

**THE REASONS WHY THIS LAWYER DOES NOT PREFER EMAIL
WHEN COMMUNICATING WITH HER CLIENTS**

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I recognize that there is a generation gap regarding electronic communications. I appreciate how efficient and simple email may be. I also dislike its efficiency and simplicity. Although my children, who are members of the X Generation, can't live without email, text messages and Facebook, this 57-year-old can. My clients of whatever age, especially those I represent in divorce and custody cases, must be concerned about their use of email for many reasons.

The most important reason that attorney-client email should be limited is that if the emails are sent to or from a client's employer's email address, there may be no expectation of privacy concerning those communications. Generally speaking, an employer owns the computer or devices from which the electronic communications are being sent or delivered. This ownership issue is obviously so when the email domain address is the employer's domain address. Therefore, when a client sends me email or I send email to him or her at his or her work address, the client should be forewarned that not only may the employer inspect such emails, but the emails may be shared with the adverse party since the expectation of privacy doesn't exist and consequently, the privilege between the attorney and client may be waived.

The other warning I must give my clients, is that if they forward my emails to other persons, then the privilege between me and my client has been waived and there is no confidentiality. Any communications for which the confidentiality or privilege has been waived may be subject to discovery by the adverse party.

Therefore, under both of these scenarios, the hallmark of the attorney-client relationship-privileged and confidential communications - does not exist when email is shared with third parties and may not exist when email is exchanged over an employer's electronic address.

When emails are exchanged between two spouses who are in litigation, such communications may haunt my client in future litigation. Particularly when one is preparing for a custody case, it may be quite damaging to my client to have disclosed the emails he or she has sent to the other parent which are highly critical of that person. It never helps in a custody case to have a client accused of alienating the other parent from his or her children, and vicious emails can often be evidence of such damning behavior.

Clients need to be reminded that any emails that they exchange with the adverse party, or other third parties, may be used as exhibits and may not be the exhibits they would want to come into evidence.

Finally, in my view, email is not a particularly productive method of communication with a client. Particularly in the setting of divorce and custody cases, communications require an exchange of information and a conversation to fully understand and appreciate the circumstances of a particular family and the nuances of the law. Emails are good for identifying dates, times and places; that is, data, but are not good for explaining the law or understanding the facts and substance of an issue. Therefore, I always advise my clients that I do not practice law by email.

In conclusion, email is a wonderful method of communication when used sparingly and thoughtfully. It is not a good way to communicate when one is upset or angry with the recipient. It is not a good method for communicating the substance of the law, as it applies to the facts of a case. If you would be embarrassed by what you have written in an email, if your mother or your grandmother read it, then don't send it. The same advice applies to texting, twitter, Facebook, MySpace, etcetera.