

E-Mail Like a Lawyer

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As one of the most common — and commonly misused — forms of business communication, e-mail can enhance or hinder your professional success. That’s why it pays to evaluate your e-mail habits and make appropriate improvements.

Most professionals know from experience the truth expressed in a book by Lynne Agress: “[E-]mail . . . has encouraged just about everyone to try his or her hand at writing off-the-cuff, with little or no preparation or forethought. As a result, lawyers, architects, accountants — all businesspeople, in fact — have been given an equal opportunity to embarrass themselves.”¹

Whether you’re a novice or a seasoned business pro, it’s a good idea to review your e-mail practices regularly and make necessary improvements. Use this article to get you started.

First, a few threshold matters:

- Don’t use smileys, other emoticons, or abbreviations like *LOL*. These might be appropriate for personal e-mail and text messages but not for the office.
- Use standard capitalization, punctuation, and spelling.
- Edit and proofread your messages as carefully as you would a letter.

¹ Lynne Agress, *Working with Words in Business and Legal Writing* 105 (Perseus Publishing 2002).

- Above all, assume that the recipient will judge you by your e-mail messages. Think about how you sound and what a reader might think.

With these points in mind, let's consider some key advice for sending the right (e-mail) message.

Think, Pause, Think Again, and Then Send

E-mail's speed often causes senders to write, reply, or forward too quickly. And its ease often causes e-mailers to neglect thoughtful scrutiny. Hence the advice to think, pause, think again, and *then* send.

In my legal-writing classes, students often report bad e-mail experiences, most caused by haste. Some arise when a summer clerk hits "Reply to all" instead of "Reply" and sends a personal, often negative message to everyone at the office. Others get burned trying to be funny or cute in ways their classmates would understand but lawyers at the office do not.

Mistakes from haste happen to lawyers too. In an incident reported in the *New York Times* in April 2002,² a lawyer at a major New York firm inadvertently destroyed the confidentiality of the bidding process for a bankrupt client. The lawyer was sending a routine e-mail message to all the potential bidders for a bankrupt client. Their identities were to be kept secret, but the sender inadvertently included all their e-mail addresses in the message.

Think about whether you should send an e-mail message at all. Often, a real letter is better than an e-mail message. No matter how formally worded an e-mail message is, it's still less formal than a

² Simon Romero & Geraldine Fabrikant, *Secret List of Potential Suitors Exposed*, 151 N.Y. Times C2 (Apr. 10, 2002).

hard-copy letter. If the formality and seriousness of a real letter is called for, write one. Sometimes a phone call is a better option. Use the phone when you need an immediate response, when you need to ask questions and negotiate, or when you have concerns about privacy.

To make good decisions about when and when not to use e-mail, consider the advice of Jeffrey Fuisz and Alison King, lawyers at Kaye Scholer in New York. They suggest asking the following questions before sending an e-mail message:

- Would you be comfortable if everyone on your team saw the e-mail you're sending?
- How would your clients react if they saw the message?
- Are you accomplishing anything constructive with your response?³

Unless you are comfortable with the answers to all three questions, Fuisz and King write, don't send the message.

Why so many cautions about e-mail? One word: easy. E-mail messages are easy to forward, easy to include in a reply, and easy to include in the most treacherous of e-mail actions: reply to all.

When you send an e-mail message to a client, Fuisz and King warn, assume the client will forward it to others.⁴ Your client might even send the message to the opposing side, writes lawyer Frederick Hertz in an August 2002 *Texas Lawyer* article. As Hertz recalls, "I have had the pleasure of reading the complete confidential advice of my opposing counsel when her client forwarded it on to my client as part of a back-channel negotiation ploy."⁵

³ Jeffrey A. Fuisz & Alison M. King, *Beware the Ease of E-Mail*, Legal Times 18, 18 (Apr. 21, 2003).

⁴ *Id.*

⁵ Frederick Hertz, *Safe E-Mail Practices for Solos*, Tex. Law. 31, 31 (Aug. 26, 2002).

Of course, clients can repeat what you say, and they can photocopy and give away your written advice. But these methods of passing along information require more effort than forwarding e-mail.

Use the Subject Line

To be a considerate and clear e-mailer, use subject lines effectively. You have certainly received a forward of a forwarded e-mail message that contains the original subject line — one that now has nothing to do with the current message. The same is true of multiple replies to replies. The subject line, which busy readers use to sort and prioritize their messages, loses its value when the sender doesn't bother to update it. Using a clear and accurate subject line allows a reader to easily skim the inbox and read messages by priority of importance.

For example, the general counsel of a nonprofit organization told me that he once got an important e-mail message requiring his urgent attention. The subject line was “Rosie’s birthday party.” This resulted from the sender’s using an earlier, unrelated message as the vehicle to forward a new message. But because the general counsel received a large volume of e-mail, he put the “Rosie’s birthday” message at the bottom of his list and didn’t get to it for days.

That’s why effective e-mailers change and update the subject line, even if only a word or two, so that the recipient gets a better sense of the *current* subject. Suppose you receive an original message that has this subject line:

Reminder: Rutherford deposition tomorrow

You might reply with a subject line like this:

Confirming Rutherford deposition tomorrow

By replacing just one word, you have made your e-mail message more helpful and more quickly informative to the recipient.

Besides updating subject lines on replies, you can do much to improve subject lines in original messages. Three tips:

- Be specific. Think of the subject line as summarizing the message instead of merely defining the topic.
- Use “FYI” to introduce the subject, or include your recipients in the “CC” line, to signal that the message is not directed primarily at them.
- State or hint at the requested action in the subject line.

Here are some examples:

Instead of: Legal memo

Write: First draft of Coastal Bank memo attached

Instead of: Impact statement

Write: Need Delta site-impact statement by Friday, 6/2/07

By using the subject line to summarize the message and to give the reader a clue about the content and the purpose of the message, you set yourself apart from run-of-the-mill e-mailers.

Use a Salutation

When you work in a law office and send e-mail messages to colleagues, professional etiquette requires that you begin with a salutation — a sign or expression of greeting. Perhaps you think of the “To” line as all the greeting you need. But most e-mail

recipients don't consider the "To" line to be part of the message. So use a salutation, and adjust it to the level of appropriate formality:

Formal: Dear Ms. Anderson: (with colon)

Moderate: Dear Denise, (with comma or colon)

Informal: Denise, (with comma or colon)

Write Short Messages

Readers are probably more likely to give up on reading a long e-mail message than any other type of writing. As one lawyer (whose name I've forgotten) told me, "Seven pages of single-spaced text becomes even more oppressive when cut-and-pasted into an e-mail." So keep it short.

As for what's short, some recommend the one-screen rule: don't send a message that requires the recipient to scroll beyond the first screen. If you do, you're all but asking the reader to ignore the later parts of the message. Of course, you can't know the recipient's screen size or type settings, and you might occasionally need to write a long message. But err on the side of brevity. The longer the message, the more likely that you should be writing a letter or making a phone call.

Think about your use of extraneous text in forwards and replies. If you are replying to someone as part of a continuing thread, you may want to include the text of previous messages so that the reader can follow or recall the context. But if you are forwarding or replying on an unrelated topic, you may decide to delete the content of previous messages to reduce clutter. Check your e-mail program's default settings to see whether the text of previous messages is automatically included, and adjust them to meet your needs.

Use Short Paragraphs in Block Style

A short message with short paragraphs is more likely to be read and understood. After all, that's what e-mail is really for: short, quick messages. Long paragraphs, like long messages, deter readers even more in e-mail than in other media. So write in short chunks.

And present those chunks in a readable format. Don't bother indenting the first line of each paragraph in an e-mail message. Block style — with an extra hard return between each paragraph — is the right style for e-mail.

So instead of looking like this:

Ms. Mandel:

Since we both agree that the exact sales price will depend on the then-current market price, I suggest that we incorporate a market-price provision into the contract rather than waiting for the closing date to get closer so that we can get the exact price into the contract. I have drafted market-price terms in other contracts, and I know that it can work well. I have the language ready to go and would be happy to send it along for your review. That's my suggestion to resolve this small impasse. Do you have any suggestions? I'd be open to considering them. The other issue, of course, is that the tentative closing date keeps getting pushed later into the year. We probably need to get together to discuss the situation and agree on a firm closing date.

Your e-mail message should look like this:

Ms. Mandel:

1. Do you have a suggestion for resolving the price-term impasse? I have a suggestion below.
2. Can you meet me Thursday (5/22) for lunch to firm up a closing date?

Suggestion on price term:

Since we both agree that the exact sales price will depend on the then-current market price, I suggest that we incorporate a market-price provision into the contract rather than waiting for the closing date to get closer so that we can get the exact price into the contract.

I have drafted market-price terms in other contracts, and I know that it can work. I have the language ready to go and would be happy to send it along for your review. I'm also open to considering your suggestions.

This revision will be easier to read and respond to.

Put the Question or Point Up Front

The example above did more than break up the paragraphs. It also moved the important questions from their original location — buried in a long paragraph — to a prominent position up front. If you are asking a question in the message, ask it first. If the reader needs background to understand the question, then ask the question and say that the background follows, like this:

Don,

Can you prepare a reply brief in *Henderson v. American Technologies*? You may need some background to be able to answer that, so here it is.

If you ask the question up front, you're more likely to get an answer. If the message had started with the background about the *Henderson* case, the reader may have quit reading before getting to your question.

Another helpful technique, recommended by Steven Stark, is to summarize the question you were asked when you reply.⁶ When you answer a question in a reply, write something like this:

⁶ Steven D. Stark, *Writing to Win: The Legal Writer* 245 (Main Street Books 1999).

Becca,

You asked whether I would be able to work on the *Henderson* reply brief. I do have the time but will need to start tomorrow. I have a 5 p.m. deadline for another brief today.

Though the recipient can scroll down and reread what she asked you, you make things clearer and easier by restating the question up front.

If you're not asking a question but making a point, use the first sentences of the e-mail message to summarize your point. Many lawyers resist this idea, saying to themselves, "I need to give the background first" or "I need to support this idea before I introduce it." Maybe so. But you'll usually get better results if you summarize the point first and give the background or support later.

For example, here are two versions of an e-mail message I sent to my students. The "before" text is a draft that does not put the point of the message first. The "after" text is the final version that moved the point of the message up front.

Before:

Dear Students,

I spoke to the Dean of Academic Affairs today about getting an exception to the law school's curve for the Legal Drafting course. As you know, I believe that I should be allowed to give grades that are higher than they would be if I conformed to the curve.

He granted me an exception to the law-school curve for three reasons: the small class size (24 students), the self-selecting nature of the course (i.e., students who signed up for this course probably take legal drafting seriously), and the fact that I had already graded and returned two earlier assignments that were not based on the curve.

So as I hoped, the grades for Legal Drafting do not have to conform to the law school's curve.

After:

Dear Students,

As I hoped, the grades for Legal Drafting do not have to conform to the law school's curve.

I spoke to the Dean of Academic Affairs today about getting an exception to the law school's curve for the course. As you know, I believe that I should be allowed to give grades that are higher than they would be if I conformed to the curve.

He granted me an exception to the law-school curve for three reasons: the small class size (24 students), the self-selecting nature of the course (i.e., students who signed up for this course probably take legal drafting seriously), and the fact that I had already graded and returned two earlier assignments that were not based on the curve.

Explain Attachments

Make it a practice to always explain — early in the message — what you have attached, in what form, and why. Many e-mail users are rightly concerned about opening attachments. So even if it's a harmless document, explain it.

And give the file you're attaching a helpful name. Attaching a file called "memo" or "letter" makes the file harder to recognize, especially if the recipient doesn't open it directly from the message screen. A better name might include the creator's name and a date:

- schiess_memo_6-21-08
- martin_demandletter_draft

Finally, don't attach a file to a message unless your recipient asked for it or might reasonably expect it.

Use a Sign-Off

In a letter, you'd always sign off with something, whether *Sincerely*, *Yours very truly*, or *Best regards*. You can be less formal in e-mail messages, of course, but in a professional setting, you ought to sign off. It can be as simple as *Thank you for your help*, followed by your name.

Set your e-mail preferences to always include a signature line, but don't get carried away. Keep your signature to a few straightforward lines, consisting of your full name, mailing address, e-mail address, and perhaps your firm's website address. (Your firm may set this up, along with any legal disclaimers, as a standard feature of all outgoing e-mails.) And remember that professional e-mail messages never include extraneous information like quotes of the week or artwork created with punctuation marks.

Every e-mail message you send says something about you and your professionalism. What ought to concern you is that e-mail keeps talking; it keeps on saying something about you long after you've sent the message. Whether by intentional forwarding or by an accidental "Reply to all," your messages live on and can come back to you in unexpected ways. So use care and e-mail as a professional would — like a lawyer.

