email, presume your client will simply forward that to their contact on the opposing side. Always, always, always write your analyses this way unless you adamantly warn your client not to simply send it along. Never put any strategy comments into your message or your memo

unless you have a clear understanding with your client ahead of time that she will not forward it to the other side.<sup>14</sup>

Because your clients will most likely forward your message to the other side, you must remember to avoid putting anything in writing that you do not want the other side to see. While your client may only intend to forward a particular attachment, the entire email string may go with it—including your prior comments that you intended to be confidential and any meta-data in any attachments.<sup>15</sup>

## 9. Proofreading

Go back and re-read your email.<sup>16</sup> You will be amazed at the errors you find. You will also be amazed at how cursory some of your statements in the message are and how ambiguous your phrasing is. Email is so informal and so instant that you do not think everything all the way through when replying or even originating an email message. In addition to proofreading the message for errors, proofread it for content and clarity, with emphasis on clarity.

Consider leaving a draft email overnight, so that you can re-read it with fresh eyes and a fresh perspective the next day. Very rarely is an email so time sensitive that it must be sent the very moment you type it. You will be surprised at how many changes you will make to an email after you have had some time to decompress and think about your response.

## 10. Security

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<sup>14</sup> “Avoid using HTML in your e-mails, not everyone can view it and it takes away from the professional image of the letter.” *Business and Workplace Email Etiquette*, *supra* note 5.

<sup>15</sup> “Be careful with confidential information. Refrain from discussing confidential information in e-mails such as someone’s tax information or the particulars of a highly-sensitive business deal. Should the e-mail get into the wrong person’s hands, you could face serious—even legal—repercussions.” Silberman, *supra* note 1 (quoting Peter Post, director of the Burlington, Vermont-based Emily Post Institute, which offers etiquette advice and answers to manners questions such as wedding etiquette, parenting issues and table manners).

<sup>16</sup> “Your e-mail is a reflection of you. Every e-mail you send adds to, or detracts from your reputation. If your e-mail is scattered, disorganized, and filled with mistakes, the recipient will be inclined to think of you as a scattered, careless, and disorganized businessperson. Other people’s opinions matter and in the professional world, their perception of you will be critical to your success.” *Id.*

Remember, that when texting or emailing—or even talking, for that matter—from wireless devices, those devices may or may not be secure from eavesdroppers and hackers. At the dawn of the wireless era, all transmissions were analogue and anyone could listen to cell phone conversations with a cheap scanner available just about anywhere. Most, if not all, wireless communication now takes place in a digital format, which wireless companies will tell you is not subject to eavesdropping. Wireless companies will not, at least in our experience, give you that in writing, however. This tells us that there is a possibility of others intercepting your communications, notwithstanding the claim that all communications are secure because of the digital format. Keep critical communications, whether voice, text, or email, on wired connections. Avoid Wi-Fi, as well as hand-held wireless devices, for anything that is really important or sensitive.

## 11. Protect Yourself From Your Emotions

Never write an email or text response when you are angry or particularly bothered by what you have just received. First, what you have just received may be misguided or poorly written (see all of the suggestions above) and may not accurately reflect what the author intended to say. Second, because the instantaneous nature of email and text messaging does not force you to reflect on what you say, if you reply when angry or upset, you may cause more harm than good and escalate the issue to an even higher, and possibly more damaging, level. This is good advice in general but is particularly important in the era of instant communication.<sup>17</sup>

Even if the sender might deserve a verbal blistering, heed your mother's sage advice and be the bigger person. Once you send something out, you cannot get it back. In my experience, most clients prefer that their attorney be professional and competent, and, perhaps more to the point, most clients have no desire to fund a battle of words.

## 12. Verifying Receipt

Always remember that you cannot verify receipt of an email or text message. Even if you use an attached return receipt, the recipient need not acknowledge that return receipt. If you want to clearly establish that some communication was received, even a fax is not foolproof. There is not a person

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<sup>17</sup> "Avoid angry outbursts..[sic] Don't send or reply to email when you are angry. Wait until you have calmed down, then compose the email. Once written and sent, it can't be recalled. Angry or intemperate email has a way of rebounding on the sender. As a guide, ask yourself, 'would I say this to the person's face?'" Tuffley, *supra* note 4.

reading this who has not said, “Gee, I never received that,” when the message was really received and nothing was done about it.<sup>18</sup> You simply cannot prove that the intended recipient received an email, text, or even a fax, for that matter. There is still a role, then, for certified and registered mail or courier delivery with a signature acknowledging receipt.

### 13. Emoticons

Do not use emoticons. This is a matter of preference. Ultimately, you want to be friendly, but you also want to be professional, and one can accomplish that through tone and word choice without using a smiley face.<sup>19</sup>

### 14. Salutations

If you use salutations, such as “Good morning,” “Good afternoon,” etc., make sure you use them correctly. Do not send a “Good Morning” email at 4:00 p.m. Also, be mindful of time zones. In this increasingly international marketplace, you are often not dealing with parties located where you are. By being aware of these issues, you appear more professional and competent.<sup>20</sup>

### 15. Attachments

Always double and triple-check any attachments you are sending via email. It is easy to be concentrating on the substance of the email message and then completely forget to attach the relevant documents.<sup>21</sup> This leads to multiple

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<sup>18</sup> “Reply—*No matter what.* Acknowledge promptly that you received a message. If no particular response is required, just say ‘thanks.’ If you own an ‘action item’ but can’t get to it for a while, let the sender know you saw the message and estimate when you expect to reply. But don’t let mail pile up in your inbox without acknowledging its receipt.” Johnson, *supra* note 7 (emphasis in original).

<sup>19</sup> “Lose the emoticons. Likewise, most business email shouldn’t have little smileys in them. They make you look goofy and unprofessional.” *Id.*

<sup>20</sup> “Know your audience. Your e-mail greeting and sign-off should be consistent with the level of respect and formality of the person you’re communicating with. Also, write for the person who will be reading it—if they tend to be very polite and formal, write in that language. The same goes for a receiver who tends to be more informal and relaxed.” Silberman, *supra* note 1 (quoting Lindsey Pollak).

<sup>21</sup> “Don’t forget the attachments. Sure, everyone makes mistakes, but you shouldn’t be ‘that guy’ who always forgets to include attachments, fails to spell-check the email, or omits the subject line.

emails and apologies and is a hassle to everyone involved. On that note, be very careful about what documents are attached. Developing a system for naming your documents is important to avoid sending a document titled “Operating Agreement” to the wrong company or client. Being specific in naming your documents helps to ensure that you are sending the client the correct documentation and not distributing another client’s information to the wrong people. Having the client’s name or number in the file name is one effective approach.

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Indeed, you might want to use a tool that makes sure your emails always have subject lines and attachments when you write something like ‘attachment enclosed.’” Johnson, *supra* note 7.