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Before you fire off a stinging e-mail, consider what happens next

Electronic communications have been a boon for sole practitioners, offering new freedoms and efficiencies in the legal marketplace.

Yet unlike formal paper correspondence, conversing in real time with mouse clicks and send buttons can lead to spontaneous, ill-advised exchanges that are not well-planned. With many solos using a single e-mail address for all purposes, moreover, the line between professional and personal contacts can blur.

In the following discipline cases, attorney e-mails were held to violate applicable ethical standards. While the e-mail content in question is clearly out of bounds in most instances, some of the scenarios are closer calls on the spectrum of free expression.

The takeaway from these decisions is that the online world never forgets, and no e-mail is ever off the record. So before you click, take a moment to reflect, consult with colleagues and when in doubt, discard, don't send.

Free advice to acquaintance
In *Attorney Grievance Commission v. Elmendorf*, 946 A.2d 542 (Md. 2008), an attorney received an e-mail inquiry from a social acquaintance, asking whether a one-year separation was required for a no-fault divorce in the state. In a "brief, off-the-cuff response," the attorney e-mailed back that the court would not "question" compliance with the one-year separation requirement "so long as the parties say that it has been a year."

Although the court concluded the brief exchange did not give rise to an attorney-client relationship, the lawyer nonetheless received a public reprimand. The e-mail was deemed "prejudicial to the administration of justice" because it "could have given ... the impression that intentionally misrepresenting information to the court is acceptable so long as all parties involved set forth the same information."

Threatening coach over child's demotion

In *Office of Disciplinary Counsel v. Baumgartner*, 796 N.E.2d 495 (Ohio

2003), an attorney became angry when her daughter was demoted for a high school track meet. The attorney "sent menacing e-mails to the superintendent and a high school track coach in an attempt to have her daughter put back in the track relay event." The e-mails "threatened criminal prosecutions and civil lawsuits, none with any apparent basis, if these school officials did not accede to her demand."

The court ruled the e-mails involved "dishonesty, fraud, deceit or misrepresentation," were "prejudicial to the administration of justice" and "adversely reflect[ed] on the attorney's fitness to practice law." Because the attorney had engaged in other serious transgressions as well, disbarment was ordered.

Publicizing judge's compliment
In *In re Reines*, 771 F.3d 1326 (Fed. Cir. 2014), an experienced practitioner in the U.S. Circuit Court of Appeals for the Federal Circuit received an e-mail from the circuit's chief judge, relaying complimentary remarks by fellow judges regarding the attorney's advocacy skills.

After adding his own endorsement of the attorney's prowess and expressing gratitude for their friendship, the chief judge encouraged the attorney to "let others see this message." Counsel took the chief judge's advice and circulated the e-mail to colleagues, existing clients and prospective clients.

The en banc appeals court then issued a public reprimand. After brushing aside the attorney's First Amendment defense, the court ruled it was "professional misconduct" to "state or imply an ability to influence improperly a government agency or official to achieve results by means that violate the Rules of Professional Conduct or other law."

Although disseminating compliments from a judge is not a per se violation, the court reasoned, "It would blink reality not to view respondent's action as suggesting his retention because his special relationship would help to secure a favorable outcome at the Federal Circuit."

SOLE SPEAK



GLENN E. HEILIZER

Glenn E. Heilizer is a veteran litigator, sole practitioner and is the founder of the Sole Practitioners Bar Association of Illinois. He handles commercial disputes in the federal, state and appellate courts in Illinois and Wisconsin. He welcomes all questions and comments. He can be reached at glenn@heilizer.com.

Blaming judge for financial woes

In *Hancock v. Board of Professional Responsibility*, 447 S.W.3d 844 (Tenn. 2014), a longtime bankruptcy attorney lost a substantial fee petition application. Months later, the attorney, struggling financially, sent the judge a "see-what-you-did-to-me" e-mail that blamed the bankruptcy court for his misfortune.

The state court issued a 30-day suspension for an improper ex parte communication. The e-mail's "threatening tone" constituted "abusive [and] obstreperous conduct" that interfered with the court's "ability to conduct its affairs."

"Good Luck in Hell"

In the following cases, attorney-to-attorney e-mails were held to violate professional ethics standards.

In *In re Panetta*, 3 N.Y.S.3d 420 (N.Y. App. Div. 2015), a personal-injury lawyer lost at trial and harbored a long-term grudge against the jury foreperson, then a first-year attorney. Four years later, the still-disgruntled plaintiff's counsel sent an abrasive e-mail to the former foreperson, questioning her integrity and sarcastically wishing her "Good Luck in Hell." The state disciplinary agency issued a public censure, for "conduct that

adversely reflects on the lawyer's fitness as a lawyer."

In *In re Anonymous Member of South Carolina Bar*, 709 S.E.2d 633 (S.C. 2011), e-mail exchanges between divorce counsels became increasingly hostile. The father's attorney suggested his opponent could not properly represent the mother because the mother's attorney had no children. The mother's attorney retorted that the daughter of the father's attorney was a known drug user, which was "ironic" and "far worse than the allegations your client is making."

The court issued a letter of caution with a finding of minor misconduct to the mother's attorney. "An e-mail such as the one sent ..." the court explained, "can only inflame the passions of everyone involved, make litigation more intense, and undermine a lawyer's ability to objectively represent his or her client."

In *In re Rudolph*, 774 N.W.2d 466 (Wis. 2009), an attorney settled a malpractice claim, then used an e-mail address with an assumed name to threaten the malpractice attorneys who sued him. The attorney was suspended for 30 days.

Romance rejected

Lastly, in *In re Usher*, 987 N.E.2d 1080 (Ind. 2013), a male lawyer who was a disappointed suitor decided to "humiliate" the object of his affections, a female attorney, by interfering with her employment prospects. The jilted barrister disseminated a compromising video of the woman, along with a fabricated e-mail chain of negative comments, to the woman's law firm and others. The state Supreme Court suspended the attorney for at least three years, rejecting his First Amendment and "not-done-in-a-professional-capacity" defenses and finding his conduct involved "dishonesty, fraud, deceit or misrepresentation."

Final note: Think first

Before you start down that dangerous road of contentious electronic discourse, think of these cases, put down your keyboard and remember that the Internet is watching.