

# The Art of Client Email: Tips for New Lawyers

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## Summary

- ❑ A lack of timely communication is one of the most common errors alleged in legal malpractice claims and the cause of many ethical complaints.
- ❑ Information about the client's matter should be communicated frequently and regularly.
- ❑ The most important aspect of using email ethically is knowing when not to use it.



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One of the most important skills a young attorney can cultivate is communicating clearly and ethically with clients. Often, [client communications](#) will be conducted through email. Although it has become ubiquitous, the implications of using email are relatively new in the realm of legal ethics. It wasn't until 1999 that the ABA first acknowledged that a lawyer could [ethically transmit any information](#) relating to the representation of a client by unencrypted email over the internet. It is worth your time to consider when and how to use email ethically and effectively. Fortunately, there are some simple considerations you can keep in mind to help ensure your email communications with clients satisfy your ethical obligations.

## Using Email for Timely Client Communication

A lack of timely communication is one of the most common errors alleged in legal malpractice claims and [the cause of many ethical complaints](#). Information about the client's matter should be communicated frequently and regularly. *And it should almost always be confirmed in writing.* Email is a useful and practical tool to convey such information and ensure it is preserved as it was presented.

But how can you use email effectively? When and how should you use it? When shouldn't you use it? Email in modern legal practice is so commonplace and easy to use that emailing reflexively—without even thinking about it—has become the new default. However, because email is so deeply ingrained as the default, lawyers are sometimes lax or complacent about best practices for using email effectively and proficiently, or not using it at all.

## Writing Effective Emails

To ensure your emails are effective, consider using this simple three-step approach:

- 1 Draft the email, including all the important information to be communicated to the client.
- 2 *Call the client to discuss it by phone*, using your draft email as a script for the call.
- 3 Then go back and start your email with this phrase: "I am writing to follow up on our telephone conference today in which we discussed the following."

This three-step approach is simple, easy, and effective. It ensures that you err on the side of over-communication instead of relying on email alone.

Other important principles for using email are more mundane. Replying to an older email from the same person, rather than starting a new one, is easier but more problematic, both because it incorporates all the old emails in the email string and because the writer often forgets to update the subject line. If your client is using an employer's email system, it could be malpractice to send a sensitive email without warning the client that the employer has the right to see any email sent or received on its server.

## When Not to Use Email

Perhaps the most important aspect of using email ethically is knowing when not to use it. Generally, email is unsuited to be the primary means of communication with your client in several different contexts, including:

- ❑ if the message is extremely important or confidential, and you cannot risk it falling into the wrong hands;
- ❑ if the message is emotional or sensitive in nature;
- ❑ when a two-way conversation is necessary, or the recipient should be given the opportunity to provide immediate feedback or responses;
- ❑ when you need to [communicate bad news](#), complaints, criticism, or anything controversial. Without the benefit of facial expressions, intonation, and body language, misunderstandings and hurt feelings are hard to avoid if you deliver bad news by email.

## Consequences of Using Email Inappropriately

Ultimately, always remember what the "e" in email stands for (Exhibit). Imagine that your email has an exhibit sticker on the bottom right. If the contents of your message are such that you or your client would not want it displayed on a screen to the jury, then email is the wrong medium to convey it.

As a concrete example, consider the plight of a young lawyer who has just realized that they have made a mistake on the client's matter (think missing a mandatory disclosure deadline or a statute of limitations). The lawyer's jurisdictional ethics rules require that the mistake and the potential damage to the client must be promptly disclosed to the client, and the client also must be advised to consult independent counsel about whether your firm can continue with the representation. However, as a threshold matter, a lawyer in this situation must seek advice from the firm before disclosing the problem to the client.

These initial discussions—how to report what may have happened and seeking advice about what to do next—should not occur over email. In fact, this situation checks all the boxes for when not to use email. First, you must meet with your ethics counsel. Then, you must meet with your client in person or at least via phone.

At a minimum, how an attorney and a firm handle this sort of communication—candidly admitting its own error—may be outcome-determinative for future representation of that client. Communication does not need to be uncomfortable or hostile. A lawyer who promptly and completely discloses a mistake to the client will occasionally find that the client, apparently overwhelmed by the lawyer's candor, might disregard a mistake and reaffirm their commitment to your representation. Of course, this disclosure must be confirmed in writing.

Ultimately, using email intentionally, not reflexively, can make a large difference in whether [your client communications](#) satisfy your ethical obligations.

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