

Avoiding Inadvertent Disclosures When Using Email: A Luddites' Guide

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In 2013, the Delaware Supreme Court amended the Delaware Lawyers' Rules of Professional Conduct ("DRPC") to address the growing relationship between technology and the ethical practice of law. Included in those changes are requirements that lawyers make reasonable efforts to address the risks of inadvertent or unauthorized disclosures of confidential information.¹ In one well known example of inadvertent disclosure, a lawyer disclosed confidential information about settlement discussions between her client, Eli Lilly & Co., and the federal government to a New York Times reporter. The lawyer mistakenly thought she was sending the email to her co-counsel who had the same last name as the Times reporter.² The lawyers' mistake did not result from the technology itself, but rather from failing to proofread the email addresses closely before hitting send. Here I offer some simple suggestions on how to avoid similar inadvertent or unauthorized disclosures of information when using email.

Technical Tweaks to Avoid Inadvertent Disclosures

Outlook and most email services offer an "auto-complete" feature that suggests or fills in names from your contact list when you start typing their name in one of the email address fields. The feature increases the risk that you will accidentally include an unintended recipient on your email. If you have an itchy trigger finger and often hit send without carefully reviewing the list of addressees, you should turn off the auto-complete feature. That will force you to proof read the addresses by typing them in full.

Consider setting up delayed delivery. Microsoft Outlook includes a feature called delayed delivery that "holds" an email for a specified time period (usually a few minutes) after you hit "send." Therefore, if you "send" your email and then realize that there was or might have been a mistake, a period of time exists during which you can retrieve the email and revise or delete it before it is delivered to the recipients.

Disable key board "send" shortcuts. Email software like Microsoft Outlook allows you to use key strokes to send your message rather than clicking on the "send" button with a mouse to touch

pad. Depending on the version of Outlook, the key combinations of [Ctrl + Enter] or [Alt + S] send an email message. Disable these shortcuts. It is very easy to accidentally hit either key combination when typing thereby prematurely sending a message. Here, a little inconvenience (having to click on the "send" button on the screen) is worth the reduced risk of sending a message before it is final.

Type the body of the email first and the email addresses last. Doing this eliminates the risk of sending the email by accident until it is complete. It also forces you to think more about who should receive the email. Because the substance of the email is final, you can choose addressees with the benefit of knowing everything contained in your email and make a more informed choice regarding who should and should not receive it.

The "reply all" and "bcc" features should be used carefully. If you received a message and want to respond to the sender, check the identity of all the recipients of the email before hitting "reply all." It is easy to inadvertently send a message to an unintended recipient who is buried among multiple recipients of the original email. If your "bcc" recipient decides to "reply-all," his or her presence on the original email will be revealed. In general, do not address a single email to persons with adverse interests (*e.g.* opposing counsel and your client). In responding, your client might inadvertently send an email intended for you to opposing counsel. Rather than cc'ing your client, forward a copy of the original email in a separate email.

Apply Old Habits to Using New Technology

Perhaps the best and most effective means to avoid inadvertent disclosure by email has nothing to do with technology. Rather it involves a practice that lawyers have followed for centuries: proof reading. Slow down and re-read both the body and the list of addressees on every email before you hit send. The convenience and speed of email sometimes leads lawyers to not exercise the same degree of care and review to email correspondence that they do to paper letters and documents. But, some old habits should not be broken. 📧

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1. See Delaware Lawyers' Rules of Professional Conduct 1.6 and the related comments.

2. Debra Cassens Weiss, *Did Lawyer's Email Goof Land \$1B Settlement on NYT's Front Page?* ABA J., Feb. 6, 2008.