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# ETHICAL ISSUES WHEN A LAWYER INCLUDES A CLIENT IN A GROUP EMAIL OR TEXT TO COUNSEL FOR OTHER PARTIES

## *I. Introduction and Scope*

This opinion addresses ethical issues that arise when a lawyer includes the lawyer's client in a group email or text to counsel for other parties, including ethical issues for both the lawyer who sends the communication ("sending lawyer") and the lawyer who receives it ("receiving lawyer"). Concerns include unauthorized disclosure of information relating to the representation of a client, communication with persons represented by counsel, and the extent of any implied consent for communication with a person represented by counsel.

## *II. Syllabus*

Three Colorado Rules of Professional Conduct (Colo. RPC or Rule) are implicated. They are Colo. RPC 1.1 (Competence), Colo. RPC 1.6 (Confidentiality of Information), and Colo. RPC 4.2 (Communication with Person Represented by Counsel). This Opinion discusses each Rule and how they impact the ethical obligations of the sending lawyer and receiving lawyer involved in a group email or text.

A sending lawyer who includes the lawyer's own client in a group email or text to counsel for other parties divulges the client's contact information and creates a risk that the client (even if "bcc'd")[1] will send a reply that divulges additional information relating to the representation to the other counsel. A lawyer therefore should not include the lawyer's client in group emails or texts to counsel for other parties unless the client gives informed consent.

The Colorado Bar Association Ethics Committee (Committee) also opines in this Opinion that the sending lawyer who has included the lawyer's own client in a group email or text to other counsel has impliedly consented to having the sending lawyer's client included in a reply from a receiving lawyer. A receiving lawyer therefore does not violate Colo. RPC 4.2 by including the sending lawyer's client in a reply, subject to the limitations addressed below.

The sending lawyer can avoid these issues simply by sending the group email or text only to the receiving lawyer, and then separately forwarding it to the sending lawyer's own client (hereafter referred to as the two-email alternative).

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[1] Thetechedvocate.org explains the history of the terms "cc" and "bcc." "CC stands for carbon copy. This term originated from the days when people used carbon paper to make copies of documents. Now, with email, CC refers to the process of sending a copy of an email to someone other than the primary intended recipient…. BCC, on the other hand, stands for blind carbon copy. This means that when you send an email, you can add a recipient to the BCC field, so that they receive a copy of the email too, but their name will not be visible to any of the other recipients. This is particularly useful when you want to send an email to multiple people, but don't want others to know who else received the email." Matthew Lynch, *What Do CC and BCC Mean in An Email* (June 8, 2023), *available at* https://www.thetechedvocate.org/what-do-cc-and-bcc-mean-in-an-email/.

When there is implied consent to the sending lawyer's client being included in a reply, the receiving lawyer should direct the reply to the sending lawyer, not the client. The sending lawyer also should limit the lawyer's reply to the topic raised by the sending lawyer and send the reply within a reasonable period of time to avoid using the email as a pretext later to communicate with the sending lawyer's client.

The receiving lawyer also should make reasonable efforts to not include in a reply, for example: (i) anyone to whom disclosure of information is not allowed by Colo. RPC 1.6; (ii) anyone who is represented by counsel in the matter whose counsel has not given consent for direct communication with that counsel's client; or (iii) anyone whose identity the receiving lawyer cannot determine. Reasonable efforts may vary depending on the circumstances, including the substance or nature of the communication. The receiving lawyer can avoid the risk of unauthorized disclosure of information and the risk of improperly communicating with a represented person simply by sending a reply only to the sending lawyer and letting the sending lawyer decide to whom, if anyone, to forward the reply.

## *III. Discussion and Analysis*

### A. Duty of Competence

A lawyer has a duty of competence under the Colorado Rules of Professional Conduct. Colo. RPC 1.1 states:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

One element of maintaining competence is keeping up with changes in communication technologies used in the practice: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, and changes in communications and other relevant technologies…." Colo. RPC 1.1, cmt. [8]. A sending lawyer who contemplates including the sending lawyer's own client in a group email or text to counsel for other parties should be aware of, and avoid, potential negative consequences of doing so.

Also, as a matter of professionalism, lawyers can avoid misunderstandings and potential pitfalls associated with the use of group communications such as emails and texts by conferring proactively with each other and their respective clients at the outset of a matter about the use and parameters of group communications, if any.

### B. Confidentiality of Information

One potential negative consequence of including a client in a group email or text to other counsel is the risk of revealing information about the client, or the representation of the client, that Colo. RPC 1.6 protects from disclosure. Colo. RPC 1.6(a) states:

> A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or disclosure is permitted by paragraph (b).

Colo. RPC 1.6(b) identifies a few specific and narrowly drafted exceptions to the general prohibition on revealing information, but none of those exceptions allow the disclosure of information for purposes of convenience or speed in communications. Colo. 1.6(c) extends the lawyer's obligation to safeguard confidential information by requiring a lawyer to "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."

The scope of "information relating to the representation of a client" under Rule 1.6 is very broad. "The confidentiality rule … applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as required by the Rules of Professional Conduct or other law." Colo. RPC 1.6, cmt. [3]. Colorado's Presiding Disciplinary Judge and disciplinary hearing boards, citing Comment [3], have acknowledged the broad scope of information considered confidential under Rule 1.6. *See People v. Isaac*, 470 P.3d 837, 840 & n. 13 (Colo. O.P.D.J. 2016) (even the client's identity may be confidential under certain circumstances); *People v. Albani*, 276 P.3d 64, 70 (Colo. O.P.D.J. 2011); *People v. Hohertz*, 102 P.3d 1019, 1022 (Colo. O.P.D.J. 2004).[2]

[2] The opinions issued by the Presiding Disciplinary Judge and disciplinary hearing boards offer valuable guidance to attorneys on conduct that has resulted in discipline and the basis for (and severity of) discipline imposed against Colorado lawyers. They are not binding precedent for future cases because only decisions of the Colorado Supreme Court have stare decisis effect in attorney discipline proceedings. *In re Roose*, 69 P.3d 43, 47-48 (Colo. 2003).

By including a client in a group email or text to counsel for other parties, the sending lawyer reveals at a minimum the email address, or phone number, of the lawyer's client. In a matter where the sending lawyer has been retained by the client's insurer to represent the client – for example, in a personal injury matter – by including a representative of the insurance company, the sending lawyer might reveal information as basic as the fact that there is insurance coverage, the identity of the insurance company, and the identity of the representative making decisions on behalf of the insurance company. Likewise, in the context of a corporate or governmental client, the sending lawyer might be revealing the identity of the person within the entity with whom the lawyer communicates about the subject of the representation. The sending lawyer also might reveal the identity of the person within the entity who makes decisions on behalf of the entity regarding the subject of the representation.

There is also a risk that the sending lawyer's client, or representative of the client or client's insurer, will use the software's "reply all" feature, either intentionally or inadvertently, to respond to the communication. By doing so, the lawyer's client, representative of the client or the client's insurer, could potentially communicate information relating to the representation, which might include particularly sensitive information, directly to counsel for other parties.

The risk of inadvertent disclosure of confidential information is not eliminated by the sending lawyer's inclusion of the client or client representative as a "bcc" rather than a direct addressee. For example, in *Charm v. Kohn*, 27 Mass. L. Rptr. 421, 2010 WL 3816716, at *1 (Mass. Super. Sept. 30, 2010), a lawyer sent an email to opposing counsel

and included his client as a "bcc." The client, intending to communicate only with his own counsel, responded to the email using the "reply all" function, thereby also transmitting his response simultaneously to opposing counsel. When opposing counsel used the email response as an exhibit in opposition to a motion for summary judgment, the sending lawyer moved to strike the exhibit. Although the trial court ultimately struck the email as an exhibit because it inadvertently disclosed an attorney-client communication, the court noted that the client's mistake was "of a type that is common and easy to make; indeed, there may be few e-mail users who have not on occasion used the reply all function in a manner they later regretted." 2010 WL 3816716, at *2. The court also stated that the lawyer's practice of including the client as a "bcc" on emails to opposing counsel gave rise to a foreseeable risk that the client would respond exactly as he did, and the court noted that the client in fact had made the same error of mistakenly replying to all, including opposing counsel, six months earlier. *Id.* The trial court admonished the lawyer and his client not to expect similar indulgence again: "They, and others, should take note. Reply all is risky. So is bcc. Further carelessness may compel a finding of waiver." *Id.* The trial court also stated that, "Lawyers should advise clients to be careful, and should avoid practices that exacerbate risks." *Id.*

Another example of unintentional disclosure of information by a person included as a "bcc" in an email is *People v. Maynard*, 483 P.3d 289 (Colo. O.P.D.J. 2021). In that case, a lawyer under suspension from the practice of law in Colorado assisted *pro se* defendants in a defamation lawsuit in Wisconsin. Even though she was under suspension in Colorado and did not hold an active license to practice in any other state, she drafted

pleadings for the *pro se* defendants to sign and file in court. *Id.*, at 291 & 295. She was found out when she replied all to an email one of the *pro se* defendants sent to opposing counsel and "bcc'd" to her. *Id.*, at 294-95. As the result of her unauthorized practice of law, she now has been disbarred. *Id.*, at 302.

The sending lawyer can avoid the risk of disclosure of information protected under Colo. RPC 1.6 simply by using the two-email alternative. *See* N.Y. City Bar Ass'n Comm. on Prof. Ethics, Formal Op. 2022-03, "Copying Clients on Email Communications with Other Counsel" (2022) (NYC Opinion 2022-03), p. 1.

### C. Client's Informed Consent

Rule 1.6(a) provides that a lawyer may reveal information relating to the representation of a client if the client gives informed consent. Colo. RPC 1.0(e) defines informed consent as "denot[ing] the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Comment [6] to Rule 1.0 advises, in pertinent part:

> The lawyer must make reasonable efforts to ensure that the client ... possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client ... of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's ... options and alternatives.... A lawyer need not inform a client ... of facts or implications already known to the client ... nevertheless, a lawyer who does not personally inform the client ... assumes the risk that the client ... is inadequately informed and the consent is invalid....

There may be situations where a client is agreeable to certain information being revealed to counsel for other parties as the result of the client being included in group emails or texts. Some examples include revealing the client's email address, phone number, identity of the representative of a client organization, or identity of a client's insurer and insurance representative. There also may be situations where lawyers and their respective clients all want to be directly involved in group communications. For example, lawyers and their respective clients in transactional matters may all want to be directly involved in group communications to efficiently exchange drafts of business documents or proposed contracts. Additionally, in ongoing business dealings between organizations, the client representatives may want all parties and their lawyers to be continuously and promptly up-dated. Moreover, in a family law case, the parties and lawyers may desire immediate communication regarding childcare arrangements or the health needs of a child.[3] This would be permissible under Rule 1.6(a) as long as the client gives informed consent. *See* NYC Opinion 2022-03, p. 3.

Such informed consent should include an advisement by the sending lawyer to the client about: (1) the risks of sensitive information being revealed to other counsel by mistake; (2) the risk that a communication that was intended to be confidential between the client and the sending lawyer could be mistakenly sent to other counsel, as in *Charm*

[3] In the transactional setting, lawyers and their clients frequently desire that all clients and client representatives be included in the email chains so that all constituents are aware of and involved in the communication. In such circumstances, so long as the lawyers communicate their consent to such an approach at the beginning, after obtaining informed consent from their clients, replying all to group communications would be appropriate.

*v.Kohn*, discussed above; and (3) the risk that such an intended confidential communication from the client that includes other counsel might be determined to be a waiver of attorney-client privilege. This informed consent also should advise the client of any reasonably available alternatives, such as the two-email alternative.

### D. Lawyer's Implied Consent to Other Counsel's Communication with Lawyer's Client

Colo. RPC 4.2 states:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

This rule protects clients against "possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounseled disclosure of information relating to the representation." Colo. RPC 4.2, cmt. [1].

A sending lawyer who chooses to include the lawyer's client in a group email or text to counsel for other parties should anticipate that a receiving lawyer might respond by using the "reply all" feature, thereby transmitting a communication simultaneously to all addressees, including the sending lawyer's client. The sending lawyer frequently invites a reply from the other counsel. Even where the sending lawyer does not invite a reply, the sending lawyer should be aware that the other recipients, including other counsel, may send a reply. By including the client in the group email or text, the sending lawyer has created a situation leading to a potential communication from the other counsel to the sending lawyer's client.

The New Jersey Advisory Committee on Professional Ethics considered the issue and opined that a group email which includes the sending lawyer's client is analogous to the lawyer initiating a conference call with opposing counsel and including the calling lawyer's client on the call. By initiating the call in that manner, the lawyer has consented to opposing counsel speaking on the call and thereby consented to opposing counsel communicating with both the lawyer and the lawyer's client. *See* N.J. Advisory Comm. on Prof. Ethics, Op. 739, "Rule 4.2 – Lawyers Who Include Clients on Group Emails and Opposing Lawyers Who 'Reply All'" (2021) (NJ Opinion 739), p. 2. As stated in NJ Opinion 739: "Lawyers who initiate a group email and find it convenient to include their client should not then be able to claim an ethics violation if opposing counsel uses a 'reply all' response. 'Reply all' in a group email should not be an ethics trap for the unwary or a 'gotcha' moment for opposing counsel." *Id.*, p. 1.

The Restatement of the Law Governing Lawyers notes that in representing a client, a lawyer may communicate on the subject of the representation with another represented person when the other person's lawyer "has consented to or acquiesced in the communication. An opposing lawyer may acquiesce, for example, by being present at a meeting and observing the conversation. Similarly, consent may be implied rather than express, when direct contact has occurred routinely as a matter of custom, unless the opposing lawyer affirmatively protests." Restatement (Third) of the Law Governing Lawyers §99, cmt. j (Am. Law Inst. 2000).

The Colorado Supreme Court has held that, in certain circumstances, a lawyer's consent under Rule 4.2 to an opposing counsel's direct communications with the lawyer's

client may be implied. *In re Wollrab*, 420 P.3d 960, 968-69 (Colo. 2018). In *Wollrab*, an attorney discipline case, the respondent lawyer, who had represented a client on several matters over the years, entered into a business transaction with the client. Although the client had separate counsel regarding the business transaction, the respondent and the client continued to have considerable direct discussions with each other about the proposed deal. The client's separate counsel was aware of that fact, yet neither attempted to prohibit or limit those discussions nor objected when the respondent prepared an option contract and had the client sign it out of the presence of the client's separate counsel. Accordingly, the court concluded that the separate counsel had impliedly consented to the respondent communicating directly with the client about the business transaction and, therefore, the respondent had not violated Rule 4.2. *Id.*, at 969.

The American Bar Association (ABA) has considered the issue of a lawyer including the lawyer's client in an email or text to counsel representing another person. ABA Standing Comm. on Ethics & Prof. Responsibility, Formal Op. 503, "'Reply All' in Electronic Communications" (2022) (ABA Formal Opinion 503). The ABA concluded that the sending lawyer impliedly consents under Rule 4.2 to a receiving lawyer's "reply all" response which includes the sending lawyer's client. Like the New Jersey Advisory Committee, the ABA reasoned:

> Similar to adding the client to a videoconference or telephone call with another counsel or inviting the client to an in-person meeting with another counsel, a sending lawyer who includes the client on electronic communications to receiving counsel generally impliedly consents to receiving counsel "replying all" to that communication. The sending lawyer has chosen to give receiving counsel the impression that replying to all copied on the email or text is permissible and perhaps even encouraged.

> Thus, this situation is not one in which the receiving counsel is overreaching or attempting to pry into confidential lawyer-client communications, the prevention of which are the primary purposes behind Model Rule 4.2

ABA Formal Opinion 503, pp. 2-3.

The Virginia Supreme Court approved an opinion from the Virginia State Bar's Standing Committee on Legal Ethics, which similarly concluded that "a lawyer who includes their client in the 'to' or 'cc' field of an email has given implied consent to a reply-all response by opposing counsel." VA Legal Ethics Op. 1897, "Rule 4.2 - Replying All to an Email When the Opposing Party is Copied" (2022) (VA Opinion 1897), p. 1. Virginia's Opinion 1897 aligns with New York City Bar Association Committee's opinion on the same issue. *See* NYC Opinion 2022-03, p. 6.

Consistent with the authorities cited above, this Committee's opinion is that a sending lawyer who includes the sending lawyer's client in a group email or text to counsel for other parties has impliedly consented to the client being included in a reply. Consequently, a receiving lawyer who includes the sending lawyer's client in a reply does not violate Colo. RPC 4.2.

To avoid implied consent, the sending lawyer should not include the client as an addressee or a "bcc" in group emails or texts to counsel for other parties. Instead, the sending lawyer should use the two-email alternative.

### E. Extent of the Sending Lawyer's Implied Consent

The implied consent provided by the sending lawyer is limited, however. It does not give the receiving lawyer carte blanche to communicate with the sending lawyer's client. This is so for several reasons.

First, the implied consent is limited to addressing in the reply the topic raised in the sending lawyer's email or text. Colo. RPC 4.2 prohibits the receiving lawyer from addressing additional matters relating to the representation, if the receiving lawyer is aware that the sending lawyer's client was included in the initial email or text, and the receiving lawyer includes the sending lawyer's client in the reply. *See* ABA Formal Opinion 503, p. 3; VA Opinion 1897, p. 3-4; *see also* N.Y. City Bar Ass'n Comm. on Prof. Ethics, Formal Op. 2009-01, "The No-Contact Rule and Communications Sent Simultaneously to Represented Persons and Their Lawyers" (2009) (NYC Opinion 2009-01) ("Even when consent is implied, it is not unlimited. Its scope will depend on the statements or conduct of the represented person's lawyer, and it will have both subject matter and temporal limitations").[4]

Second, if the receiving lawyer replies only to the sending lawyer's client, that would violate Colo. RPC 4.2. *See* NJ Opinion 739, p. 2, n.1; NYC Opinion 2022-03, p. 7. If the sending lawyer "bcc's" the sending lawyer's client and the sending lawyer's client replies to all, the receiving lawyer may not then respond to the sending lawyer's client

[4] NYC Opinion 2009-01 may be downloaded at: https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/formal-opinion-2009-01-the-no-contact-rule-and-communications-sent-simultaneously-to-represented-persons-and-their-lawyers.

because it cannot reasonably be said that the sending lawyer has given prior consent to such a communication from the receiving lawyer. NYC Opinion 2022-03, p. 7.

Third, the implied consent provided by the sending lawyer is limited to a reasonable period of time under the applicable circumstances. *See* NYC Opinion 2009-01. The receiving lawyer should not use "reply all" as a pretext to communicate with a sending lawyer's client if the passage of time has made a reply to the initial email or text moot. NYC Opinion 2022-03, p. 7.

**F. Revocation of Consent**

In this Committee's opinion, a sending lawyer who does not wish to consent to a reply that includes the sending lawyer's client should not attempt to negate consent by incorporating a statement to such effect in the specific email or text that includes the sending lawyer's client, or in a prior generalized communication. Although ABA Formal Opinion 503 suggests that such steps might overcome a presumption of implied consent, the opinion acknowledges that the better approach is the two-email alternative. *See* ABA Formal Opinion 503, pp. 3 ("If the sending lawyer would like to avoid implying consent when copying the client on the electronic communication, the sending lawyer should separately forward the email or text to the client."). In this Committee's opinion, attempting to avoid implied consent by a statement in the specific email or text that includes the sending lawyer's client, or in a prior generalized communication, could either intentionally or unintentionally create an ethics trap or a "gotcha moment" for the receiving lawyer. *See* NJ Opinion 739, p. 1. A receiving lawyer who replies to a group email or text might: (1) mistakenly fail to remove the sending lawyer's client before sending the reply;

(2) not know which email address or phone number in the group communication is associated with the sending lawyer's client; or (3) forget that the sending lawyer weeks or months earlier had stated that including the sending lawyer's client in a group communication did not signify consent to include the sending lawyer's client in a reply. In this Committee's opinion, therefore, a boilerplate disclaimer would be ineffective to avoid implied consent.

A sending lawyer who already included the client in a group email or text to other counsel (thereby impliedly consenting to a receiving lawyer including the sending lawyer's client in a reply), however, can later revoke that consent in a separate communication. For example, the sending lawyer could send a follow-up communication to explain that the sending lawyer included the sending lawyer's client in the initial communication, identify the email address or phone number of the sending lawyer's client, and clearly state that the receiving lawyer should delete that email address or phone number before replying to the initial communication. If a receiving lawyer had already sent a reply that included the sending lawyer's client, the sending lawyer could state in the follow-up communication that the receiving lawyer does not have consent to include the sending lawyer's client in any further replies to the initial communication. To avoid any argument of repeated implied consent, the sending lawyer should not include the sending lawyer's client in the follow-up communication. Instead, the sending lawyer should separately forward the follow-up communication to the sending lawyer's client.

### G. Inadvertent Disclosure of Information by Receiving Lawyer

A lawyer who receives a group email or text from a sending lawyer has had no control over who the sending lawyer included in the group communication. For example, the sending lawyer might have included (either with the consent of the sending lawyer's client, or improperly without that consent) a third person having no direct involvement in the matter at issue, such as an investigator or a media representative. Alternatively, the sending lawyer might have improperly or mistakenly included persons represented by counsel without having their counsels' consent to communicate with them directly. If the receiving lawyer were to "reply all" in such a situation, the receiving lawyer potentially could disclose information relating to the representation of the receiving lawyer's client in violation of Colo. RPC 1.6 or could potentially communicate with a person represented by counsel in violation of Colo. RPC 4.2.

Colo. RPC 1.6(c) requires a lawyer to "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." As noted earlier in this opinion, confidentiality under Colo. RPC 1.6 "applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source." C.R.C.P. 1.6, cmt. [3].

Colo. RPC 4.2 prohibits a lawyer from communicating about the subject of representation with a person the lawyer knows to be represented by another lawyer in the matter without the other lawyer's consent (unless the lawyer is authorized to communicate by law or court order). A sending lawyer who represents one party in a matter cannot

consent to direct communication with a different party who is represented by a different lawyer.

The receiving lawyer therefore should make reasonable efforts to not include in a reply, for example: (i) anyone to whom disclosure of information is not allowed by Colo. RPC 1.6); (ii) anyone who is represented by counsel in the matter whose counsel has not given consent for direct communication with that counsel's client; or (iii) anyone whose identity the receiving lawyer cannot determine. Of course, reasonable efforts may vary with the circumstances, including the substance or nature of the particular communication.[5] The receiving lawyer can avoid the risk of inadvertent or unauthorized disclosure of information and the risk of improperly communicating with a represented party simply by sending a reply only to the sending lawyer and letting the sending lawyer decide to whom, if anyone, to forward the reply.

As a matter of professionalism, the sending lawyer could help avoid these pitfalls by identifying for the receiving lawyer any persons included as an addressee in a group email or text who are not counsel for a party to the matter. The sending lawyer and receiving lawyer also could avoid these pitfalls by conferring with each other - by telephone or separate email – about who the addressees are and whether they ethically may be included in any reply.

[5] The Rules define reasonableness with respect to a lawyer's conduct as "denot[ing] the conduct of a reasonably prudent and competent lawyer." Colo. RPC 1.0(h).

## *IV. Conclusion*

A lawyer who includes the lawyer's client in a group email or text to counsel for other parties discloses the client's contact information, namely, email address or phone number. The sending lawyer also risks the disclosure of additional, potentially sensitive, information relating to the representation if the lawyer's client sends a reply that includes the other counsel, which can happen even if the sending lawyer has bcc'd the client. A sending lawyer therefore should not include the sending lawyer's client in group emails or texts unless the client has given informed consent for the lawyer to do so. Also, this Committee's opinion is that the sending lawyer, by including the sending lawyer's client in a group email or text, has impliedly consented to the other counsel sending a reply that includes the sending lawyer's client. The sending lawyer can avoid these issues simply by using the two-email alternative.

A lawyer who receives a group email or text that includes the sending lawyer's client may send a reply that includes the sending lawyer's client only if: (1) the reply is directed to the sending lawyer, not the sending lawyer's client; (2) the reply is limited to the topic addressed by the sending lawyer; and (3) the reply is sent within a reasonable period of time and not used as a pretext later to communicate with the sending lawyer's client. The receiving lawyer should make reasonable efforts in light of existing circumstances, which may include the substance or nature of the particular communication, not to include in a reply anyone to whom disclosure of information is not allowed by Colo. RPC 1.6, anyone who is represented by counsel in the matter whose counsel has not given consent for direct communication with that counsel's client, or anyone whose identity the

receiving lawyer cannot determine. The receiving lawyer can avoid these concerns simply by sending a reply only to the sending lawyer and letting the sending lawyer decide to whom, if anyone, to forward the reply.