

Email is Here to Stay: Pointers for Ethical and Practical Use



State Bar of Wisconsin
2008 Annual Convention
Nonresident Lawyers Division

Percentage of attorneys using email:

99%

...for routine correspondence?

97%

...for memos or briefs?

74%

...for court filings?

55%

...for client billing?

43%

...send confidential information to clients by
email once or more per week?

72%

	2004-2005		2007
Memos & Briefs	66%	→	74%
Court Filings	42%	→	55%
Client Billing	25%	→	43%
Confidential	56%	→	72%

What about security?

Rely on confidentiality/privacy statements:

79%

Use encryption:

17%

Require client's *oral* consent:

9%

Use password protection:

8%

Require client's *written* consent:

7%

Don't use email for confidential information:

12%

E-Mail Danger #1: Misdirected & Misaddressed E-Mail

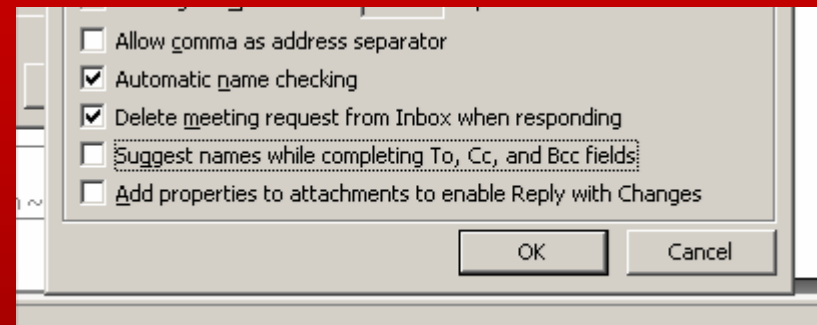
Cautionary Tales

- Attorney accidentally sends email to New York Times Reporter
- Partner sends email intended for colleagues to more than a dozen reporters
- Coffee shop executive accidentally forwards embarrassing internal discussion to customer

Best Practice: Disable AutoComplete!

In Outlook 2003:

1. Go to the "Tools" Menu
2. Select "Options"
3. Under the "Preferences" tab, select "E-mail Options"
4. Select "Advanced E-mail Options"
5. Uncheck box labeled "Suggest names while completing To, Cc, and Bcc fields."



[Read more...](#)

**Best Practice:
Check, double check
the **to**, **cc**, and **bcc** lines**

Best Practice: Check the E-mail Tail

Are ALL of the e-mails in the reply/forward string appropriate for the recipient?

Would the original sender want me to pass their e-mail on?

E-Mail Danger #2: Metadata

Best Practice: Metadata

What are your duties when sending?

Can you look?

What do you do if you find metadata?

Best Practices: Metadata

UPDATE

Check with software vendor for updates (e.g. [Word add-in](#))

CONVERT

Converting files to PDF will eliminate some metadata.

SCRUB

Use a commercial “metadata scrubber” like Payne’s Metadata Assistant or iScrub

UPGRADE

Newer versions of MS Office and Adobe Acrobat handle metadata more sensibly.

E-Mail Danger #3: Spam/Phishing



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Best Practices: Spam/Phishing

Use two (or more) email addresses to divide personal and work email.

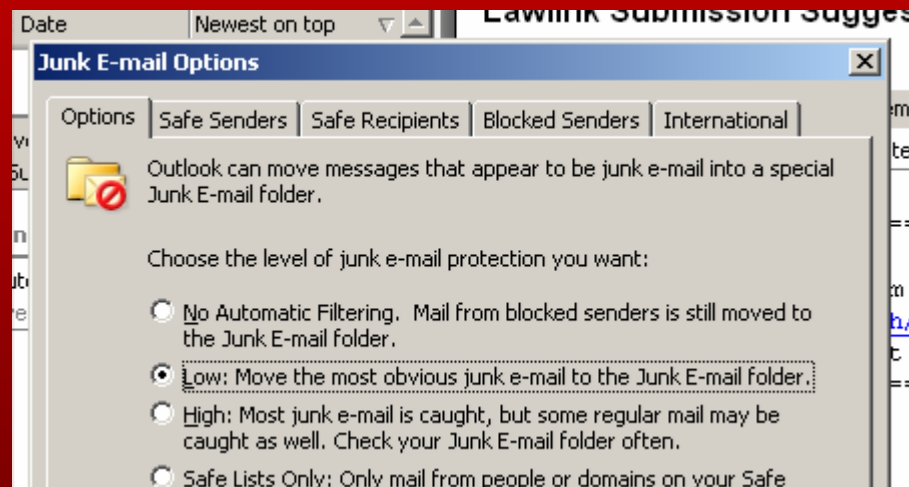


+



Best Practices: Spam/Phishing

Use a spam filter...



...but also use a white list.

Best Practices: Spam/Phishing

- Don't click on links or download files if you don't know the sender.
- Look over the email for glaring typos, grammatical errors, unusual e-mail addresses, and suspicious language.
- When in doubt, try calling the supposed sender.



E-Mail Danger #4: Encryption and Disclaimers

Best Practices: Encryption/Disclaimers

- Move the confidentiality/privacy statement to the top of the e-mail, or consider adding “CONFIDENTIAL” to the subject line.
- Use [encryption](#) and/or password protection when sending confidential information (hushmail.com, PGP, etc.).
- Talk to your client to determine what works best for both parties.

E-Mail Danger #5: Blackberrys/Smartphones

Best Practices: Blackberrys/Smartphones

- Password protect the device itself and, if appropriate, encrypt the contents.
- Most providers or Blackberry administrators offer some remote wiping feature. Know what your provider offers and know how to request it if your device goes missing.
- Be careful when donating or selling the device. Make sure it's wiped fully!

E-Mail Danger #6: Office Policies

Best Practices: Office Policies

Develop a written email use policy for your firm. It should address:

1. Proper use of firm email for business communication by lawyers and support staff;
2. Storage and retention of email as a record;
3. Security issues including opening attachments, identifying spam and phishing, and other scams;
4. Use of firm email for personal communication; and
5. Use of other Internet-based communication tools such as instant messaging, blogging, commenting on blogs, social networking, and online chat.

Best Practices: Office Policies



Educate your clients!

E-Mail Danger #7: Publicized Email Addresses

Best Practices: Publicized Email

“...a statement in sufficiently plain language...” CA Formal Opinion 2005-168

EMAIL A LAWYER

Partner, New York

Subject

Message

Your Name

Your Email

CC Yourself

I have read the following disclaimer:
Please be aware that contacting our attorneys by email does not create an attorney-client relationship between you and our firm. Please do not send us any confidential information unless and until a formal attorney-client relationship has been established.

SEND

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Questions?

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