

Attorneys say e-mails, safer than texting, are just as fast

Messages are part of clients' file, so they must be saved

By **CLAUDE SOLNIK & SYLVIA HSIEH**

More clients are asking their lawyers to communicate in ever-faster ways, and many lawyers are accommodating them by using text messaging, instant messaging and personal digital assistants for client communications.

But while some are turning to texting, others prefer e-mailing as a more cautious, quick way of communicating.

Paul Margiotta, a sole practitioner in Bay Shore frequently communicates with clients via BlackBerry.

"I respond so much quicker than getting back to the office and getting a list of phone calls," Margiotta said. "Most importantly, in the court it's silent. You don't have to talk on the phone."

Glenn Gruder, a partner at the Hauppauge office of East Meadow-based Certilman, Balin Adler & Hyman, also sticks with e-mail rather than texting for rapid electronic communication.

"I e-mail my clients from my BlackBerry. I don't use my cell phone to text a client," Gruder said. "I don't think texting's needed."

Others said lawyers are being pressured

into using faster types of communication without taking precautions.

Brief, rapid-fire written communications, they said, can lead to misunderstandings.

"I recommend that lawyers do not use texting or instant messaging for any essential communications," said Ellen Pansky of Pansky Markle & Ham in South Pasadena, Calif., who represents attorneys in ethics cases. Last-minute parking or logistical changes would be an exception.

"If you're on the way to court and trying to tell your client, 'Meet me in Courtroom 20 instead of 15,' I have no problem with that," she said, but anything more raises a number of concerns that lawyers should consider.

One of the downsides of using text messaging and chat is that clients may come to expect an on-call attorney.

It's bad enough with e-mail, where clients expect a response within a day, said Traci Capistrant, a family law attorney at Capistrant & Wong in Minneapolis.

Most people expect a response to a text

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message within 10 minutes, she added.

"I just don't want to be that reachable," said Capistrant.

Margiotta, however, believes most clients prefer talking to texting, because it's more personal.

"Most clients expect phone calls," Margiotta said. "It's difficult to make them understand that e-mailing works."

Regardless of whether lawyers choose to use texting as a way of communicating with clients, Todd Scott, vice president of risk management for Minnesota Lawyers Mutual, a malpractice insurer for small and solo law firms, recommends attorneys set out those expectations in agreements, including the types of communication they plan to use, the times of day they are likely to check messages and typical response times, so that clients will know what to expect.

Another problem is that it can be unclear who is on the other end of texts or chats.

"I know my child picks up my phone when it buzzes. Particularly in family law practice, [an attorney would need to know] if it is a phone used by multiple people who can look and see the messages," said Capistrant.

Margiotta said one spouse may look at the other's phone and accidentally see texted messages.

"The problem to me with texting is if I text someone's phone and they're not there,

anyone could pick it up and read what I said," Margiotta said. On the other hand, "if I e-mail you, you have to sign in to get your e-mail."

Lawyers sometimes forget that electronic communications are part of a client's file.

"When you close that file, you also want to save those communications," said Scott.

But it's unclear whether and for how long text messages or chat sessions are saved.

In general, text messages are only saved for 72 hours on the provider's server, so unless you save a copy to your device, you only have a short time to request a copy before it vanishes, said Scott.

As for instant messaging, some providers have an option for the user to save a chat session locally, but unlike e-mails, not all providers preserve them on their servers, he added.

And if a dispute between you and your client erupts, "you need to know what was discussed," Scott said.

Rimas said that as a rule, he saves instant messaging sessions with clients by cutting and pasting the conversations into a document that he saves and prints as a PDF. He has not found a way to do the same for text messages.

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