



Lost in Translation: Why Digital Communication is Making Lawyers Less Civil

by Geri Green, Esq. and Zoey Surdis, Esq.

The Rise of Lawyer Incivility

Civility in the legal profession has been on the decline for years. As the Fourth District Court of Appeal decried, “[t]he timbre of our time has become unfortunately aggressive and disrespectful. Language addressed to opposing counsel and courts has lurch[ed] off the path of discourse and into the ditch of abuse. This isn’t who we are.”¹ The profession is experiencing a seismic shift as remote work reshapes daily practice, digital communication replaces in-person interactions, and opportunities for mentorship and relationship-building diminish. In its 2021 Report, the California Civility Task Force, a joint project of the California Lawyers Association and the California Judges Association, recognized that “bullying, intimidation, and nastiness have too often replaced discussion, negotiation and skillful, hard-fought advocacy.”²

A significant contributing factor may be the heavy reliance on asynchronous digital communication. Written communication is inherently contextual and influenced by a reader’s prior knowledge and cognitive processes. Non-verbal cues such as posture, proximity, smiles, pauses, tone, facial expressions, eye contact, hand gestures, and volume constitute 60-80% of face-to-face communications.³ The asynchronous nature of email and text communications deprives recipients of the immediate opportunity to clarify the sender’s intended meaning.

Additionally, our brains process information differently when reading on a screen versus in print. Research suggests that we comprehend less when reading on a screen compared to print and retain 20-30% less information.⁴ This is exacerbated by multitasking and skimming. It is no longer safe to assume

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that someone understands our intended meaning.

To make matters more challenging, the ability to transmit messages instantaneously encourages impulsive responses rather than thoughtful reflection. Collectively, these factors create a complex communication landscape, posing new challenges in interpretation and etiquette.

The Impact of the Changing Communication Landscape

Digital communication can cause a perception of anonymity, invisibility and minimization of authority that contributes to the “online disinhibition effect,” causing people to drop their guard, forego formalities, and express themselves in ways they never would in person. In legal practice this can manifest as aggressive, sharp or dismissive messages that deplete the professional currency that instills trust among peers and allows for a communication to be judged on the merits of its content as opposed to its tone.

A study in the *Journal of Personality and Social Psychology* found that in emails, the sender’s tone is misinterpreted 50% of the time. A similar study found that individuals are less likely to empathize with others in digital communications compared to face-to-face conversations, potentially leading to harsher responses or reduced cooperation.⁶

Without eye contact, tone of voice, or body language, written words can either be given too much significance or dismissed altogether. This can result in increased conflict among legal professionals and inefficiencies in case management. For example, having to send three emails instead of one to reach the same result.

Best Practices for Asynchronous Digital Communication

No uniform digital written language currently exists. Lawyers of diverse backgrounds, unique personalities, and varying experience levels converse differently depending on the method of communication.

For example, for junior lawyers, digital correspondence often serves as a comprehensive communiqué and is expected to include complete thoughts and more conversational tone. For senior attorneys, email is frequently a shorthand vehicle that need not be as formal or explanatory, because it is intended as a precursor to a clarifying phone call or email exchange. An email response of “No.” may be taken by a junior lawyer as an abrupt end to a conversation whereas a senior lawyer often perceives that same response as the beginning of a negotiation.

Strengthening communication skills across generations of lawyers in a digital world by learning from one another is crucial for developing a common civil language in the legal profession. A mutual mentor-mentee relationship offers a unique opportunity for both lawyers to learn other communication styles.

To mitigate misunderstandings and maintain professionalism consider adopting best practices, such as:

- **Timely Asynchronous Responses** – Delayed responses to inquiries convey the appearance of disinterest, annoyance, or a lack of urgency. A good rule of thumb is to provide a full response within 24 hours of receipt. If that is not possible, be sure to reply with an expected timeframe for when a complete response will be given. Take note that texting typically has shorter response time expectations.

- **Avoid Impulsive Responses** – Emails sent too quickly without careful wording may sound more confrontational than intended. Read messages twice before sending, and ensure tone and meaning are appropriate. While responding within a reasonable timeframe is important, it is equally crucial to allow yourself the space to thoughtfully modulate your response to actual or perceived incivility to avoid escalating that incivility or inadvertently perpetuating it.

- **Brevity Can Be Misinterpreted** – Short emails, while efficient, can give the impression that the communication is complete when it is not. Use clear and concise language while providing sufficient information for the reader to be fully informed within the four corners of the email.

- **Elicit a Meaningful Response** – Design your requests to open a dialogue, unless all you want is a yes or no answer.

- **Punctuation Matters** – Thoughtful punctuation helps ensure clarity and preserves a respectful tone. Punctuation choices can drastically change how a message is received. For example, the use of ALL CAPS can come across as shouting while the overuse of ellipses (...) can create uncertainty or the appearance of passive aggression.

- **Pick Up the Phone for Clarification** – A quick call can be worth 1,000 emails.

- **Be Mindful of Cultural & Generational Differences** – These can lead to misunderstandings and offensive assumptions. Consider how to address opposing counsel in an initial email greeting. Until a more familiar digital rapport is established, address them deferentially as “Counsel.” If you do not know someone’s title or position, use temporal greetings such as “Good afternoon.” If you are still

unsure how to address someone after the initial exchange, you can always ask them directly. At work, mutual mentor-mentee relationships with someone from a different background or generation can help bridge these types of gaps across differences in communication styles.



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Identifying deviations in digital interactions allows lawyers to navigate the challenges created by these shifts in communication more effectively. By adopting best practices in asynchronous digital communications, lawyers can reduce incivility and misunderstandings, promote greater respect in professional exchanges, and ultimately strengthen the integrity of the legal profession.

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