Can Your Spam Filter Cause You to Commit Malpractice?

We all abhor junk mail. It clogs our inbox, wastes our time, and exposes us to scams and malware. But overly aggressive spam filters can be equally problematic.

In 2007, an attorney who failed to appear in Colorado was required to pay the opposing party's attorney fees when his firm's spam filter inadvertently blocked the court's e-notice of a settlement conference. *Pace v. United Services Auto. Ass'n*, 2007 U.S. Dist. LEXIS 49425 (D. Colo. July 9, 2007).   In 2009, the 8th US Circuit Court of Appeals was equally unsympathetic when the losing party failed to timely file a Notice of Appeal because an employee at the law firm "accidentally deleted" an e-notice informing the parties that a final order had been issued.   In 2010 the 4th US Circuit Court of Appeals upheld the dismissal of a wrongful termination case when the plaintiff's lawyer failed to respond to a Motion for Summary Judgment served by e-mail. The lawyer told the court he never received electronic notice of the motion because his "computer system experienced several problems … that caused him not to receive various e-mails." Last Friday I blogged about a lawyer in Philadelphia who lost the right to arbitrate because "he did not know how to retrieve his e-mail and his wife (who was his secretary) was out of the office with a broken arm." The lawyer did not receive the court's e-notice of the arbitration.

How Can You Avoid These Malpractice Traps?

Above all else: Learn the technology! The Philadelphia case is particularly inexcusable. Your staff person can't be the only one who knows how this stuff works, especially when you practice in a mandatory e-Court jurisdiction like Philadelphia.

To prevent court notices and other e-mails from getting caught by your spam filter:

- Use white-listing. Set your spam or junk e-mail filters to allow receipt of e-mails from specified senders or domains. Include courts, administrative agencies, key clients, opposing counsel, and any other senders whose e-mail you don't want to miss. You may need to make this change at the Internet Service Provider (ISP) level *and* in the settings of your specific e-mail program.
- Check quarantine summaries daily. In my experience, Postini is notorious for continuing to block preapproved senders and domains.
- Check junk mail folders – Approved senders and domains can make it past your ISP or server-level spam filter, then land in your e-mail program's junk mail folder.
- Don't be so quick to delete. Normally I'm all in favor of keeping your inbox lean and mean by emptying deleted items. But what happens if you accidentally delete a court notice? If you empty your e-mail trash upon exiting, it may be difficult, if not impossible, to recover the message. (This assumes you realize you made a mistake.) You can try Recuva to undelete the file and restore it's path, but there is no guarantee you'll get it back.

Is There a Safety Net?

- Learn how to retrieve docket activity from the court's Web site. In PACER, click on Reports-Docket Activity, check the box "Only Cases to Which I am Linked," enter the desired date range, and choose "Run Report."
- Once you've learned how to retrieve docket activity online, consider making it a weekly routine. Every Friday, run a docket activity report for the remainder of the current month. Compare the court's calendar to yours and update your calendar if necessary.
- Add secondary e-mail addresses to court filings whenever possible. If your primary system goes down or you experience problems receiving e-mail, you can check the second account for notices.
- If you're experiencing problems, tell the court. The attorney who lost the right to arbitrate in Philadelphia would probably still have a viable $35,000 fee claim if he had just picked up the phone. According to the judge, "… A telephone call to (my) chambers might have avoided the whole predicament."
- Learn more about best practices for e-Court and how to avoid e-Court pitfalls.

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