

## Email Pitfalls in Business Transactions

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Monday, November 2, 2015

The benefits of email communication are numerous: Emails are sent and received instantaneously. They can be read and responded to on many platforms such as your desktop, your smart phone, or, nowadays, even your watch. Emails are also environmentally friendly and, in theory, free.

For all the benefits, however, there are just as many downsides to email communication. Workers spend much less time talking face to face or even over the phone. Emotion and tone do not translate well through inboxes and often get misinterpreted. Moreover, from a legal standpoint, email can be a hotbed for litigation, whether it be exchanges between employees that embarrass and damage the company's reputation or the smoking gun email that leads to a multi-million dollar lawsuit.

To avoid the latter of these downsides, here are a few hard and fast rules to live by when communicating over email during business transactions:

1. **If what you are typing is not something you would write in a letter that you sign with a pen, do not put it in an email.** What you may think of as friendly or joking banter with a colleague or client, could end up as Exhibit A in a publicly filed complaint against you or your employer. Think before you type and think again before you press send.
2. **Avoid sending personal email on your business account and vice versa.** Most companies have this rule as a policy, but few employees follow it. There should be no reason for personal emails to be discoverable in a business case unless you use them interchangeably (#HillaryClinton).
3. **Avoid forwarding emails from your lawyer to anyone.** If you do, you most likely are waiving the attorney-client privilege, meaning anything in those emails can be used as evidence in litigation.
4. **If you are a lawyer, in-house or otherwise, do not copy your client on email correspondence with the other side of a dispute, deal or transaction.** The mistaken "reply all" could reveal confidential information or strategy and/or lead to an unintentional waiver of the attorney-client privilege. If an otherwise privileged email is sent to the other side, immediately notify the other side that the email was sent in error and that it should be deleted.
5. If you are a lawyer communicating legal advice, or a business person forwarding a lawyer's advice to others, **include in the subject line of emails with clients something like *\*\*Privileged and Confidential - Do Not Forward\*\****. That small step could, at minimum, cause the recipients to think twice before forwarding the chain to someone else.

You can avoid many email pitfalls by following the above rules and avoiding sending emails to multiple parties. Also - when in doubt - walk down the hall or pick up the phone. Memories fade. Emails last forever.

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Article By [Sherin and Lodgen LLP](#)  
[Jessica Gray KellyPL Alert](#)

[Communications, Media & Internet](#)  
[All Federal](#)