

Dealing with E-Mail Overload

As the pace of technology increases, so do the challenges that keeping up with these changes make on your time.

These challenges include:

- I. How do you deal with the client who expects you to respond to their e-mail immediately?
- II. How do you deal with your flooded Inbox?
- III. Spam, Spam and MORE SPAM!
- IV. How do you organize messages and attachments?
- V. How do you find messages once you save them?
- VI. What's appropriate when composing e-mail?
- VII. How do I protect myself from getting a virus?

REMEMBER, THERE IS NO MAGIC BULLET TO THESE PROBLEMS!

I. How do you deal with the client who expects you to respond to their e-mail immediately?

Have you ever downloaded messages and then got sidetracked by something else before reading them? Or reviewed messages, including ones from clients, but don't respond right away? When you check a short time later, there's another message from a client "just in case you didn't see the earlier message." Or you get the call wanting to know why you haven't responded to the e-mail they sent you 10 minutes ago? What can you do?

1. Set aside specified times each day to review and respond to e-mail. In most cases, if you check e-mail in the morning when you get in to the office, again after lunch and once towards the end of the day, you will be able to catch any critical e-mail and avoid constantly being distracted by new e-mails.

✓ Turn off any sounds that notify you that you've received new e-mail – this helps prevent the urge to open and see what has arrived and act as a time thief.

2. If a client is sending you something by e-mail that requires immediate attention, they should call first to advise you that they are sending you this important information.
3. Establish a client e-mail policy and publish it to your clients. Respond to the first e-mail you receive from a client with the policy being the first part of the message. You can also be pro-active in publishing this policy to new clients by sending them an e-mail regarding the policy when they have retained you or your firm.

✓ Sample e-mail policies can be found at the end of this paper in Appendix A. These are different from you own in-house acceptable use policy which is not addressed in this paper.

4. The policy should explain the risks associated with sending information by e-mail; the fact that you treat e-mail as you treat other client communications; that e-mail, while being quicker in delivery, does not mean that it is entitled to a faster response.
5. E-mail to clients should be kept short, succinct and in a conversational tone. However, this doesn't mean that you should forget the common elements of good writing.

II. How do you deal with your flooded Inbox?

Is there anything that you can do to try and gain control of the flood of messages you receive everyday? How can you separate the important messages from the rest?

1. Use "Private" addresses for client messages and for messages to other attorneys. Use "Public" addresses for receiving listserv and newsgroup messages or when you need to provide an e-mail address for registration at a website or establishing an account.
2. Sign up for a free account at Yahoo Mail, FindLaw or Hotmail. Use this account as your "Public" address. If you or your firm has a private domain name i.e. www.johndoelaw.com you can have 2 e-mail accounts – one "Private" and one "Public." Examples of this are:
Public Address: jd@johndoelaw.com. Private Address: johndoe@johndoelaw.com.
3. Use filters to direct mail to specified folders.

III. Spam, Spam and MORE SPAM!

Are you inundated with messages with subject lines like : YOU'RE A WINNER!; Enlarge your P***s; Lonely Housewives Looking For Love; Refinance Now, etc. Many advertisers (aka Spammers) will argue that they are providing direct marketing services no differently then if they sent you the information through the US Postal Service. However, this is inaccurate for several reasons: A) It costs you money for the connection and for your ISP to download this mass of messages B) It costs you time to wade through this unwanted junk and get rid of it C) It increases the chance that you will accidentally delete a legitimate message that is mixed in between all of the junk messages D) Many of the products and services offered are SCAMS – if they sent it through the mail, they would be exposed to penalties including mail fraud and more.

While you will never be able to completely eliminate Spam, you can take steps to reduce the amount of it and where it is sent.

1. Use "Private" addresses for client messages and for messages to other attorneys. Use "Public" addresses for receiving listserv and newsgroup messages or when you need to provide an e-mail address for registration at a website or establishing an account.
2. Sign up for a free account at Yahoo Mail, FindLaw or Hotmail. Use this account as your "Public" address. If you or your firm has a private domain name i.e. www.johndoelaw.com you can have 2 e-mail accounts – one

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"Private" and one "Public." Examples of this are: Public Address =
jd@johndoelaw.com;
Private Address = johndoe@johndoelaw.com.

3. Use filters to direct mail to specified folders or do delete messages. Many programs also offer the ability to set up "Block Sender" lists. For Outlook Express you can see <http://dogbert.msl.net/~spam/> for instructions.

✓ Spammers use a variety of methods for acquiring e-mail addresses. Some web sites sell your addresses after you register or sign-up. They can also use what's known as "dictionary" programs that send out Spam using common words and names. Your e-mail address is a precious commodity – guard it like you guard your other private information. Many of the free e-mail accounts provide spam filters and bulk mail filters to try and control the ever increasing proliferation of SPAM.

4. The prevailing rule is not to use the "unsubscribe" feature on SPAM as it only confirms that it has reached a valid address. Some are now advocating using the unsubscribe feature due to the increasing scrutiny that Spammers are coming under, and quite frankly, they're already sending you junk know. The safest method is still not to respond.
5. Consider using anti-SPAM programs (see Appendix B for examples).
6. Educate yourself by checking out anti-SPAM websites such as:
<http://www.ftc.gov/bcp/online/pubs/online/inbox.htm>
<http://www.privacyrights.org/fs/fs20-spam.htm>
<http://www.mindworkshop.com/alchemy/nospam.html>

IV. How do you organize messages and attachments?

So how do you gain control of your inbox and all of the messages and attachments that you want to save? Do you leave everything in the Inbox? Do you save the messages with attachments there as well? There are numerous methods for dealing with this problem. The key is to find a system or method that works for you and follow it.

According to Tom Rowe, President of Practice Management Partners, Inc. (www.pmpi.us) in his White Paper "Eliminating E-Mail Overload with TimeMatters E-Mail"

"When looking at the root cause of e-mail overload and how it should be overcome, it is helpful to compare it to a well known problem that has been around much longer than e-mail ... the problem of "pushing paper." Executive organization experts teach that the best way to avoid being overwhelmed by paper is to do the best you can to make sure that you "touch" a piece of paper once, and only once. Many people waste considerable time moving paper on their desks from one stack to another, use these stacks as quasi-ToDo lists, and often end up spending more time shuffling the papers around their desks than it would take to accomplish the tasks for which the papers call. Just walking into an office with a

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messy desk can cause confusion and disrupt an otherwise organized day.”(pg. 1)

Dealing with e-mail can be compared to dealing with the constant inundation of paper that you deal with every day. Thinking of e-mail messages as merely another form of correspondence can help you start envisioning a method for dealing with this potentially explosive problem.

Tom Rowe suggests that you apply a time-tested principal to the problem:

“One system to reduce this problem that is widely presented is the RAFT system-- Refer, Act, File or Toss. Pursuant to this system, the first time you “touch” a piece of paper you should refer it to the appropriate party to be handled, act on it to completion, file it for later use or reference, or toss it in the round paper file – the waste basket. The diligent application of RAFT can result in a reduction in the amount of paper with which one has to deal, gets it to the person who is best suited to handle the task it represents, and generally increases productivity by reducing clutter and the inefficiency that is inherent therein.” (pg.2)

While this White Paper points out the benefits of using TimeMatters E-mail features to solve the problem, the same general principals can also be applied using other case management programs with e-mail capability or in using standalone e-mail clients such as Outlook, Outlook Express and Eudora. Look at you e-mail client as a gateway, not as a repository.

1. Just like your paper files, handle it one time if at all possible. Apply RAFT to each and every message.
2. Important messages from clients should be saved in their folders with your other work product for that client or matter. There are various ways of doing this, but one of the easiest is to print the message as a pdf and print to the client or matter folder. You can also cut and paste into your word processor or text editor and save as a file. Once saved, delete the e-mail unless there is an attachment.

✓ One benefit to saving the message using your word processor is that the text is then searchable using various indexing engines and search methods.

3. Attachments should be saved in the client or matter folders. Once saved, then delete the associated e-mail and attachment.
4. For messages that you want to respond to, create a “Respond To” folder and move the message to it. Once you complete your response, delete the original message.
5. By saving messages with other client documents, you improve the likelihood of proper backup in case of a disaster as well as being able to find the information faster.
6. If you decide to use your e-mail client to also act as a repository, then organize your folders accordingly: think about how you have patterned your paper storage and ask yourself if it will allow you to logically and efficiently store your e-mail. If it doesn't do something different.

✓ ***A major problem with storing everything in your e-mail client (unless you're working off of an in house e-mail server which stores all messages on the server itself) is that your staff will not have access to the messages and attachment s if required.***

7. The benefit to using a case management program that either has it's own e-mail client or integrates with one of the major e-mail programs is the ability to associate messages with the appropriate client and/or matter with just a few steps and allows you to create To Do's, Events or forwarding to another interoffice party maintaining the "all in one place" approach which forms one of the basis' for using case management.

V. How do you find messages once you save them?

If you've saved them with your other client or matter documents, you've already gone a long way in simplifying your ability to find these documents again. Microsoft includes a search function in Windows Explorer that allows you to search at a basic level. Your e-mail program also allows you to search folders and messages for specified recipients/sender/words. You can also use the built in capabilities of many case management programs to create indexes and perform full text searches in documents and pdf files as well as associating the e-mail and attachments with a specific client and/or matter. There are other third party programs like the dtsearch (<http://www.dtsearch.com>) and Filehand (<http://www.filehand.com>) for searching various file formats; Wintility Plus (www.wintility.com) a DMS including the capability to manage e-mails and WORLDOX (www.worlddox.com) another extremely popular DMS with e-mail management capabilities for GroupWise and Outlook users.

Microsoft lists these steps to search for a file or folder in Outlook Express

Click Start, point to Search, and then click For Files or Folders.

In Search for files or folders named, type all or part of the file name or folder you want to find.

To search for files containing specific text, in Containing text, type the text you want to find.

In Look in, click the drive, folder, or network you want to search.

To specify additional search criteria, click Search Options, and then click one or more of the following options to narrow your search:

Select Date to look for files that were created or modified on or between specific dates.

Select Type to look for files of a specific type, such as a text or WordPad document.

Select Size to look for files of a specific size.

Select Advanced Options to specify additional search criteria.

Click Search Now.

Notes

If you get too many results, try entering additional search criteria to make your search more specific.

To clear the search criteria fields and begin a new search, click New.

Under Advanced Options, Search slow files refers to files that reside on removable storage media, such as optical or tape backup. These files may

need to be copied to a faster storage medium before the contents can be searched.

Microsoft Windows 2000® Help

VI. What's appropriate when composing e-mail?

Many people look at e-mail as being more in the manner of a conversational method of communication i.e., messages are less formal, shorter and don't always follow the same grammatical rules of paper correspondence.

Unless corresponding with a close acquaintance or friend on none legal matters, you should consider e-mail as an extension of written communications: if you follow the same grammatical rules and usage as you would if you were sending a paper letter, you can avoid misinterpretation and potential problems leading from a poorly written e-mail. A list of e-mail etiquette suggestions can be found in Appendix C.

There is currently disagreement regarding whether or not you should include a privacy/confidentiality notice in your message. Those in favor of this position believe that since the notice is usually placed at the end of the message, it is too late for the notice to be effective. This position usually contrasts the standard fax coversheet notice to e-mail notices based on the above and that the fax coversheet is sent before the rest of the document and so, the notice is on the first page available. Following this position leads to the conclusion that you should not send anything you wish protected by the attorney-client privilege via e-mail. However, many states bar associations have taken the position that communicating by e-mail is no more subject to interception or disclosure than other means of electronic communication. Various state and/or federal laws also prohibit the illegal interception or obtaining of e-mail. In light of these laws and the general nature of e-mail, you can take the following action when sending e-mail:

- Place the notice at the beginning of the e-mail with the message to follow it in the body of the message; or
- Place the notice in the e-mail and attach the message or correspondence as an attachment to the e-mail.

Of the two, the first is probably the easiest and reduces the risk of a lost attachment or having it stripped by a mail server. The bottom line is that you must weigh the risk vs. the benefit of using email to communicate with you client.

It's still more prudent to include a notice than to omit it in privileged communications: this will, at a minimum allow you to argue intention that the communication is privileged.

✓ Remember, e-mail messages can be considered evidence and can come back to haunt you if you're not careful. Before sending e-mail, ask yourself "Is this something that I don't mind the entire world seeing? Will it reflect

poorly on me or cause me embarrassment if it was published to everyone on the Internet."

VII. How do I protect myself from getting a virus?

While it may seem basic to use an Anti-Virus (AV) program, many people still do not do so. There are also other steps that you can take to protect yourself from java based applets and other malignant programs from using your e-mail to damage your system.

✓ It may appear that Microsoft Products Outlook and Outlook Express are the worst e-mail clients that you can use due to the number of attacks that are written to cause problems for users of these products. The simple truth is that hackers and others focus their efforts on those programs that are used by the most people and these Microsoft products are the most widely used.

Common sense tips to avoid an e-mail virus:

1. USE an Anti-Virus program that scans e-mail as it's downloaded. Better AV programs also scan outgoing e-mail to insure that you don't send out an infected message. Norton Anti-Virus, Trend Micro PC-cillin and McAfee Virus Scan are three popular and effective AV programs.
2. UPDATE your virus definitions weekly. Many of the more popular programs will do this automatically or notify you when a new download is available.
3. Download and Install program updates and patches as they become available.
4. Turn off message preview: certain attacks can be launched without opening the message but by simply using the pre-view message function.
5. DON'T OPEN ATTACHMENTS. If you receive an attachment that you are not expecting or that you are unsure of, contact the sender to verify the file. In no event should you open any attachment that is an .exe file.
6. See Article III for dealing with Spam.

VIII. Conclusion.

While you can't completely eliminate the problems of spam, applying the principals and policies set out in this White Paper can assist you controlling them .

REMEMBER, THERE IS NO MAGIC BULLET TO THESE PROBLEMS, BUT GOOD PLANNING AND CONSISTENT IMPLIMENTATION CAN REDUCE THEM AND THEIR POTENTIAL IMPACT ON YOUR PRACTICE.

Appendix A

Policy Sent by E-mail to each new client.

The following are samples of a client e-mail policies that can be sent to each new client or posted on a website:

Client Policy Sample #1

Subject: Greatlaw, P.C. Client E-mail Policy

Dear New Client:

You may contact or respond to me using e-mail: the Illinois State Bar Association Ethics Committee has stated that lawyers may use electronic mail services, including the Internet, without encryption to communicate with clients unless unusual circumstances require enhanced security measures.

The following should be followed if you choose to use e-mail to contact me:

1. While e-mail may appear to be quicker for getting me information or to get a response, I treat this form of communication no differently than I do a fax or a written letter and my response may take the same amount of time as if responding to a fax or letter. If you are sending me something that is important or time sensitive, please call and let me know.
2. Do not send any type of attachments to messages except graphic files such as .gif, .jpg and .tiff, unless we discuss them in advance.
3. Do not send or forward e-mail that is not related to your representation unless it is regarding a new matter you wish me to undertake on your behalf.
4. Replies to your e-mail will be sent to the "reply-to address" of your own e-mail. If you want me to reply to another e-mail address, you must tell me specifically at the start of my representation of you.
5. If you are sending the e-mail from work, remember that you might be violating your employers e-mail policy by receiving and sending private e-mail and that your employer might have the legal right to read your e-mail.
6. If you wish to contact me by e-mail, please send to: iamlawyer@greatlaw.com

Respectfully:

Iam Lawyer
Greatlaw, P.C.
111Main Street
Rockford, IL 61101
815.999.1212

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Client Policy Sample #2

Subject: Greatlaw, P.C. Electronic Documents Policy

Dear New Client:

Clients frequently ask to have legal documents provided in electronic form. Upon request, I will supply you with your documents on floppy disk or via e-mail (see below). Formats which I can supply include Microsoft Word 6.0, RFT, PDF, and ASCII. The default floppy disk is PC formatted.

Many clients ask for electronic format so they can use an agreement as a template and make changes themselves for different situations. If you modify a legal agreement yourself without consultation, you may be significantly altering the balance of the obligations and benefits. The firm strongly recommends that you make a brief phone call to check before making any modifications, particularly if the modifications are requested by the opposing party. Any document that is supplied to you in editable electronic format, will also be delivered to you in PDF format as your reference to the finished form in which your document was originally sent.

E-Mail

E-mail provides a useful and informal way to correspond with the office to inquire about appointments and the status of legal matters, and to exchange information in electronic form. It is also possible to deliver legal documents to you via e-mail, at your request. If you choose to use e-mail as opposed to more secure methods of communication, you should keep the following in mind:

Response and Reliability of E-Mail

The firm or your attorney will make every effort to respond to your e-mail and other client communications as promptly as possible. If you have not received a response to e-mail **WITHIN 2 DAYS**, please phone the office to make sure that your e-mail was received, or to inquire whether the attorney is currently out of the office for illness, vacation, or business reasons.

E-mail software is sometimes unreliable. E-mail may bounce back without an error message or may get lost. File attachments can disappear or be unreadable. It is also possible that our service provider has received an e-mail, but that it got delayed or lost within the provider's local mail system, or within the firm's computer systems. If you are in doubt about a message you sent, or were supposed to receive, please call the office to check on its status. Do not send encoded or encrypted mail without first phoning the office.

Privacy, Security and Interception

There are a number of security concerns with the structure of the Internet. E-mail which travels from one address to another, either via the Internet or entirely within a commercial service provider such as

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America Online, may be monitored by the provider as allowed under the Electronic Communications Privacy Act of 1986. It may be intercepted by another party, intentionally or unintentionally. You communicate with the office by e-mail at your own option, and at your own risk. If you choose to do so, you should avoid using subject headers which refer to the sensitive content nature of the communication or which contain an opposing party's name. Do not send e-mail concerning your ongoing litigation. If you are not comfortable sending information by e-mail, you can send it by fax, first-class mail, registered mail, or overnight delivery.

Attorney-client Privilege

Attorney-client privilege protects communications between a lawyer and client or potential client, from discovery by third parties, as long as the communications are not heard by any other parties. The privilege belongs to the client and not the attorney. The client can waive the privilege by allowing third parties to have access to the communications.

Although the Michigan Bar and State of Michigan have not yet ruled on the issue, at least one state has held that cellular communications are not protected by attorney-client privilege, because of the ease of radio interception. It is possible that this rule could be extended to communications by e-mail between lawyer and client.

To keep from losing your attorney-client privilege, please refrain from sending any information by e-mail that involves current, pending or threatened litigation, or which concerns your potential legal liability or exposure on some matter.

E-mail Address

You may send e-mail to Iam Lawyer at: iamlawyer@greatlaw.com

(Credit: The above was posted to the ABA SoloSez Listserv by Carol Sheperd)

Provision to Include in Representation Agreement.

This is a sample provision to include in a new client representation agreement.

Unless you specifically inform me otherwise, I may use e-mail to communicate with you and with others on your behalf. If you have privacy concerns with my using e-mail to communicate with you and others, please let me know. While e-mail, like other forms of electronic communication such as cell phones, cordless phones, fax transmission, can be intercepted, the Illinois State Bar Association Ethics Committee has stated that lawyers may use electronic mail services, including the Internet, without encryption to communicate with clients unless unusual circumstances require enhanced security measures.

Provision to Include on a Website.

This is a sample of a policy notice for a website.

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Important note! Please read the information on this page carefully before you send e-mail or any other correspondence.

If you are dealing with a legal matter that may involve a deadline such as filing a lawsuit, Due Date for a Notice to Pay Rent or another time critical issue, you should contact me by telephone. If you do send me e-mail, you need to follow these rules:

1. Do not send me confidential information unless you have retained my office.

I may represent another party involved or connected to your matter or represented them in the past. I may have a legal duty to disclose your information to my client if you provide it to me. Even if you do retain my office, be aware that e-mail may be stored and forwarded through many computer systems, and it may be possible for someone to illegally access it. Be careful about sending confidential or sensitive information by e-mail to anyone. The Illinois State Bar Association Ethics Committee has stated that lawyers may use electronic mail services, including the Internet, without encryption to communicate with clients unless unusual circumstances require enhanced security measures.

2. Do not send me anonymous e-mail. I protect the confidentiality of my clients and potential clients. To do so, I will not respond to e-mail that does not contain your full name, address and phone number. I am aware of the privacy concerns you may have, but as a lawyer I cannot communicate with anonymous persons. I do not sell or provide contact information to any third parties unless authorized by a client or by law. Your name and other contact information is required for the sole purpose of determining if I can discuss legal matters with you without breaching client confidentiality. Any information I receive will be kept confidential so long as I am allowed to do so by law or the Rules of Professional Conduct.

3. Do not rely solely on this website or my e-mail when making decisions. Until I explicitly agree to represent you, there is no attorney-client relationship. I may include information about the law in responding to e-mail I receive, but it is offered for the sole purpose of educating you, not as legal advice.

4. I am an Illinois lawyer. I am licensed by the Supreme Court of Illinois as well as certain federal courts, but nowhere else. I cannot provide any information unless you live in Illinois or the matter involves a person, company or legal matter in Illinois. I am not licensed to practice law in any other state.

5. Please understand that I have to earn a living. I realize that you may need to ask a few preliminary questions before you can decide whether to hire me, and I welcome such inquiries. However, please don't abuse this by asking for free legal advice. Answers to many general questions can be found in the FAQ (Frequently Asked Questions) Area of this website. If you need specific information, I cannot provide this until you have hired me to represent you.

Click here to send your e-mail, or call (815) 999-1212.

Or if you prefer, write to me at the following address:

I am Lawyer
Greatlaw, P.C.
111 Main Street
Rockford, IL 61101

✓ *Client Policy Sample #2 above can also be posted on a website.*

Appendix B. E-mail Utilities.

Anti-Spam Utilities (there are others)

McAfee SpamKiller – www.mcafee.com (Pay)
SpamBouncer - www.spambouncer.org (Free)
SpamInspector – www.giantcompany.com(Pay)
IHateSpam - www.sunbelt-software.com (Pay)
Mailwasher – www.mailwasher.net (Free or Pay)
Spamhilator - <http://www.spamihilator.com> (Free)
SpamBayes - <http://spambayes.sourceforge.net> (Free)

Forwarding Message Cleaner:

ECleaner - <http://www.ecleanersoftware.com/>(Free or Pay)

GAIA TidyMail- <http://www.printcharger.com/emailStripper.htm> (free)

Appendix C: E-mail Etiquette Suggestions.

DO:

Use the Subject Line. ²
Use proper grammar and structure.
Use proper punctuation and spelling.
Keep it concise.
Use active voice – remember
“bottom line up front.”
Use the Bcc field ¹
Use a signature block. ⁵

DON'T

Attach unnecessary files
Use all CAPITAL letters.
Overuse the Priority Option.
Resend the entire message unless
necessary. ^{3 4}
“Reply to All” if not necessary.
Overuse the Cc field. ¹
Don't abuse abbreviations and
emoticons
Use HTML
Request delivery receipts
Discuss confidential information.
Use autoresponders for public
addresses. ⁶

Notes:

1. Overuse of Cc: One of the more annoying facets of e-mail is the over usage of the Cc block. When you put an address in the Cc block, everyone the e-mail is sent to sees all of the other recipients. A better practice is to use the Bcc Block – this is the Blind copy and any addresses placed here will not show up to other recipients.
2. Failure to use the subject line. Many people depend on the Subject Line to identify junk messages from legitimate messages. Think about the topic of your message and use the Subject line accordingly.
3. Leaving the entire body of the message you are responding to in your reply. There may be instances where this is appropriate, but in most instances, you are better served to use <snip> to indicate you've deleted a portion of the original message and only include the precise portions you are responding to if necessary. Otherwise, don't include any of the prior message in your response.
4. Leaving all of the annoying '>' symbols, word wrapping fragmented sentences, HTML code and headers in a forwarded message. Freeware programs such as eCleaner (www.pccontrolanywhere.com/ecleaner/) are available that will make removing these annoyances from forwarded messages a breeze.
5. Failure to include your full name and other identification in messages.
6. Autoresponders that respond to messages from a listserv