



A Judge's Advice for Effective E-mail Communication

*Making e-mail
more of a blessing
and less of a curse*

By Richard B. Klein

In today's world, almost every lawyer has an e-mail address. Most lawyers, and almost all younger lawyers, access and write e-mails themselves without going through their secretaries. This can be both a blessing and a curse. E-mail functions neither as a telephone call nor a letter but is in between. It does not have the immediacy of a telephone call, but it does have the permanency of a letter and gives the reader a chance to respond.

E-mail does have advantages. It is quick and convenient.

As Kaitlin Duck Sherwood said in her excellent book, *Beginner's Guide to Effective E-mail*, "E-mail is cheaper and faster than a letter, less intrusive than a phone call, less hassle than a fax."

E-mail is very good for conveying hard, factual information. For example, it is an easy way of telling clients about a court date or that they have an extension to reply to interrogatories.

Of course, the lawyer should ask for an acknowledgement of receipt and ask the recipient to ensure that there are no problems with the request. Particularly if a client lives where it takes mail some time to arrive, e-mail will almost always get there much more quickly than "snail mail."

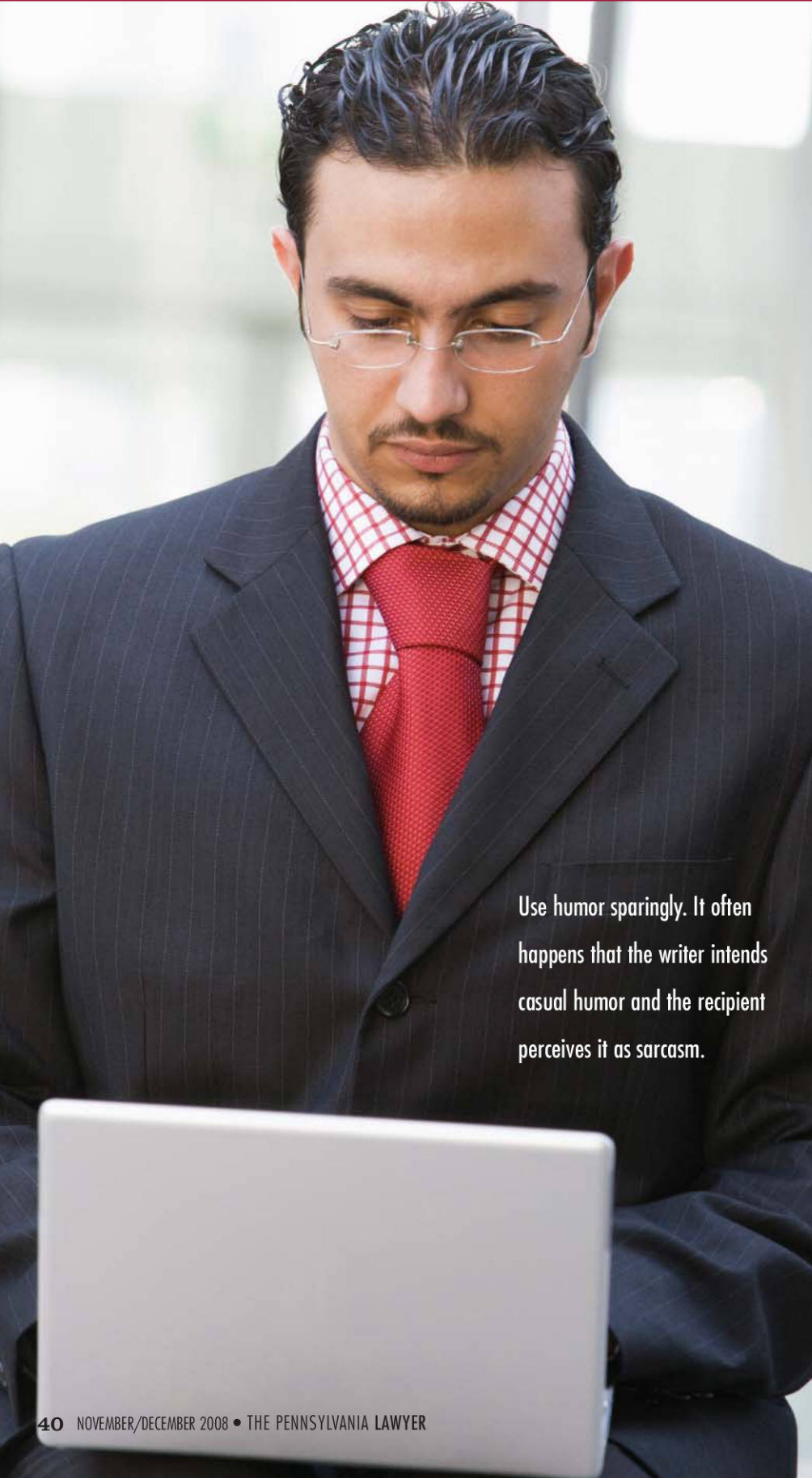
But e-mail has a number of risks. There is the risk of e-mail overload. Many lawyers receive hundreds of e-mails a day. An e-mail can get lost in the shuffle. Also, an e-mail can be misdirected and reach a different Marvin Smith than intended. It is a good idea to send a snail mail letter as well as an e-mail.

E-mail is subject to misinterpretation and is often perceived as nastier and as more negative than intended. Some psychologists say that more than 90 percent of communication is non-verbal. Of course, the reader does not see the writer or hear a tone of voice in an e-mail. While this is also true of letters, the immediacy of e-mail makes it different.

E-mail is subject to particular risks if the writer does not personally know the reader. As noted, there is a tendency to interpret the tone of e-mails as more negative than intended. If there is trouble in a situation, with opposing counsel or even a client, it may be better to pick up the telephone or even go to visit the person on the other side. Also, the layout of what the reader sees may be different than what the writer sees as he or she composes the e-mail, because of configuration differences.

While lawyers do take advantage of the benefits of e-mail, many misuse e-mail and fall prey to e-mail's risks.

E-mail is subject to misinterpretation and is often perceived as nastier and as more negative than intended.



Use humor sparingly. It often happens that the writer intends casual humor and the recipient perceives it as sarcasm.

Avoid trouble by following the golden rule. Do not send an e-mail you would not like to receive.

Some Rules of the Road

The lawyer should use the subject line appropriately. The subject line should make it easy for the reader to identify the case and the topic at issue. If the subject line is too long, then the first sentence of the message can show the subject matter of the e-mail, as, "I am writing concerning our request for discovery of information concerning the value of the stamp collection in the case of *Stevens v. Stevens*."

There should be a limited number of ideas in an e-mail. An e-mail works best to communicate basic information, not for a long, involved settlement proposal or contract. It may be appropriate to send several e-mails, each covering one topic, so that the recipient can respond to each one, perhaps at different times.

IT IS NOT APPROPRIATE TO TYPE IN ALL CAPITAL LETTERS. This is the e-mail equivalent of shouting at someone. However, an occasional capitalization can give emphasis. Also, a writer *can* give emphasis by using symbols around the word or **bolding**. If something is underlined, the writer can _show the underlining_ by placing underlines at each end of the words that were underlined.

If a lawyer is responding to another e-mail, he or she should include enough of the prior e-mail so the recipient can readily understand the context for the reply. This does not mean the e-mail should include the entire string of all communications over the past months on

the topic. The lawyer should include just enough of the prior communication to put things in context. The conventional way to show that you are quoting the prior e-mail is to use the “greater-than” sign (>) before the lines you are quoting. In the alternative, the writer can say, “You wrote ...” and then cut and paste a paragraph or two.

Also, even when including some of the message to which you are replying, the writer should still be specific in the beginning of the message. Use nouns instead of pronouns. In other words, do not just tell your corporate client, “It will not be possible to make the scheduled hearing because of a conflict.” Rather, say, “We cannot have the hearing on discovery issues on March 22 because Mr. Spector, the opposing counsel, is on trial in Pittsburgh.” Otherwise, the executive might not immediately know the date you are discussing and will not know the nature of the conflict.

A lawyer makes an impression when sending an e-mail, either to another lawyer or to the client. It is true that our culture permits sloppier writing in e-mails than in regular mail, just as less formal wording is more acceptable in conversations than in letters. However, just as a lawyer would not send out a letter with misspellings, grammatical errors or repeated use of slang, the lawyer should check his or her e-mail for these errors, even if the e-mail is somewhat informal.

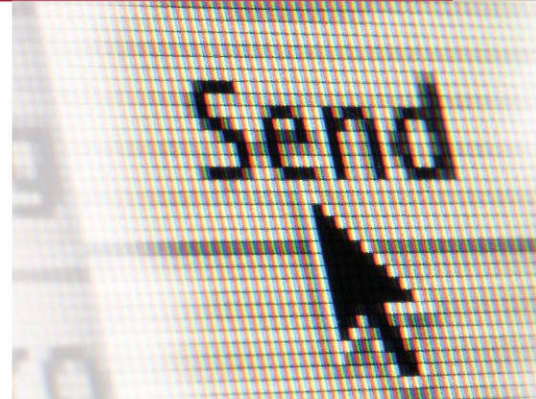
It may be that the lawyer does have a good deal to cover in a communication. If that is the case, e-mail might not be the best means of communication. It might be more appropriate to draft a letter. If time is important, include the letter as an attachment to the e-mail. This is merely a quicker way to send a letter than via the U.S. Postal Service.

However, since recipients sometimes have difficulty opening attachments, the writer might want to cut and paste the entire letter as text at the end of the e-mail, saying, “In the event you have trouble opening the attachment, I have also included it at the end of this e-mail in text form.” While the format will not be proper, at least the reader will understand what you are saying without the need for telephone calls. As noted, it is probably a good idea also to send the letter attached to the e-mail as hard copy in the mail.

Also, it is not appropriate to send huge files as attachments. The person at the other end might not be able to open them or they might clog his or her mailbox. While storage space is rapidly expanding, be careful about sending attachments that, for example, contain a number of photographs or a long video.

Just as in dealing with briefs, it is important to use humor sparingly. It often happens that the writer intends casual humor and the recipient perceives it as sarcasm.

The writer should be particularly careful in noting who is getting copies of the e-mail. Obviously, just as with a regular letter, some people should get copies and this should be indicated on the e-mail and some people should get blind copies. However, there is a risk to using the reply-to-all key. Many people have had real problems when an e-mail is sent to someone who just should not see it. It has happened that people in an organization were contemplating firing someone, and somebody sent an e-mail with this discussion by using the reply-to-all key and accidentally included the employee being discussed as a recipient. Likewise, e-mails criticizing someone may accidentally be sent to the person being criticized.



Many people act in writing e-mails as some people act when driving a car. Put them behind a keyboard typing e-mails and they become evil, raging maniacs.

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'Netiquette'

A system of "network etiquette" called "netiquette" has arisen. Although the rules are in a state of flux, there are some conventions that should be followed.

In general, a lawyer can avoid trouble by following the golden rule. Do not send an e-mail you would not like to receive. E-mails can often be interpreted to be more negative than intended. It is a good idea to be conservative in what is sent and tolerant of what is received. The writer should refrain from sending a heated message (a "flame") by e-mail, even if provoked. At the same time, the lawyer should be patient if an opponent succumbs to the temptations of e-mail and flames the lawyer. Do not respond in kind.

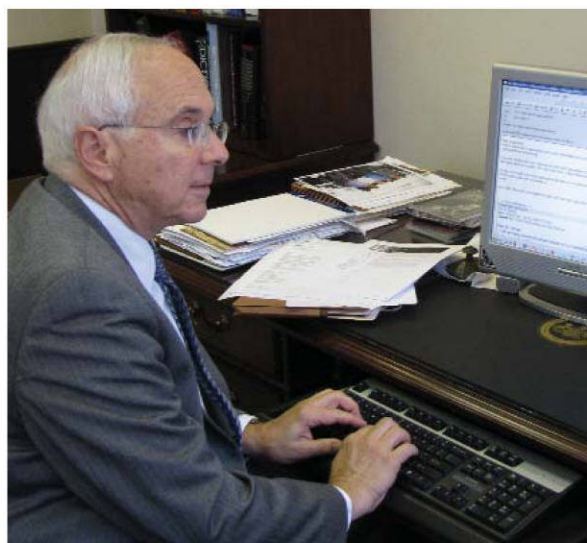
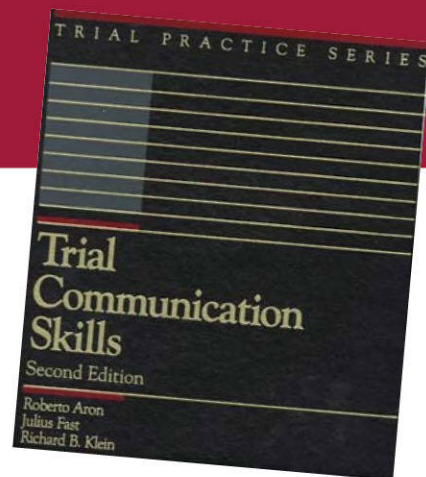
Many people act in writing e-mails as some people act when driving a car. Normally, they are kind, considerate and polite people. But put them behind the wheel of a car (or behind a keyboard typing e-mails), and they become evil, raging maniacs. The test might be to read the e-mail out loud, and then see if you would say it to the other person face-to-face. If not, do not send it. Also, consider typing the response in your word processing program rather than directly as an e-mail response. Then you can save the vitriolic response and come back to it later when you have calmed down to see if you *really* want to send it as is. You should remember that just as with letters, people keep e-mails. A nasty e-mail can come back to haunt you.

There are some specific rules that have gained acceptance. For example, as noted, it is considered rude to "shout" by using all capitals. Since there are no non-verbal clues (such as a smile) to soften the blow, it is particularly important not to be rude in e-mail communication. Generally, rules of common courtesy apply. However,

while it is *more* important to be polite in e-mail, lawyers as well as other people tend to be *less* polite in e-mails.

Just because you send an e-mail on the spur of the moment does not mean the recipient can reply instantaneously. If you need a response by a particular date or time, put that in the e-mail. If it is truly time-critical to get a response, such as answers to interrogatories from a client, in the subject heading start with the word, all capitals, "URGENT." If you are on the receiving end, you might briefly respond to acknowledge receipt of the e-mail but say you will be delayed in responding. You might say something like, "I received your e-mail, but I am in the middle of a two-week trial. I will try to get back to you at the beginning of next week." And then calendar this ahead so you might say, "Unfortunately, my trial is dragging on and it will be a few more days before I can get back to you on this matter." You could send this as another reply to the initial e-mail.

Be careful not to get carried away with abbreviations in your e-mail. Lawyers are tempted to use trendy abbreviations, particularly if they have children living in their households. Only use the common abbreviations, such as FYI for "for your information" or perhaps "BTW" for "by the way." However, avoid "TTFN" ("ta ta for now") or BCNU ("be seeing you") or even OBO ("or best offer") unless your client is a teenager or younger. ☹



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This article is an excerpt from the West Group book, Trial Communication Skills, by Aron, Fast and Klein. No further reproduction is permitted without authorization.

Richard B. Klein has been a judge on the Superior Court of Pennsylvania since 2002, following 28 years on the Common Pleas Court of Philadelphia. He is founder and chair emeritus of the PBA's Plain English Committee. He was also the founder and initial chair of the Philadelphia Bar Association's Lawyers' User Group for Personal Computing and served as chair of the American Bar Association National Conference of State Trial Judges' Technology Committee.

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