

# Practice Management

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[network.aia.org/blogs/alexander-chaconas1/2020/03/31/aia-practice-management-digest-march-2020](https://network.aia.org/blogs/alexander-chaconas1/2020/03/31/aia-practice-management-digest-march-2020)

## Architectural Writing

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*How to craft effective messages that convey their necessary contextual purposes.*

Letter from the editor

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**By Sara R. Boyer, AIA, LEED AP BD+C**



I am a huge proponent of the Oxford comma, syntax, and punctuation! Google search “comma memes” and you will quickly realize why I am fanatical about grammar. I give full credit to my junior high English teachers. I also give credit to the early days of my career when I lived at the fax machine, sending out bid advertisements, memos, and meeting minutes. In that era, the early days of email and the internet, I believe that the words written with hands and ink carried more weight. Yet, we were not nearly as productive as we are today.

Despite having numerous tools for communication, there is still a lack of over-communication. Additionally, as communication lines are blurred with the proliferation of texts, e-newsletters, email, and so on, it is timely to revisit the fundamental skill of writing effectively.

We must carefully craft our outgoing messages and interpret incoming data with the same care. Understanding the potential risks embedded in manufacturer’s literature with respect to an Architect’s stand of care and Contract language is carefully explained in the article “Contract Language and Manufacturer Representations” as contributed by the steadfast resource of the AIA Trust. “Killer Cover Letters” by Robert Stempien, AIA, a reproduction from the 2010 article for SMPS, cuts to the chase outlining how to achieve the utmost first impression of a proposal. “Working With a Ghostwriter” by Zac Sprunger and Sarah Hemmersbach of Fanning Howey discusses how to tell an informative story through collaboration with another author. Mitchell Milby reminds readers that anything written can and will be used against you in “Emails and Texts.” All of these articles are valuable resources to review in this litigious society.

This is my final issue as Editor of the AIA’s Practice Management Knowledge Community Digest. I am grateful for the opportunity to contribute in this endeavor.

Please consider the environment before you print.

## Features

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### **Contract Language and Manufacturer Representations**

*By Frank Musica*

Recently, a lot of design firms have come under fire for not living up to client expectations in terms of the performance, content, and reliability of their materials, products, and systems.

In order to mitigate this, contracts should reaffirm the ability of design professionals to rely on client and manufacturer representations as long as they meet the standard of care for applying their professional judgment to the information.

### **Killer Cover Letters**

*By Robert Stempien, AIA*

Submitting a proposal for a 'must-win' project will likely begin with a cover letter. Incorporating these cover letter suggestions can promote your company as the firm that listens and the one that is focused on customer objectives. Creating a 'killer cover letter' sets the tone for understanding the project, the client, and the unique qualities of your company that differentiate you from the competition.

### **Working with a Ghostwriter**

*By Zac Sprunger*

At some point in your career, you will probably work with a ghostwriter, a professional who turns your thoughts into an article, a website blog or a whitepaper. Whatever the situation, it is important to understand the end goal of the collaboration and the process to get there. Your ghostwriter isn't just helping you get words on a page; they are collaborating with you to tell a story.

### **Emails and Texts**

*By Mitchell S. Milby*

Pain is temporary, glory is forever, except that when it comes to texts, emails, internet posts, and the like, both pain and glory are forever. Once you write it, it never goes away. What does that mean for you? Think before you press send. The effects if you fail to do so can be disastrous or most excellent.

## Further reading and resources

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[The AIA Trust](#)

[Grammarly](#)

[The Architect's Guide to Writing](#) by Bill Schmalz, FAIA

## Contribute to the Digest

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The future issues of the *Practice Management Digest* are currently planned to cover topics such as firm management, talent management, and architectural writing. If you have topics related to practice management that you'd like explored or articles you would like us to consider, please contact [pmkc@aia.org](mailto:pmkc@aia.org).

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## Quick Links

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## Who we are

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The **Practice Management Knowledge Community** (PMKC) identifies and develops information on the business of architecture for use by the profession to maintain and improve the quality of the professional and business environment. The PMKC initiates programs, provides content and serves as a resource to other knowledge communities, and acts as experts on AIA Institute programs and policies that pertain to a wide variety of business practices and trends.

## A'20 announcement

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Because of the rapidly changing circumstances, please refer to [conferenceonarchitecture.com](https://conferenceonarchitecture.com) for the latest information on A'20 sessions and events.

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## Contract Language and Manufacturer Representations

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By [Alexander Chaconas](#) posted 2 days ago

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# Contract Language and Manufacturer Representations

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**By Frank Musica**





Recently, there have been disputes and judicial decisions addressing the responsibility of design firms to understand the composition, performance, and availability of specified products, materials, and systems. In part, this relates to the performance of the specified components, but it is increasingly extending to the actual composition and health effects of the specified components.

Few design professionals have the ability to independently test and analyze substances, to verify the performance of a manufactured product, and to predict the longevity of a specified component. And fewer clients are willing to pay the additional costs and experience the delays in design that such second-guessing of a manufacturer's data would generate.

A design professional's reliance on information provided by product suppliers is judged by the standard of care: at the time of specification, would a reasonable design professional have relied on the information provided as to the performance, content, and reliability of a material, product, or system? Some firms are apprehensive that a client will attempt a cost recovery effort by alleging that the design firm had a greater duty in specifying products. In some egregious third-party claims, firms are concerned that the judicial system might place unreasonable, unrealistic, and unanticipated responsibilities on them based on the duties established by licensure laws.

### **Rely on Communication and Information Consent**

There are ways to head off some claims and make the design firm's responsibility rational. One is a high level of communication with the client so that the client understands the risks and rewards of an inadequately tested component or one that has no substantial reputation in the industry. The client's informed consent can be used to show that the design firm made a recommendation based on information available and the client approved the recommendation after weighing the risks, benefits, and alternatives.

### **Contract Language Can Help Mitigate the Exposure**

Contracts should reaffirm the ability of design professionals to rely on client and manufacturer representations as long as they meet the standard of care for applying their professional judgment to the information.

The EJCDC has taken the lead in creating contract language that notifies the client of the engineer's reliance on information provided by others. The standard owner-engineer agreement (E-500-2014) states in article 6.01.D the following "Standard of Performance" provision:

**Reliance on Others:** Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

This is in addition to the contractual agreement that allows the engineer to rely on owner-provided information.

The standard owner-architect agreement published by the AIA does not go as far as the EJCDC contract in protecting the design firm. There is no provision that states that the architect can rely on manufacturer information; the reliance is based on the standard of care and not a contractual limit of responsibility.

AIA B101-2017 states in § 3.1.2 the following:

The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information. The provision protects against the reasonable use of information from the client or others providing services to the client, but is silent on reliance on product data.

If a client wants more design firm involvement in assessing the performance, durability, or content of a project component, a discussion should take place during contract negotiation that includes the client's role in evaluating available information and determining the risk the client will assume in approving a new product or a new use for an existing product.

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*Frank Musica is a senior risk management attorney with Victor. His background includes service as in-house counsel for a west coast A/E firm with a large international practice and staff positions with The American Institute of Architects (AIA), the American Society of Civil Engineers (ASCE), and the National Society of Professional Engineers (NSPE). During his tenure with the AIA and NSPE, Frank supported the activities of the AIA Contract Documents Committee and the Engineers Joint Contract Documents Committee, respectively. Frank received a professional degree in architecture, an MBA, and a law degree from the University of Notre Dame.*

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## Killer Cover Letters

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By [Alexander Chaconas](#) posted 2 days ago

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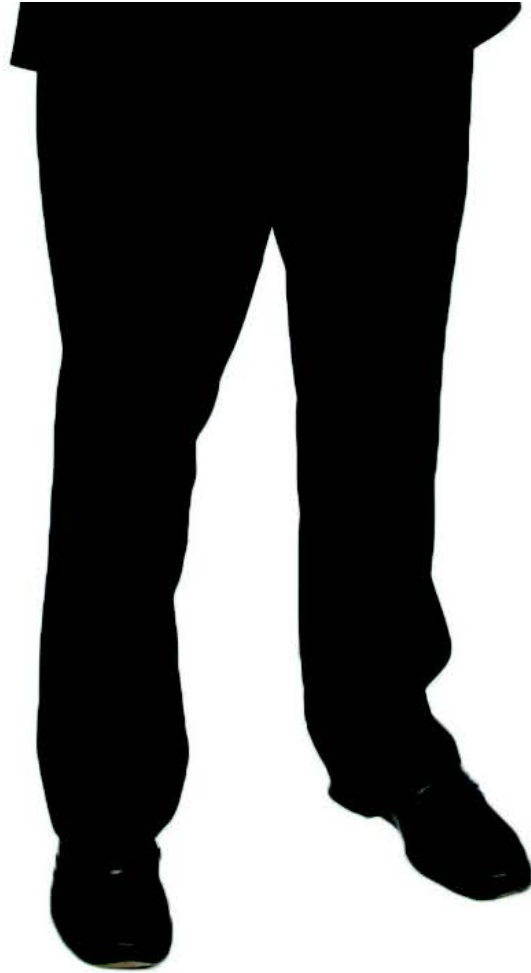
## Killer Cover Letters

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**By Robert Stempien, AIA**

*This article first appeared in Marketer, The Journal of the Society for Marketing Professional Services (SMPS), in June 2010. This may not be reproduced without permission from SMPS (smps.org).*





Submitting a proposal for a “must-win” project will likely begin with a cover letter. The cover letter is the first impression a client may have that highlights your project understanding before they fast forward to the fee section or other key areas of interest. The cover letter is a golden opportunity to put your best foot forward and to capitalize on your pre-sell effort.

### **Avoid the Boilerplate Approach**

After reviewing hundreds of cover letters from A/E/C firms, it is remarkable how similarly they typically begin:

“Thank you for the opportunity to submit our credentials for your XYZ project.”

Or,

“We are excited to submit our...”

This is a boilerplate approach for any project of any size. Does this sound like your cover letters? Claiming you are “excited to submit” may not be sincere and given how often it is used, it probably won’t differentiate your firm from your competitors. Boilerplate cover letters signal that the person who authored the letter was not engaged in the pre-selling effort and doesn’t understand the client.

## **The Opening Sentence**

The opening sentence in a cover letter can capture the selection committee’s attention and set the tone for the entire written proposal response to follow. One approach is to capitalize on the emotional side of what the client can expect from a successful project outcome. Consider an opening sentence for a new hockey arena that speaks to the essence of the project:

“The puck being dropped at the opening 2011 home game in your new arena is the beginning of many firsts. The first breakout play, the first check, the first goal, and the first chant echoed by the spirited fans who have come together to celebrate a new era for your hockey program.”

Or perhaps this example for a community college science building renovation project, which states what the client plans to achieve:

“The purpose of the science building renovation is to provide the opportunity for students to obtain the skills necessary for today and tomorrow’s employment needs. Our goal, as a Construction Manager, is to partner with your community college to deliver this vision. This proposal details how we will work to achieve project goals.”

## **Rules of Thumb**

Keep in mind that the focus is on the client. Concentrate on client needs and objectives and the benefit your company will provide. In addition to the opening cover letter dynamics, consider the following rules of thumb when composing a cover letter.

1. Keep the cover letter to one page and highlight only a few key points—try not to fit every differentiator imaginable into the cover letter. Save some thunder for the proposal!
2. Provide three to five bulleted reasons why your firm is different from your competition and how the client will benefit by hiring your company. This could be unique qualifications of personnel, knowledge about end users, sustainable strategies, ideas to address project challenges, or creative bid packaging to engage local firms or save money.
3. Encourage the client to call key references and make it easy for them by including phone numbers and e-mail addresses.
4. List your cell phone number in case the selection committee needs quick information to complete its decision-making process.
5. Provide a believable, strong closing statement.
6. Have the person with whom the client has the strongest relationship/connection sign the cover letter. This might be the president of the company or the proposed site superintendent. The person with the highest position in the company doesn't necessarily warrant their signature on a cover letter.

Incorporating these cover letter suggestions can promote your company as the firm that listens and the one that is focused on customer objectives. Creating a “killer cover letter” sets the tone for understanding the project, the client, and the unique qualities of your company that differentiate you from the competition.

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*Author Robert Stempien, AIA, has over 35 years of design and construction experience in the K-12, higher education, sports, municipal and corporate markets on work totaling more than \$3.6 billion. As Sr. Vice President at Plante Moran Cresa, he excels at helping clients with large capital improvement projects that require high-level strategic planning and development. Robert served two four-year terms on the governor-appointed Michigan State Board of Architects and State Board of Engineers.*

*You can reach him at 248-603-5252 or [Robert.Stempien@plantemoran.com](mailto:Robert.Stempien@plantemoran.com).*

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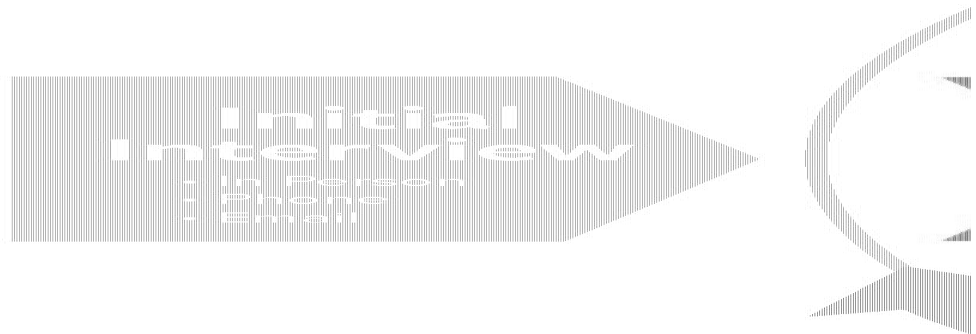
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## Working with a Ghostwriter

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**By Zac Sprunger**



At some point in your career, you will probably work with a ghostwriter, a professional who turns your thoughts into an article, a website blog or a whitepaper. Whatever the situation, it is important to understand the end goal of the collaboration and the process to get there. Your ghostwriter isn't just helping you get words on a page; they are collaborating with you to tell a story. That story can be how you share who you are, what you do and how you think as an architect. It can be about why and how you design something or the impact of a new space. Whatever the topic, the story drives the conversation and your collaboration.

**Our Lives are Built with Stories**

Storytelling is a buzz-worthy marketing term these days, but the concept of telling a story as a brand, as a professional, as a community and as a person is built within our culture and our nature. We tell stories to connect, to learn and to document our history.

When thinking about storytelling as a tool, it is important to take a breath and get back to basics. What are the main tenets of storytelling? How will my ghostwriter and I use them best? What do I need to think about ahead of time?

## **Start with Why**

At a young age we learn the tenets of a story structure: Who, What, Where, When and Why. Many people start working their way down that list and figure out the Why at the end. However, the why is integral to finding out who this story is really about, what it means to your audience, where it will go and when to focus on the details. If you start to think about the Why of your story, you will be setting yourself up for success to work with your ghost writer. Why a design was created, why a business exists and why you do what you do are filled with stories.

One of the best examples of this concept is an article we wrote on school restrooms. Restroom design is not a topic rife with excitement. However, we asked multiple team members if they had a story of their most inspiring restroom design. We ended up talking about design strategies for a special education campus in Washington, D.C. The article focused on how the restroom design met the specific needs of these very special learners. The editor later told us that the article was “the best restroom article we’ve ever received.” The story and the Why made that possible.

## **Avoid the Curse of Knowledge**

Often in our careers we become so entrenched in our field that we develop the curse of knowledge. We forget what it was like before we knew something that has become so ingrained in our day-to-day. Jargon, acronyms and even basic details of how things are done evade our memories because they’ve become second nature. A ghostwriter will help you work past that to find the core of your story. This not only helps your ghostwriter connect with your story, but it helps your overall story connect with a larger audience.

## **How to Prepare**

Collaboration with your ghostwriter starts with an initial interview, either in person, over the phone or through email. When preparing for this conversation, start by thinking about your audience. Who is listening to this story? What are their challenges? What will they learn? Think about conversations you've had with similar people. What questions have they asked? What is their motivation? What problems are they trying to solve? There are many stories to tell. Developing empathy for your audience will make sure you pick the right one.

After considering the perspective of your audience, begin to think about your own passion and ideas. Chances are you have already been telling stories related to your topic. Think about those conversations you have with your colleagues, your friends and your family. What details do you share with them? What anecdotes do you repeat again and again? What themes have you already developed? These details are the foundation of your conversation with the ghostwriter.

To write a good article or blog post, the story must be authentic to you. So don't be afraid to raise a red flag if the proposed topic is not fertile ground. On one article for a national trade publication, the initial interview revealed that the author did not have a compelling story to tell. We reassigned the story to other team members, and the resulting article turned out great. Remember to be honest about your passions and areas of expertise. It is better to have someone else write a great article than to write a boring one yourself.

## **Owning the Process**

When working with a ghostwriter on an article, the process doesn't end after the initial interview.

One of the biggest mistakes architects make is to treat the first draft like the end of the collaboration. Instead, think of it as the midway point.

When reading the first draft, go back to the initial exploration of your audience. Does the article answer their needs? Have you addressed their common questions and motivations? If not, then you need to rethink and dig deeper.

Also, evaluate the first draft based on its position in the broader marketplace of ideas. Are you making the same points as everyone else? Are you talking about things in the same way? If the answer is yes, don't be afraid to rethink your approach and content.

The willingness to honestly evaluate a first draft led to one of the most successful articles we've ever written. The topic was media centers, and despite our best intentions, the initial draft came out as the typical recitation of strategies: reducing collections, maximizing

flexibility, adding technology – all the old chestnuts. It was a passable article, but not a great one.

Rather than settling for good enough, the author insisted on a new direction. He came up with the idea to explore how Design Thinking allows clients to determine the best future use for a media center. As a ghostwriter, I was thrilled. Our article now had a focus and a purpose. It had a story. We used many of the same details, but gave them a new context. The fresh idea reinvigorated the article, and after its publication, several potential clients reached out to our firm with questions. Each one of them had the same comment: “We never thought about it this way before.” We had told a different story.

So remember, even though a professional is helping you write, ultimately these are your words being published. Make sure they reflect your best thinking.

## **Think in Pictures**

Pictures are our oldest storytelling tool. As you iterate through your edits with the ghostwriter, begin to think how images will supplement your content. You want to choose pictures that clearly illustrate your main ideas. The ideal picture is both striking and informative. If possible, the picture should also stand on its own, without the need for captions. Captions are an important part of the storytelling process, but they are often missed by readers who are skimming for information.

## **Finish Strong**

The last part of your collaboration with the ghostwriter involves a series of back and forths as the article or blog post takes shape. The more input you give, the better the article will be. When reviewing the final draft, make sure the technical details are spot on. Your ghostwriter is trained in grammar and punctuation, but they aren’t an industry expert. You are the last line of defense against misused terms that will undermine your authority and your story’s impact. Remember, this story is yours, so you need to own it.

Working with a ghostwriter is an opportunity to tell the best possible story through collaboration. By working hand-in-hand, you will tell a story that informs, inspires and improves the architecture industry as a whole.

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*Zac Sprunger is director of communications for Fanning Howey, an architecture, interiors and engineering firm specializing in learning environments. Sarah Hemmersbach is a communications specialist with Fanning Howey.*

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## Emails and Texts

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**By Mitchell S. Milby**

Pain is temporary, glory is forever, except that when it comes to texts, emails, internet posts, and the like, both pain and glory are forever. Once you write it, it never goes away. What does that mean for you? Think before you press send. The effects if you fail to do so can be disastrous or most excellent.

### Good Recordkeeping

When should you write? Good examples of things to record include:

- meetings (notes – be sure to circulate these immediately after the meeting);
- communications (when the client, contractor, *etc.*, says something verbally, follow up with an email confirming the conversation, the actions items, if any, and who will do what);
- site visits (provide all notes, photos, *etc.* to your client);
- scope changes (yes, you can agree to scope changes, waive services, and add services via email);
- nonconforming work (report at the time); and
- substantial completion.

These are only a few examples.





Furthermore, I cannot emphasize the importance of good recordkeeping. Have you ever wondered why two people can have a wildly different memory of what actually happened? Studies have consistently shown that our memory is false more often than not. Memory consistency reportedly has a striking 60% decline, which means that approximately 60% of our memories change over time. For more information on the topic, I suggest listening to the Revisionist History episode, "Free Brian Williams" at <http://revisionisthistory.com/episodes/24-free-brian-williams>. I can personally report instances where 2 people routinely took project meeting minutes, compared their minutes, and found that their minutes did not match – *even though each took the notes during the same meetings*. Therefore, best practices dictate that you take the meeting minutes, you confirm verbal communications with a follow-up email, you take notes as part of your site visits, and, as soon as possible after the event, you also distribute the minutes, you send the follow-up email, and you send your client your notes from your site visit and, if appropriate, solicit any comments or changes at the same time.

## **It Can and Will Be Used Against You**

If you are wondering "what should I write," keep in mind that anything you write can and will be used against you in a court of law. If you're ever in a lawsuit, one of the first things your attorney will ask you is to "send the file over." This includes each and every email, text, or other writing that you made. I always ask for this because I must know what the other side will use against you. Yes, the other side has your emails, text, *etc.*, too because – spoiler alert - the recipient of those emails likely kept them. So please don't think you can "wipe the drive." That strategy never works for us ordinary people. I can recall at least one lawsuit where my client sent an *internal office* email describing their client (who became the plaintiff) in less than flattering terms using language that would make my mother blush. What's that saying - hope for the best but expect the worst? Sure enough, the other side used that awful internal office email at my client's deposition. It did not go over well and painted my client in a very, very bad light. The lesson - if you have something unkind to say, either don't say it at all or at least say it in person so you minimize the chance of it being recorded.

## **Various Forms of Contracts**

Finally, even if you think you don't have a contract because you didn't use a signed, written agreement, you do if you provided services – moreover if you billed for your services. A contract can be as simple as an offer and acceptance of that offer (good reason to put an

expiration date on any proposals you make). The form of the communication generally doesn't matter. A contract can be formed verbally or by any written exchange. Similarly, a contract can sometimes be changed by any verbal or written exchange. Emails and texts can be as effective as formal memos and can even form or amend contracts. I recall one matter where my client was hired via email. The scope unfolded slowly like a suspense novel – over several emails. My client's scope of services was a critical to our defense, so we spent a significant part of our case clarifying what or scope was and wasn't (Texas allows an architect to limit its scope of services via contract). After 3 years of litigation and a 5 week jury trial (plaintiff would not settle), the jury agreed that with us that the cause of the damage was not the result of anything that was within our scope of services. It could have been much easier (and less expensive) to resolve had the scope of services been described in one place – a signed contract.

In short, your writing – good and bad - can impact your architecture practice. The pain of that bad email or text *is* forever, or, if managed properly, the glory of the good email or text can be yours. Check statutes of limitations in the state(s) where you practice.

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*The author, Mitchell S. Milby, is outside counsel for architects and engineers. He is involved in all phases of project development: company formation and transition planning, contract drafting and negotiation, and litigation/trial. Mitchell is an ongoing guest lecturer for the Department of Civil Engineering at the University of Texas at Arlington. He received the AIA Professional Affiliate of the Year Award (2012) and the Consultant Award (2019) from the Dallas AIA chapter. His received a B.A., cum laude, from Vanderbilt University and a J.D. from Northwestern School of Law, Lewis & Clark. He is a 2018 & 2019 Super Lawyer® and has the highest rating, 5.0/5.0, from Martindale-Hubbe™ (national attorney rating for ability & ethical integrity).*

*For more information, contact [www.milbyllc.com](http://www.milbyllc.com), [mitch@milbyllc.com](mailto:mitch@milbyllc.com), or 469-358-9610.*

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