



ETHICS COMMITTEE BULLETIN

EMAIL COMMUNICATION WITH COURTS AND TRIBUNALS

1. Recent instances of barristers communicating with court or tribunal staff via email without notice to their opponents have been brought to the attention of the Ethics Committee. The Ethics Committee wishes to remind barristers of the Rules of Conduct relating to communications and to provide guidance with respect to email communications with court staff.

RULES OF CONDUCT

2. Rules 54, 55 and 56 are of general application. They provide:
 54. A barrister must not, outside an ex parte application or a hearing of which the opponent has had proper notice, communicate in the opponent's absence with the court concerning any matter of substance in connection with current proceedings unless:
 - (a) the court has first communicated with the barrister in such a way as to require the barrister to respond to the court; or
 - (b) the opponent has consented beforehand to the barrister dealing with the court in a specific manner notified to the opponent by the barrister and has an opportunity to participate.
 55. A barrister must promptly tell the opponent what passes between the barrister and a court in a communication referred to in Rule 54.
 56. A barrister must not raise any matter with a court in connection with current proceedings on any occasion to which the opponent has consented under Rule 54(b), other than the matters specifically notified by the barrister to the opponent when seeking the opponent's consent.

GUIDANCE

3. Recognising that email communication between court staff (including Registry staff and Associates) is a common occurrence in civil and criminal cases, the Ethics Committee provides the following guidance:
 - Apart from those situations where the rules or practice directions of a court or tribunal provide for the electronic lodgement of documents, before communicating with a court or tribunal by email a barrister should notify his or her opponent of the intention to do so.



- It is essential that the barrister provide his or her opponent with a copy of any such email communication.
- Email communication with court staff should be confined to matters which are routine and uncontroversial. Such communications should not be argumentative or tendentious, and should avoid the possibility of the court staff becoming involved in any dispute between parties or legal practitioners.
- All email communication should, unless the court or tribunal has otherwise directed, be confined to matters of practice and procedure. Such communications should not be used as a vehicle for the provision of unsolicited submissions or evidence.
- Barristers should familiarise themselves with any rules, practice directions or notices issued by the relevant court or tribunal which may bear on email communications with court or tribunal staff.¹

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Chair

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¹ For example, the Chief Judge of the County Court has issued a Notice to Practitioners, "Communication with County Court Associates", dated 23 February 2011, NTP 1-2011.