

Think Before You Write - It May Be Evidence One Day

By Alison Mullins

Have you heard about the Sony hack? The “personal” emails exchanged between co-workers that are now available for public consumption? When reading these hacked emails, most people think to themselves – “Did the person writing this email think before they put that in writing?”

Everyday each one of us receive and send countless emails and texts. Do you think before you write? You should, as it may be evidence one day.

The Writing Process

Long ago are the days of sending a typed letter and waiting for a response via mail. When letters are written, it is a several step process. We write the letter. Then we review and edit the letter. Sometimes we ask for someone else to review and edit the letter too. Only after this thoughtful process is the letter printed on letterhead, and mailed out the door. Even handwritten letters often call for review and time to process.

In stark contrast to the letter writing process, emails and texts offer instant gratification. Upon receipt of an email or text, we all too often shoot back a response. The response is often typed and the send button clicked without rereading or editing the email - not even spell checked or reviewed for “corrections” by auto-correct that you did not intend (and that may completely change the meaning of your

message). Draft emails are hardly ever reviewed by another person. Instead, it is a quick type and send. This is dangerous.

Internal Emails Can (and Will) be Evidence in Court

This is especially dangerous when emotions are involved. Unsatisfied with a co-worker’s performance? Sub-consultant’s performance? Owner’s action or inaction? Have you shot off an email or text to another employee regarding your frustrations and dissatisfaction? You should have thought before you put it in writing.

More often than one would think, an email is produced during litigation that discloses unpleasant emails exchanged among the design team. Examples of such emails include: “oops we really made a mistake there”; “without the doors physically installed, operable and accepted by the owner, we cannot bill anything for this job!” (and then the owner received a bill that same month for 100% completion of the doors); “there are so many errors in our subconsultant drawings, I hope we catch them all before the owner does.” Statements like these – and worse – have been in emails admitted as evidence in court cases. Such emails are treated as admissions or liability and are very damaging to a defense of a case that the design team is not at fault, to say the least.

Conclusion

Think before you send a letter, email or text. Type a draft, review the draft, and ask someone else to review the draft - especially your lawyer if you think or know may have legal consequences or be seen by the receiving party as confrontational. You may even consider writing the information in a letter and attaching it to an email so that you – as well as the receiving party - understand the importance of the statements made in the writing. Overall, think to yourself, “Would I be ok if this email was available for public consumption? Or being read by a judge?” ... because one day it just might be evidence.

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This article is not intended to provide specific legal advice, but instead as general commentary regarding legal matters. You should consult with an attorney regarding your legal issues, as the advice you may receive will depend upon your facts and the laws of your jurisdiction.

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