



**WSBA President
Steven G. Toole**

The 24-Hour Rule



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in releasing pent-up emotions. We religiously follow the “24-hour rule,” or at least the “overnight rule.” For those who don’t follow or even know them, these rules mandate not sending out an emotionally drafted, emotionally driven e-mail response until after there has been an opportunity to calm down — perhaps have a friend or colleague read it, or at least sleep on it. *E-mails, although they have revolutionized the practice of law, can be the most dangerous tool in our office.* They are instantaneous, therefore enabling you to communicate your thoughts before actually thinking, and they create a written record of your statement, for the whole world to see — sometimes over and over and over again. Once hitting that infamous “Send” button, your e-mail is irretrievably transmitted into cyberspace, forever. Don’t fall victim to the lure of instant gratification; slow down and reflect. Employ *the 24-hour rule.*

Although the 24-hour rule can help us avoid the potential catastrophe that can result from an angry e-mail that is prematurely sent, there are other serious problems that can be and are generated by the use of e-mail. E-mails are so instantaneous and direct that we often forget that the person on the receiving end is not able to see the smile on our face or hear the intonation in our speech and the emphasis on a particular word or phrase. The receiver is not able to see our body language as our message is read, and things written in these e-mails can easily be taken out of context. How often do we hear someone say, “That is not at all what I meant when I wrote that”? We each have to take accountability for how our words and sentiments can be misinterpreted and misunderstood.

As attorneys, this is of particular

We’ve all been there. We just received that letter in the mail from opposing counsel that personally attacks our character, our intelligence, our professionalism, and our competency. We are steaming and drop everything so that we can immediately defend ourselves and strike back. We’re not going to let that so-and-so get away with this. Reason and civility and giving the benefit of the doubt are out the door. We have been personally attacked. This is war.

Since e-mail is such an immediate method of communication enabling us to memorialize our brilliant response and actually see it in print for posterity’s sake, it is the easiest route to take. We do a quick check of our file to make certain there is nothing glaring at us that might suggest that the allegations

in the letter we just received could be an innocent mistake. Satisfying ourselves that we have been intentionally and inexcusably maligned, we start typing away at our computer. The words just fly off the keyboard, so focused in our response that we type at blazing speed. Words don’t fail us in this state of heightened emotion and urgency. We cut the legs out from under our opponent, destroying his suppositions and artfully arguing the truth and veracity of our position. When the smoke clears and the keyboard cools down and we read over what we have written, we feel vindicated and justified. The process of writing this e-mail response has been cathartic. We have been able to get the hurt and anger out of our system, or at least we have managed to let those emotions take a back seat to what is hopefully reason and professionalism.

As I said, we have all been there. For many of us, this is merely an exercise

We are representing a client whose case could well be impacted by careless or thoughtless e-mail communications. If we offend the person to whom we are sending the e-mail, it could impact the ability to resolve a dispute amicably and inexpensively. It could result in a business transaction failing. This is a heavy burden to carry and we should carefully consider the potential consequences before we go down that road.

concern for us. We are not just having personal communications that might impact our own relationship with an individual. We are representing a client whose case could well be impacted by careless or thoughtless e-mail communications. If we offend the person to whom we are sending the e-mail, it could impact the ability to resolve a dispute amicably and inexpensively. It

could result in a business transaction failing. This is a heavy burden to carry and we should carefully consider the potential consequences before we go down that road.

A good rule of thumb is to always assume that whatever you are e-mailing to someone is going to end up as an exhibit in court. Ask yourself if you are going to be embarrassed to see your e-mail blown up on an overhead projector or if it is going to paint your client in a bad light. For the litigators among you, is this potential exhibit going to help your case or hurt it? Will it make it more difficult for you to maintain credibility with the judge or jury? Is it going to make you a less effective advocate? In the case of transaction attorneys, is this exhibit going to make it harder or easier to negotiate terms on your contract that are favorable to your client? Is the e-mail serving your client in this case or is it just making

you feel momentarily powerful and righteous? *Do you want this e-mail defining you, who you are, and the way you practice law?*

Another good rule of thumb — after sleeping on the e-mail — is to ask yourself why you want to send it. Who is it going to benefit? What do you want to accomplish and will this e-mail accomplish that? Is the receiver going

to truly hear the message you are trying to convey, or will that person be so incensed at your words or manner of communicating that your message will be totally lost? Also, remember that people save e-mails. Are you sure that you didn't send an e-mail a year earlier that contradicts what you are saying in this one? I suspect we have all done that and, speaking personally, it is really embarrassing.

Whether you are a litigator or a transaction attorney, civility and professionalism need to be at the core of who you are and how you practice law. We need to take the high road in representing our clients. An attorney can be effective without the use of intimidation and righteousness. The January edition of *Bar News* included an article by Professor Paula Lustbader of Seattle University School of Law, entitled "Raising the Bar: The Promise of Civility in Our Profession." This was the first of a series of monthly articles that are going to be published in *Bar News* intended to focus on and enhance civility in the practice of law (see page 26 for the second article in this series). I applaud this effort and hope it will be well received by our members.

In the spirit of this Civility Initiative, we need to be particularly sensitive to this world of instant communication. The practice of law has morphed into one of immediate e-mail replies. When we mail a *traditional* letter to someone, our mindset is to draft and proof it several times before it goes out. However, our mindset with an e-mail is to respond quickly and send it out. We frequently don't even proofread the e-mail, relying on spell check to catch typographical errors. This can be dangerous and can convey unintended thoughts and opinions. To make matters worse, once you hit that "Send" button, the e-mail is out there for the whole world to potentially see, copy, and resend to people to whom you never intended it to go. The best protection we have for our clients, our effective representation of our clients, and our reputations is to be professional and civil at all times and to be aware of all the potential pitfalls of e-mail. Finally, and most importantly, when it comes to e-mails, *remember the 24-hour rule.* 

WSBA President Steven G. Toole can be reached at steve-wsba@sgtoolelaw.com or 425-455-1570.

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