

Ethical Implications of Texting

I confess to being averse to texting, and I try to avoid it. Unfortunately, since COVID and working from home, I have used my cell a lot to return calls. Once some people have your cell number, they feel free to text frequently.

Having just gotten used to email niceties, what are the ethical implications of texting? How do you keep track of texts, especially within the context of a case management system? Curmudgeons need to know.

I do not prefer to text with clients, mostly because I retain all email in my practice management software. I tend to forward a text to myself as email and then respond to the client via email.

Deborah Matthews, Virginia

YMMV, but for me it's just way too much work to keep track of texts. If you're running a high-volume practice (personal injury, bankruptcy, etc.) it's probably a great idea to accept texts, but for lower volume practices I think the drawbacks outweigh the benefits. I have certain clients that do have my personal cell number, but these are either my repeat clients I have an ongoing relationship with or one-off clients who have "proven" themselves to me that they're not maniacs who will text me 100 times a night. I think the best practice here is to either.

1. Politely tell the client that you due to volume and professional ethics considerations you do not respond to texts and to please call or e-mail with non-urgent matters or
2. Always send a follow-up e-mail or letter memorializing what was discussed in the text conversation so no accusations can be levied against you later about something that was allegedly said or not said (wow, possibly the most lawyer-ish sentence I've ever typed).

Bryce James Davis, Florida

I am with Deb. I do not give out my cell phone number but in those cases where I occasionally have to return a call with my cell, I follow her practice. I tell me clients that I do not accept text messages and they must use email if they want to communicate with me, or else it will be by snail mail and things will move more slowly. Everyone always comes up with an email address.

Ed Burcham, Kentucky

A few years ago, I got a phone call late at night from a person I did not know, from an area code far far away, seeking legal advice. I asked him how he got this number and he hung up. The next day I got a text message from him with a legal question. I put two and two together and realized he got my number from Avvo. I also knew instantly that this was a person who felt ordinary rules applicable to professional consultations did not apply to him. Who calls a professional at 11 pm? Who texts a professional as his initial contact?

I got a text a few days ago that said, "L. Max, I just wanted to check in on you." It was from a Texas area code and was unsigned. I am sure it was not from my sister-in-law who just moved there, uses her California-area-code cell phone and doesn't call me "L. Max." I don't know anyone else in Texas. I think it was random, of a piece with phishing. I just deleted it.

So, I do very little texting. And only with people I know. (Except texting is apparently necessary to communicate with physicians' offices in the COVID-19 era-- they tell you to wait in your car and text you when it's time to come in.)L. Maxwell Taylor, Vermont

I'm not aware of any ethical implications unique to texts as compared to emails.

Eugene Lee, California

He is a New Hampshire Ethics Committee opinion re: text messages, might be a good starting point for you Kevin.

<https://www.nhbar.org/resources/ethics/ethics-corner-practical-ethics-articles/2015-12>

The Ethics of Texting: Preserving Client Files - NHBA<<https://www.nhbar.org/resources/ethics/ethics-corner-practical-ethics-articles/2015-12>>

The Ethics Committee provides general guidance on the NH Rules of Professional Conduct with regard to a lawyer's own prospective conduct. New Hampshire lawyers may contact the Ethics Committee for confidential and informal guidance by emailing Robin E. Knippers. Brief ethics commentaries based upon member inquiries and suggestions will be published monthly in the NH Bar News. www.nhbar.org

William E. Denver, New Jersey

I hate texting, so if a client starts thinking they get to text me whenever they want, I tell them they are getting billed. My solution to this is to not give out my cell phone number. There are so many phone services out there too code from that key you call from a different number than your cell number (I don't need to use them as I am able to call from the relevant office phone). For the rare person that is so impoverished they can't afford internet or a smart phone, I have them text my google phone number which makes it easier to track and gets emailed to me.

Lesley Hoenig, Michigan

Interesting. But I think the concerns are mostly solved if lawyers do the following:

1. use a text service that backs up texts (like mysms or apple messages)
2. store texts in your practice management system if you have one (my practice management system stores client texts)

A good percentage of my clients prefer text communication. I don't see that client texts are any more extraneous than the emails they send me. To me, client texts are just like client emails. When I need to reach a client, I often use both text and email to head off any excuse that they didn't get my message (which I used to get a lot, now I literally never do). I use a service that converts emails to texts, so to send a text, i just add a cc in my outgoing email.

Eugene Lee

Gene is right. Not surprisingly. This is the problem with the legal profession summed up in a nice, neat bow. Lawyers, especially older lawyers, are so scared of new things that we keep doing the same thing over and over and then we wonder why there is no real progress in the legal profession.

My dad had this hanging in his office. He obtained it from Jim Burke. It now hangs in my office and I read it daily:

Man is so constituted as to see what is wrong with a new thing... NOT WHAT IS RIGHT. To verify this, you have but to submit a new idea to a committee.

They will obliterate ninety per cent of rightness for the sake of ten per cent of wrongness. The possibilities a new idea opens up are not visualized because not one man in a thousand has imagination!

--- Charles Kettering

Jonathan Stein, California

I use texting with my clients. I have many younger clients who prefer to text. Since I can draft my texts directly from my MacBook, it isn't any different than writing an e-mail. No one has abused their texting so I continue to allow it. I save my text messages just as I save e-mail.

Christine J. Kuntz, Pennsylvania

As an older guy (60) I dislike texting for professional messaging, but it is inevitable*. That being said, using something like Pushbullet (or Google Messaging's web interface) allows you to text and respond from your computer, which (for those of us most comfortable with QWERTY) makes things a lot more natural, and makes copying and saving messages a lot easier.

* Which brings up something I've thought about for some time: it's interesting how, what with all our advances in portability and Internet access, communication has become *way, way* more complicated than it used to be. Many people do not bother to check their voice messages.

Some people are devoted to Facebook Messenger. Others Twitter. Others straight texting. Some people never bother to check their e-mail. Lots of luck getting someone to sign for certified mail. WhatsApp. Snapchat.

Instagram. What with all our options, it can be really, really difficult to keep track of how a particular person prefers to communicate.

Michael A. Koenecke, Texas

Jonathan -

That's a great quote, and so true! I added it to my Quotes notebook in OneNote.

Caroline A. Edwards, Pennsylvania

Most of my clients are businesses in tech or communications. I have numerous clients that use texting, most often to co-ordinate calls or meetings or ask a quick (almost always non-legal) question. At first, it was mostly younger clients, but I've noticed in the last year a dramatic increase in texting by older clients. No one has abused the texting privilege. Rarely do I use texting to communicate legal advice. If I do, I generally follow up with an email.

Mark Del Bianco

My VOIP number accepts phone, text and faxes, and keeps track of all communication by client's number.

Nicholas I. Fuerst, Arizona

I put in my fee agreements: "No texting except to give notice regarding being late for or cancelling appointments."

Roger Rosen, California