Email is Here to Stay:
Pointers for Ethical and Practical Use

State Bar of Wisconsin
2008 Annual Convention
Nonresident Lawyers Division
Percentage of attorneys using email:

99%

Source: 2007 ABA Legal Technology Survey Report

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...for routine correspondence?

97%
…for memos or briefs?

74%
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...for court filings?

55%
…for client billing?

43%
...send confidential information to clients by email once or more per week?

72%
<table>
<thead>
<tr>
<th>Service Type</th>
<th>2004-2005</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Memos &amp; Briefs</td>
<td>66%</td>
<td>74%</td>
</tr>
<tr>
<td>Court Filings</td>
<td>42%</td>
<td>55%</td>
</tr>
<tr>
<td>Client Billing</td>
<td>25%</td>
<td>43%</td>
</tr>
<tr>
<td>Confidential</td>
<td>56%</td>
<td>72%</td>
</tr>
</tbody>
</table>

Sources: 2004-2005, 2007 ABA Legal Technology Survey Reports
What about security?
Rely on confidentiality/privacy statements:

79%
Use encryption:

17%
Require client’s *oral* consent:

9%
Use password protection: 8%
Require client’s *written* consent:

7%
Don’t use email for confidential information:

12%
E-Mail Danger #1: Misdirected & Misaddressed E-Mail

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Cautionary Tales

- Attorney accidentally sends email to New York Times Reporter
- Partner sends email intended for colleagues to more than a dozen reporters
- Coffee shop executive accidentally forwards embarrassing internal discussion to customer
Best Practice: Disable AutoComplete!

In Outlook 2003:
1. Go to the “Tools” Menu
2. Select “Options”
3. Under the “Preferences” tab, select “E-mail Options”
4. Select “Advanced E-mail Options”
5. Uncheck box labeled “Suggest names while completing To, Cc, and Bcc fields.”
Best Practice: Check, double check the to, cc, and bcc lines
Best Practice: Check the E-mail Tail

Are ALL of the e-mails in the reply/forward string appropriate for the recipient?

Would the original sender want me to pass their e-mail on?
E-Mail Danger #2: Metadata
Best Practice: Metadata

What are your duties when sending?

Can you look?

What do you do if you find metadata?
## Best Practices: Metadata

<table>
<thead>
<tr>
<th><strong>UPDATE</strong></th>
<th><strong>CONVERT</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Check with software</td>
<td>Converting files to PDF will eliminate some</td>
</tr>
<tr>
<td>vendor for updates (e.g.</td>
<td>some metadata.</td>
</tr>
<tr>
<td>Word add-in)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>SCRUB</strong></th>
<th><strong>UPGRADE</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Use a commercial</td>
<td>Newer versions of MS Office and Adobe</td>
</tr>
<tr>
<td>“metadata scrubber” like</td>
<td>Acrobat handle metadata more sensibly.</td>
</tr>
<tr>
<td>Payne’s Metadata Assistant or iScrub</td>
<td></td>
</tr>
</tbody>
</table>
E-Mail Danger #3: Spam/Phishing
Best Practices: Spam/Phishing

Use two (or more) email addresses to divide personal and work email.

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Best Practices: Spam/Phishing

Use a spam filter…

…but also use a white list.
Best Practices: Spam/Phishing

• Don’t click on links or download files if you don’t know the sender.

• Look over the email for glaring typos, grammatical errors, unusual e-mail addresses, and suspicious language.

• When in doubt, try calling the supposed sender.
E-Mail Danger #4: Encryption and Disclaimers
Best Practices: Encryption/Disclaimers

• Move the confidentiality/privacy statement to the top of the e-mail, or consider adding “CONFIDENTIAL” to the subject line.

• Use encryption and/or password protection when sending confidential information (hushmail.com, PGP, etc.).

• Talk to your client to determine what works best for both parties.
E-Mail Danger #5:
Blackberrys/Smartphones
Best Practices:
Blackberrys/Smartphones

• Password protect the device itself and, if appropriate, encrypt the contents.

• Most providers or Blackberry administrators offer some remote wiping feature. Know what your provider offers and know how to request it if your device goes missing.

• Be careful when donating or selling the device. Make sure it’s wiped fully!
E-Mail Danger #6: Office Policies
Best Practices: Office Policies

Develop a written email use policy for your firm. It should address:

1. Proper use of firm email for business communication by lawyers and support staff;
2. Storage and retention of email as a record;
3. Security issues including opening attachments, identifying spam and phishing, and other scams;
4. Use of firm email for personal communication; and
5. Use of other Internet-based communication tools such as instant messaging, blogging, commenting on blogs, social networking, and online chat.
Best Practices: Office Policies

Educate your clients!

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E-Mail Danger #7: Publicized Email Addresses
Best Practices: Publicized Email

“…a statement in sufficiently plain language…” CA Formal Opinion 2005-168
Questions?

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