



TECHSHOW2018

The 411 on Texting for Lawyers

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March 9, 2018

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Your personal opinion on the business use of text messages is probably related to a number of factors from your age group to your past experiences with texting, pro or con.

There's certainly a lot of misinformation floating around text messages—and a lot of poor advice to lawyers on the subject. See for example, see *A Lawyer's 7 Laws of Texting in Business*, where a lawyer who hates text messaging first asserts that judges “don't like” to admit text messages into evidence and then creates his seven laws, most of which apply equally to email as well as text messages. At a minimum, that lawyer hasn't been trying cases in family law court the last several years.

Whether and how you use text messages to communicate with clients is a very simple question that, like most things lawyers deal with, requires a detailed analysis that is far from simple.

Among the considerations are:

1. The digital security of communicating by text message
2. The lawyer's ability to document every communication with the client in the client file
3. The clients' need to have good communication with the lawyer in ways that make sense for them
4. A lawyer's need for certainty that the client has received a communication
5. The negative impact on the lawyer's personal life that giving out the lawyer's mobile phone to too many clients will undoubtedly cause

SHOULD YOU COMMUNICATE BY TEXT MESSAGES WITH CLIENTS?

Several years ago, Jim Calloway met with a lawyer to discuss law practice management issues.

“I expressed my concern about the fact that she made extensive use of text messaging to communicate with her clients and that (at the time) it was difficult for her to preserve them in the client file should a later dispute arise. She responded that she believed she had to make use of text messages because she was frequently at the courthouse all day.

“But then she told me something I'd never considered. She believed that for at least one client, she was ethically required to use text messages to communicate with the client.

“This particular client in his early 20s was facing a criminal charge and lived with his mother. His mother had absolutely no respect for his privacy, often opening his mail that was delivered to the house. A millennial, he had an email account, but never checked it— only using it for things like registration for new services and password recovery. His method of communicating digitally was to use text messages. He had a lock code on his phone, which he did change periodically and would never disclose to his mother after a previous incident of her looking at text messages between him and his girlfriend.



“While I had never considered it before, this lawyer did convince me that in this particular and somewhat unique situation, text messages were the most secure method of communicating with the client, particularly when considering the method that attorney client confidences would be most likely invaded.”

If that situation was encountered today and the client had used an iPhone, it would be an additional good idea for the lawyer to advise the client on how to disable the lock screen preview of the text message.

WHAT SHOULDN'T YOU TEXT?

Let's be very clear. Text messaging is a very limited communications method. It works great for letting someone know you're running five minutes late for your luncheon meeting or to pass on a quick congratulations or kudos to someone.

But it is very limited and is a poor tool for almost every complex legal discussion. So one needs to learn to use the medium's strengths and avoid its weaknesses. Here are some common-sense examples:

Let's not do that! Call me to discuss why.

That's too complicated to discuss via text message. Call my office to schedule an appointment.

That's an important strategic decision and requires more in-depth discussion.

The above examples may sound like you are putting off your client and while that is, to some extent, true, we still encourage this because you have combined the immediate responsiveness that many clients crave today without the potential problem of discussing complicated situations in a medium that tends to dangerously oversimplify complex communication.

Other concerns include texting to someone who is not your client about a legal matter and whether you may have inadvertently created what they believe to be an attorney-client relationship. Even though it is certainly a bit stuffy, don't be hesitant to clarify that you're not representing someone until they have executed a formal representation agreement.

Likewise, one would want to be cautious about any communication that appears to be negotiating terms of an attorney-client relationship or billing rates via text message. Be a clear communicator as to why the limitations of text messages make it inappropriate to discuss certain topics.

Certain areas of substantive law like possible mergers or acquisitions or other topics related to securities law likely mean that your text messages should be friendly but very limited in scope.



DISCUSSING TEXT MESSAGING WITH YOUR CLIENT

Lawyers due to their cautious natures and training might be less likely to commit text messaging errors than most of our clients. It is incumbent with each new client engagement that the lawyer takes the time to discuss all possible challenges with all forms of digital communication including text messaging and email.

As is noted in other presentations at ABA TECHSHOW 2018, it is quite likely that a law firm's appropriate use of client portals will resolve many of the security issues related to communicating confidential information over the Internet.

But the beginning of each attorney-client relationship must now include a discussion of expectations of appropriate communication and the client's need to also be a partner in protecting the confidentiality of their information.

While all lawyers are concerned about fulfilling their professional obligations to protect a client's confidences, in truth it is more likely that the client will make a significant error in texting without proper advance direction from the lawyer.

SAVING TEXT MESSAGES IN THE CLIENT FILE

It is critically important to document everything in the client file to properly represent your client. It is also critically important for the lawyer that all client communications are documented in the client file in case the lawyer is later accused of misconduct.

It is also important to appreciate that the law firm or a client might receive a document preservation notice as a part of the e-discovery process and so a law firm process that preserves every text message to the client file might help an individual lawyer avoid the unpleasant possibility of having to turn over one smart phone to an e-discovery processor.

So, if you're going to have conversations with clients via text message, the firm has to develop procedures to save these messages in the client's file. This is likely easier to do with the digital client file (as we assume almost all TECHSHOW attendees now use) as opposed to a paper file. But if you have paper client files, then some printing may be involved.

So let's discuss various techniques.

THE "ONE OFF"

Even though you attended this session, you were convinced that texting with clients was a bad idea and you were not going to do it. And then a client who you had previously called several times on your mobile phone, sends you an important text message like "I have changed my mind. Let's accept their last settlement offer."



Obviously, this is a very important message to retain as the client file up until that moment contains repeated entries documenting the client's position that settlement is not an option. So the simple solution is to at that moment take a screenshot of your mobile phone screen and transfer that to the digital client file, even if it means printing it out on paper. And because a part of practicing law in the digital age is a healthy skepticism, most lawyers would finalize that settlement or communicate with opposing counsel until they had an additional conversation with the client just to make certain they sent that text. So if you ask the client to email you or call you to confirm this direction, it may be that you do not need to retain that text message in the client file because you have other documentation.

THE DO-IT-YOURSELFER

This tutorial from Macroplant.com shows iPhone users how to [Transfer & Backup Text Messages \(SMS\) to Your Mac or PC](#).¹

This tutorial from Digital Trends is entitled [Don't lose your texts! Here's how to save text messages in Android and iOS](#).²

Here is a similar tutorial from [Popular Science](#).³

There are other manual methods.

The problem with any manual method is that it creates yet another task for the lawyer to do. In this situation it is also difficult for staff to help the lawyer because the lawyer must surrender her cell phone to the staff. No matter what size of law firm, if any of these do-it-yourself methods are done regularly and consistently, the question will arise as to whether this is an effective use of the lawyer's time.

The application IFTTT has recipes that allow you to save SMS messages to Google Sheets in Google Drive.⁴ But, of course, this will require an IFTTT account and some training.

ENTERPRISE TEXTING SOLUTIONS

A better solution is an automated process or an enterprise texting solution. A primary privacy benefit for lawyers is that an enterprise texting solution often provides an app that will allow the lawyer to text from their mobile devices without revealing their mobile phone number.

While it is outside of the scope of our presentation to do an-depth review of every available enterprise texting solution, at least according to what we see on the Internet, ZipWhip is a example of these type of tools and ZipWhip could be a serious contender for any law firm

¹ <https://macroplant.com/iexplorer/tutorials/how-to-transfer-and-backup-sms-and-imeessages>

² <https://www.digitaltrends.com/mobile/how-to-save-text-messages/>

³ <https://www.popsci.com/how-to-save-your-text-messages>

⁴ <https://ifttt.com/applets/166449p-save-incoming-text-messages-to-google-drives>



seeking to implement this type of solution. We have both been test driving ZipWhip in preparation for this presentation and will cover how this other enterprise texting solutions perform and retain all texting data.

It is also worth noting that practice management solution Clio has developed a ZipWhip integration.⁵

LAWYERS NEED A LITTLE PRIVACY, TOO

One of the challenges of sending a text message to a client is that savvy clients will then save your mobile phone number so that they can call you anytime that they feel like it.

This might be appropriate for the general counsel of a very significant major law firm client. In fact, many of those types of clients already have the attorney cell phone number. But it's really unworkable for a practitioner who practices mainly in the family law arena and who may find their weekends and evenings interrupted by complaints about the behavior of the soon-to-be ex-spouse or other clients who have boundary issues.

Enterprise texting solutions like ZipWhip provide a mobile device app so that one can text a client from a cell phone and use the law firm's main landline number to receive any replies at the ZipWhip app.

Hong Dao, Practice Management Advisor with the Oregon State Bar Professional Liability Fund (PLF) reminds us that it is generally possible to send text messages to your clients using email. The blog post in [Appendix 1](#) appears at <https://www.osbplf.org/inpractice/send-text-messages-to-your-clients-without-using-your-cell-phone/>. The post is from the PLF's blog, *inPractice*.

THE DIGITAL SECURITY OF COMMUNICATING BY TEXT MESSAGE

The world's first SMS text message was sent well before your firm's most recent class of Fall Associates were born,⁶ however it's quite possible that — depending on the smartphone in question — lawyers may be sending text-based messages to clients without using SMS at all, which it's why it's important for us to understand the digital security of communicating by text message.

Practically every cell phone on the market can communicate via SMS (Short Message Service) and many can also send MMS (Multimedia Messaging Service) messages, messages with pictures or video. However, smartphones may also communicate using new or emerging message platforms. Each of these platforms has its own advantages, and it's important to understand the security implications related to each, if for no other purpose than to know

⁵ <https://www.zipwhip.com/integrations/cli/>

⁶ <https://en.wikipedia.org/wiki/SMS>



where your text is being stored and how it's being protected when you communicate with clients and others.

SMS

Cell phone service providers allow phones on their networks to send 160-character plain text messages to other devices, usually other cell phones, on the same or some other network. Messages longer than 160 characters may be split into 160-character blocks and delivered sequentially.

Your provider or "carrier" keeps records of your cell phone use, including calls and text messages, and even pictures, sent from your phone. Almost all cell phone carriers give detailed information about [a] phone's use in billing statements sent to the owner."⁷

In the United States, Federal privacy laws like the, "Consumer Telephone Records Protection Act of 2006"⁸ help to protect this data from "fraudulent acquisition" and threaten penalties for the "unauthorized disclosure of phone records."

MMS

According to Wikipedia, "the MMS standard extends the core SMS capability, allowing the exchange of text messages greater than 160 characters in length. Unlike text-only SMS, MMS can deliver a variety of media, including up to forty seconds of video, one image, a slideshow of multiple images, or audio."⁹

As with SMS, MMS messages are delivered to devices by cell phone providers.

APPLE MESSAGES

The Messages app ships with all iOS devices. iPhones with active cellular plans can use this app to send SMS and MMS messages to modern phones. However, messages sent to other iOS users may be sent using the iMessage format, which is Apple's secure, end-to-end encrypted solution for its platform. You can send messages in the iMessage format by logging into any modern Apple device, whether it be phone, tablet, or Mac, using your iCloud username and password. Message and SMS messages are backed up on iCloud for your convenience, but you can turn iCloud Backup off whenever you want.¹⁰

⁷ <https://www.lawyers.com/legal-info/communications-media/privacy-law/are-your-text-messages-and-images-private.html>

⁸ <https://www.gpo.gov/fdsys/pkg/BILLS-109hr4709enr/pdf/BILLS-109hr4709enr.pdf>

⁹ https://en.wikipedia.org/wiki/Multimedia_Messaging_Service

¹⁰ <https://www.apple.com/privacy/approach-to-privacy>



As your intuition may be telling you, messages sent as iMessages fall outside the purview of the federal privacy laws that protect SMS and MMS messages; instead, they rely on iMessage encryption to keep that information out of hands that should not have access to it.

ANDROID MESSAGES

People who use modern Android phones will find that their default text messaging app is Android Messages, Google's SMS and MMS app. By default, the Android Messages app sends messages using what it hopes will become a new standard, RCS (Rich Communication Services), which "is more rich"¹¹ and provides other enhanced features beyond the scope of what either SMS or MMS can provide.

GOOGLE ALLO

Allo is a smart messaging app from Google that provides rich formatting options, and delivery of messages over a data network — it doesn't rely on SMS or MMS. It also lets you start secure, end-to-end encrypted message conversations, although messages aren't secured by default.

That last point bears repeating: Google Allo messages aren't secured by default. To better understand the implications of this statement, read "Everything You Need to Know About Google Allo's Privacy Backlash"¹² over at fortune.com.

INSTANT MESSAGING

In the previous sections we've discussed SMS text messaging and MMS multimedia messaging, as well as a few other systems that people might assume use the SMS or MMS protocols. In actuality, these other systems blur the line between traditional text messaging and more modern instant messaging. According an American Bar article published in 2008, "Instant messages (IMs) are transmitted via the Internet in real time, often through an account provided by an Internet Service Provider."¹³

Smartphones have become the default communication device for many over the last ten years. And with the proliferation of mobile apps that bring desktop computing power to the pockets and purses of the masses, instant messaging apps — or apps that contain some messaging capability — have become ubiquitous. In many ways, it is now easier than ever to tie electronic messages to the devices that send them, as well as to the location from which those messages were sent.

¹¹ https://en.wikipedia.org/wiki/Rich_Communication_Services

¹² <http://fortune.com/2016/09/22/google-allo-nope>

¹³

https://apps.americanbar.org/litigation/litigationnews/2008/april/0408_article_messages.html



What follows are brief descriptions of a few services that some businesses and lawyers use to better leverage the power of text-based communications.

SENDHUB

SendHub provides what it describes as “business-class texting.” The service includes an online messaging mailbox that collects all conversations into a web-based dashboard, support for SMS and MMS, and mobile apps on Android and iOS. It also delivers functionality similar to that of email, including the ability to archive, search, as well as mark messages read and unread. It’s available at www.sendhub.com.

SIDELINE

Sideline is a service that aims to help you, “keep your personal number private.” It can automatically respond to unanswered calls or texts with a custom branded message, route inbound calls to ring at multiple devices across a team, as well as provide support for MMS. Arguably, this service is more about voice-based features than the text-based ones, but it provides a collection of features that some find valuable. Learn more about Sideline at www.sideline.com.

SIGNAL

Signal’s value proposition is privacy for calls as well as instant messages. The first two sentences on the website read: “Fast, simple, secure. Privacy that fits in your pocket.” The goal of this open source project is to provide a secure messaging experience, free. With that said, end-to-end encryption is the cornerstone of what makes Signal great. It reproduces text messaging and telephone functionality, all from within a secure framework. Apps for Android, iOS, Mac, Windows, or Linux are available at www.signal.org.

RINGCENTRAL

RingCentral is a cloud VoIP phone system that includes web conferencing, team collaboration tools, as well as mobile texting, calling, and faxing. Some companies use RingCentral to replace their telephone systems. It supports multiple telephone extensions within an organization. And, with regard to its texting platform, there’s support for sending and receiving SMS and MMS messages. A powerful web-based app allows for calling or texting from within a browser. It also offers apps on Android and iOS, and a whole host of integrations with 3rd-party services, like Clio and zapier.¹⁴ The website is www.ringcentral.com.

TEXTMAGIC

TextMagic is an “all-in-one bulk SMS service for business.” The feature set it provides is focused around communicating with a large number of recipients around the world in a systematic way,

¹⁴ <https://apps1.ringcentral.com/apps?compatibility=ringcentral>



whether text originates online, in their Android or iOS apps, as SMS, or email. This service does not support MMS messages. Learn more about its features on their website:

<https://www.textmagic.com/business-sms-platform>.

TXTIMPACT

TXImpact is an enterprise text message service that supports SMS and MMS, while also allowing for features like polling, surveys, message scheduling, and more. In addition, it can enable support for sending and receiving of text messages at existing landline telephones with any existing voice service provider. To get a better sense of available options, visit

<https://www.txtimpact.com/products>.

ZIPWHIP

ZipWhip enables texting for your existing business phone number. The service gives you a text inbox that's available online, or in the various apps it supports. Searching, scheduled messages, SMS, MMS, and automatic text replies are just a few of the features available. Discover all their features at www.zipwhip.com/features.

RISKS ASSOCIATED WITH TEXT MESSAGING

SMS SPOOFING / SMISHING

As with any technology, there are potential risks associated with communicating using text messaging. For example, as with email messages, a person can forward a message — or a screenshot of a message — to someone else. Similarly, it's possible for a bad actor to “spoof” or pretend to be someone else when sending a text message. This is called SMS Spoofing.¹⁵ While ne'er-do-wells often resort to SMS Spoofing to access premium services for free, it's possible they could set their sights on a specific target to extract information from them, an act that's half SMS Spoofing and half Phishing — Smishing.¹⁶

Several months ago, Jared Kushner's lawyer was fooled into forwarding a legitimate email to a fake address.¹⁷ It's not hard to imagine how SMS Spoofing could, especially on small screens, lure someone into divulging confidential information to an untrusted party.

¹⁵ https://en.wikipedia.org/wiki/SMS_spoofing

¹⁶ <https://www.mirror.co.uk/money/how-fake-text-message-trick-11439875>

¹⁷ https://www.washingtonpost.com/lifestyle/style/email-hoax-comes-back-to-haunt-jared-kushners-attorney/2017/09/28/c2df2c4a-a490-11e7-ade1-76d061d56efa_story.html?utm_term=.168254c01c69



CONCLUSION

Like email, communicating by text message commonly known as “texting” is likely going to be with us for a while. Under the right circumstances, it is incredibly convenient and a time-saving tool.

But as is true of many things related to the legal representation of clients concerning their confidential business and private matters, we — as members of the legal profession — have to look beyond the convenience factor to ensure that we are not compromising our clients’ interests or our professional interests by thoughtless use of text messaging communication.

Text and Instant Messaging Technology is continuing to evolve at a rapid rate. It’s quite likely that a presentation on text messaging for lawyers at ABA TECHSHOW 2023 might cover significantly different issues and challenges that we are not yet able to conceive.

But OTOH maybe texting has already fully evolved. IDK. So we will TTYL. TYVM for your attention. EOM.



APPENDIX 1

SEND TEXT MESSAGES TO YOUR CLIENTS WITHOUT USING YOUR CELL PHONE

March 10, 2017

by Hong Dao

Have you ever wanted to text an appointment reminder or a quick message to your clients without having to use your cell phone? Many clients are faster at reading and responding to their text messages than to their emails. There is an easy and free way to do this. It's called Email-to-SMS Gateway. You just use your email program on your computer to send a short text message to your clients. No need to use a third-party service that you don't know and trust. No need to install an application.

WHAT IS SMS GATEWAY?

An SMS gateway allows your computer to send Short Message Service (SMS), which is generally known as a "text message," to a cell phone. However, the text message cannot be more than 160 characters and cannot include media.

If you want to send a longer text message with an image, video or audio, you'd need to use the MMS (Multimedia Messaging Service) gateway. MMS is a type of messaging that has no character limit and allows media files. Most cell phones support both SMS and MMS. But keep in mind that if your client's phone plan doesn't have MMS, he or she won't receive the message.

The SMS gateway texting method requires you to know three things:

1. Your client's cell phone number.
2. The name of the client's phone carrier. You can look up the carrier at this [website](#).
3. The SMS gateway address that corresponds with the carrier. The gateway addresses for major U.S. phone service providers are listed below for your convenience:

U.S. Carriers	SMS Gateway (text only)	MMS Gateway (text and media)
AT&T	@txt.att.net	@mms.att.net
Boost Mobile	@sms.myboostmobile.com	@myboostmobile.com
Sprint	@messaging.sprintpcs.com	@pm.sprint.com



T-Mobile	@tmomail.net (Include "1" before the phone number)	@tmomail.net (Include "1" before the phone number)
U.S. Cellular	@email.uscc.net	@mms.uscc.net
Verizon	@vtext.com	@vzwpix.com
Virgin Mobile	@vmobl.com	@vmpix.com

Follow these steps to send text messages from your email program:

1. Compose a new email.
2. In the "To" field, insert the client's 10-digit phone number followed by the appropriate @gateway address. Do not include hyphens or dashes in the phone number.

For example, if your client's phone number is 503-123-4567 and the carrier is AT&T, this is the SMS gateway address: 5031234567@txt.att.net.

If the carrier is T-Mobile, make sure you include the number "1" before the 10-digit phone number.

3. Write your message. Keep the message to fewer than 160 characters. If you need to write a longer message or want to include media, use the MMS gateway address or regular email.
4. Hit "Send."

Your client will receive your email in the form of a text message on his or her cell phone. If the client responds to your text, the message will be sent to your email inbox.

There are other options to send text messages from your computer, including using Google Voice and third-party online services. But SMS gateway is simple, reliable and free. You can test it right now by sending a text from your email to your cell phone.

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