

Oregon State Bar Bulletin — APRIL 2013

April Issue 

Managing Your Practice

Email Missteps:

Documenting Email as Part of a Client's File, Part I

By Beverly Michaelis

A few years ago I used social media to poll lawyers and their staff about client email. I wanted to know how lawyers were documenting email as part of the client file. Were messages printed and placed in the client's paper file or retained electronically? If filed electronically, who did the filing — lawyers or staff? The results were interesting and generally in line with what I was hearing anecdotally. Here are some of the comments I received:

- All emails are printed and placed in the client's file.
- Attorneys are supposed to file emails in Time Matters (case management software), but they end up in folders in Outlook, junking up memory.
- I am a sole practitioner, and I file my email in Outlook folders. I have a folder for each client.
- I am a sole practitioner, and I spend an hour and a half every day moving email from my inbox into client folders.
- We use Gmail. We use the search feature whenever we need to find a message.
- We label emails with the appropriate matter/client name in Gmail and archive or backup messages as needed.

These answers illustrate four common missteps in how law firms are processing client email:

Printing What Should Remain Electronic. All files that begin life electronically can and should be stored electronically. Not only is this a sustainability issue, it is also a matter of efficiency and productivity. Firms that insist on printing emails often require staff to file each new message sent or received — even if the message is part of a redundant string of prior exchanges. This quickly becomes an expensive proposition in paper, ink, electricity and staff time that could be better spent.

Not Backing Up Email. Law firms relying on web-based email are placing their faith in the cloud, often at their peril. While email can be archived in a web-based account, most users misunderstand how this works. Archiving is not equivalent to backing up. In Gmail, for example, archiving merely moves the message from your inbox into the "All Mail" folder. If Gmail experiences an outage or you lose messages — and both events have occurred — there is no "backup" unless you have taken additional steps to copy your email and store it elsewhere.

Using Your Email Program as a Filing Cabinet. Using folders in popular programs like Outlook or Thunderbird is nice from an organizational point of view when you are actively working with messages, but neither program is meant to be a permanent storage solution for electronic client correspondence. While Outlook will tolerate thousands of emails, keep in mind that using it as a filing cabinet affects memory, consumes hard drive space and may drain network or server resources. If you are using an older version of Outlook, your data file may become too large to back up. Other good reasons to get email out of your email program are discussed below.

Failing to Establish and Follow Filing Protocols. All of this invites the question: *whowill do the filing?* If we agree that email should be moved from your email inbox or sent items folder into the client's electronic folder on the firm's computer system, who is going to perform this task? In the days of a paper-based practice, it was easy to delegate paper filing to staff. Should a lawyer delegate electronic filing to staff? And if yes, how? And how often? Next month, this column will address questions of office filing protocols in more detail.

Email Must be Properly Filed



All client email should be segregated by client and saved electronically in the same network or local folder where client pleadings, correspondence, research and so forth are stored. Storing email with other client documents provides a complete electronic record in one place that everyone can access. When email sits in your inbox, no one else working on the case can see it, and no one else will know what is going on. This isolationist approach to email may cause communication breakdowns and other errors. Even if you are a sole practitioner and don't need to share access to your emails, your inbox will become bloated as you accumulate more and more messages.

Because the process of getting email out of your inbox and into a client's folder can be tedious, shortcuts are a must. Filing email electronically is far easier if you use the built-in capabilities of email applications, electronic filing assistants, Adobe Acrobat or case/document management software. Let's explore the advantages of each method.

Use Built-in Capabilities of Email Applications

If your email is web-based (e.g., Outlook.com, Yahoo!, Gmail or another provider) I strongly recommend downloading your email into an email application like Outlook or Thunderbird. (Next month's column will discuss this process in more detail.) Once email is downloaded into an email application resident on your computer or network, it is far easier to manipulate. Let's look at some specific ways you can use the built-in capabilities of Outlook to save email directly to your clients' folders:

Organizing Email Using Folders. First, create a folder on your computer for each client. If a client has more than one matter, create a subfolder for each matter. Within each matter folder, create additional subfolders for correspondence, client pleadings and other documents, as needed. Next, set up email folders and subfolders for each of your clients and client matters in your Outlook inbox that mirror the folders and subfolders in the client's computer files. Drag the messages from the inbox into the appropriate client email folder or subfolder to segregate messages by client.

Saving Multiple Email Messages as Text Files. To save client emails en masse using Outlook, navigate to the email folder containing the messages you want to save, choose "Select All," or select the individual messages you want to place in a text file. With the messages highlighted, choose "File, Save As," and navigate to the folder on your computer where you want to save the messages. Give the file a name, such as "Jones email messages." If desired, add a date or date range to the file name. "Jones email messages" will be saved as a text file that can be opened in Notepad, WordPad, Word, or WordPerfect. If you save multiple messages in one batch, they will automatically be consolidated into one text document. The document can be searched, stored with client Jones' other electronic documents, and printed if absolutely necessary. The original email messages can then be deleted from Outlook, freeing up valuable space. (Note: saving messages as a .txt file does not preserve Internet message headers. If you prefer to capture Internet message headers – which provide a list of technical details about the message, such as who sent it, the software used to compose it, and the email servers that it passed through on its way to you – then save the message in another format, such as .msg described below.)

Capturing Attachments. If you want to save the attachments or graphics along with the original email, when you select the "File, Save As" option, change the message type at the bottom of the dialog box from the default (which may be plain text, HTML, or rich text) to Outlook Message Format (.msg). Note that messages saved in the .msg format will have an envelope icon and are opened using Outlook. This format preserves the Internet message header contained in the message.

Best Practices. You can save emails one at a time — as you receive them — or all at once at the end of a client matter. Depending on the duration of the matter, save emails frequently enough to protect your client's information from loss. If you are accumulating emails in your email application, organize the messages into folders as described above. In either case, I like to use the "DAFT" approach suggested by colleague and fellow practice management advisor, Dee Crocker: D-Defer, A-Act, F-File, T-Trash. The goal is an empty email inbox.

If you receive an email and cannot complete the associated task the same day the message is received, create a task from the email, choose a date for completion, file the original email using a method described in this article, then delete the original message from your inbox. If you can act on the email immediately, do so. Send your reply, file it in the client's folder, then delete the original message. (When your reply is saved to the client's file, it will contain the original message you received. You can also delete the sent item if you save your reply email directly to the client's folder on your network or server where all other client documents are stored.)

Occasionally, you will receive an email that requires no action except filing. Save the email to the client's folder and delete the message from your inbox. If you receive a non-client-related email that does not require action or filing, you can trash it. In the minds of many, this is the best email of all.

Electronic Filing Assistants

Electronic filing assistants can greatly speed up the process of filing email into folders if you are an Outlook user. Three of the more popular are SimplyFile (www.techhit.com/SimplyFile/), SpeedFiler (www.claritude.com/) and QuickFile 4Outlook (www.outlook4lawyers.com). All three offer free trial copies. These programs work in substantially the same manner by adding a toolbar to your Outlook program that "auto files" your email. For example, SimplyFile applies an advanced algorithm to learn and adapt to the user's email filing habits. After you "train" SimplyFile for a time, filing email to the right folder takes only one click of the SimplyFile toolbar button. Whether you want to file a newly sent email or a reply to an existing message, the program will "guess" which Outlook folder the message belongs in. (The accuracy rate is 80-90 percent.) There are no configuration wizards, no set-up and no rules to maintain.

Adobe Acrobat

If your office owns Adobe Acrobat 9 or later (all referred to as Acrobat), you may want to take advantage of this program's powerful email portfolio capabilities. When Acrobat is installed, two new buttons appear on the Outlook toolbar: "Create Adobe PDF from selected messages" and "Create Adobe PDF from folders." You can use these buttons to capture messages and attachments together, converting your email into a single PDF portfolio with a fully searchable/sortable index.

To convert selected messages from Outlook to PDF, follow these steps:

1. In Outlook, select the inbox folder with the email message you want to save.
2. Click the button "Create Adobe PDF from selected messages."
3. In the "Save Adobe PDF File As" box, specify a folder on your computer (e.g., client/matter) in which to save the PDF file, type a file name, and click "Save."

To convert a folder of email messages from Outlook to a PDF, do the following:

1. In Outlook, select the relevant inbox folder.
2. Click the button "Create Adobe PDF from folders."
3. Click OK.
4. In the "Save Adobe PDF File As" box, specify a folder on your computer (e.g., client/matter) in which to save the PDF file, type a file name, and click "Save."

These basic techniques also work with the professional versions of Adobe Acrobat 7 and 8. You can append additional messages to an existing PDF portfolio or archive emails to PDF automatically. For more information, search Acrobat Help for "append email portfolio" or "automatic email archiving." (Note: saving messages in a PDF portfolio does not preserve Internet message headers. If you prefer to capture Internet message headers, then save the message in another format, such as .msg described above.)

Case/Document Management Software

For those who are looking for solutions beyond mere email management, purchasing case or document management software may make the most sense.

Case management software centralizes all client and matter data into one software program — from calendaring, docketing, conflicts and billing to email, documents, research and more. With case management software, email and attachments are stored by the software in the appropriate case or contact file when received or sent. There is no need for mail to remain in your inbox. There are many options for case management software. The American Bar Association Legal Technology Resource Center (ABA LTRC) maintains a comprehensive and current software comparison chart: www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/casemanagementcomparison.html.

Document management software brings together *all* of an organization's sources of knowledge, including email communications, scanned paper documents, word processing documents and spreadsheets — anything that can be stored as an electronic file. For a discussion of document management software, including a list of available software programs, visit the ABA LTRC, www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/scannerocrfyi.html.

Conclusion

Next month, we will continue this discussion by delving further into protocols for filing client email, including a consideration of who should do the filing — and some additional tips to make the entire process go more smoothly.

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Oregon State Bar Bulletin — MAY 2013

MAY ISSUE

Managing Your Practice

Filing Protocols to Capture It All:

Documenting Email as Part of the Client's File, Part II

By Beverly Michaelis

Last month we began a conversation on email protocols, addressing the need for proper filing of client email. Part I of the discussion also covered the practical process of getting email out of the inbox and into a client's folder where the pleadings, correspondence, research and other client matters are stored. (See the April 2013 *OSB Bulletin* found online at www.osbar.org/publications/bulletin/13apr/managing.html.) This month we resume that conversation, because whichever approach you use, some additional considerations and tips should make the process go more smoothly.

Once you have chosen an email filing method, the next issue to consider is who will *do* the filing?

Options for Getting the Filing Done Routinely

If you have no support staff, you will be filing your own email. As you receive or send client email, save it immediately into the client's electronic folder on your hard drive or server and delete the copy in your inbox. If you are uncomfortable immediately deleting client email after filing it, then create client folders in your email program as a *temporary* holding place. I understand that many attorneys like to leave email in their email application because they find it easier to work with. However, at some point — no later than the close of the client matter — you should create a routine to *move email messages out of your email folders into the client's electronic folder on your computer*. Use the techniques and shortcuts described in Part I of this discussion to make this process less painful.

If you have support staff, you have other options for filing email.

One option is to forward client emails to your secretary or assistant for electronic filing. *Pros:* Forwarding email means you stay in control. Private or confidential firm emails remain in your inbox. Only client email is forwarded, with the benefit of keeping your staff person in the communication loop. *Cons:* You remain in control of your inbox. If you aren't good about forwarding messages, this approach is bound to be self-defeating. In addition, your IT department may not appreciate such a scheme. Every time you forward an email, three copies exist: the original that landed in your inbox, the copy you forwarded, and the forwarded message received by your secretary or assistant. Unless you are diligent about deleting the first two, your firm will be storing all three.

A second option is to give your secretary or assistant full access to your inbox along with responsibility for filing. *Pros:* If you give staff access, they will be in the communication loop. If you don't want to be bothered with filing your own email or forwarding it, this may be the approach for you. *Cons:* Staff may have to wade through a lot of messages to tackle this task — personal, firm confidential and client-related. Lawyers who choose this option would be best advised to keep personal email separate (more on this below). In addition, you will need to take precautions to protect sensitive information exchanged within a firm, such as employee evaluations or law firm financial statements. It might be wise to post such material in a secure place on the server, accessible only to designated individuals with proper credentials.

Good Basic Filing Protocols

Train Staff. Make sure staff understand their role in filing email — whether they do so directly from your inbox, or upon receipt when you forward messages. If the "people" part of this process fails, you may end up with no record of your electronic correspondence.

Keep Personal Email Out of Your Business Account. Many lawyers and staff are already overwhelmed by the amount of email they must process. Slogging through personal email in addition to business email makes it more difficult to find critical, time-sensitive messages. Establish a personal email account you can access via the web from your work desktop — if your firm permits. Better yet, use your smartphone, tablet or other electronic device to access personal email. Doing so will save space on your



business server, protect your privacy at work and prevent business email from bouncing back to the sender because your inbox is full of personal messages.

Zap the Spam. Use a spam filter to keep junk and scam email out of your inbox. Remember to check your quarantine summaries daily in case your spam filter is holding back a legitimate message. Specifically, verify that email from important sources such as the Oregon State Bar (@osbar.org), Professional Liability Fund (@osbplf.org), courts and official agencies is not blocked from your inbox.

Take Back Your Inbox by Unsubscribing. If you order products online, visit news sites, belong to professional groups or participate in social media, you have likely acquired email subscriptions you don't want or need. Sure, you can delete these messages from your business email — just as you delete spam — but wouldn't it be better if you never saw the messages at all? The truth is that deleting email means reading email — or at least skimming through your inbox. This is a tremendous time waster. Instead, get serious about unsubscribing. "Constant contact" updates and broadcast email product announcements have "unsubscribe" links — usually at the bottom of the email message. If you don't find an unsubscribe link, click to "download pictures or images," which might make the link easier to see. Click "unsubscribe" and follow the link to get off these lists. As you shop online in the future, use your personal email, not your business email, for purchases. (Or better yet, set up a separate free email account used exclusively for online shopping.) The goal is to reduce your business email to only those messages that relate to your law practice.

Don't Use Outlook or a Mail Program's Rules to "File" Client Email. Please don't rely on rules to "file" client email. Even if you are willing to suffer the tedium of creating a rule based on each client's email address, clients don't always use the same account to communicate with their lawyers. Using a subject line as the basis for a rule is also unworkable. How many times have you received (or sent) an email with no subject line? Or continued an email thread based on a subject line that had already run its course? Rules require consistency to work properly, and subject lines simply aren't consistent. In addition, rules created while you are connected to your office network often don't run properly when using web-based remote email access. For myriad reasons, reliance on a mail program's automated rules is a bad idea when it comes to filing client matters.

Get Your Email Off the Web. I find it ironic that lawyers who are leery of cloud computing don't give their Outlook.com, Gmail, or Yahoo! accounts a second thought. When you leave email on a web server, your confidential client data is not entirely under your control. As discussed above, if your provider's server is down, or you can't get on the Internet, then you can't access your client information. Additionally, reliance on cloud solutions for email may raise security and privacy concerns. Macs and PCs both ship with an email application. Set it up to download your web mail. *Doing so is absolutely free since you are using a program preloaded on your computer.* Go to your web mail's help page and search for instructions on how to download web mail to your specific program. For Google, log in to Gmail, click on Help, and click on POP under "Other Ways to Access Gmail." Google offers instructions for setting up Apple Mail, Outlook Express, Outlook 2002-2010, Thunderbird, Windows Mail, the iPhone and other mail programs.

Once you are downloading email to a local application on your computer or network, you can save it, print it to PDF or at least archive it locally. Remember: the idea is to sort email by client, get it out of your inbox and into the client's file on your network or local hard drive.

If you absolutely, positively, cannot be persuaded to download your web mail, then I strongly recommend you print your web-based email messages to PDF. If you don't own and don't want to spend the money on Adobe Acrobat, then download a free PDF writer. For a discussion reviewing some of the best free PDF writers, see www.techsupportalert.com/best-free-pdf-writer.htm. To print an email to PDF, simply open the message, choose Print, select your PDF printer, click Print, name the file, browse to where you wish to save it, and click Save.

For those of you who are wholly cloud-based — that is, you are using a cloud solution like Clio or Rocketmatter for calendaring, docketing, conflicts, billing, trust accounting, document management, email and so forth — I recommend you create a recurring reminder to export a local copy of your data from the cloud provider's server to your computer or network on a weekly basis. While you are meeting the goal of keeping all your client information in one place by using the cloud, it makes good business sense to retain a local copy of your client data.

Conclusion

Email has become *the* way to communicate with clients, opposing counsel and others. Finding a reliable means of filing client-related email is critical in order to properly document your file. Be consistent in your approach. Capture all messages sent and received, as well as attachments, and retain them electronically just as you would paper correspondence, pleadings or other client documents.

Remember, your inbox is not your filing system.

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