

Protect Attorney Email From Going Viral

What if your next email went viral? Can you protect attorney email from going public? Really public? If someone subpoenaed my attorney email account, they may find these statements peppered throughout my emails:

“Since the statute has been amended, there is no basis for creating two entities.”

“On your way home will you pick up some cashews?”

“My client is not willing to accept that offer unless your client will agree to confidentiality.”

“I love you too, shmoog - ums.”

“See if Ray Scott will help you, he helped me pick fishing spots last Spring.”

I may have been able to object to one of these emails (the first one) based on attorney-client privilege. Based on the facts of the action, the rest of them are probably going to be produced in response to a subpoena. Once I've produced them, they are one step closer to going viral.[1. ©2016 Brandon L. Blankenship, Image Credit: IGM_3596 by Samp Hamalainen CCflickr 20MAR2010.]

Attorney-Client Privilege Is Limited

One way to protect attorney email is to make it clear that you intend for the email to be privileged. Remember that for attorney-client privilege to attach, the email chain has to be for the purpose of seeking or giving legal advice.

-Statute interpretation - YES

-Cashews, love, fishing expert - NO

-Business advice - NO

If you intend for the email to be privileged, say so. An introductory phrase like, "In response to your legal question," goes a long way in evidencing your intention.

And then there is waiver. Attorney-client privileged communications published to third parties waive the privilege. Yes, it is easy to forward an email, but one forward may destroy privilege. In some jurisdictions, the waiver is extended to the ENTIRE SUBJECT MATTER.

Why Not Two Email Accounts?

One way to protect attorney email is to avoid mixing it in with all of your other email. So why not maintain two separate email accounts - one for attorney-client communications and another for everything else? The email account for attorney-client email could have the most recent disclaimers related to clients and law practice. In the event it was subpoenaed, all of the emails would be privileged.

The email account for all other communications, however, would have a much broader disclaimer.

-I am not providing any advice in this email as an attorney and you follow any such advice at your own risk.

-No amount of email communication establishes a business or attorney-client relationship.

-Unless there is an express, written agreement to the contrary, I am not in a business or professional relationship resulting from this email or any series of emails.

How about this disclaimer that my local deputy sheriffs have on their email account?

-The opinions expressed are my own and do not represent those of the Shelby County Sheriff's Office, The Shelby County Commission, County Government, or Elected Officials.

Or At Least Flag Privileged Communications

One way to protect attorney emails is to have a standard flag for those you intend to protect. If you insist on keeping all of your email in one account, consider a heading at the beginning of email that you intend to be privileged that states something like this:

PROTECTED BY ATTORNEY-CLIENT PRIVILEGE
DO NOT FORWARD OR SHARE

You can even add a disclaimer in your email signature that states how emails without this heading are intended to be treated.

Note that the opposite method does not work. Adding "ATTORNEY-CLIENT PRIVILEGE" to all of your emails does not make them privileged. In fact, stating that emails which are obviously not privileged are privileged weakens your privilege claim on emails that actually should be privileged.[2. Learn more about [The Risks of E-Mail Communication](#).]

Or Just Don't Write It At All

You know it, but just as a reminder, once something is written, there is a chance it will outlast you. Once it is transmitted in any way through the internet, *it will* outlast you. Your case will be finished, you will be resting in the great beyond and your email will still be floating around in cyberspace. If you consider that your email may be a large part of your legacy, you may write more purposefully.

And while you are living there is another consideration. What you write in an email may end up on the front page of the paper (or the Huffington Post). Even if you have written the email, ask yourself, "what if this went viral tomorrow?" before you click send.

Question whether you should write it at all. If a quick phone call is faster, expresses your tone of voice better and more clearly communicates what you want to say, why write an email at all?

Brandon L. Blankenship

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[Brandon Blankenship](#)

Presenter at [Enemy In The Camp](#)

Brandon L. Blankenship is a continuing legal education presenter and business educator. He is the author of [Unmasking Hour](#). He writes weekly posts on the legal industry and is a contributor to the [Nobility Academy](#). He and his wife Donnalee live on their hobby farm south of Birmingham, Alabama.



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