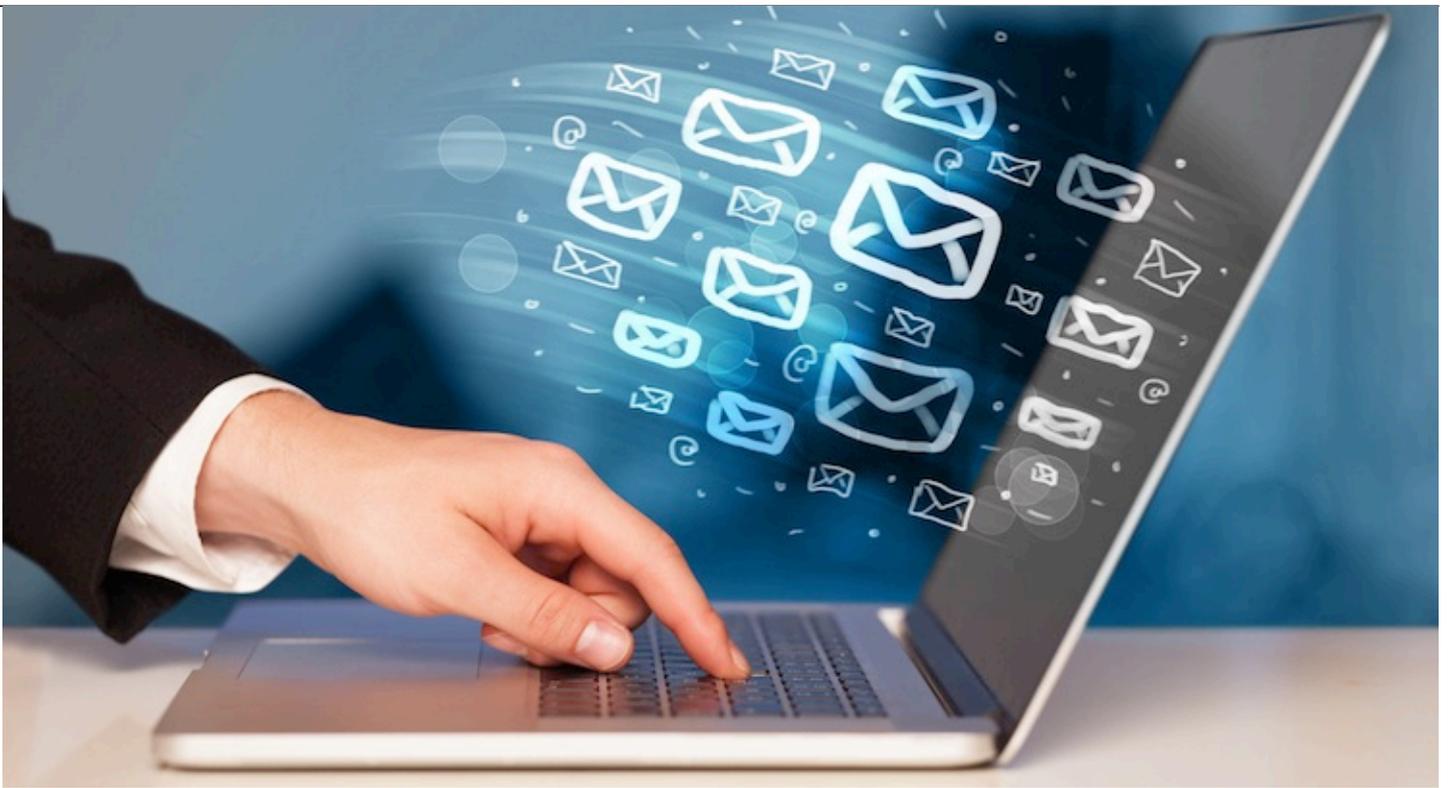




The Email Doth Disclaim Too Much, Methinks

Career Development



The fish-to-pond ratio in a small law department shows your colleagues that having an in-house lawyer makes life easier. Targeting this low-hanging fruit can be a simple and satisfying way to demonstrate that you're not always adding complexity. A great place to start is email disclaimers.

A daily-use email template should only contain items that either identify the sender and company, or provide other means for reaching the sender. If you compose an email that contains privileged content, clearly mark it as such, preferably in the subject line. Otherwise, kindly disabuse yourselves of the notion that two inches of dense and vaguely menacing boilerplate below your signature block will ever improve an outcome for you. If this makes you uncomfortable, pull up the disclaimer that you're using now, read it carefully, and ask yourself what any recipient would be obliged to do upon reading it.

I'm not the first to take this position. Several capable writers have demonstrated that the disclaimers lack the requisites of a contract and are insufficient ways to prevent an attorney-client relationship. So, why do so they persist? Several attorneys that I've asked have confessed their own belief, or the belief of the executive they report to, that they add some vague gravity to the communication. They believe that the language ultimately prompts recipients to take more care in the handling and disposal of the material. I then ask if they're made to feel that way when they receive one, and I typically hear: "Well no, but I'm a lawyer." If that statement isn't followed by a blush of self-awareness, I might say something about how good it is that we lawyers aren't stereotyped by trying to confuse non-lawyers with complex but meaningless language.

Maybe the decades of unquestioned use have made email habits harder to break. Ironically, those same years of repetition have probably rendered them invisible. Most people that I've talked to readily acknowledge they never read the disclaimers they receive. Take the brake light as a real

world example of an effective innovation that became obsolete with its ubiquity. A 1986 regulatory change required cars sold in the United States to be equipped with a center high-mounted brake light, prompted by studies that showed improved reaction times for drivers behind the slowing vehicle. More recent studies, however, showed that the reaction time benefit had evaporated in the intervening years. This, in turn, prompted calls for modifications to regain the lost benefit. In the meantime, however, brake lights are now a normal feature of traffic.

The disclaimer isn't alone among the extraneous items that can disappear from below the signature block. For example, the other day I printed a copy of an email that I needed to reference during a conference call. It covered three pages — double-sided, because that's the least I could do. The email would've been two pages long, but the last bit of the signature block, which included a little green tree graphic that read "Please respect the environment and don't print this email," pushed it over onto the third page. Of course, if the page hadn't already been taken up by lengthy instructions, a warning about the confidential nature of the email's contents, and a disclaimer about the liability associated with email cyber-cooties, the little green tree would've landed on page two. I can, however, still blame the little green tree for triggering the low ink warning on my printer.

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