

D'OH!!!!

The Dumb Things Lawyers Do with E-Mail

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Even Homer Simpson might be appalled at what lawyers do with their e-mail. We've compiled our list of favorite gripes. If you're a savvy e-mail lawyer, perhaps none of the mistakes below are yours, but if you see yourself below, it might be time to polish up your Net manners!

1. **Check the spelling and grammar!** Would you send out something on your letterhead that is full of misspellings or grammatical errors? Most surely, you would not. No lawyer wants his or her correspondence to look unprofessional. But in a frantic, pressed-for-time world, lawyers are increasingly conducting their business via e-mail. Nothing inherently wrong with that, but for heaven's sake turn on the spelling and grammar checker and proof your e-mail before you hit send. We've received e-mails from lawyers with so many misspellings and grammatical errors that it is hard to conceive that they graduated from high school, much less law school!
2. **Get your own domain.** In today's world, as unbelievable as it seems, we continue to receive e-mail from joeqlawyer@aol.com, jillqlawyer@yahoo.com and the like. If you haven't figured it out yet, let us be crystal clear – today's more sophisticated clients have utter disdain for lawyers so far behind the times that they don't have their own domains. For mere pennies (at least figuratively), attorneys can own their own domain. And guess what? If you have an AOL, Yahoo, or Hotmail account and you (or they) decide to cancel it or the company bellies up – you do not have a transportable domain and must make sure that all clients have your new e-mail address. E-mails sent to your old address will vanish into the electronic void. On the other hand, when you own the domain smartlawyer.com, you can travel merrily from ISP to ISP with your website and your e-mail address of dudleydoright@smartlawyer.com.
3. **Remember that e-mail lives forever.** We've read highly entertaining e-mail from lawyers who were thoroughly ticked off. Make a note to yourself: "I will not e-mail anyone when I am angry." First, you're likely to say something that will come back and bite you. Second, what you say in anger and what you will say after a cool-down period are two different things – and the cooled down reply is likely to be the smartest play. Finally, e-mail doesn't vanish. It's on your backup tapes, the person who received it may save it, forward it, etc. – worst of all, it may turn out to be the subject of litigation. We always tell clients, "Ask yourself. Is it ok with you if your e-mail is on the front page of your local newspaper? If not, don't send it!" Which brings us to the Mom rule below.

4. **Don't hit "Send" unless it's ok if Mom reads it.** There are some activities that don't belong on business e-mail. If you can't figure out what, you're too young to be reading this magazine. Business e-mail may be monitored by your law firm. It may turn out to be the subject of discovery in a malpractice or other lawsuit. The person you're e-mailing may not guard your privacy as you would. You may, even with security on your network, have spyware on your machine monitoring your activities. This "Mom" rule applies more generally to all personal e-mail and not just the "R" or "X" rated stuff – this is the perfect place to get a free Hotmail, G-Mail or Yahoo account to conduct your personal business (including your financial transactions!) to make sure that what is personal stays personal. Even with this personal account, remember that there is inherent danger of disclosure using the personal account in a business setting. At home, you control your own security and you do not need to consider whether your activities online are being monitored by an employer.

5. **Look carefully at the recipient name before you hit send.** This is particularly true if you use the auto-complete feature of your e-mail program, where you start typing "jo" in the "To" book and it cheerfully offers you johnsmith@yahoo.com who you write to often. However, if you meant to write johnsutton@lawfirm.com, this can be a big boo-boo. Herewith a cautionary tale from one of the authors, who wrote a testy, slightly threatening e-mail to an attorney who had failed to comply with discovery requests. Unfortunately, it was misaddressed to an attorney with a similar name, who demanded to know what the heck the author was talking about. Profuse apologies behind her, your heroine finally got the right name. One more tale, which we will tell discreetly to protect our "R" rating: a partner at a local firm was having an affair with an associate. He e-mailed her with his plans for the night at a hotel rendezvous. These plans included various oils, mechanical devices and a set of handcuffs. Unfortunately, in his erotic euphoria, he goofed and sent the e-mail to the entire firm via an e-mail distribution list. It didn't turn out to be such a great night after all.

6. **Remember that you have a "bcc" (blind carbon copy) field.** Not everyone loves to have their e-mail addresses shared, and it is a clear violation of "Netiquette" to do so. If you want to send holiday messages to your clients, fine, but their addresses should go in the bcc field. Not only do folks get irritated by having their addresses shared with total strangers, it also results in more spam as their e-mail addresses, without their consent, are now on other peoples' hard drives ready for the bots, worms, viruses and Trojans of the world to exploit them. There is a notable exception to this guideline: if you are working with a group of folks at your firm, obviously having e-mail addresses visible is a good thing since they can hit "Reply All." The same applies to bar committees and the like, where "Reply All" is a desirable feature.

7. **Have a well-designed signature block.** Hey, this is free advertising! And the best "branding" you can get. Your name, over and over, putting small wrinkles in the gray matter of your clients' and colleagues' brain. Here too, close at hand, is

all your contact info so they can send you a letter or a fax, or visit your website. Virtually all e-mail programs now make it simple to create a signature block. Simply type in “signature” in your e-mail program’s “Help” and you’ll be good to go in no time.

8. **Don’t send out metadata unless you intend to!** Ah, but lawyers are a slapdash bunch. You need to send a document to a client, you attach it to your e-mail and through the magic of the Net, it is almost instantly at your client’s fingertips. But unless you’ve scrubbed the document of its metadata, your client (or God forbid you sent something to opposing counsel!) can plainly see who the author of the document is, how many revisions it went through, who saved it last, when it was last printed, and, if they have the right software, the entire chain of authorship, complete with comments and revisions. How do you avoid this? You can PDF it, which will strip out almost all of the metadata, or you can use a metadata scrubber. Our favorite is Metadata Assistant from www.payneconsulting.com, which runs about \$80 per user. It is idiot proof (one of the authors knows this, being a lawyer herself). When you go to transmit a document, Metadata Assistant pops up a box saying, in effect “Wait a moment you chowderhead!!! Are you sure you want to send this without cleaning it?” On more than one occasion, having been saved from self destruction, we’ve knelt in reverent prayer, thinking of the horrors that might have ensued if a sensitive document had been sent out with the metadata still intact.
9. **Think carefully before you engage in substantive conversation!** E-mail is fine for setting up appointments, advising clients of court dates, etc., but do you really want to conduct substantive business that way? We have seen countless cases where attorney-client correspondence was monitored by spyware – can you afford to take that risk? Is it prudent to discuss things via e-mail, especially sensitive things, when one never knows what a client might say? The whole concept is rife with potential ethical problems. Imagine a criminal attorney who, after corresponding with his client, gets a late-night e-mail from a client who has had too much wine confessing in maudlin regret to a crime. Or an angry client who decides that your e-mail needs to be shipped off to a disciplinary board with a complaint. If it can happen, it will, though hopefully not to you. Five good practice tips:
 - a. **Say nothing substantive until you have a retainer agreement in place.** Make sure any e-mail you send to a prospective client says that there is no attorney-client relationship in place until there is a retainer agreement.
 - b. **Make sure the retainer agreement addresses e-mail.** It is prudent to have a separate clause, which the client initials, stating that the client authorizes the use of the e-mail in his or her case, and understands that sensitive subjects should not be addressed in e-mail. Highlighting this clause in some manner and having a separate set of initials may help you

down the road if the client ignores your advice.

- c. **Follow your own advice.** E-mail is fast and easy – its allure can be seductive. However, it is often better and safer to pick up the phone and confer.
- d. **If you're going to be away, use an "Away From the Office" message.** Most e-mail packages allow you to make an "out of office" message these days. At least the client will know why you cannot respond. If an "out of office" message is not possible with your e-mail configuration, you may want to actively notify clients that you will not have access to your e-mail prior to being unavailable.
- e. **What's your e-mail response time?** This is another sore spot with clients, and suggests another clause that you should probably insert in the retainer. Set the client's expectations by saying something along the lines of "I will attempt to respond to all e-mail within 24 hours or to let you know if I am out of the office or otherwise unavailable." Clients get accustomed to the immediate gratification of e-mail, so it is best to set their expectations early on.

10. **E-mail is great for business development – use it!** E-mail is a splendid marketing tool, and too rarely used. You never, ever, want to use it for spam, of course, but keeping your name in front of clients and colleagues is very important for future business and for referrals. In today's electronic world, it is perfectly acceptable to send birthday or holiday wishes via e-mail. We frequently use it to say a warm hello to client after a case is closed and to express our hope that we'll be able to work together again. If something crosses our desks that might interest a client, we forward it on. We use our Contacts in Outlook to keep records of the names of spouses and children, and other facts of interest. Since we suffer from the classic malady CRS (Can't Remember Stuff – well, it's something like that), our database of information is invaluable. If an old client calls up out of the blue, we can quickly pull up the client in Contacts and ask about the kids by name – they really like it that you remembered (and for heaven's sake don't give your database secret away!). Likewise, when you want to e-mail a group of clients, perhaps because of a new development in the law that they need to know about, it is simplicity itself to write an e-mail to a group, selecting the group's members from your Contacts list. Just remember **Rule 6** and use the "bcc" block for the addresses!

There you have it, a top ten list for the 21st century lawyer. We have finally reached the point where virtually all lawyers have succumbed to our times and now use e-mail. There were a LOT just five years ago who swore they never would. We are down to a handful of stragglers still resisting. But as the electronic world has become the norm, it has also brought new ethical and professional considerations with it. E-mail can be a trap for the

unwary, but it is an enormous boon to those who use it effectively.