Eight Simple Ways to Lose Your Law License Electronically[1]

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[1] My most sincere thanks to Barbara Seymore Deputy Disciplinary Counsel for the South Carolina Judicial Department. Much of her material made it into the body of this paper, and the lion's share of the examples yet to be shared are the product of her research and graciousness in sharing with me. The suggestions at the end of the paper are Barbara's unless otherwise noted.

In a way, I long for the years gone by, the time before the advent of the FAX machine, e-mail, text messaging and twitter. Life was much simpler then. Business took place at a reasonable pace compared to the breakneck speed at which it is conducted today. Discourse was thoughtful, sometimes even eloquent. In years gone by, an exchange of pleasantries might have consumed several minutes of conversation or several sentences in correspondence. Today such an exchange might go like this:

"How r u?"

"K."

The fast pace at which we currently conduct business and the tools with which we conduct business have evolved significantly. So have the expectations of those in business. At one time responses to questions or answers to proposals were expected in months or days. Today, responses may be required within minutes. Our time has somehow become limited and expectations for responses have at times become instantaneous.

Much of the business world relies upon communications between people who are not physically in the same building, area or even country; setting up and attending an in-person meeting, telephone communication, or telephone conference call can be inconvenient, time-consuming, and costly. E-mail provides a way to exchange information between two or more people with minimal set-up costs and that are generally far less expensive than physical meetings or phone calls.

Early e-mail was just a small advance on what we know these days as a file directory - it just put a message in another user's directory in a spot where they could see it when they logged in. Simple as that. Just like leaving a note on someone's desk. Probably the first e-mail system of this type was MAILBOX, used at Massachusetts Institute of Technology in 1965. Another early program to send messages on the same computer was called SNDMSG.[2]

Before computers became networked, there was no method to send a message to an individual user. Messages could only be sent to the mainframe computer and (hopefully) retrieved by the rightful owner. Once computers became networked, the problem was to devise a way to address the communication and send it to the rightful recipient.

[2] Ian Peter, The History of E-mail. www.nethistory.net

Ray Tomlinson is credited with inventing e-mail in 1972. He picked the "@" symbol from the computer keyboard to denote sending messages from one computer to another. For anyone using Internet standards, it was simply a matter of nominating name-of-the-user@name-of-the-computer.[3] The first e-mail was sent between two computers that were actually sitting beside each other. However, the ARPANET[4] network was used as the connection between the two. The first e-mail message was "QWERTYUIOP". Ray Tomlinson is quoted as saying he invented e-mail, "mostly because it seemed like a neat idea." No one was asking for e-mail.[5]

Today, e-mail is the most important and widely used application of the Internet. At the time of this article (2004) it was estimated that more than 600,000,000 internationally use e-mail.[6]

One of the first new developments when personal computers came on the scene was "offline readers". Offline readers allowed e-mail users to store their e-mail on their own personal computers, and then read it and prepare replies without actually being connected to the network - sort of like Microsoft Outlook can do today.[7] Users would read their incoming mail offline and have an opportunity to prepare a response prior to go back online to send their own e-mail response. Today, e-mail is delivered to the recipient so they don't have to work to get it -- they just open their Inbox and there it is.

Technologies are sometimes labeled *push* or *pull* as described below:

Pull. These technologies require the user to actively go and retrieve the information. A library, the Web, and the Usenet are pull technologies, requiring active participation of a human being to retrieve the information.

Push. These technologies deliver information to the user so all they have to do is receive it. Radio, television, and e-mail are push technologies.

[3] Ian Peter, The History of E-mail. www.nethistory.net
[4] The ARPANET network was the precursor to the Internet developed by the Advanced Research Projects Agency
[5] Mary Bellis, The History of E-mail and Ray Tomlinson, http://inventors.about.com
[6] Ian Peter, The History of e-mail. www.nethistory.net.
[7] *Id.*

One of the reasons e-mail has been such a big success is because it is a push technology. The person that sends the e-mail writes it, then transmits it using a specified e-mail protocol, and all the recipient has to do is open his e-mail program and double-click on the e-mail to read it.

An advantage of push technologies is their ease of use -- they require a minimum of effort on the part of the recipient, which greatly supports adoption because they get used more often. Partly because of this feature, the use of e-mail has greatly outstripped all other Internet applications since its creation, even after the explosive development of the Web.[8]

As one can imagine, the benefits of e-mail are significant. The Australian Government's Department of Broadband describes the benefits as:

- E-mail combines the speed and efficiency of the telephone with the written word.
- It allows users to transfer files and documents.
- It facilitates consultation.
- It is a quick and easy way to allow others to participate in or monitor a process.
- It allows you to easily inform others of what's happening and is more effective than any other method because of the ability to view documents without the cost and time constraints of face-to-face meetings.
- There are no time or place barriers. You can write and respond to e-mails whenever you choose – day or night. It can free people from the office, make communications across time zones a simple process, and avoid 'telephone tag', where two people leave numerous phone messages as the other moves in and out of meetings.
- E-mail can reduce time spent in meetings by educating participants on issues before the meeting, or it can eliminate the need for the meeting entirely.
- Mail can help you organize meetings. E-mail allows the user to contact many other users at the same time, eliminating production and postage costs, and keeping many people in the loop at the click of a few keys. [9]

Another web commentator has suggested the following detriments to the use of e-mail:

[8] Dave Crocker, E-mail History. www.livinginternet.com
[9] http://www.e-strategyguide.gov.au/make_e-mail_work/benefits_of_e-mail

- E-mail is impersonal. Unlike in a face to face conversation, it's tough to get across facial expressions and other nuances in e-mail prose. Even a telephone call relies on oral cues such as inflection and volume to convey subtleties such as sarcasm and wry humor.
- Impersonality of e-mail also leads to another problem: forgetting that, most of the time, a live human being will be reading your message. E-mail is so easy that you can throw together a message in a few minutes and send it packing with a single keystroke or mouse click. And once it's sent, there's no way to retrieve a message that was written in a fit of pique or anger.
- E-mail can take over your life. As you get more involved in the world of e-mail, you'll naturally start getting more correspondence. You'll be exchanging pleasantries with friends and colleagues, subscribing to mailing lists and online journals, and trading info with complete strangers. Before you know it, you can spend most of your day just reading and responding to the deluge.
- E-mail security is lax, at best. As your e-mail messages wend their way to their destinations, they have to pass through other, public, systems. Anyone with the right amount of technical know-how can easily intercept your mail and snoop through it without you or the recipient knowing.
- E-mail messages are easily stored. "Hey, wait a minute! I thought that was a pro." Well, it is, but there's a downside to this easy storage. If you say nasty things about your boss or a colleague in a message, a saved copy of your tirade could easily resurface and come back to haunt you sometime in the future. A good rule to follow is to assume your message will be read by the general public and to write accordingly.
- E-mail can only handle text. The big advantage that snail mail and couriers have over e-mail is that you can send things like Christmas presents and food. E-mail is a text-only medium, which limits the types of things you can send. Things are getting better, though. Most modern e-mail programs let you "attach" things like graphics, sound files, and other types of documents. [10]

When the use of e-mail became mainstream and commonplace in the legal world (in the early 19909's) lawyers and judges were rightfully concerned about the propriety of communicating

[10] http://www.mcfedries.com/Ramblings/e-mail-pros-cons.asp

sensitive legal matters, and particularly matters of confidence, via this (relatively) new electronic medium. Electronic messages could be misdirected, computers could be hacked, and back-up systems could fail. Some courts and bar associations initially issued advisory opinions and proposed rules that would prohibit the communication of confidential information by e-mail.[11] We were warned of the dangers of corresponding with clients and others about legal matters using e-mail.

With the burgeoning use of e-mail in the legal business world, those courts and bar associations were forced to re-evaluate those initial opinions concerning the medium. Now, many state bar associations and even the American Bar Association have at least accepted the use of electronic communications among lawyers and judges, and even with clients. Certainly the same confidentiality rules apply to electronic communications as are applicable to oral or written communications.

Interestingly, the ABA was not the first association to sanction the use of electronic technology. The North Carolina Ethics Committee appears to be one of the first to authorize the use of electronic technology for communications between a lawyer and client.[12] That was followed by opinions in North Dakota,[13] Vermont,[14] South Carolina,[15] Kentucky,[16] Illinois[17] and Alaska. [18] On March 10, 1999, the American Bar Association Issued its Opinion 99-413. In that opinion the ABA discussed the various types of e-mail systems: "Direct" e-mail where the message is sent directly from the lawyer's modem to the client's modem. This is indistinguishable from communications sent via FAX; "private system" e-mail where an internal intranet has the capability to directly dial into another private system; On-line service providers, which are third party providers of e-mail communication such as AOL, CompuServe and MCI Mail; and Internet e-mail, where the message is sent over the Internet between Internet Service Providers (ISPs) without the interposition of any on-line service provider. The message is

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[11] Opinion 1997-1 Iowa Bar Association (sensitive information should not be transmitted by e-mail . . . without client consent.); Opinion 97-130 Pennsylvania Bar Association Committee on Legal Ethics (lawyers should not use unencrypted e-mail to communicate with or about a client absent client consent); Opinion 97-04 State Bar of Arizona Advisory Opinion (lawyers should caution client or consider the use of encryption before transmitting sensitive information by e-mail.

[12] A lawyer using a cellular or cordless phone or e-mail or other unsecure method of communication, must minimize the risk of disclosing confidential information. If the lawyer has reason to believe that the mode of communication is susceptible to interception, the lawyer must advise the parties to the conversation. Opinion 215 (07.21.1995) Ethics Committee of the North Carolina State Bar.

[13] Opinion 97-09 (09.04.1997) Ethics Committee of the State Bar Association of North Dakota

[14] Opinion 97-5 Committee on Professional Responsibility of the Vermont Bar Association

[15] Opinion 97-08 (06.1997) Ethics Advisory Committee of the South Carolina Bar

[16] Opinion E-403 (03.1998) Ethics Committee of the Kentucky Bar Association

[17] Opinion 96-10 Illinois State Bar Association

[18] Opinion 98-2 (01.16.1998) Ethics Committee of the Alaska Bar Association

relayed between the sender and recipient via a series of random intermediate computers utilized for this purpose.[19]

The ABA concluded "lawyers have a reasonable expectation of privacy in communications made by all forms of e-mail, including unencrypted e-mail sent on the Internet, despite some risk of interception and disclosure. It therefore follows that its use is consistent with the duty under Rule 1.6 to use reasonable means to maintain the confidentiality of information relating to a client's representation.[20] However, when the lawyer reasonably believes that confidential client information being transmitted is so highly sensitive that extraordinary measures to protect the transmission are warranted, the lawyer should consult the client as to whether another mode of transmission, such as special messenger delivery is warranted. The lawyer must then follow the client's instructions as to the mode of transmission.[21]

Following the ABA's formal opinion declaring that electronic communication met the confidentiality requirements of Rule 1.6 may other states followed suit in issuing opinions. Most of these opinions followed the ABA in its embrace of the use of electronic communication with the caveat that more sensitive information may require special treatment. See for example: Maine;[22] Connecticut;[23] Massachusetts;[24] Minnesota;[25] Ohio; [26] Utah; [27] Delaware; [28] Hawai'i[29] and Virginia.[30]

The reality is that in order to be responsive to our clients and to provide efficient and effective legal services, lawyers have to use e-mail. It's cheap, quick, and almost effortless. Unfortunately, it is the cheapest, quickest, and most effortless way to get yourself in ethical (and sometimes legal) trouble. There are a number of important ethical considerations to think about when using e-mail in the law office, such as client confidentiality (Rule 1.6), conflicts of interest (Rules 1.7 – 1.13), solicitation (Rules 7.1 – 7.5), candor and truthfulness (Rules 3.1, 3.3, 3.4, 4.1,

[19] ABA Formal Opinion 99-413 (03.10.1999)
[20] *Id.*
[21] *Id.*
[22] Opinion 195 (06.30.0-1998) Profession Ethics Committee of the State Board of Bar Overseers of the State of Maine;
[23] Opinion 99-52 (12.21.1999) Committee on Professional Ethics of the Connecticut Bar Association
[24] Opinion 2000-1 (07.15.1999) Massachusetts Bar Association Committee on Professional Ethics
[25] Opinion 19 (01.22.1999) Minnesota Lawyers Professional Responsibility Board
[26] Opinion 99-2 (04.09.1999) Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court
[27] Opinion 00-01 (03.09.2000) Ethics Committee of the Utah State Bar
[28] Opinion 2001-2 Committee on Professional Ethics of the Delaware State Bar Association
[29] Opinion 40 (04.26.01) Disciplinary Board of the Hawai'i Supreme Court
[30] Opinion 1791 (12.22.2003) Standing Committee on Legal Ethics of the Virginia State Bar

8.4), supervision of associates and non lawyer staff (Rules 5.1 – 5.5), and threatening criminal prosecution (Rule 4.5).

The Internet has brought tremendous change to the legal profession. Those of us who are "more seasoned" attorneys remember the days of having to scour through the Descriptive Word Index© and respective state and federal digests in order to find the appropriate case. Now such research can be done through the use of electronic legal research systems such as Westlaw© and Lexis/Nexis©. Nonsubscribers to these specialized legal research systems can access legal treatises, commentaries and case law through a simple Google© or Fire Fox© search.

Nothing has been affected more by the Internet than advertising by attorneys. Ever since advertisement by attorneys has been deemed to be commercial speech and thus entitled to limited protections under the First Amendment,[31] attorneys have become very clever in the way in which they market their services to the public. We have seen a proliferation of radio, television, direct mail advertising, targeted direct mail advertisements, Yellow Page© advertisements, and billboards. Today, many firms are even employing the Internet as a means of reaching new clients. With the use of the Internet to attract new clients, new and previously untapped methods of reaching new clients have become available. Today we see law firms with elaborate web sites displaying members of the firm and their areas of expertise. We see polished firm resumes and invitations to browse the site to learn more about the firm.

Most recently, law firms have included on their web site a link where potential clients may pose questions to the firm regarding legal issues. There seems to be a split in opinions concerning this practice and the safeguards that must be employed. The Virginia State Bar Committee on Ethics has opined that a lawyer does not owe a duty of confidentiality to a stranger who unilaterally divulges sensitive information to the lawyer in an uninvited e-mail message to the lawyer's e-mail address provided on the firm's web site.[32] The Committee cautioned, however, that circumstances other than the mere publishing of the contact information might invite contact from prospective clients thus triggering a duty of confidentiality. The Arizona Committee on the Rules of Professional Conduct has stated that a lawyer does not owe a duty of confidentiality to a person who unilaterally sends an unsolicited e-mail to the lawyer because such a person does not have a reasonable expectation of confidentiality in that

[31] *Bates v. State Bar of Arizona* 433 U.S. 35 (1977)
[32] Opinion 1842 (09.30.2008) Virginia State Bar Committee on Ethics

communication.[33] The committee did remark, however, that law firm web sites containing e-mail information for lawyers should contain disclaimers indicating whether e-mail communications from prospective clients will be treated as confidential.[34] The State Bars in Florida and Iowa have reached a similar result.[35]

On the other hand, if the law firm web site contains an area or link where a prospective client may fill out an online form with details of their accident in exchange for a free evaluation of their claim, that is considered to be an invitation to form a lawyer-client relationship and the information so transmitted must remain confidential.[36]

Finally, in an area that may hit close to home to many of us in this room, the Los Angeles County Bar Association has come to the conclusion (not unsurprisingly) that a Listserv, whether closed or open, is a public conversation. Participants in a Listserv should take care not to divulge client confidences and secrets. Lawyers should also be mindful that their messages could be read by unintended recipients, such as judges, creating the possibility of unintended *ex parte* communications.[37]

Attorney discipline cases involving improper and unethical use of e-mail communication are starting to crop up in reported opinions all over the country. Lawyers are finding a number of creative ways to completely mess up their careers without even leaving their keyboards. Here are some of their methods that you might want to avoid:

(1) <u>If a judge sanctions you $80,000, be sure to thank him by sending an e-mail to all your friends calling him a whacko.</u>

Mr. Moseley represented a client in a contract dispute. The defendant said that there was an arbitration clause in the contract. Mr. Moseley's client said that there wasn't. At the time the lawsuit was filed, neither party could locate a copy of the contract. Later, Mr. Moseley's client found his copy, which confirmed that there was an arbitration clause. He gave it to Mr. Moseley, who didn't tell anyone about it. On cross-examination at trial, Mr. Moseley's client admitted to

[33] Opinion 2002-04 (09.02) Arizona Committee on the Rules of Professional Conduct
[34] *Id.*
[35] Opinion 07-03 (01.16.2009) Professional Ethics Committee of the Florida Bar; Opinion 07-02 (08.08.2007) Iowa Supreme Court Board of Professional Ethics and Conduct.
[36] Opinion 1842 (09.30.08) Standing Committee on Legal ethics of the Virginia State Bar; Opinion 99-9 (12.02.1999) Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.
[37] Opinion 514 (08.19.2005) Ethics Committee of the Los Angeles County Bar Association

finding the contract, learning of the arbitration clause, and giving his copy to Mr. Moseley prior to trial. The judge sanctioned Mr. Moseley and his client and awarded the defendant about $80,000.00 for fees and costs. In a flash of brilliance, Mr. Moseley decided to circulate an e-mail in which he indicated that opposing counsel "reek[ed] of evil" and was "demonically empowered." He also mentioned that the sanctions award was "an absurd decision from a whacko judge [who] was bribed." In re Moseley, 643 S.E.2d 190 (Va. 2007)

(2) The best way to help your friends with their cases is to get a job as a judicial law clerk and feed them inside information by e-mail.

Ms. Sauter got her first big break with an appellate clerkship. It was a big break for her friend in the city attorney's office, too, seeing as how Ms. Sauter had access to all those neat books and stuff. The city was scheduled to appear at a hearing on an appeal of an eminent domain case in front of Ms. Sauter's judge's panel. Ms. Sauter sent an e-mail to her friend the assistant city attorney explaining that the judges on the court were leaning towards a "not based on sound reasoning" standard of abuse of discretion rather than an "arbitrary or unconscionable" standard. She advised that one judge "especially thinks this is a better standard for abuse-of-discretion review. This type of review is probably better for the city, so you might want to hammer on the lack of sound reasoning by the lower court." Ms. Sauter ended the e-mail with the quip, "This message will self destruct in two hours." Unfortunately for her, the e-mail didn't, but she did. Although her friend might have failed appellate practice in law school, she passed ethics with flying colors and turned the e-mail over to another attorney in her office. Cincinnati Bar v. Sauter, 772 N.E.2d 620 (Ohio 2002).

(3) If you are going to solicit a bribe from the opposing party to tank you client's case, e-mail is a good way to make sure your efforts are adequately documented.

Mr. Kiczales represented the landlord in suit for eviction and back rent against Mr. Gosain. After Mr. Gosain's deposition, Mr. Kiczales asked Mr. Gosain's attorney if he could speak privately with Mr. Gosain. Mr. Gosain's attorney, an accommodating fellow, said "Sure!" In their private conversation, Mr. Kiczales informed Mr. Gosain that he had recalculated the back

rent and he actually owed $2,000 less than originally thought. Mr. Gosain, also an accommodating fellow, offered to pay Mr. Kiczales the $2,000 difference if he could get the case settled and get him a favorable lease. Mr. Kiczales agreed because his wife was mad at him for losing $1500 in Atlantic City. Mr. Gosain told Mr. Kiczales that he would want the money back if the case went to trial. In a series of e-mail messages that followed between the two, Mr. Kiczales repeatedly pressed Mr. Gosain to make the payment nonrefundable. At some point, Mr. Gosain shared the e-mails with his attorney, who surely regretted his earlier accommodation. The e-mails were turned over to Mr. Kiczales's boss. He was fired. The court noted that he had some trouble getting work as an attorney after that, so he started doing "brokerage work" – no mention of what he was brokering. In the Matter of Kiczales, 36 A.D.3d 276 (NY 2006).

(4) When it comes to sex with a client, if at first you don't succeed, try and try again.

In his first meeting with a divorce client, Mr. Bash tried to kiss her (twice). She refused, but asked him to proceed with the divorce representation anyhow. Apparently she had a change of heart; the client decided to try to make her marriage work. When she called Mr. Bash and told him she didn't want to go forward with the divorce, he tried to talk her out of it. Unable to persuade her, he filed a motion to dismiss. Not one to give up too easily, Mr. Bash then proceeded to send his client several unsolicited sexually explicit e-mails. At the disciplinary hearing, Mr. Bash admitted to sending the e-mails, but said that he only did it after she begged him to because she was lonely and needed to "feel like a woman." Yeah, right. In the Matter of Bash, 880 N.E.2d 1182 (Ind. 2008)

(5) While on administrative leave from your job as a solicitor because you downloaded porn on the government's computers, find another way to get your jollies – like maybe sending some dirty e-mails to your former co-workers.

Mr. Beatse was in court the day the IT department had to shut down the computers in the solicitor's office for maintenance. Mr. Beatse's secretary went into his office to shut down his computer for him (so helpful!). It took a few minutes because of all the porn images Mr. Beatse had minimized before he left for his hearing. The secretary reported Mr. Beatse to the boss (ok –

not so helpful after all). He explained that the pictures came from his son's computer at home. He claimed to have downloaded them onto a flash drive to view at work to see what his kid had been up to. Turns out, that wasn't exactly true. Investigation revealed that in the past month Mr. Beatse had spent 36 hours at work on the Internet looking at dirty pictures. While he was suspended without pay, he apparently got bored at home, so he accessed the state's computer system and sent some e-mails to two women in the office bragging about his sexual exploits. When he got caught doing that, he didn't blame it on his son, but he did say that he was just kidding. The Supreme Court of Wisconsin didn't think it was funny. In the Matter of Disciplinary Proceedings against Beatse, 722 N.W.2d 385 (Wis. 2006)

(6) When sending e-mails disparaging the opposing party, make sure you have your thesaurus handy.

Mr. Foster was involved in what the Court referred to as "antagonistic collection proceedings" with a pro se party on the other side. For reasons not disclosed in the opinion, Mr. Foster decided to engage in an e-mail exchange with the opposing party's older brother. In his communications with the brother, Mr. Foster characterized the opposing party as an "anencephalic cretin" with a "single operating brain cell" whose "brain-dead ravings" and "anal rantings" were characteristic of the "lunatic fringe." Not satisfied with insulting little brother, Mr. Foster suggested that the family had been "seriously inbred for the last few generations" and that the family's gene pool (which he thought would be better described as a "gene pond") needed a filter. Although they took into consideration letters from some judges who said that Mr. Foster "ordinarily practiced in a professional and competent manner," the Court suspended him. Butler County Bar v. Foster, 794 N.E.2d 26 (Ohio 2003).

(7) If you don't like a former client, e-mail can be an effective tool for informing others about your opinion of him.

Mr. Heghmann represented two clients, Mr. Stender and Mr. Rose, in various civil matters. Mr. Rose is also an attorney. At some point, the relationship ended. Mr. Heghmann then became involved in a case on behalf of another client that was similar to the prior

representation. In an attempt to settle the new case, Mr. Heghmann sent some e-mails to opposing counsel suggesting that he make a deal before Mr. Stender and Mr. Rose found out about the case. He said that they would likely become involved and that they favored "circus" litigation, suggesting that the case would be tried in the media. He said that his former clients would resort to "vendetta-type" personal attacks. He went on to describe his view of what had happened in the previous litigation with Mr. Stender and Mr. Rose and to predict a re-play of that scenario in the new case. Regarding Mr. Rose, Mr. Heghmann said that was "not a very good attorney but can copy and edit." He also referred to Mr. Rose as an "incompetent buffoon." Mr. Heghmann was disciplined for violating client confidentiality. Statewide Grievance Committee v. Heghmann, unpublished (Conn. 2004).

(8) If you are going to hack into your firm's e-mail and download confidential information, make sure every employee in the firm knows about it.

Ms. Brown worked for a legal aid law firm. She was part of a committee to unionize the firm. Management opposed the unionization effort. In the months leading up to the union vote, Ms. Brown used stolen passwords to access the office e-mail accounts of her co-workers and superiors in an effort to gauge anti-union sentiment. She downloaded some of the messages and deleted others. Ms. Brown came across a particularly interesting e-mail message to her boss from the firm's outside counsel. She shared this e-mail message with her committee, which decided that Ms. Brown should disseminate it to all of the firm's employees eligible to vote in the union election. Ms. Brown lost her job and her license to practice law. In the Matter of Brown, 628 S.E.2d 885 (SC 2006).

When we read these disciplinary opinions, we shake are heads and wonder how these lawyers could make such bad decisions. At the same time, we can all remember that e-mail we probably shouldn't have sent (or wish we had never received) – whether it was unnecessarily harsh, a bit off-color, or embarrassingly hurtful. E-mail is good. It helps us be more efficient and responsive. It is a useful tool for getting things done in a fast-paced world where regular mail doesn't cut it and no one is around to answer the telephone. But we have to be smart about using it.

When using e-mail in a law office, the following tips can help you keep your name out of the advance sheets:

- Always consider the ethical implications of your e-mail message.
- Think before you "Send".[38]
- Have (and enforce) written e-mail usage policies that apply to all users in the office.
- E-mail unto others, as you would have them e-mail unto you.[39]
- Don't use office e-mail for personal use.
- Don't get personal in case-related e-mails.
- Don't lie.
- Don't be mean, or angry, or sarcastic, or condescending.
- Only use "Reply All" when necessary and appropriate.
- Don't discuss highly sensitive matters in e-mail.
- Make conscious choices about whether to relay information by e-mail or in person.
- Write an e-mail as if it were a letter (good grammar, spell check, no shorthand, etc.).
- Remember where you work - your e-mail might be subject to disclosure under FOIA.
- Don't send jokes, or vacation photos, or gossip, or chain letters, or prayers.
- Don't put anything in an e-mail that you would not want published in the newspaper.
- Change your settings so that e-mail addresses won't automatically fill in as you type.
- Use your software tools to automatically sort your e-mail messages.
- Keep your e-mail password a secret.
- Remember that e-mail is permanent, even if you delete it.
- Beware of Instant Messaging.

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[38] SEND: The Essential Guide to E-mail for Office and Home, by David Shipley and Will Schwalbe (Alfred A. Knopf, 2007)
[39] *Id.*

I have a few of my own.

- SLOW DOWN. Take the time to thoroughly read your e-mail for content—did you really mean to say that?
- Don't put anything in an e-mail that you would not your mother to read.
- Double check the address line—are you sending this e-mail to the appropriate people "Reply All" is a potentially dangerous function
- Delete does not mean delete—Your e-mails will remain in the bowels of the company server (and maybe your ISPs server) until deleted by the IT Department.
- Do not send editable documents (MS Word, Excel, PowerPoint or WordPerfect) as attachments—unless you want the recipient to be able to edit them—use pdf files instead.
- Scrub attachments and e-mails for metadata (a whole other seminar topic)