

Roger Plawker Quoted in Law360 Article Regarding NJ Ethics Opinion on "Reply All" Emails

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Roger Plawker, Chair of the Attorney Ethics & Professional Misconduct practice at Pashman Stein Walder Hayden, was quoted in the Law360 Pulse article, "What Attys Are Saying About NJ's 'Reply All' Email Opinion." The article discusses a recent opinion issued by the New Jersey Advisory Committee on Professional Ethics stating that an attorney who includes their own client on an email to an opposing attorney cannot claim an ethics violation when that opposing attorney clicks "reply all" and includes the client in a response email.

Plawker noted that the opinion could provide a pathway for devious behavior:

The opinion is reasonable insofar as it goes. The danger is that the lawyer who then "replies all" may use that now ethically permitted communication to effectively "send a message" to the opposing client unfiltered by that client's lawyer. It also opens the dangerous possibility that a lawyer who hits "reply all" will breach a confidentiality order limiting disclosure of something marked "attorney's eyes only" or other confidential information. In that case, a court would have to consider whether the clawback standards for inadvertent disclosure apply.

Plawker commented further: Now there's a potential layer for protection, at least at first blush. Every consideration of a potential ethics violation is very fact-sensitive. This doesn't mean that this is a free pass for responding attorneys to do and say whatever they want now that the first attorney's client has been CC'd. So, if they seem to take advantage of this advisory opinion in some sort of blatant manner, I don't think they will escape consequences necessarily, but they will be able to present the advisory opinion as some level of justification.

It's the responsibility of the practitioners to use their reasonable professional judgment in how they conduct themselves. Nothing is ever carte blanche, Plawker said.

Plawker observed that sometimes, though, mistakes happen. There is the ever-present danger that the client will mistakenly reply all to his/her attorney message because that is what happens with humans and technology.

He offered simple guidance to attorneys who may be concerned about finding themselves in this situation.

The better practice, generally, is not to include clients openly on any third-party communications via email. It is simple enough to BCC them or forward a copy of the email afterwards.

To view the full article, [clickhere](#).