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From the SelectedWorks of Hon. Gerald Lebovits

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E-Mail Netiquette for Lawyers

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A Message from the Section Chair
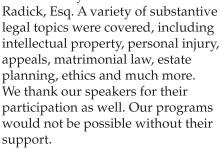
Dear Young Lawyers Section member:

Welcome to our latest edition of *Perspective*—the printed publication of the NYSBA Young Lawyers Section (YLS)! Our last publication was printed at the beginning of our 75th Anniversary Year, and here we are approaching the term's end on May 31st. We continue to be proud of "growing old while staying young."

Since we last touched base, we have had a lot of fun and exciting events happening around the State.

During the last week in January, we held our Annual Meeting as part of NYSBA's Annual Meeting at the New York Hilton Midtown. Our Executive Committee meeting and half-day CLE program were held on January 29th. The CLE program focused on bankruptcy law and was extremely well-received. We thank our CLE co-chairs, Nathan Kaufman, Esq. and Erica Weisberger, Esq., for putting together an amazing program. Thank you also to our wonderful speakers.

The Young Lawyers Section each year honors a young lawyer who has rendered outstanding service to both the community and legal profession. After our Annual Meeting CLE program, we were proud to present this award to Muhammad Faridi, Esq.

Our two-day Bridging the Gap program was then held on January 30th and January 31st and was co-chaired by John Christopher, Esq. and Courtney Radick, Esq. A variety of substantive legal topics were covered, including intellectual property, personal injury, appeals, matrimonial law, estate planning, ethics and much more. We thank our speakers for their participation as well. Our programs would not be possible without their support.

March 29th through April 2nd found the Young Lawyers Section in Ithaca, NY for the Fifth Annual Trial Academy. This program is an intensive five-day trial techniques program, which provides attorneys with the opportunities to improve their trial skills. With over 60 attendees this year, it was the best attended year to date. Thanks to our co-chairs Michael L. Fox, Esq. and Sarah E. Gold, Esq. for your efforts in ensuring that this Trial Academy was a success. Thank you also to Megan O'Toole and Adriana Favreau, our NYSBA Staff, for your assistance with our Trial Academy. The program would not be the same without your guidance and hard work.

Throughout the year, the YLS' District Representatives from throughout the State have been holding events near you. We held a few annual parties, including a Toys for Tots drive, during the holiday season. We also had a wine tasting event on Long Island and attended

Inside

E-Mail Netiquette for Lawyers

By Gerald Lebovits

Electronic mail, called "e-mail" and often spelled "email," has electrified the practice of law. E-mail is invaluable. It's "cheaper and faster than a letter, less intrusive than a phone call, [and] less hassle than a fax."[1] It eliminates location and time-zone obstacles.[2]

E-mail isn't perfect. Attorneys are besieged by the volume of e-mails. It's hard to sort through the mix of solicitations, SPAM, correspondence, and critical, time-sensitive information. One result: "people are either annoyed by the intrusion [of e-mail] or are overwhelmed by the sheer number of e-mails they receive each day."[3] E-mail also leads to misunderstandings.[4]

Despite its problems, e-mail is an essential tool. Attorneys must make the most of it—so long as the attorney follows this good advice: "Think. Pause. Think again. Then send."[5] This column reviews e-mail etiquette, e-mail tips, and e-mail's implications for the legal profession. Good protocol makes e-mail fit to print.

Etiquette

Lawyers must consider the e-mail's recipient to determine how formal or informal etiquette should be. E-mails among colleagues sent in a series of quick responses are different from e-mails to a potential client. The varied purposes of e-mails and the diversity of recipients lead to conflicting etiquette rules. Many equate e-mail with traditional correspondence. Others see it as a new and different way to write. Some authorities argue that old-fashioned "snail mail" letters are better when interacting with adversaries, clients, and courts.[6] Others criticize the informal and sloppy writing common in e-mails. To them, "the e-mail culture is transforming us into a nation of hurried, careless note makers."[7]

The following etiquette rules outline general concepts and apply to all forms of electronic mail, regardless of the recipient.

Don't hide behind the electronic curtain. Easy access to e-mail leads to the common but poor practice of relying on e-mail's impersonal characteristics to deal with things better done in person. The mantra must be "Never do anything electronically that you would want others to do to you in person."[8] E-mail writers must ask themselves: "Would I say this in person?"[9] Asking this question reduces the potential to use e-mail for an exchange best suited for oral communication.

> "[E]-mail is an essential tool. Attorneys must make the most of it—so long as the attorney follows this good advice: 'Think. Pause. Think again. Then send.'"

End confrontations. If communication leads to confrontation, end the dialogue and, if appropriate, agree to speak by telephone or in person.[10] E-mail is an imperfect way to resolve differences. Unlike oral communication, e-mail provides no tone or inflection. The reader must assign character to the communication. Angry, or "flame," mail[11] escalates disputes.[12]

Cut the back-and-forth. Stop e-mailing when an exchange, called a "thread," turns into a long back-and-forth discussion.[13] It's better to discuss on the telephone or in person any matter requiring more than three replies. Long threads lead to confusion when the discussion strays from the original subject. Sending e-mails also gives senders a sense of

absolved responsibility when nothing has been accomplished. Just click the "send" button and it's the other guy's responsibility. Clarifying tasks by telephone or in person avoids this trap.

Interpret generously. Just as e-mail writers must consider the tone recipients might assign to the text, so must recipients generously interpret the writer's text.[14] Recipients should assume the best of the writer to avoid overreacting to a text that might be brief, hostile, or unclear. Avoid misunderstandings by giving e-mail writers leeway when deciphering meaning.

Always edit. Avoid confusion through editing. Reading what you've written will let you see how an intended recipient might misinterpret your writing. An example of this is an e-mail that reads "I resent your message" when the writer meant to say, "I re-sent your message."[15]

Editing includes more than reading for meaning. It means checking spelling and grammar. Informality like making typos or using only lowercase letters is fine between friends. It has no place in professional correspondence. To ensure credibility and respect, avoid grammar and spelling errors. Use your e-mail program's spell-check function. Editing is necessary because "[c]lients often can't tell whether your legal advice is sound, but they can certainly tell if you made careless typos."[16]

Be concise. Given the volume of e-mail and the limited time to read and respond, make e-mail readable. Write so that readers can read and comprehend quickly. Compose short sentences, short paragraphs,[17] and short e-mails. To make the reader's job easier, condense brief, casual e-mails into one paragraph.

This doesn't mean that e-mail writers should abandon all formalities of correspondence for brevity. Maintain a professional tone through proper capitalization and word choice. Many traditional-correspondence rules apply to e-mail.[18]

Front load and summarize questions and answers. If you're asking a question in your e-mail, ask it before you say why you're asking. If you ask the question up front, you're more likely to get an answer; the reader is less likely to stop reading before getting to your question.[19] Another technique when you reply is to summarize the question you were asked—and only then answer the question.[20] That'll let your reader know you're both on the same e-mail page.

Use the subject line to its full potential. Attorneys are inundated by e-mail. They must decide what to read and take care of first. An e-mail's subject line often determines the decision a recipient makes about when, or whether, to deal with it. Use the subject line to inform recipients of the e-mail's subject and purpose.[21]

A recipient will be frustrated by false or insufficient information in the subject line. Include key information to let recipients evaluate quickly whether they've time to deal with your e-mail at that moment. Don't make your subject line too short or too long.[22] Use initial capitals for subject-line messages, but don't capitalize short articles or prepositions. Don't end subject-line messages with a period.

Occasionally you can fit your entire message in the subject line. This works when the message is extremely brief and when asked to reply to a short, simple question. Use the abbreviation "EOM" at the end of the subject line-message.[23] EOM means "end of message." It tells the recipient that the subject line is the complete message and that they needn't waste time opening the message.

Format replies for clarity. Answer at the top of an e-mail so that readers need not search through text.[24] To answer multiple questions or make various points, organize replies with numbers or letters. If you're interlacing your answer between paragraphs of the original e-mail, use a different color, size, or font to set your writing apart from the sender's.[25]

Don't overuse abbreviations. LOL! To be brief and to type quickly, it's tempting to use lots of abbreviations. This isn't as time-saving as it might seem. Abbreviations waste time if your e-mail, filled with ambiguous abbreviations, requires the recipient to reply seeking clarification. The solution is to use them sparingly.[26] Stick with familiar abbreviations that express your meaning.

Use contractions. Although contractions are inappropriate in formal letters, contractions, which enable readers to understand text quickly, are encouraged in e-mails. Not using contractions sounds awkward and fussy and makes readers feel scolded.[27] Using the uncontracted form in the directive "Do not make extra copies of the report," for instance, suggests that dire consequences will follow for doing so.[28] Reserve the uncontracted form for special emphasis.[29]

Be sensitive when e-mailing to and from telephones. Smartphones like Blackberrys and iPhones are increasingly prevalent. Their small screens and cramped keyboards make writing concisely and using the subject line to its full potential even more important. In your quest for concision, never use, in a professional context, SMS (Short Message Service) language, or "textese," like substituting "c u l8r" for "see you later."[30] This extreme form of abbreviation is like writing in another language.

☺ **Emoticons are inappropriate.** Emoticons are small faces made by combining colons, semi-colons, parentheses, and other symbols. The authorities have different opinions about emoticons, but the consensus is that they don't convey meaning in a professional setting.[31]

Correspondence littered with smiley and frowny faces looks juvenile. It reveals the writer's inability to find good words, phrases, and sentences. Readers find emoticons annoying[32] and disruptive.

All capitals are ineffective. All capitals equals SHOUTING. Never use them, regardless of the context.[33]

Exclamation points liven up e-mails! Because e-mail has no affect, "exclamation points can instantly infuse electronic communication with human warmth."[34] They show enthusiasm. Writing "Congratulations!" is more expressive than writing "Congratulations," which sounds apathetic or sarcastic. Don't use multiple exclamation points. Also, don't use exclamation points to convey negative emotion. It means you're throwing a tantrum.[35]

Avoid format embellishments. Many e-mail programs offer options to personalize e-mail. These options include different fonts and background "wall paper" featuring pictures and clip art. Personalize with content, not format embellishments. Stick to a plain font, like Times New Roman or Arial in black type,[36] and 10- to 12-point type size on a plain background.

Project respect. Appropriate salutations and closings express respect. Writers should use salutations and closings in most professional settings. Sometimes official salutations and closings are unwarranted, as in a string of replies between peers or colleagues or among friends.[37]

If you're unsure how to address your recipients, mirror the earlier correspondence.[38] When there's no correspondence, the following are helpful salutations and closings. Use last names and titles until you're told otherwise. For an individual, "Dear Mr./Ms. [*last name*]:" is always appropriate. If you're unsure whether your relationship is familiar enough to allow first names, "Dear [*first*

name] (if I may),"[39] allows informality and addresses whether first names are appropriate.

These closings aren't comprehensive, but they're a start to your finding the appropriate ending to correspondence: "All best," "All the best," "Best," "Best regards," "Best wishes," "Cordially," "Regards," "Respectfully," "Sincerely," "Sincerely yours," and "Yours."[40]

Sign your e-mail. An e-mail exchange might be your only correspondence with a recipient. Signatures tell recipients how you like to be addressed and signal that the e-mail is complete. The context of your e-mail determines the appropriate signature. Not every e-mail requires a full signature. Quick responses between co-workers and friends about simple issues dispense with e-mail formalities, including signatures. Alternatively, consider correspondence between opposing counsel at the start of litigation. Signatures with full names and titles are informative. Make the most of this line to tell recipients whether you wish to be addressed by your first name, your last name, or a title.

Start smart. Don't both begin and end an e-mail with your name and who you are. A formal, polite way to write is to introduce yourself up front but to sign your name only at the end. Thus: "I represent Mr. Y, the defendant in X v. Y. Please telephone me tomorrow. Sincerely, John Smith." Not: "My name is John Smith. I represent Mr. Y, the defendant in X v. Y. Please telephone me tomorrow. Sincerely, John Smith."

Tell recipients how they can contact you. Include contact information below your signature. It sets the right business tone and shows your desire to be available to recipients. Include your full name, title, organization name, telephone number, e-mail address, mailing address, Web site, fax number, and other relevant information.[41] Save time with your e-mail program's automatic signature-line feature.

Announce prolonged absences. Tell correspondents when you'll be away from your e-mail for more than a day or two. If you don't, they might e-mail expecting quick action and grow frustrated when you don't reply. Use your e-mail software's "Out of Office" function to send an automatic reply announcing your absence. Or set your program to forward mail to an account you'll monitor while you're away.

Limit urgent e-mail. E-mail programs contain an option to flag or highlight messages as "urgent" or "important." This option helps senders and recipients supplement information in the subject line, but only if the "urgent" or "important" designation is accurate. Using flags to entice recipients to read e-mail that doesn't qualify for a flag harms the flag's purpose and your credibility.[42] Use "urgent" and "important" sparingly.

Never forward without permission, but always assume that recipients will forward without permission. E-mail makes it easy to reply with the click of a button. Forwarding and carbon copying e-mail is just as simple. The ease with which you can pass along e-mail makes it tempting to do so. But etiquette dictates that you not forward any e-mail unless you have the original sender's permission. Also, when carbon copying (CC) or blind carbon copying (BCC) someone unfamiliar to your reader, state the reason for copying.

Your commitment to following the rules of etiquette doesn't guarantee that others will do the same. Assume that any e-mail you write will be forwarded, copied, and blind copied to others without your permission.[43] Protect your wish that your mail remain with your recipient by placing that request in the subject line and in your e-mail's body. These precautions don't guarantee compliance. E-mail isn't confidential. Don't assume it is.[44]

Don't abuse e-mail. Sending unsolicited advertisements to a mass list of recipients (SPAM) is like clog-

ging up your friends' and colleagues' inboxes with unwanted jokes and chain mail. Don't be a spammer.

Note e-mail policies. Most large employers have e-mail policies. Follow them.

Beware of using business e-mail for personal use. Most large companies can access their employees' e-mail and hard drives. If in doubt, never e-mail anything you wouldn't want to see in tomorrow's newspaper.[45] Never send inappropriate mail, let alone to or from your office e-mail address.[46]

Your company might require a disclaimer at the end of your e-mail to specify the level of privacy assigned to e-mail communications and a warning that the e-mail shouldn't be used outside its stated context.

The New York State Bar Association provides a sample e-mail policy in its resources for small and solo practice firms.[47] The sample includes a list of risks and liabilities, legal requirements to use company e-mail, and suggested format for company e-mail. The policy is helpful if you're setting up an e-mail system.

E-Mail Tips

Here are some tips to make writing, sending, and receiving e-mail efficient and hassle-free.

Fill in the address box only when you're ready to send. The ease of sending out mass e-mail, purposely or inadvertently, means that you must take care when addressing your message. To avoid sending an e-mail before you're ready, write your entire e-mail, do all your edits, and proofread before you fill in the address box.[48]

Make managing e-mail part of your daily tasks. If the constant inflow of mail becomes overwhelming, set up a schedule to read e-mail just as you would an appointment.[49] Otherwise, read e-mail as received.

Start by answering e-mails that require a response. If you can't give

the e-mail full attention, send a quick response to let the sender know that you received the message and that a more complete response awaits.

Set up a filing system. Most e-mail programs allow multiple folders you can add to manually or automatically based on your criteria. Consider a pending folder for e-mail you must deal with later, a monthly or weekly review folder for follow-up exchanges, a permanent folder for mail you must never delete, and folders for clients or personal matters. Don't clog up your inbox. Deal with your mail and then discard it or place it in a folder.

Take the time to respond appropriately. The immediacy of e-mail leads people to send messages before they've fully thought through their ideas. Combined with the constant access to e-mail, instantaneous e-mail correspondence leads to situations in which senders often wish they could take their message back. This is wishful thinking: "No one will remember that you responded instantaneously. Everyone will remember if you respond inappropriately."[50]

Some people are always online. When they press the "send" button, their computer immediately sends the e-mail. Most e-mail programs allow an intermediate step between sending e-mail and its actual delivery: the outbox feature. An outbox works like your home mailbox. You place the letter in the box, but it isn't sent until the letter carrier picks it up.[51] Set your program to send all e-mails in the outbox at a particular time or only when you manually empty the outbox. In the meantime, the e-mail is in the outbox and available to edit or delete.

This feature also helps those who e-mail outside business hours. Setting your outbox to deliver all messages at 9:00 a.m. will hide that you were awake at 4:00 a.m. when you wrote it.

Watch out for Reply All. The "Reply All" feature is convenient to exchange responses with a large group. The feature can turn disastrous if used in error. The horror stories are well known, but the mistakes continue.

Use CC and BCC properly. Several options let senders address messages. The "To" box should include all those to whom the message is directed. The "CC" box is reserved for those who should receive the message for informational purposes but from whom no response or action is required. The "BCC" box works the same way as the "CC" box but preserves recipients' anonymity.[52]

Check and explain attachments. Correspondents can instantly share documents by attaching them to e-mails. This useful feature requires careful attention. First, consider whether to send a document by e-mail. Sending large files (anything over two or three megabytes) causes problems. Many servers block large e-mails. Or an e-mail that goes through might exceed the memory capacity of the recipient's inbox, causing it to crash. Next, remember to attach a document when you state in your e-mail that you're attaching it. Also, explain early in the e-mail message what you've attached, in what form, and why. Finally, attach the correct document, especially when dealing with sensitive materials.

Use your address book wisely. Most e-mail programs offer options to store contacts in an address book. This allows you to maintain a database of e-mail addresses to send e-mails without searching for addresses. Ready access to your contact list might lead to costly mistakes. Confusing your intended recipient is embarrassing. Although it's impractical to maintain separate address books for each contact, maintain separate address books for media,[53] professional, and personal contacts.

Save time: Set up group e-mails. When you're collaborating on a project or regularly exchange e-mail with a set of recipients, set up a group e-mail list. This assures completeness and saves time.

Request an acknowledgment of receipt. If you're concerned that your recipient might not receive an e-mail with time-sensitive or other important information, request an acknowledgment of receipt. Most e-mail programs have an option to do this, but you can also request an acknowledgment in the body of your e-mail. Not all e-mail communications require acknowledgment. Give yourself peace of mind, but don't burden recipients.

Rely on timestamps cautiously. Each e-mail message sent or received is stamped with date and time information. This information is good for documentation, but it's not 100% accurate.[54] Glitches in computer software and other electronic anomalies result in inaccurate timestamps.

Be careful with interoffice e-mail. Interoffice e-mail systems offer options and features different from personal e-mail programs. Some interoffice systems allow access to the "Properties" of e-mail exchanges to permit senders to check when their recipients read a message, how long the recipient looked at a message, whether the recipient deleted a message, and whether the recipient forwarded a message. Each system is unique. Be aware of these possibilities.

Save your recipient's time with "No reply needed." In an age when so many e-mails are exchanged daily, include a notation in e-mails sent only for informational purposes that no reply is needed.[55]

E-Mail and the Law

E-mail etiquette is important for attorneys because "[e]mail leaves a written, time stamped, and traceable record of your lazy habits, and flip email replies can come back to haunt you."[56]

Not all e-mail between attorneys and clients is privileged: "[E]mail communications in which legal advice is neither sought nor given are not necessarily privileged and could

be discoverable."[57] Avoid off-topic banter when corresponding with clients.

You're responsible for your mail. The costs of misdirecting e-mail containing confidential information are incalculable. Check and double check the accuracy of a recipient's address. Attorneys are charged with a standard of care that includes "carefully checking the addresses prior to sending an e-mail and ensuring that privileged information is not inadvertently sent to a third party."[58]

Consider the impact and repercussions each e-mail might have. Arthur Andersen's fall can be attributed to an Anderson in-house attorney's e-mail directing staff to follow its document retention policy—a direction to shred documents.[59] Because electronically stored data, including e-mail, is generally discoverable in lawsuits,[60] consider the legal implications of what you write.

Conclusion

Corresponding with the click of a button instead of dropping an envelope into a mailbox doesn't give you license to become complacent. When attorneys correspond in their professional capacity, it reflects on their capacity as professionals.

Endnotes

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4. Janice Mac Avoy et al., *Think Twice Before You Hit the Send Button! Practical Considerations in the Use of Email*, 54 Prac. Law. 45, 45 (Dec. 2008).

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12. Shipley & Schwalbe, *supra* note 8, at 11–13.

13. Enbysk, *supra* note 11.

14. Bouchoux, *supra* note 9, at 141.

15. *Id.* at 140.

16. Joshua Stein, *How to Prevent Email Embarrassments, Control the Email Deluge, and Get People to Read the Email You Send*, 19 Prac. Real Est. Law. 7, 9 (Jan. 2003).

17. Shipley & Schwalbe, *supra* note 8, at 132.

18. *See generally* Kane, *supra* note 3 (containing sample letters and examples of legal correspondence).

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20. *Id.* at 26.

21. Laura Stack, *12 Tips for Better E-mail Etiquette*, http://office.microsoft.com/en-us/outlook/HA012054101033.aspx (last visited Oct. 14, 2009).

22. Mark Grossman, *Email Etiquette is Important*, http://www.ecomputerlaw.com/articles/show_article.php?article=2008_email_etiquette_is_important (last visited Oct. 14, 2009).

23. Shipley & Schwalbe, *supra* note 8, at 88.

24. *Id.* at 158.

25. *Id.*

26. Bouchoux, *supra* note 9, at 141.

27. Shipley & Schwalbe, *supra* note 8 at 132.

28. *Id.* at 133.

29. *Id.*

30. Wikipedia, SMS Language, http://en.wikipedia.org/wiki/SMS_language (last visited Oct. 14, 2009).

31. Bouchoux, *supra* note 9, at 141.

32. Mac Avoy et al., *supra* note 4, at 51.

33. Grossman, *supra* note 22; Mac Avoy et al., *supra* note 4, at 51.

34. Shipley & Schwalbe, *supra* note 8, at 137.

35. *Id.* at 138.

36. *Id.* at 97–98.

37. *Id.* at 107.

38. *Id.* at 110.

39. *Id.* at 105.

40. *Id.* at 108.

41. *Id.* at 114–15; Stack, *supra* note 21.

42. Shipley & Schwalbe, *supra* note 8, at 95–96.

43. Stein, *supra* note 16, at 10.

44. Bouchoux, *supra* note 9, at 141.

45. Mac Avoy et al., *supra* note 4, at 51;

Shipley & Schwalbe, *supra* note 8, at 61 ("Never send anything to a business email address that the recipient would be embarrassed to have the entire company read.").

46. Bouchoux, *supra* note 9, at 141.

47. New York State Bar Association Solo and Small Firm Resource Center, http://www.nysba.org/AM/Template.cfm?Section=For_Attorneys&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=14569 (last visited Oct. 14, 2009).

48. Mac Avoy et al., *supra* note 4, at 49.

49. *See* Dennis M. Kennedy & Tom L. Mighell, The Lawyer's Guide to Collaboration Tools and Technologies: Smart Ways to Work Together 127 (2008) (advising readers to use "triage" on their inbox by identifying which e-mails must be dealt with immediately, which require action but can wait for a response, and which can be deleted immediately because they are of no future use.)

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51. Jonathan Soll, *Managing Electronic Data Risks Through an Email Retention Policy*, 18 Am. Corp. Counsel Ass'n Docket 18, 25 (Apr. 2000).

52. Shipley & Schwalbe, *supra* note 8, at 59–60.

53. Mac Avoy et al., *supra* note 4, at 50.

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55. *Id.* at 54.

56. Kennedy & Mighell, *supra* note 49, at 125.

57. Christopher Wesser, *Ethical Considerations and the Use of Email*, 49 For the Def. 68, 71 (Feb. 2007).

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60. Soll, *supra* note 51, at 19.

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