

Professional Communication in the Digital Workspace

Risk-Smart Practices for Professionals



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Presented by



Diane P. Mika
Senior Vice President,
Risk Management Officer

- 25+ years in loss prevention education for A/E professional liability insurance
- BS in Organizational Behavior from University of San Francisco
- Certified Instructional Designer
- Has led in-depth claims studies to understand A/E risks and has translated that into meaningful education programs

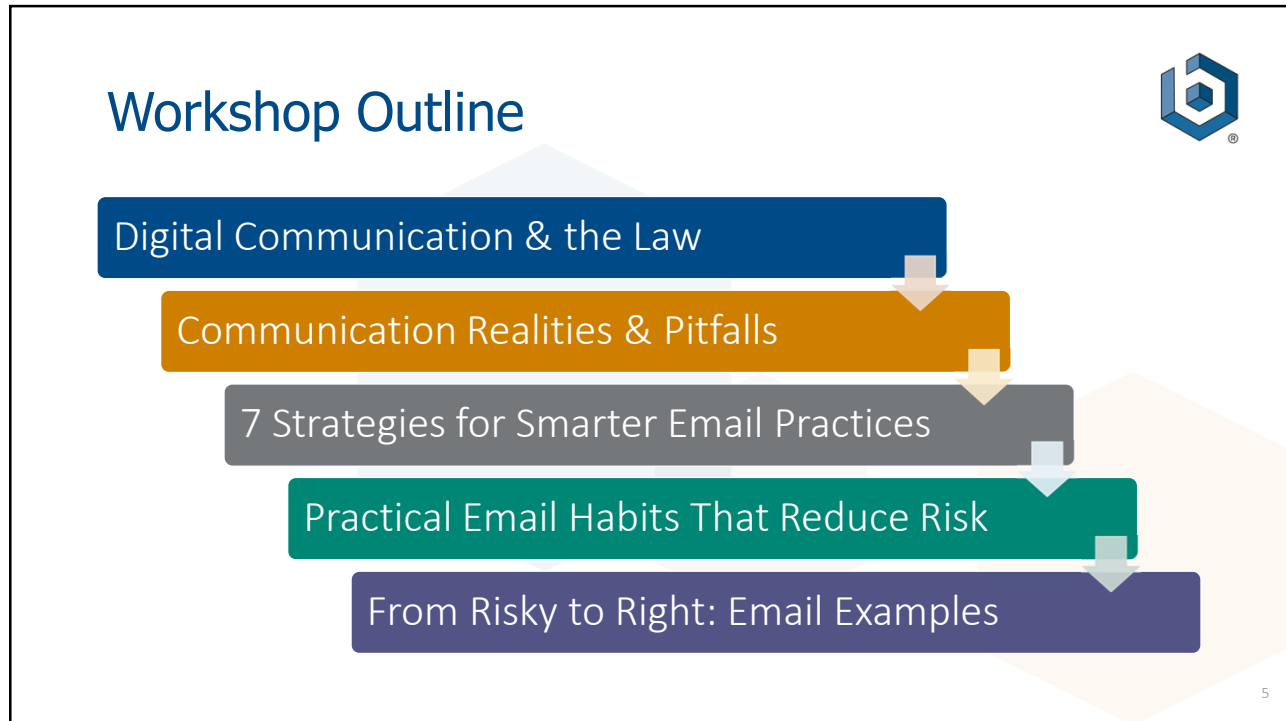


Joseph Shields, P.E.
Assistant Vice President,
Director of Construction Professional
Risk Management

- 15+ years experience with construction project management across healthcare, higher education, and infrastructure
- Licensed professional engineer in Virginia
- Bachelor's degree in civil engineer from the University of Pittsburgh

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Digital Communication & the Law

What Professionals Need to Know about Electronically Stored Information

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What is ESI?

Electronically Stored Information

Refers to any data created, stored, or used in digital form that may be relevant in legal proceedings, including:

- Emails and attachments
- Text messages and instant messages
- Digital documents
- Databases
- Images, audio, and video files

Data from:
Servers,
Laptops, and
Mobile Devices

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Relevant ESI Laws & Regulations

Federal Rules of Civil Procedure

- Rule 26 – Duty to Disclose & Scope of Discovery
- Rule 34 – Producing Documents and ESI
- Rule 45 – Subpoenas for ESI



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Why ESI Management Matters

- ESI is legal evidence in disputes
- Courts allow broad access to electronic records
- Poor digital communication practices = higher liability risk
 - Increased legal costs due to disorganized records
 - Higher risk of losing claims or settling unnecessarily
 - Damage to firm reputation and client trust



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ESI Risk Mitigation Tips

- Limit business email to firm-approved systems
- Implement retention and archiving policies
- Train staff on email etiquette and compliance



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Digital Communication Realities & Pitfalls

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Email Communication Realities



- Email is the primary record of business decisions and communication
- All emails are permanent and discoverable in litigation
- Emails on firm systems are not private and can be reviewed by management
- Careless or unprofessional emails can severely harm your legal defense



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Instant Messaging Realities

- Informal tone and rapid replies increase risk of miscommunication
- Messages may be discoverable in litigation, even if deleted
- Lack of documentation protocols for chat platforms
- Risk of bypassing formal approval or project channels
- Difficulty preserving and retrieving chat records



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Text Messaging Realities

- Texts are legally discoverable and may be subpoenaed
- Personal devices complicate record retention and access
- Informal tone can lead to misinterpretation or liability
- Lack of metadata and context weakens evidentiary value
- Risk of bypassing firm-approved systems and protocols



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Communication & Documentation Pitfalls



- Using casual or unprofessional language
- Admitting fault or assigning blame
- Making informal commitments
- Using vague or ambiguous wording
- Mixing personal and professional email accounts
- Failing to preserve important emails (disorganization)

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7 Strategies for Smarter Email Practices

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7 Strategies for Smarter Email Practices



1. Maintain Professional Tone & Language
2. Avoid Admissions of Fault
3. Formalize Commitments
4. Write with Clarity
5. Use Firm-Approved Systems
6. Craft Clear Subjects and Threads
7. Preserve Key Communications and Project Record



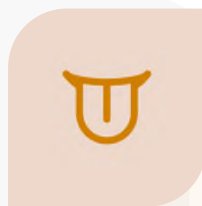
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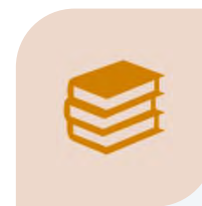
1. Maintain Professional Tone & Language



MAINTAIN A
RESPECTFUL, OBJECTIVE
TONE



AVOID SARCASM,
SLANG, OR EMOTIONAL
LANGUAGE

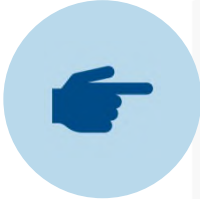



USE PRECISE,
PROFESSIONAL
TERMINOLOGY


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2. Avoid Admissions of Fault



DON'T SPECULATE OR ASSIGN BLAME



AVOID PHRASES LIKE "OUR MISTAKE" OR "WE MISSED THAT"



USE NEUTRAL LANGUAGE PENDING INVESTIGATION

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3. Formalize Commitments



CONFIRM KEY DETAILS, (SCOPE, TIMELINES, DELIVERABLES, OR TERMS) IN WRITING



AVOID VAGUE PROMISES OR OFF-THE-CUFF APPROVALS



USE CONTRACT-ALIGNED LANGUAGE WHEN APPROPRIATE

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4. Write with Clarity



BE SPECIFIC AND UNAMBIGUOUS



CLARIFY ASSUMPTIONS AND LIMITATIONS





MARK DRAFTS AND PRELIMINARY OPINIONS CLEARLY


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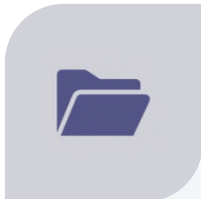
5. Use Firm-Approved Systems



COMMUNICATE THROUGH OFFICIAL CHANNELS TO PROTECT CONFIDENTIALITY AND MEET PROFESSIONAL STANDARDS



AVOID PERSONAL EMAIL OR MESSAGING APPS THAT COMPROMISE SECURITY AND RECORD KEEPING



MAINTAIN RETRIEVABLE RECORDS TO SUPPORT COMPLIANCE, DEFENSIBILITY, AND CONTINUITY

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6. Craft Clear Subjects and Threads



USE CONSISTENT
SUBJECT LINES THAT
REFLECT TOPIC OR
ACTION



KEEP THREADS FOCUSED
AND START A NEW ONE
WHEN TOPICS SHIFT



SUMMARIZE DECISIONS
CLEARLY IN THE BODY
OF THE MESSAGE

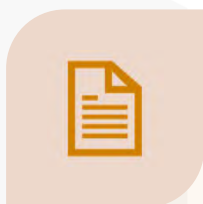
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7. Preserve Key Communications



SAVE EMAILS THAT
DOCUMENT DECISIONS
OR APPROVALS



RETAIN CORRESPONDENCE
RELATED TO KEY CHANGES,
FINANCIAL TERMS, OR
CONTRACTUAL OBLIGATIONS



FOLLOW FIRM
PROTOCOLS FOR
ARCHIVING

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Best Practices for the Project Record

- Maintain organized, standardized digital files for easy access and defensibility
- Follow a clear retention policy—define what to keep and for how long
- Apply consistent practices across all offices and platforms, including litigation holds when needed

Never attempt to delete or alter emails after becoming aware of a potential claim

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Practical Email Habits That Reduce Risk

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Email Hygiene Essentials

- **Pause Before Sending:**
Avoid writing or replying when angry—take time to reflect before responding
- **Limit “Reply All”:**
Include only those who truly need the information to reduce noise and risk
- **Use Flags Sparingly:**
Reserve “Read Receipt” and “High Importance” for critical messages to avoid desensitizing recipients
- **Double-Check Recipients:**
Verify email addresses before sending—beware of AutoFill errors and misdirected messages
- **Keep It Concise:**
Focus on key points; long emails are often skimmed or ignored. Consider using AI tools to review tone and clarity
- **Handle Confidential Matters Carefully:**
For sensitive issues, consult the company attorney and send emails directly to legal counsel

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Do Not Use Email For

- Delivering **bad news**—use a phone call or in-person conversation instead
- Sharing messages that could **surprise, anger, or upset** the recipient
- Communicating **time-sensitive information** where immediate confirmation is needed
- Topics where **tone or nuance** could easily be misunderstood
- Conveying **emotional or sensitive content** that requires context and empathy



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Risky A&E Email Example #1

Subject: ADA Compliance Review & Drawing Update – Smith Project

Hi Alex,

We guarantee this design will meet all ADA requirements. Let us know if you need anything else.

Sorry again for the mistake in the last drawing—it was definitely our fault.

Best,
Jordan

Why it's risky:

- “Guarantee” implies certainty and liability
- Admitting fault without investigation
- No clarification of scope or assumptions

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Safer A&E Email Example



Subject: Project Update – Please Review Latest Drawings

Hi Alex,

The design has been developed in accordance with currently published ADA guidelines as of [Date]. Please note that interpretations may vary and evolve, and we recommend coordination with your accessibility consultant for final compliance review.

Regarding the previous drawing, we're reviewing the issue and will follow up with any necessary revisions.

Let us know if you have questions.

Best,
Jordan

Why it's safer:

- Clarifies scope and limitations
- Avoids definitive language
- Maintains professional tone and avoids premature admissions

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Risky Construction Email Example



Subject: Re: Change Order Approval

Hi Chris,

I don't think the subcontractor's change order is valid. They should have caught that during their walkthrough. We're not paying for their mistake.

Push back hard on this.

Thanks,
Jay

Why it's risky:

- Assigns blame without investigation ("their mistake")
- Emotionally charged language ("push back hard")
- Could escalate conflict or be discoverable in a dispute

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Safer Construction Email Example



Subject: Change Order Discussion

Hi Chris,

I've reviewed the subcontractor's change order request. Based on the current documentation, it appears the condition may have been visible during the initial site walkthrough.

I recommend we request clarification from the subcontractor regarding their basis for the change.

Let me know if you'd like me to draft a response or join the next call.

Thanks,
Jay

Why it's safer:

- Maintains a neutral, fact-based tone
- Avoids assigning blame
- Encourages due diligence and collaboration

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Risky Insurance Agent Email Example



Subject: Coverage Question

Hi Taylor,

Your policy will cover this claim—it's completely straightforward. I don't anticipate any issues, and we'll get this approved quickly. I'll confirm once the carrier responds.

Thanks,
Riley

Why it's risky:

- Predicts coverage outcome without authority
- Creates unrealistic expectations about approval and timing
- Uses definitive language (“will cover,” “completely straightforward”)
- Could be discoverable and damaging if the claim is denied

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Safer Insurance Agent Email Example



Subject: Coverage Question

Hi Taylor,

The claim is under review by the carrier. Coverage will be determined based on the terms and exclusions outlined in your policy. I'll keep you updated as soon as we receive a decision, and please let me know if you need help gathering additional documentation in the meantime.

I understand this process can feel uncertain, so don't hesitate to reach out if you'd like to talk through next steps.

Thanks,
Riley

Why it's safer:

- States facts without predicting outcome
- References policy terms and exclusions
- Maintains a professional, neutral tone
- Adds empathy without making promises

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Risky Real Estate Agent Email Example



Subject: Offer Status

Hi Morgan,

The seller will definitely accept your offer—it's very strong. I'd start lining up inspections and planning next steps. We're in great shape here.

Cheers,
Quinn

Why it's risky:

- Predicts outcome without certainty (“will definitely accept”)
- Encourages premature action (lining up inspections)
- Creates unrealistic expectations that could lead to client reliance and liability
- Lacks any reference to contingencies or process

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Safer Real Estate Agent Email Example



Subject: Offer Status

Hi Morgan,

Your offer has been submitted and acknowledged by the seller's agent. While we can't predict the outcome, we'll keep you informed of any updates and next steps. Please hold off on scheduling inspections until we receive confirmation. Let me know if you'd like to discuss contingency planning in the meantime.

Best regards,
Quinn

Why it's safer:

- States facts without predicting outcome
- Advises against premature action
- Maintains a professional, neutral tone
- Offers support and proactive planning without overpromising

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Risky Property Managers Email Example



Subject: Action Required – New Tenant

Dear Team,

We have a new tenant scheduled to move in tomorrow, but we're running behind on paperwork. Please go ahead and approve their application without the usual background checks so we don't lose them.

Let's finalize the lease later this week. Speed is critical here—don't let this fall through.

Thanks,

Why it's risky:

- Skipping Standard Procedures: Approving without background checks exposes the property to financial and legal risks
- Urgency Pressure: "Action Required" and "speed is critical" can cause staff to bypass compliance safeguards

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Safer Property Managers Email Example

Subject: Next Steps for New Tenant Move-In

Dear Team,

We have a new tenant scheduled to move in soon. Please ensure all standard procedures are completed before approval, including background checks and verification of documents.

After all the paperwork is finalized, we can proceed with scheduling the move-in.

Thank you for following compliance protocols.

Best regards,

Why it's safer:

- Emphasizes Standard Procedures: Requires background checks and document verification
- Removes Urgency Pressure: Encourages proper process instead of rushing
- Clear Compliance Reminder: Reinforces risk management and security protocols

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Questions?

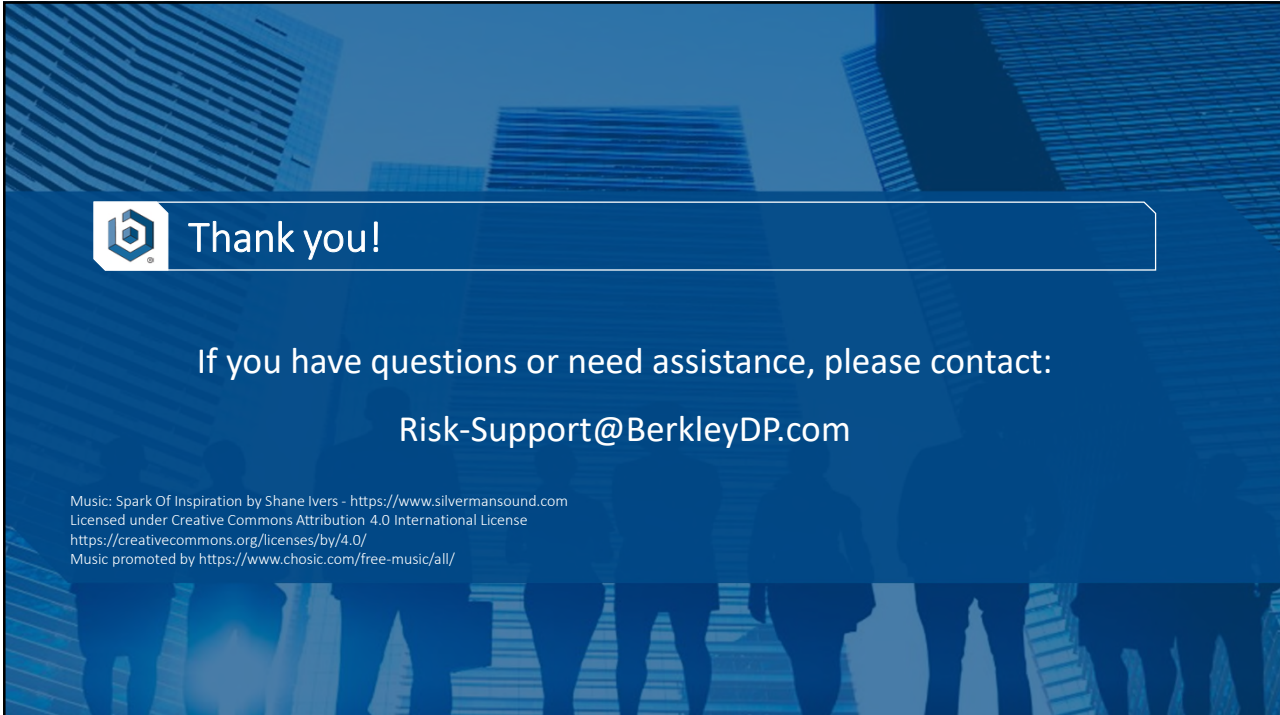
Diane P. Mika
Senior Vice President,
Risk Management Officer
831.293.6243
dmika@berkleyalliance.com


Joe Shields
Assistant Vice President
Director of Construction Professional Risk Management
724.940.2521
jshields@berkleycp.com



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If you have questions or need assistance, please contact:
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