



## Reduce Agency E&O Exposures for Mobile Devices

Technology provides solutions for better and faster service. It also makes communicating with clients easier. But sometimes, technology makes communicating with customers too easy—and too easy to forget about the need to document communication. This can create more errors & omissions exposures and leave agencies more exposed when defending E&O claims.

Communication through handheld devices, such as texts and emails, are the biggest culprits. When producers use their devices to email or text clients, there is often no record in the agency management system.


Most agencies fail to keep a record of other than what may or may not be on a producer's device, and they are relying on a producer to put the information on the management system. If that does not occur, the CSR will not know what is happening with the account.

The good news is that technology also provides great solutions. Agency staff must be educated and some hard decisions must be made for the solutions to be implemented successfully. Here are a few important points to consider:

- Some hardware devices can automatically integrate email from mobile devices to the agency's systems. Integrating texts may or may not be possible. If not, prohibiting texts may be necessary, if they are not guaranteed to be saved in the agency management system.
- Someone must determine who owns the hardware. If the producer owns it, can the agency control it? This may mean the agency prohibits the use of personal handheld devices for business purposes and purchases business use-only handheld devices. In addition, producers are required to exhibit more self-discipline, and they understand they will face severe consequences if they don't.
- The people involved need to understand the importance of privacy. Cell phones are more easily hacked than agency systems. Only non-private data should be transmitted by handheld devices—which may be a reason for choosing a particular handheld device and mandating uniformity in the handheld devices all producers use.
- The agency must mandate that communication sent or received by mobile devices—including personal devices—possess the same disclaimers as if the communications were sent to or received by the agency directly. Agency staff should add a disclaimer to cell phone voicemails stating that no coverage can be changed or bound simply by leaving a voicemail. This is another reason for having completely separate business and personal cell phones.
- Communication from mobile devices is easily tracked in discovery. However, the actual communication may not be easily discovered. This leaves the plaintiff's attorney plenty of room to imply the nature of the discussion and to point out the holes in the agency's documentation because it will be evident that a communication occurred, but a record does not exist of what was said or written. The plaintiff's attorney may even go as far as proposing that producers use their own cell phones for all communications they do not want recorded.

Minimizing these exposures requires discipline and some hard decisions. An owner of an agency needs to ask: Is it worth the battle to mandate a simple, free solution like a disclaimer—which is accepted by nearly all agencies as being necessary for their phone system and defense—even if it inconveniences their producers' friends who call the business cell phone? Is the battle for mandating a business-only phone worth fighting? Or is it worth mandating that only emails can be sent because the agency's hardware and software cannot integrate texts messages automatically?

All of these solutions are reasonable. The costs will vary, depending on the agency's hardware and software, and its willingness to accommodate different people's demands.

The key is to get ahead of this now before the volume of lost emails, texts and voicemails grows even more voluminous. There is no telling how much documentation the agency has already lost. How much more can your agency risk losing? 

**Chris Burand** ([chris@burand-associates.com](mailto:chris@burand-associates.com)) is the founder and owner of Burand & Associates, LLC. in Pueblo, Colo.

## Other Agency Mobile Devices Considerations

For more practical information on how agencies can manage the use of personal devices in their agency, check out the following articles on Big "I" risk management website, E&O Happens ([iiaba.net/eo](http://iiaba.net/eo) happens):

"Bring Your Own Device (BYOD)—Opportunities and Risks": Provides a number of specific steps agencies should take before allowing employees to use personal devices for business purposes.

"Reality of Texting for Insurance Agencies": Offers steps agents can take to forward texts to email, so they can be sent to other agency employees and attached to the system. The article also explains how an agency can send texts to consumers from a business email account.

"Don't Let Texting Create an E&O Wreck": Highlights the need for an agency policy handling texts and stresses the need for carrier communications to be documented.

—C.B.