



# Think Before You Send

Civility and Professionalism in Emails

BY MARILYN S. CHAPPELL

**T**he pandemic has profoundly impacted us all, personally and professionally. It has added challenges to an already stressful profession, making many of us more reactive than previously to the communications or conduct of our colleagues. It has also increased the already too great role that email plays in our communications.

All these factors mean we should be more careful than ever in what we say, and how we say it, in our emails. In this article, I discuss why such caution is important and provide suggestions to help the “think-before-sending” process.

## Three Reasons to Exercise Caution When Emailing

As a young lawyer I was taught never to write anything I wouldn’t want to loudly announce

at the corner of 16th Street and Broadway in Denver. Today, that admonition is even more important, as emails can last virtually forever and can be forwarded to virtually anyone. Before sending that impulsive email, consider the following risks.

### *It could be filed with the court.*

Any email you write to opposing counsel may become a publicly filed court exhibit. This is particularly so given meet-and-confer requirements in both state and federal courts.<sup>1</sup> Judges tell us they detest squabbles among attorneys, including through emails appended to court filings. In a recent CLE program, a federal magistrate judge commented that asking opposing counsel in an email “Is that a joke?” does not, to put it mildly, comply with conferral requirements.

So, when emailing opposing counsel about your views on their clients’ positions, consider who might read your writings in addition to the intended audience—including judges presiding over your cases.

### *You could be sanctioned.*

Emails can also implicate ethical concerns.<sup>2</sup> In fact, emails can result in actual sanctions—and that has happened in Colorado. In *People v. Abrams*, an attorney was sanctioned for using discriminatory language about a judge in an email to his client (before the two became involved in a fee dispute), in violation of Colo. RPC 8.4(g).<sup>3</sup> The Colorado Supreme Court upheld the hearing board’s ruling, finding that Rule 8.4(g), which prohibits conduct that “exhibits or is intended to appeal to or engender” discriminatory bias in the course of representing a client, does not violate the First Amendment.<sup>4</sup>

Sanctions have also been imposed for emails in other reported cases, including where an attorney’s emails to opposing counsel in his own divorce case included “threatening language, intimidation and personal attacks directed to opposing counsel, including inappropriate remarks about counsel and members of her family.”<sup>5</sup> Harassing and threatening emails to a former girlfriend, along with other misconduct, even led to counsel’s disbarment.<sup>6</sup>

My most memorable experience in this area was an email I received from a lawyer who was representing my client in a separate matter. I was hoping to gain his cooperation to assist the client in the matter I was working on. He rebuffed my attempts, culminating in this email: “Do you not understand ‘no’? Is English not your primary language?” That email, along with other information from those who knew him personally, led me to seriously consider filing an ethical complaint.

### *You could be sending an unintended message.*

Lastly, as to the tone of emails, by stripping away everything but the written word, emails can come across as unduly harsh, regardless of the sender’s intent. I have been aghast at the tone of some of my own emails when reviewing them later.

Sometimes adversariness between opposing sides can feed the tone of emails. This happened to me in a recent case in which, even though opposing counsel was a friend and mentor, the relationship between our clients was so negative that it came across in the tone of my emails. I finally realized I needed to pick up the phone and apologize to counsel for my tone—which I did.

Guarding our tone is often reflected in various judges' practice standards. For example, some require that counsel communicate with one another "courteously" and with "respect."

### Steps to Increase Email Professionalism

Of course, our jobs are to act as zealous advocates for our clients. But in doing so, we should maintain a civil and professional tone in emails. This is crucial for the sake of our profession overall and to promote the healthiest possible attitude in ourselves and those around us regarding our work.

So, it makes sense to "think before you send." Here are some ways that have helped me do so, and I recommend them to you.

#### 1. Ask yourself if you really need to send that email.

What about picking up the phone instead—or even better, meeting in person? It's harder to be uncivil and unprofessional in person, especially in a public place.

#### 2. Don't assume the worst.

You never know what's going on in your adversaries' personal or professional lives that has led to your being ready to burn up the internet. Give others the benefit of the doubt unless and until proven otherwise.

#### 3. Check your assumptions.

Verify that your assumptions about your adversaries' communications are accurate. Could there be an honest mistake or misunderstanding that has led to your anger?

#### 4. Avoid personal attacks.

Our work is about advocating for our clients and should not involve ad hominem attacks.

Focus on the issues and avoid imputing ill intent wherever possible.

#### 5. Avoid excessive emphases.

Avoid all caps and excessive boldface, italics, underlining, and exclamation points, all of which can come across as unduly aggressive.

#### 6. Send it to yourself as a draft.

Consider sending that email you've pounded out in anger to yourself as a draft, waiting some time to cool down, and then re-reading (and toning down) before sending.

#### 7. Send it to a colleague as a draft.

Even better, send your draft email to a trusted colleague for review and comment (and likely toning down) before sending.

#### 8. Rewrite in a more civil, professional way.

Can you rewrite your email to say what you need to say, but in a more civil and professional way? It may even be more effective and persuasive.


#### 9. Set a one-minute delay on outgoing emails.

A one-minute delay on outgoing emails is a really good idea to build in some cool-down time.

#### 10. Rise above the fray.

Finally, even if your adversary is being nasty, you can be civil and professional. Again, judges hate squabbling among attorneys. Your judge will appreciate your rising above the fray.

### Conclusion

Our jobs as attorneys are hard, especially in these unique times. Anything we can do in our written communications to increase civility and professionalism is a good thing for ourselves and others. Think before you hit send! 



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### NOTES

1. See, e.g., CRCP 121 § 1-12(1), (5) (conferral regarding discovery disputes); CRCP 121 § 1-15(8) (conferral before filing motions); D.C.COLO.LCivR 71(a) (conferral before filing motions). In addition, most state and federal court judges have adopted their own conferral requirements regarding discovery disputes and motions practice.

2. See, e.g., Colo. RPC Preamble: A Lawyer's Responsibilities ¶ 5 (lawyers should not use legal procedures to "harass or intimidate others"); Colo. RPC 3.5(d) (barring conduct "intended to disrupt a tribunal"); Colo. RPC 4.4(a) (prohibiting means having no substantial purpose other than to "embarrass, delay, or burden a third person"); Colo. RPC 8.2(a) (forbidding statements known to be false or with reckless disregard as to truth or falsity regarding the qualifications or integrity of judicial officers); and Colo. RPC 8.4(h) (prohibiting "conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law"). See also Colo. RPC 8.3(a) (duty to report ethical violation by attorney whose conduct "raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer").

3. *People v. Abrams*, 19PDJ036 (Feb. 12, 2020).

4. *In re Abrams*, 2021 CO 44.

5. *In re Spain*, 802 S.E.2d 240, 241 (Ga. 2017).

6. *In re Keaton*, 29 N.E.3d 103, 109 (Ind. 2015).

7. See, e.g., Practice Standards, US Magistrate Judge Kristen L. Mix, ¶ 2 ("[a]ttorneys and pro se parties will promptly and courteously respond to each other's correspondence . . ."; Pre-Trial Order, District Court Judge Alex C. Myers, District Court, City and County of Denver: "This is a CIVIL division. Counsel will treat jurors, parties, witnesses, me, my staff, and each other with professionalism, courtesy and respect at all times. This applies not only to the actual trial, but to all aspects of the case, including discovery and motions practice, and includes what is written as well as what is said." (bold italics and underlining in original).

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