

AUTOFILL FAILS – ATTORNEYS BEWARE

Written communication on paper is so rare in this digital age, supplanted by email as the communication tool of choice for most businesses. Law firms are no exception. Email is quick, easy and yields instantaneous results. Although we often take email for granted, there are threats that a practicing lawyer should keep in mind, especially with autofill – a function in some email programs that prefills an email address automatically, usually based on the first few keystrokes entered.

The following two cases are examples that highlight some of the risks posed by autofill.

CASE 1: June, a claims handler, leaves one insurance carrier for another. The email account at her previous employer is not deleted because she is the subject of a litigation hold. When June moves to the new insurance company, she begins working with some of the same insurance defense attorneys. As new matters progress, these insurance defense attorneys and their staff communicate with June by email. On one occasion, a defense attorney sends June a confidential email about a case they are working on together. Unfortunately, the attorney does not notice that June's *previous email address* autofills and the email is sent to June's prior employer.

As a good email citizen, the receiver at the prior employer should delete the email as soon as they determine that the email was sent in error. However, they must first investigate and verify that the related claim is not theirs and does not require a response. In so doing, they discover the identity of the other carrier's insureds and all manner of privileged information about the claim. In addition, the other parties copied on the email (including the insured), might also learn that this was sent to the wrong email address. The attorney's reputation with both carriers and the client is greatly compromised due to his inattention to detail. This may result in loss of a client and possibly loss of future case referrals from both carriers – a costly mistake.

Of equal concern, if confidential or personally identifiable information was included in the email, this error may also constitute a breach of privacy. Depending on applicable state law, it may expose the attorney to notification requirements. These expenses would be uninsured by a traditional Legal Professional Liability Errors & Omissions (E&O) insurance policy, but might be covered if the firm has a cyber insurance policy.

CASE 2: A case has been transferred to John, a new attorney at another law firm. The initial attorney forwards all of the important documents to John via email. However, the initial attorney does not confirm the email and his autofill sends the email (with all of the documents) to a person who is not a party to the case, and who in fact is not an attorney at all. The client was carbon copied on the incorrect email and notifies the former attorney that she had just sent all of their confidential information to a third party without their consent. This event sets up future litigation between the former attorney and the now former client.

IMPACT AND LESSONS LEARNED

It's clear that attorneys need to be very careful with autofill as the ramifications from such an easy-to-miss detail could be significant. In addition to the embarrassment and negative impact on reputation, there are clear litigation consequences. Traditional Professional Liability (E&O) policies may not cover loss due to autofill errors. Additionally, a cyber insurance policy might not cover this loss either. If a firm does not have coverage, the exposure could be significant.

The following best practices should be implemented in order to reduce this autofill risk. When contacts change employers, attorneys should delete the old address from their email autofill so they do not risk the potential of sending information to the wrong company. In addition, to safeguard confidential information, attorneys might want to consider sending the information through some other secure channel (other than email) in order to protect the information.

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