The Seven Deadly Sins of Email

10 Heavenly Steps to Stay Out of Email Hell
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Nancy Rigassio

- Executive Claims Counsel for AXA XL
- Over 20 years’ experience
- Focus on high-profile, large loss cases
- Practiced law for 14 years in state and federal courts

- Education
  - J.D., Rutgers School of Law
  - B.A., Economics Douglass College
Email: The Seven Deadly Sins

Presented to Lexbe Attorneys

Ten heavenly steps for staying out of email hell
Webinar Learning Objectives

1. Attendees will be able to recognize email communication that could create a misunderstanding, exacerbate an issue, or implicate the sender in a claim.

2. In this program, through the study of emails from actual claims cases and disputes, attendees will examine and edit these cited emails, identifying inappropriate text and discussing alternative language or alternative methods of communication.

3. Today’s program participants will explore the best practices for writing well-drafted emails that are clear, concise and actionable.

4. Attendees will be able to use litmus test questions to evaluate their emails before sending them; and to access the need to send or further revise an email message with additional recommended preemptive actions.
Agenda

1. Seven Deadly Sins

2. Email Best Practices
Which email comment came from a claim against a lawyer?

1. “Sam *(client)* is light years past difficult.”
2. “A motion not fully complying with the rules of court does not necessarily mean it will be denied . . .”
3. “We do not have enough qualified associates to staff this case.”
4. “We need to increase the value of these billing entries as much as possible without getting caught . . .”
Email

DEFINITION:

(a) Messages sent and received electronically through an email system (source: Merriam-Webster)

(b) The documents that give ammunition to the adversary’s attorney during a deposition
Purpose of Communication

For the recipient of the message to understand as the deliverer intends it.

Say it again…
Complications

- The “Falstaff” Factor
- Autocorrect
- Teeny tiny screen: old eyes and big thumbs
Seven Deadly Sins
Seven Deadly Sins

Cardinal Sins

- Greed
- Wrath
- Lust
- Envy
- Sloth
- Gluttony
- Pride
Seven Deadly Email Sins

1. Self-criticism
2. Blaming
3. Complaining
4. Colloquialism
5. Thoughtlessness
6. Self-indulgence
7. TMI (too much information)
# Seven Deadly Email Sins - unfiltered

1. **Self-criticism**  
   *I messed up*

2. **Blaming**  
   *You messed up*

3. **Complaining**  
   *Everything is hard & unfair*

4. **Colloquialism**  
   *I sort of write like I talk*

5. **Thoughtlessness**  
   *I’m lazy*

6. **Self-indulgence**  
   *I’m a know-it-all*

7. **TMI**  
   *I write more than I need to*
1 Self-criticism

Definition:

Negative judgment or analysis of one’s own actions or behavior without the aid of another person
“I am working very hard to get enough information to be able to paint a true picture of what it will take to defend this case. Given the amount I was off on my budget for expert witnesses, I am very nervous about making a new projection. However, the estimate for each phase of the litigation is as follows:
Self-criticism

Attorney’s email response to his client

“I am working very hard to get enough information to be able to paint a true picture of what it will take to defend this case. Given the amount I was off on my budget for expert witnesses, I am very nervous about making a new projection. However, the estimate for each phase of the litigation is as follows:
2 Blaming

Three categories:

1. **Blaming** - finger pointing
2. **Transferring** – not my monkey
3. **CYA (Cover Your Tail)** – you made me do it
Blaming

Definitions:

1. **Blaming** - the act of making explicit and often unfair accusations of blame (aka: finger pointing)

2. **Transferring** – blame shifting; the act of transferring responsibility for an error or problem to another (aka: not my monkey)

3. **CYA (Cover Your Tail)** - action by an individual to protect themselves from possible subsequent criticism or legal penalties
Blaming

Cover Your Tail

Associate’s internal email

I reviewed the brief with the list of citations, as you had requested. I have some concerns about the strength of the arguments, but given the short time you allotted me, I couldn’t review the motion as thoroughly as I would normally do. So go ahead and accept my track changes on the list of citations and get the brief filed.
Complaining - Expressing pain, dissatisfaction, or resentment

Venting - Forceful expression of pent-up thoughts or feelings
Complaining

Email from one partner to another

“You’re always off to your beach house every weekend, dumping on me the deposition of the adversary’s expert witness or picking the jury for you. How can I adequately prepare for these events when it’s not my case? This last minute dump is always one way, always making your life easier or better . . . you couldn’t make my life more complicated if you tried.”
Colloquialism

Definition:
Written communication that imitates informal speech, use of informal words, phrases, or even slang

Three categories:
1. Qualifiers – words that limit or enhance
2. Adjectives – modifiers to use carefully
3. Filler words – words to delete
Definitions:

1. **Qualifiers** – words or phrases that are added to another word to modify its meaning; either increasing or decreasing its meaning.

2. **Adjectives** – a word usually preceding a noun, serving to describe or modify a noun; or denoting a distinct quality of the noun.

3. **Filler words** – sneak in between relevant words, add no meaning to a sentence, serve no purpose and are generally useless.
Colloquialism

Poor Qualifiers

“It’s *kind of* apparent your legal theories are *pretty much* wrong.”

Others:
- sort of
- somewhat
- a little
- fairly
- indeed
- rather
- a lot
- like

ELIMINATE
4 Colloquialism

Adjectives (and adverbs)

- big
- great
- bad
- massive
- multiple
- mere
- shoddy
- terrible

Inappropriate adjectives
- “These are poor arguments”
- “This is an absolute problem”
- “That is an odd way to plead that”

BE SPECIFIC
"I just wanted you to understand I think that we are really outside of our area of expertise."

**Additional words/phrases you do not need:**
- very
- actually
- that
- perhaps
- even
- In order to
- Needless to say
- In the process of
- Due to the fact that

**MINIMIZE USE**
So the meeting this morning *sucked* and I have no desire to go back for a while and I don’t plan to. It was Rob and Aaron who were there and who have *little to no involvement in anything*. They decided they wanted to be *tough guys* *about everything* and complain *about every little thing* and blame *most everything* right on me.
Definition:

**Blathering** – ramble, go on, or lengthy, confusing message

**Instant reply** – immediate response to email
5 Thoughtlessness

Blathering

“There is conflicting info can we talk to the employees, or not, can we “interview” or not etc. . . the reality is that we do have some names from the police report and we should know what we can/can’t do while the investigation process is still “open”. Thoughts?”
Blathering - Redo

“There is conflicting info on which witnesses we can interview. My questions:

• Shall we send an investigator to interview the witnesses?
• Interview them before we notice them for depositions?
• What is the appropriate approach for this case?
Instant reply

To: johnbrown@we defend anyone.com
From: harrysmith@plaintiff attorney.com

John – good to see you at the dep today. I want to include a count for punitive damages and want your confirmation that you’ll refrain from filing opposition to my motion for leave to amend. Please confirm that we can amend the pleadings and if you are free for lunch Thursday.

To: harrysmith@plaintiff attorney.com
From: johnsbrown@defendanyone.com

yes
Thoughtlessness

Instant reply - Redo

To: johnbrown@defendanyone.com
From: harrysmith@plaintiffattorney.com

John – good to see you at the dep today. I want to add a count for punitive damages. Please confirm that we may do this without leave of court. Please let me know if you are free for lunch Thursday.

Harry

To: harrysmith@plaintiff attorney.com
From: johnsbrown@defendanyone.com
yes

You will need to seek leave from the court on that amendment. Yes to lunch Thurs.
6 Self-indulgence

Three categories:

1. Opinion – my view
2. Speculation – my guess
3. Exaggeration – my overstatement
6 Self-indulgence

Definitions:

1. **Opinion** – a view or judgment not necessarily based on fact or knowledge.

2. **Speculation** – forming a theory or conjecture without firm evidence.

3. **Exaggeration** – representing something as better or worse that is really is.
6 Self-indulgence

Opinion

Attorney’s response to disciplinary board’s investigation

“It is my opinion that the dynamics of the interaction between the diary system and the configuration for calendar reminders to the admin staff created a false sense of security . . . that then allowed the system to fail and made us miss the statute of limitations.”

How did the lawyer further implicate himself?
TMI

Definition:

Information not important or useful to the subject of discussion, or incriminating information offered as justification and/or explanation
• “Trevor may be brand new to the law firm but he has a lot of experience. So I’m sure we are fine.”

• “Given your last minute changes, I think this went better than expected.”

• “Trevor has 12 years of experience with similar estate and trust practice. In my opinion, he is a benefit to the team.”

• “It would be really helpful if you could provide specific examples of the “last minute issues” you refer to in your email.”
TAKEAWAYS

1. Do not document your self-critical analysis concerns
2. Document solutions – not blame
3. Stick to the facts
4. Keep words that serve a purpose - delete the rest
TAKEAWAYS

5 Before replying to an email, confirm:
   • You understood what was asked
   • Answered question(s) appropriately

6 Edit your emails for all forms of opinion, speculation and exaggeration

7 Provide only the necessary facts in your emails
Ten (heavenly) Steps to Optimal Email
10 Optimizing steps

1. Know your purpose
2. Strong subject line
3. BLUF
4. One topic
5. Edit, Edit, Edit
6. Concise
7. Clear ending
8. Proofread
9. Confidential
10. Litmus test
1. Why are you sending this email?
   • Give information
   • Ask for a decision
   • Confirm an agreement
   • Delegate work
   • Make a request
   • Set up an appointment
1. Know your purpose

2. Who is your audience?
   - Internal team
   - Your boss
   - Client or client team
   - Project stakeholders – regulators, agencies, boards, community members, etc.
2. Strong subject line

1. Caller ID of your email
2. Put your key message in the subject line
3. Compel recipient to open your email

Additionally:
Are you changing the subject in an email thread?
• Create a new message with a new subject line
3 Bottom line upfront

BLUF

Definition: conclusions and recommendations placed at the beginning of the text, rather than the end, to facilitate rapid decision making

(Source: wikipedia.org)
3 Bottom line upfront

State intent within the first two lines of your email

Do:
“Here is a quick summary of our phone call. Please confirm by Friday that you approve an additional five hours of research.”
4 One topic

1. Keep your emails simple

2. One topic per email:
   - Issue
   - Idea
   - Decision
   - Request
   - Question
4 One topic

Do: “The key issue is…”
Do: “A decision has to be made concerning…”
Do: “Although we have multiple concerns this needs to be addressed first…”
### 5 Edit, Edit, Edit

Be mindful of Red Flag words

<table>
<thead>
<tr>
<th>Extreme</th>
<th>Promise</th>
<th>Multiple meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Absolutes</strong></td>
<td><strong>Guarantee</strong></td>
<td>• Inspect</td>
</tr>
<tr>
<td>• Highest</td>
<td>• Certify</td>
<td>• Estimate</td>
</tr>
<tr>
<td>• All</td>
<td>• Assure</td>
<td>• Supervise</td>
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<tr>
<td>• Complete</td>
<td>• Will</td>
<td>• Optimize</td>
</tr>
<tr>
<td>• None</td>
<td>• Shall</td>
<td>• Oversee</td>
</tr>
<tr>
<td>• Best</td>
<td>• Ensure</td>
<td></td>
</tr>
<tr>
<td>• Every</td>
<td></td>
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</tbody>
</table>

- Be mindful of Red Flag words
- Do: "The key issue is…"
- Do: "A decision has to be made concerning…"
- Do: "Although we have multiple concerns this needs to be addressed first…"
If you want someone to read your email:

- Keep it short
- Use short sentences
- Five sentences per email or less
- Make your messages easy to scan
Do:

1. Be specific
2. Avoid jargon & generalizations
3. Add headings within the text of the email
4. Use bullet points to list three or more items
Tell the recipient what they need to do

**Do:** “Thanks for confirming this by Thursday”
**Do:** “Let me know if you are available”
**Do:** “No response required…I wanted to make sure you were in the loop”
8 Proofread

Do:

1. Type in recipients name – **LAST**
2. *Uze* spell check – then read
3. Stop Instant Reply errors
4. Read from recipients point-of-view
9 Confidential

1. No such thing
2. Do not write anything private, confidential or incriminating in an email
3. Do you need to “Reply All”? 

Do: Have a phone call
Do: Conduct a face-to-face meeting
Ask yourself:

▪ Do you need to write this email?

▪ Will it surprise the recipient?

▪ Would it be better to wait until you are less emotional (including post-happy hour communications)?
Litmus test

Would you be comfortable?

- Receiving this email from someone else in or outside your firm
- Delivering this face-to-face
- Reading it aloud while sitting on the witness stand
Still uncertain?

1) Don’t send it
   • Use your draft email as talking points for your conversation with the client

2) When in doubt – take it out
   • Delete the text you are still not sure about

3) Pick up the phone
   • Can be more appropriate, constructive & efficient

Reminder: All emails are discoverable even ones labeled “attorney/client privileged”
Text Messages

1) Do not text the following:
   • Requests for changes or revisions
   • Approvals for changes or revisions
   • Resolutions to problems
   • Sensitive case information

2) Follow email best practices

Example reply: “Got your text. Please see my response sent to your email.”
The Solution

Optimize your email

• Make emails work for you – not against you
• Review emails for the Seven Deadly Sins
• Follow the Ten Email Best Practices
• Does your email pass the litmus test?
• When in doubt – take it out
Thank you
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How to Leverage the Seven Deadly Sins of Email in Your eDiscovery

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Boutique Firms Want to be ‘Lean and Mean’

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  Advanced case intelligence, expletive filters and best practices

- **Infrastructure**
  Cloud-based with virtually infinite capacity with lightning-fast performance

- **Expertise**
  DIY tools that equip your team with the capabilities to perform discovery workflows in-house vs. outsourcing

- **Advanced Capabilities**
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How to Leverage the Seven Deadly Sins of Email in Your eDiscovery

The Lexbe Solution

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1. Native Characters
2. OCR Characters
3. Image OCR Characters
4. Translated Characters

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- All OCR Characters are Extracted and Included in the Uber Index.
- All Images are OCR’d, Characters Extracted and Included in the Uber Index.
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Simple to Use, Yet Advanced Capabilities
Creating Intelligence & Organization Out of Chaos

- Email Threading, NearDup Groupings and Technology Assisted Review

Email Threading

NearDup Groupings

Technology Assisted Review

The Seven Deadly Sins of Email
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“Because of the Lexbe software, the entire playing field has been leveled for my firm.”

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*Boutique Firms Want to be ‘Lean and Mean’*

- **Support Staff**
  Doesn’t require IT or Litigation Support Staff to Operate

  - Lexbe empowers firms without large litigation support departments to instantly increase their discovery and review capacities.

  - Our 24 hour ticket system allows you to submit an IT issue to our support department.
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Moderator:

Jeff Fugitt
jfugitt@lexbe.com
(512) 653-8295

Webinar Questions:

webinars@lexbe.com