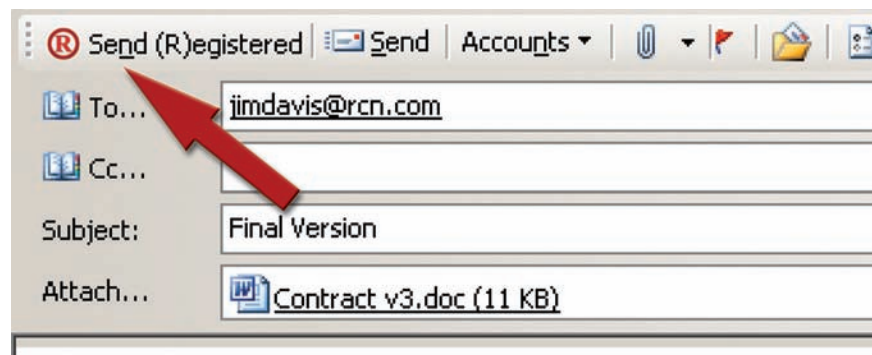


Are You Legally Protected When You Send An E-mail?

Prepared by Judge Dana Senit Henry (ret.)

The simple fact that almost everyone has access to some sort of electronic mail capability causes us to take a lot for granted. Your average user equates e-mail with a simple telephone conversation that ceases to exist once the phone is hung up. *The legal profession, however, considers e-mail to be a discoverable document* – legal evidence that is on a par with a recorded phone conversation or a signed contract or letter.

Unlike telephone conversation, e-mail lives on in time and while this is not of concern for most e-mail messages that are simple and unimportant, some contain valuable content, oftentimes making the e-mail record itself critically important after the fact. While exotic e-discovery decisions continue to focus the mind, it is important to understand the simple fact that in legal disputes involving damning e-mail correspondence, *a case can be lost easily by either party if the veracity of the electronic document's content and / or time stamp is challenged.*



With the ever increasing volume of electronic records offered in evidence in litigation, it should alarm attorneys, accountants, regulators, etc. that important electronic business / legal transactions continue to be executed on a business as usual basis, without any e-mail protections and without the proper record retention systems needed to avert costly, unfortunate consequences.

Consider this simple rule of thumb in sending your next important e-mail message or when advising your client about important e-mail transactions:

Does it matter if the original e-mail message is misquoted; never received or read; delivered but its actual receipt denied; insured of content integrity from reader to reader; or challenged based upon the actual time sent and received?

If your answer is "yes" to any of these questions then you should be taking the necessary steps to protect yourself and your clients' important e-mail transactions.

Standard e-mail provides little evidentiary value, leaving you and your clients exposed!

In the case of a dispute over content, timing, sending or receiving of an e-mail, *the archiving of that e-mail in electronic or printed form provides very little protection after the fact. With two clicks of the mouse, one could change anything in standard e-mail and represent it to be the original e-mail.* Therefore, it is important to consider that the recipient of an important e-mail transaction could alter the original e-mail and then subsequently challenge the sender's archived copy as being fraudulent.

The recipient of important standard e-mail messages can easily change the text, the "from" address, the content of the attachments, the "time sent" and also move it to any folder to suit his or her needs in perpetrating a hoax.

Legal protection is critical. Provisions of electronic law and recent court decisions underscore the fact that E-Business systems require proper transaction documentation, and a reliable recordkeeping management system that can record, retrieve and authenticate electronic transactions involving important business communications and transactions (both content of e-mail and attachments, and official time sent and received).

The solution is RPost® Registered E-mail® (www.rpost.com)

What is it? Registered E-mail® messages protect the sender with proof of the entire e-mail transaction by providing legally valid evidence (in the form of a Registered Receipt™ e-mail) that your Registered E-mail® message was sent; that it was received and when; and verification of the content of the e-mail message sent, including all attachments.

Tested and used by the federal government: The RPost® Registered E-mail® service has been tested, accredited and is used daily by U.S. Government customers, such as the U.S. Government Accountability Office, an arm of the U.S. Congress.

Registered E-mail® messages comply with electronic standards and statutes: Legal opinions stipulate that the RPost® Registered E-mail® service meets both federal and state electronic laws relating to evidentiary proof of the delivery (official time sent and received) of each Registered E-mail® message and the integrity of the content and attachments of each. In short, the Registered Receipt™ e-mails will withstand a legal challenge.

Where there is a legal requirement for a document to be retained as originally created, in writing, or sent and received in electronic form, that requirement will be satisfied by retaining the RPost Registered Receipt e-mail that recorded the electronic transmission.

Explanation of Registered E-mail service and how Registered Receipt e-mail solves recordkeeping / evidentiary problems: RPost Registered E-mail is a simple, professional way for serious e-mail users to address the many shortcomings of standard e-mail that could leave a business transaction vulnerable to challenges. RPost Registered E-mail provides the sender of an e-mail with legally valid evidence of authorship, content, sending and receiving to any Internet address, with the atomic-clock time stamp. The digital snap-shot of the entire delivery transaction, including attachments, is compressed, protected and folded into a tamper-detectable Registered Receipt e-mail that is returned to the sender by e-mail. The RPost system does not require the recipient to have any special software or take any compliant action. It generates evidence of the transaction, proof of delivery, by means of a Registered Receipt e-mail returned to the sender (and to the recipient as an optional feature). RPost does not retain a copy of the original transaction so RPost is not subject to discovery.

The Registered Receipt e-mail is irrefutable, durable, and self-contained evidence of the entire electronic transaction.

All Registered Receipt e-mails are stored in an automatically created "Receipts" subfolder of the sender's inbox that can be archived according to the policies of the sender. In addition, a copy of the Registered Receipt e-mails can be automatically sent to another e-mail address (such as receipts@agency.com) for permanent storage and routine back-up or in the event an employee is terminated, resigns or upgrades his or her system in the future. For documentation management purposes, the Registered Receipt e-mail can be tagged with any identifying characteristics, such as a client code, customer ID number or project code for simple, fast retrieval of any Registered Receipt e-mail.

In addition, the Registered Receipt e-mail is durable and can be forwarded to any party who disputes the delivery or content of an e-mail message. It enables the complainant to authenticate the delivery or content of the disputed message by forwarding the Registered Receipt e-mail to a special verification address, which in turn regenerates the original e-mail and all attachments and returns the original information by e-mail to the complainant. In fact, a Registered Receipt e-mail can be put on a CD and brought to a courtroom or to an arbitrator where any party can authenticate the delivery and content of a contested Registered E-mail message.

[Note: an added feature of Registered E-mail service is Digital Seal protection. If used by the sender, it will likewise allow any recipient to verify authorship, transmission time, and content of the original message and attachments, by forwarding the sealed, Registered E-mail message to the verification address. Where the original Registered E-mail message has been sent sealed, the recipient does not need the sender's Registered Receipt e-mail in order to take advantage of the verification process.]

Benefits derived from using RPost Registered E-mail: RPost Registered E-mail saves money, increases efficiency / accountability and protects the sender and his or her organization, while enabling the movement of more transactions from paper / fax / mail to electronic delivery systems. Furthermore, it reduces manpower, postage, printing, telecom, storage, archiving and dispute resolution costs.



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After working as a judicial officer for many years on the Los Angeles Superior Court, Judge Dana Senit Henry (ret.) now serves as a mediator, arbitrator, and private judge. She has been an advisor and commissioner to city, county and state agencies, corporations and community-based organizations. She also serves in an advisory role with RPost® Registered E-mail®. Judge Henry may be reached at resolver1@earthlink.net. General questions may be addressed to RPost at info@rpost.com.