

You've Sent Mail:

Ten Tips to Take with You to Practice

By Anne Enquist and Laurel Oates

Anne Enquist is the Associate Director of the Legal Writing Program and Laurel Oates is the Director of the Legal Writing Program at the Seattle University School of Law in Washington.

When we think about all the ways legal writing classes prepare students for practice, it is surprising that we may have neglected an important area of “legal writing”—drafting e-mails. As our students prepare for clerkships and our graduates prepare for that first job, consider whether you might want to use your last class to talk about professionalism and how that plays out in e-mail. The following article sets out 10 tips that we plan to share with our students.

Most attorneys have an e-mail horror story. One manager sends another manager an e-mail suggesting that the company could save money by forcing all of the employees who are over the age of 60 to retire. A client unthinkingly hits “Reply to All” and sends a message to more than a dozen people in which she admits that she committed a crime. A new associate attaches the wrong file to an e-mail, accidentally sending opposing counsel a copy of an office memo that outlines the firm’s trial strategy.

The horror stories confirm what most of us know: e-mail is both a blessing and a curse. It has made communication easier and faster, but like most new tools, e-mail has a learning curve. Most people are still learning how to use it appropriately, and in the meantime, many professionals, including lawyers, are learning that careless or ineffective use can cause serious problems. Many of the serious and not so serious e-mail problems can be avoided by using a little common sense. Below are several

tips that many professionals, particularly lawyers, find helpful for their work-related e-mails.¹

Tip 1: Do Not Include Anything in an E-Mail That You Would Not Want Read Aloud in Court

No matter what types of statements about confidentiality you insert in your e-mail, there are no guarantees that your e-mail will remain confidential. Thus, the best policy is not to include anything in an e-mail that you do not want shared with the rest of the world. The best way to ensure confidentiality is to give the information orally, preferably in person in a room with the door closed.

Tip 2: Use the Same Professional Language That You Would Use in an Office Memo, an Opinion Letter, or a Business Letter

Sending an office e-mail is not the same thing as text messaging a friend. No matter how well you know the person to whom you are writing a work-related e-mail, use the same language that you would use drafting an office memo, an opinion letter, or a business letter. Do not use abbreviations, code words, slang, or emoticons.

Example 1: Inappropriate Language

BTW, if you have questions, feel free to call me 24-7.

Example 2: Revised: Appropriate Language

Finally, if you have questions, please free to call me.

¹ For more information on how students can conduct themselves professionally on the Internet, see Katherine Mangan, *Etiquette for the Bar: First-Year Students at Drake U.’s Law School Learn the Value of Online Discretion*, Chron. Higher Educ., Jan. 12, 2007, at A31. The article discusses the efforts of Drake University law professors Lisa Penland and Melissa Weresh to teach law students how to be more professional in their online communications.

Tip 3: Make Sure That the Tone of the E-Mail Is the Tone You Intend

“Flaming” in e-mail is the oral language equivalent of shouting at a person. Messages written in all caps or other attention-getting fonts should be used with extreme care.

Example 1: Inappropriate Tone

I got your request for the meeting with Chong.
ARE YOU SERIOUS ABOUT WANTING AN
HOUR WITH HIM?

Example 2: Revised: Appropriate Tone

I got your request for the meeting with Chong.
An hour meeting seems excessive. Would a
shorter meeting work for you?

Notice, too, that while some people can interpret very short e-mails as efficient, others may read them as having a curt or rude tone. In addition, it is often a good idea to follow up a request for information with a quick note of thanks so that colleagues and employees know you have received their e-mails and that their follow-up was appreciated.

Example 1: Inappropriate Tone

Original e-mail:

Do you want to review the draft before I
submit it to O'Brien?

Curt reply:

No.

Example 2: Revised: Appropriate Tone

Original e-mail:

Do you want to review the draft before I
submit it to O'Brien?

Revised reply:

No, that won't be necessary. Thanks for your
hard work on this project.

Finally, in drafting an e-mail, keep cultural differences in mind. If you are e-mailing a person in a culture in which it is customary to begin a conversation with an exchange of pleasantries, include the same kind of opening pleasantries in an e-mail to that person.

Tip 4: Before Hitting “Send” or “Reply,” Reread Your E-Mail, Including the Address Lines

Although it takes a bit of extra time, rereading an e-mail before sending it is time well spent. Before sending an e-mail, take a few minutes to proofread the e-mail and to double-check the address lines. While many people are forgiving of small typographical errors in e-mails, others are not. In addition, some typographical errors can lead to serious miscommunication. Remember, too, that if you are using a Blackberry® or other type of device that tries to predict what word you intend as you type (an “autocomplete” feature), you may end up sending gibberish if you do not proofread your messages before sending them.

Tip 5: Do Not Misuse the “High Importance” or the “Read Receipt” Functions

Marking every e-mail as being of high importance is a bit like calling “wolf” every time you hear a noise in the bushes. At some point, no one pays any attention to e-mails that come from you with the high importance mark. Thus, limit your use of the mark to those e-mails that are, in fact, of high importance.

In addition, do not ask for a read receipt for every e-mail you send. At best, most individuals find the process annoying; at worst, it sends the message that you do not trust the individual to whom you are sending the e-mail. If you would like a response, you can ask for such a response in the text of your e-mail. If you need proof that someone received information, use one of the more traditional communication methods: send a letter or other information through a delivery service or by some type of registered mail.

Tip 6: Be Selective in Attaching Large Files to an E-Mail

If you know that someone uses a Blackberry or similar device to retrieve e-mail, do not attach large files without first checking with the recipient to make sure he or she will be able to receive and open the file. Similarly, if the person to whom you are sending the e-mail is traveling in a country where e-mail access is limited, do not send large files without first checking with that individual.

Tip 7: Make Sure That the Subject Line Accurately Reflects the Topic or Topics Discussed in the E-Mail

In sending e-mail back and forth, change the subject line so that it matches the topic or topics discussed in the e-mail. In addition, in composing the subject line, select labels that will increase the chance that the recipient will open the e-mail and that will allow the recipient to easily store the e-mail in appropriate folders or easily retrieve the e-mail.

Tip 8: As a General Rule, Do Not Copy or Forward an E-Mail Message or Attachment Without the Author's Permission

In most instances, ask for the original author's permission before forwarding an e-mail or an attachment to an e-mail. Asking for permission demonstrates your personal integrity and can help prevent misunderstandings. Do, however, use common sense. You do not, for example, need to ask for permission to forward an e-mail to a colleague who is working on the same project.

Remember, too, that when you forward an e-mail the recipient may read the whole string of exchanged e-mails in the message, not just the last message that was sent.

Tip 9: There Is Really No Such Thing as "Delete"

Many people mistakenly assume that they can eliminate the paper trail they have created through e-mail by simply deleting old messages. While computer experts may have the necessary skills to permanently delete old e-mails, they also have the skills to recover e-mails the typical user believes he or she has deleted.

Tip 10: When in Doubt, Sleep on It or Get a Second Opinion Before Hitting "Send"

E-mails allow us to respond to someone else's ideas or comments almost instantaneously. Sometimes in the heat of a situation, that is not a good thing. Use the speed and convenience of e-mail to your advantage, but remember that in some situations, it may be to your advantage to take a breath, slow down, and not respond immediately.

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Another Perspective

"The messy desk is not necessarily a sign of disorganization. It may be a sign of complexity: those who deal with many unresolved ideas simultaneously cannot sort and file the papers on their desks because they haven't yet sorted and filed the ideas in their head."

—Malcolm Gladwell, *The Social Life of Paper*, New Yorker, March 25, 2002, at 92, 93.