

Misdirected Email Can Lead To Trouble For Sender And Recipient

January 4, 2011

Have you ever begun typing an email address, only to have the "autocomplete" feature suggest an incorrect or outdated address? While this feature is certainly convenient, it is easy to inadvertently send an email to the wrong recipient. Depending on the nature of the message, such a mistake can be very costly.

Consider the recent developments in *Terraphrase Engineering, Inc. vs. Arcadis, U.S., Inc.*, a lawsuit pending in federal court in California. The dispute was between Defendant Arcadis and several of the company's former engineers who left to start a competing firm. The plaintiffs' lawyer sent several email messages involving the litigation to his engineer clients, without noticing that one of the client's email address autocompleted to his former email address at Arcadis. The messages were automatically forwarded to Arcadis' in-house counsel, who then shared them with their outside counsel for the litigation, Gordon & Rees, LLP.

Plaintiffs' counsel only discovered his mistake when reading a counterclaim filed by Gordon & Rees referencing a meeting date that was contained in one of the misdirected email messages. Plaintiffs filed a motion for a protective order, which the court granted. The court disqualified Gordon & Rees, as well as one of the in-house Arcadis counsel, from the action.

The lessons to be learned are, first, caution, in double-checking email addresses before hitting the "Send" button, particularly when the nature of the message is privileged or sensitive. Equally important is considering how to react when you are on the receiving end of an inadvertently addressed message. Had Arcadis' counsel notified opposing counsel and the court upon their discovery of the misdirected message, it seems unlikely that the court would have disqualified them from the case. Review the court's protective order.