"Dos" and "Don'ts" for Electronic Communication and Litigation

DOs

- ✓ Assume your email or message WILL BE made public.

- ✓ Assume nothing is ever deleted forever.

- ✓ Say only what you mean, and mean exactly what you say. Your written words may be read out of context in the future and will be taken at face value.

- ✓ Ask yourself if you would be embarrassed if your mother or the New York Times saw your message.

- ✓ Be thoughtful: think before you write; edit before you send.

- ✓ Think about whom you want to be cc'd; be careful when copying new people on a chain.

- ✓ Keep your messages professional and respectful.

- ✓ When discussing personal matters, start a new message chain with a new subject.

- ✓ Check that your attachments are correct.

- ✓ Check that autocompleted email addresses are for intended individuals.

- ✓ Treat voicemail just like email, because most voicemails are now sent as attachments to email.

- ✓ Forward messages to those you want to be aware of an email chain, but do not want to directly include in the chain.

- ✓ Understand that text messages, intra-office messaging apps, and social media messages can be used in litigation and made public just the same as emails.

- ✓ Understand that your personal devices are subject to discovery in future litigation.

DON'Ts

- ✗ Assume a message is unrecoverable simply because you have deleted it.

- ✗ Use sarcasm, hyperbole, or speculation or make jokes. Tone and context are often lost in written messages.

- ✗ Use offensive, inflammatory, profane, or unprofessional language.

- ✗ Write "delete this message after reading," "it would be best to talk by phone," or something similar.

- ✗ Reply All unless you confirm that each addressee should receive your reply.

- ✗ Use messages to vent personal frustration or expose internal disagreement.

- ✗ Include personal matters in work-related message chains.

- ✗ Include attachments other than those strictly necessary for your purposes.

- ✗ Add new recipients to a message chain before confirming those recipients were not purposefully excluded and need to know all the subjects discussed in the chain.

- ✗ Use the cc function to add internal team members on outside distributions or use the bcc function to add others to an existing email thread. It heightens the risk of disclosure of sensitive information through an inadvertent Reply All.

- ✗ Share privileged messages with outside parties or with inside parties without a concrete need to know.