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ALL ABOUT BUSINESS IN NEW YORK'S GOLDEN APPLE

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Teaching the dos and don'ts of e-mail



ON THE WALL

The Golden Globe awards aren't being handed out till Jan. 16, and the Oscars till Feb. 27. But the first-ever winner of a new award for finding a publicly available e-mail faux pas has already been chosen.

Jerrold J. Ganzfried, a senior litigation partner and appellate attorney in the Washington, D.C., office of Howrey Simon Arnold & White, captured the first-ever "E-mail of the Month"

award. While reading a 196-page federal court decision issued Aug. 27 in a civil tax suit, Ganzfried spotted a smoking gun e-mail that persuaded a judge to rule in favor of the Internal Revenue Service and against the plaintiff, Long Term Capital Holdings.

Long Term claimed it had lost \$100 million in capital, but the IRS was able to convince U.S. District Judge Janet Bond Arterton in Connecticut that the firm was concealing its true value from the tax agency. At an investment bank retained by Long Term, an attorney suggested creating an entity that "makes it just a bit harder for the IRS to link all the deals together." Long Term didn't win back the \$100 million and was ordered to pay a 40 percent penalty; the case is on appeal.

Ganzfried's prize was a Native American drum, perhaps the only communication method that leaves no trace, delivered by the award's creator, Eric Rosenberg. He is a lawyer and the president of LitigationProofing L.L.C., a Mamaroneck-based consultancy devoted to teaching law firms and businesses the dos and don'ts of sending e-mail.

'FRANK AND TRUTHFUL'

"E-mail in court is more believable than any other kind of written communication. It is considered so frank and truthful," Rosenberg said.



Photo by SHIRLEY SINGER

Lawyer Eric Rosenberg is building a new career as president of Mamaroneck-based LitigationProofing L.L.C., a consultancy devoted to teaching law firms and businesses the dos and don'ts of sending e-mail.

So frank and truthful, indeed, that it helped convict investment banker Frank Quattrone on federal charges of obstructing justice and witness tampering. Quattrone was found guilty of trying to block a federal investigation into his firm's giving shares of hot tech companies to hedge funds in exchange for kickbacks.

The most damning evidence was a 2000 e-mail in which Quattrone urged his colleagues to "clean up," as in delete, their files.

"I use Quattrone's sequence of e-mails in my instruction sessions," Rosenberg said.

Each session, Rosenberg said, includes a fast-paced mix of video clips, props, audience demonstrations and, of course, e-mails that should never have been sent: "If I'm going to speak to business people, I have to do it in a compelling way, not lecturing them."

Fees vary from group to group.

Rosenberg won't say what he averages, but offered an approximate answer: "I pattern myself after the office people who train businesspeople in anti-discrimination and other human resources issues. People who do human resources training charge \$5,000 a day."

PUT IT IN WRITING

Rosenberg says he advises businesses and law firms to:

Set written policies governing e-mail use, including limits on personal use and a ban on gambling or pornography uses.

Look at what's being sent via e-mail, with penalties, including firing, for rule breakers.

Train employees regularly on company e-mail procedures.

"While it would appear that a lot of this is common sense, to people in business

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it doesn't come across that way," Rosenberg said. "In my experience, lawyers never spoke to business people about their potential for getting into difficulty until it was too late."

Another word to the wise from Rosenberg is to be more formal in e-mail correspondence: "It's written by most people as if they were talking, which often enables courts to treat it as a window to the operations of the mind."

That can cause trouble when what's being sent is a joke, especially if the source of laughs is a business situation that causes a problem.

GENERATION GAP

And business people, he added, labor under the misconception that they can avoid trouble over e-mails simply by hitting the delete key: "They often don't have any idea that what they're doing is a permanent creation."

Rosenberg started his business in May 2003 after 20 years at Merrill Lynch, notably as manager of litigation. One of the highest-profile cases he was

involved with during that time was the firm's legal wrangle with Orange County, Calif., over charges of steering the county treasurer into investments risky enough for Orange to declare bankruptcy in 1994. Merrill agreed to settle the case for \$400 million four years later.

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After less than a year at Bear Stearns as senior managing director of its litigation department, Rosenberg resumed his business more aggressively. He started writing articles and publicizing his consultancy, winning some welcome attention in a British legal issues magazine, in brief.

Recently he trained 20 senior managers and leaders of what he will only disclose as a Fortune 100 company headquartered in Stamford, Conn., that recently conducted an employee retreat in Tarrytown.

Some time this month, Rosenberg will conduct a series of sessions for a large Manhattan-based law firm whose name he cannot disclose.

Rosenberg says his early research into the firm's e-mail habits reveals something of a generation gap: "The younger people in the firm treat e-mail so informally they don't think about the issues. The older people in the firm are relatively unskilled. They send e-mail to the wrong place."

— *By* ALEX PHILIPPIDIS

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— *Eric Rosenberg, president, Litigation Proofing, LLC, Mamaroneck*



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