

▲ Email Communication

The ubiquity of email has blinded many of us to its fundamental shortcomings. No longer need we go from office to office within the law firm, either to speak with members individually or to drop off memoranda. Instead, from the security of our desks, we can easily reach out and “touch” many someones: passing along pearls of wisdom, announcing meetings, and generally communicating at will.

However, the very ease of email communication has tended to degrade our ability to actually impart information that is received by the recipient.

Email is an excellent means to disseminate information on who, what, when, and where to a large audience. However, as a means of communicating the how and the why of an issue, email is less than satisfactory. Many people don’t process information in an electronic format very well, if at all. Important communications contained in an email message can be lost in the clutter that besets us all.

Herewith, then, are a few simple rules to put email in its place and enhance your ability to communicate.

Rule #1. Discuss the how and the why of an issue in person whenever possible.

Rule #2. Supplement important email communications with a hand-delivered copy of the message, coupled whenever possible with a face-to-face discussion with the recipient.

Rule #3. When a face-to-face discussion of an important email message is not possible, drop off a paper copy of the message in the recipient’s office with a handwritten note asking to meet about it soon.

These three practices will enhance your ability to communicate within your firm.

Michael J. Ford

Quinlivan & Hughes P.A., St. Cloud
mford@quinlivan.com

▼ Motion Practice

Serving and filing of motion papers in the state district courts may not be sufficient to assure that the motion will be heard. A pair of often-overlooked provisions of the General Rules of Practice for the District Courts could thwart proceeding with the motion. Under Rule 115.02, the proponent of a motion must inform the other litigants of the prospec-



tive motion date promptly. This allows the other parties to address scheduling concerns, bring their own cross-motions, and otherwise provide for orderly proceedings. Rule 115.10 contains another oft-disregarded require-

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ment, obligating a moving party to confer, orally or in writing, with the other parties in an attempt to resolve the subject of the motion and to file with the court an affidavit reflecting compliance prior to a motion hearing. The affidavit need not be filed with the motion papers, but must be submitted before the hearing. There has been a growing tendency recently for judges to invoke these provisions, partially as a means of clearing calendar congestion and also to encourage out-of-court resolution of disputed issues. Failure to comply with either or both of these provisions could lead a court to refuse to hear the matter, require the motion to be rescheduled, or impose other sanctions.

Marshall H. Tanick

Mansfield Tanick & Cohen, P.A., Minneapolis
mtanick@mansfieldtanick.com

▲ Proving Undue Influence

To invalidate a will for undue influence, a contestant must show that another person exercised influence at the time the testator executed the will to the degree that the will reflects the other person’s intent instead of the testator’s intent. Conjecture and suspicion are insufficient to prove undue influence. The evidence must show that the influence exerted was so dominant and controlling of the testator’s mind that, in making the will, he ceased to act of his own free volition and became a mere puppet of



the wielder of that influence. Courts consider several factors when determining

whether a testator was unduly influenced, including (1) an opportunity to exercise influence; (2) the existence of a confidential relationship between the testator and the person claimed to have influenced the testator; (3) active participation by the alleged influencer in preparing the will; (4) an unexpected disinheritance or an unreasonable disposition; (5) the singularity of will provisions; and (6) inducement of the testator to make the will. This was the ruling in *In re: Estate of Mary Victorine Carpenter Torgerson*, A05-1429, (Minn. App. 04/11/06).

William Forsberg

Parsinen Kaplan Rosberg & Gotlieb, Minneapolis
wforsberg@parlaw.com



▼ Sales & Use Tax

As with income taxes, the general statute of limitations for sales and use taxes runs three and one-half years after the date the return is filed. If a law firm fails to file a return reporting sales and use tax, the statutory period does not begin to run until such a return is filed. Minn. Stat. §289A.38. Even if a return is filed, the statute of limitations is extended to six and one-half years if the return omits an amount of sales and use tax in excess of 25 percent of the amount stated in the return.

J. Patrick Plunkett

Moore, Costello & Hart, P.L.L.P., St. Paul
jpp@mch-pllpc.com