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## WHILE ZOOM CONTINUES TO IMPROVE SECURITY, MEETING HOSTS CAN TAKE PRECAUTIONS TO PREVENT ZOOM-BOMBING

by Sara Peters

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## PRESIDENT'S MESSAGE:

by Kathryn E. Clunen

I hope everyone continues to stay well during this time. I thought I would take a different tack in my message this month to see if I could entertain you all. Like many if not all of you, I have been working from home since mid-March. This is my first time working from home since I became an attorney. I tried in the past, but I found it distracting and hard to connect with people.

Well...the stay at home order changed that. My husband has already been occasionally working from home so he rearranged our upstairs office so I could also have a desk. But the problem is that we both like different working atmospheres. I like complete silence while he likes music and talking. I was engrossed in drafting a marital settlement agreement when he interrupted by asking, "What do you think about terracing our backyard?" Now, this random question is not so bad compared to the requests and questions from our two young children. However, we learned that we need to work in "shifts" so that one can work while the other takes care of our kids.

You've probably seen some memes, videos or other Internet stories about funny things that have happened during this time. I thought I'd see what local lawyers were experiencing while working from home. Here are some funny stories.

**Sasha L. Collins** was doing an initial client consultation via Zoom. The potential client logged in to Zoom with his face really close to the screen. He looked confused and said, "Well, I can see a young lady, in a brown chair, with a black shirt on. She's sitting in front of a green plant." Sasha had to tell him, "Yes, sir, that is me."

**Erik Feingold** had his first experience with a "zoom bomber" during a VCTLA zoom meeting. Members of VCTLA signed in and there was a participant in the meeting front and center on the screen

with a fu manchu mustache and wearing a sombrero. Feingold didn't recognize him but thought he may be a new member. Five minutes into the meeting, another member asked him who he was. He was muted, didn't respond, and then was kicked out of the meeting.

**Panda Kroll** shared that her Zoom backdrop includes a collection of odd piles of Buddhist art while **Karen Oakman** used a jail backdrop while she taught her Criminal Law class for Cal Lutheran University, but forgot to change it before starting a client meeting. Collins did a full Zoom conference with a client before she noticed she had a stuffed animal of baby Simba (from the Lion King) on the shelf behind her that looked like it was perched on her shoulder.

Although we don't have at-home managers, **Jill Singer's** cat sits in her cat tree watching over Singer to make sure she gets her work done, and during Zoom meetings jumps in her lap and swings her tail in front of the camera. **Bryan Zaverl's** four-year-old son popped over his shoulder during a video deposition and then ran away with the sinister laugh only a four-year-old can do.

Besides the hilarity of video calls, a lot of us are also trying to homeschool our children. I am currently both a preschool teacher and a kindergarten teacher in my home.

**Jacquelyn Ruffin**, who has an eighth grader, jokes that if anyone wants to know how to complete the square in a quadratic equation, she's giving free lessons. Her daughter recently told her that she is a good teacher and should think about becoming one, which is ironic since she used to be a middle school teacher before becoming a lawyer.

Working from home used to seem like a dream, but with all the closures and

navigating law during this time, it seems like the workload has grown. I was on hold with a bank for over an hour last week. During the hold time, I helped my daughter with her homework and my son was quietly coloring until my call was finally picked up (we all know how exciting that is after an hour on hold). Of course, that's when all hell broke loose. My three-year-old son decided he needed to watch YouTube on my phone that second and kept grabbing for it while crying. The bank representative kept asking if I was still there, and I was pleading with her not to hang up. Ahhhh good times....

It seems others are experiencing these hiccups as well as working from home. **F. Stephen Jones** is not only handling work emergencies at home, but, without a better excuse, he is now a home gardener learning to trim trees and navigate rose bush and lime tree thorns. **Rennee Dehesa** recently shared a timeline of her day that started at 6:30 a.m. and ended late at night. After a full day, which included losing and finding the family tortoise, Dehesa was returning a telephone call to a client who is in his 90s and could not hear well. Her phone service was getting worse and worse, so she was pacing inside and outside her home and repeatedly asking "Can you hear me? Can you hear me now?" I think we all know how that goes.

These times are certainly difficult, but one thing is for sure: we are all in this storm together. The best thing we can do is find the silver lining and share our experiences with each other.

I am sure you all have your own funny working-from-home stories, so please write in and share with us so we all can enjoy!

*Kathryn E. Clunen is of counsel at the Dion Law Group, APLC and practices family law. She can be reached at KatieC@dionlawgroup.com or (805) 497-7474.*

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## GOOD THINGS ARE HAPPENING IN OUR NEIGHBORHOOD: Totally Local VC And The Local Love Project Distribute Much-Needed Food And Supplies To Locals Affected By The Coronavirus

by Rachel Coleman

Lately, all we have been hearing on the news are the negative impacts of coronavirus on the economy. Luckily, some selfless volunteers are bringing joy and full bellies to many residents throughout Ventura County. Kat Merrick and her crew at Totally Local VC are working to fill the rapidly growing needs that locals are experiencing due to the coronavirus. For example, volunteer Christopher Pryor regularly wakes up at 4:00 a.m. to pick up produce from local farmers and donates much of his weekends to giving to others in need. He shows up in the delivery truck at pop-up events with a big smile for everyone. Merrick reported that she relies on many volunteers like Pryor who give their free time to make the organization's community outreach possible.

Merrick founded Totally Local VC over seventeen years ago after a long career in the clothing industry. Her dream was to start an organization to support the local community and build a strong infrastructure involving agriculture, education and local food sources. Totally Local VC is an initiative focused on promoting the importance of collaboration between the local agricultural and business communities and to provide education about agriculture. The Local Love Project is one of the umbrella programs of Totally Local VC. The purpose of the Local Love Project is to activate and organize people to assist in providing relief and support for neighbors impacted by traumatic events in the 805 area. They offered much-needed help to locals during the Thomas Fire and subsequent wildfire disasters.

The Local Love Project partners with local farmers and outreach programs to supply fresh produce boxes and essential household items. Every Saturday at 3:00 p.m. at Winchesters Grill and Saloon in downtown Ventura, the Local Love Project and various local restaurant owners host a pop-up distribution site for meals, groceries and essential items. This program specifically targets restaurant and bar employees who suffered layoffs or decrease in hours due to the coronavirus. The pop-up also targets

local musicians who find themselves without income due to music venues being closed. Another pop-up happens on Sundays at 3:00 p.m. at Ventura Avenue Thrift; this one is open to all members of the public who need assistance.

The Local Love Project also provides direct delivery to homebound individuals including prepared meals, produce boxes and home essential bags. This is achieved by the Project's partnership with 23 different organizations. The Project also works with eighteen food banks and outreach organizations to provide bulk pick-up of produce and essential items weekly. Food boxes and home essential items are also delivered directly to the fields for local farm workers at the end of their daily shifts. The bags delivered to farm workers also contain census information, COVID-19 safety tips, a list of current food banks and local outreach organizations. The Project directly delivers more than 1,200 food boxes and bags of essential items to local farm workers. Produce is also being delivered directly to schools in Ventura County. To date, 20,000 households have been served through direct delivery, bulk pick-up and the pop-up distribution efforts by Merrick and her army of volunteers.

Fourteen World Central Kitchen chefs enter the Local Love Project's warehouse all week long to pick up fresh, locally harvested produce for meals that the Kitchen's chefs create for delivery to local medical staff and homebound elderly persons.

The Local Love Project also delivered over 6,000 gloves, 500 N95 masks and three pallets of hand sanitizer to Ventura County hospitals, and 3,000 gloves, 200 N95 masks and three pallets of hand sanitizer to Santa Barbara County hospitals.

Totally Local VC is also dedicated to educating youth and community members on the important role business and agriculture plays in the success in our local community and the world. Totally Local VC offers education programs such as the *Eat Local* and *Hug a Farmer* talk series.

*Farm Fact Fridays*, *Throw Back Business*, and *Did You Know?* are educational programs on social media and on the Totally Local VC website. Among the fun facts of note are that the gluten-free diet and the cut flower industry started right here in Ventura County. Totally Local VC also offers locally owned small business mentoring.

One of the more unique programs offered by Totally Local VC is the *Farm-to-Fork Dinner Series* – on temporary hold during the coronavirus shutdown – which marries iconic Ventura County locations, such as Limoneira Ranch, Two Trees, Sierra Cross and Old Creek Winery with the area's top chefs, purveyors, wines, brews and seasonally selected harvests from local farms. Merrick stated, "It is important to educate not only the public, but local chefs and farmers about the importance of our food sources. 70 percent of all the food we eat is grown right here in California. The coronavirus highlighted the importance of our local food sources." Merrick also noted, "Many of today's food trends can be directly related to the relationships between the farmers and chefs. Chefs set the trends and the farmers grow the food. For example, a chef made kale a household vegetable when it began showing up on restaurant menus."

If you would like to volunteer, make a charitable donation (Totally Local VC is a 501 (c)(3)), find out more about the educational programs and services, or just thank the volunteers, please visit the website [totallylocalvc.com](http://totallylocalvc.com) or send an e-mail to [totallylocalvc@gmail.com](mailto:totallylocalvc@gmail.com).



**Rachel Coleman** is an associate at Myers, Widders, Gibson, Jones & Feingold and is a member of CITATIONS' editorial board.

# WHILE ZOOM CONTINUES TO IMPROVE SECURITY, MEETING HOSTS CAN TAKE PRECAUTIONS TO PREVENT ZOOM-BOMBING

by Sara Peters

Many of us would be thrilled to have the likes of Will Ferrell crash our Zoom meeting. The Seattle Seahawks appeared delighted when the comedian did just that in April. Ferrell amused fans everywhere by posing as the Seahawks' Greg Olsen while lifting his shirt to reveal a not-so-fit "yoga body." Said Ferrell: "I'm an older guy. I'm 36. But I've been working out." (Seattle Seahawks (@Seahawks), Twitter (Apr. 30, 2020, 6:10 PM) <https://twitter.com/Seahawks/status/1256028105153474560>.)

## Zoom-Bombing Here, There And Everywhere

Unfortunately, most Zoom meeting interruptions from uninvited guests are anything but funny. The interruption that occurred during the Conejo Valley Unified School District's Board of Education meeting in March was no laughing matter. As reported in Thousand Oaks Acorn, before the meeting even started, it was hijacked by pornographic and antisemitic images and repeated use of the N-word. And, as if that weren't bad enough, the Zoom-bomber(s) told board members they should kill themselves and made implied threats they would physically harm members and their families. (Megli, "District Apologizes For Ugly Zoom Mishap," *Thousand Oaks Acorn* (Mar. 26, 2020) <https://www.toacorn.com/articles/district-apologizes-for-ugly-zoom-mishap/>.)

Such disruptions have become so commonplace in recent months that there's a name for the phenomenon: Zoom-bombing. It's so widespread and troublesome that it got the attention of the FBI and the New York Attorney General. On March 30, the FBI issued a warning about it. (Setera, "FBI Warns of Teleconferencing and Online Classroom Hijacking During COVID-19 Pandemic," *FBI Boston* (Mar. 30, 2020) <https://www.fbi.gov/contact-us/field-offices/boston/news/press-releases/fbi-warns-of-teleconferencing-and-online-classroom-hijacking-during-covid-19-pandemic>.) That same day, the New York Times reported that the New York Attorney General's Office sent Zoom a letter expressing concern about the inadequacy of its security practices. (Hakim

& Singer, "New York Attorney General Looks Into Zoom's Privacy Practices," *New York Times* (Mar. 30, 2020) <https://www.nytimes.com/2020/03/30/technology/new-york-attorney-general-zoom-privacy.html>.)

## Suddenly The Whole World Is Using Zoom

Zoom-bombing is, in part, the result of the unexpected and sudden massive increase in the number of people using Zoom. Because of the COVID-19 pandemic and worldwide stay-at-home orders, people everywhere have turned to Zoom video conferencing for everything from work meetings to virtual happy hours. A blog post by Zoom Founder and Chief Executive Officer Eric S. Yuan reported that the number of daily Zoom meeting participants increased from 10 million in December 2019 to 200 million in March 2020. Yuan also mentioned that Zoom was being used by over 90,000 schools across 20 countries for remote education. (Yuan, "A Message to Our Users," *Zoom Blog* (Apr. 1, 2020) <https://blog.zoom.us/wordpress/2020/04/01/a-message-to-our-users/>.)

## Unfamiliarity With Zoom Privacy Settings And Features Made New Users Vulnerable

But why did the recent increase in Zoom-users result in the Zoom-bombing phenomenon? As Yuan explained in his April 1 blog post, Zoom was designed primarily for "large institutions with full IT support." The problem now is that millions of new Zoom users are isolating at home and, more likely than not, trying to figure out Zoom all on their own. This means that new and unsuspecting meeting hosts probably had no one around to warn them that their video conference could be Zoom-bombed if they failed to take precautions such as selecting the "Enable waiting room" option, or changing the screen sharing setting to "host only." As a result, Zoom meetings everywhere were easy targets for Zoom-bombers. (Yuan, "A Message to Our Users," *supra*.)

## Changes Made to Protect Against Zoom-bombing

To counter the problem of the obvious lack of awareness of Zoom's settings and features, all that Zoom had to do was change its default settings. To its credit, Zoom began making such changes before the COVID-19 pandemic. And on March 29, it implemented changes to default settings for "education users." (Yuan, "A Message to Our Users," *supra*.) But those same changes should have been made for the rest of Zoom's users as well—and they weren't (at least not until after the New York Attorney General began investigating).

The following default settings changes have been made by Zoom to protect against Zoom-bombing:

### *Changed Setting to Add Passwords by Default*

Last July it was pointed out to Zoom by security experts that, when scheduling meetings, if hosts didn't select the "Require meeting password" option, a Zoom-bomber could get into the meeting by, essentially, guessing the meeting ID. These experts recommended that Zoom make several specific changes to prevent that – and it did. One of those changes was a change to its setting to add passwords by default to all future scheduled meetings. (Chailtyko, "Zoom-Zoom: We Are Watching You, Check Point Research," *Check Point Research* (Jan. 28, 2020) <https://research.checkpoint.com/2020/zoom-zoom-we-are-watching-you/>.)

### *Changed Setting to Enable Waiting Room by Default*

Waiting Rooms prevent guests from going into a meeting until the host allows them to enter. Previously, hosts had to select "Enable waiting room" in Meeting Options when scheduling a meeting. Now hosts no longer have to do that. On April 4, Zoom changed its settings to enable waiting rooms by default for all users. ("April 2020: Setting updates for free accounts and single Pro users," Zoom Help Center, <https://support.zoom.us/hc/en-us/articles/360041408732>.)



### *Changed Setting to Limit Screen Sharing to Host by Default*

If a host allows screen sharing for meeting guests, there is potential for a guest (whether invited or uninvited) to take over your screen. This is how Zoom-bombers are able to disrupt meetings by disturbing images on the screen. It used to be that hosts had to select the “host only setting” in order to safeguard against this. As of May 9, however, screen sharing has been limited to hosts by default. (“*May 2020: Updated password and security settings*,” Zoom Help Center, <https://support.zoom.us/hc/en-us/articles/360042647952-May-2020-Updated-password-and-security-settings>.)

### **Improvements In The Works**

Pursuant to its April 1 90-day security plan and its agreement with the New York Attorney General, Zoom continues to work to improve security. (Press Release, “New York State Office of the Attorney General: Attorney General James Secures New Protections, Security Safeguards for All Zoom Users” (May 7, 2020) <https://ag.ny.gov/press-release/2020/attorney-general-james-secures-new-protections-security-safeguards-all-zoom-users>.)

Some of the things Zoom will do to improve security are:

- Conduct risk assessment and software code reviews to prevent being hacked;
- Update its Acceptable Use Policy to prohibit abuse based on race, religion, ethnicity, national origin, gender or sexual orientation;
- Investigate misconduct reported by users and take corrective action, including suspending or banning those who violate the Acceptable Use Policy; and
- Maintain a bug bounty program for researchers and the public to report vulnerabilities and compensate those who discover and report bugs.

### **What Hosts Can Do To Protect Their Meetings From Zoom-Bombing**

As Zoom takes steps to improve security, there are things hosts can do to protect their meetings from Zoom-bombing:

#### *Keep Up with Zoom’s Frequent Changes*

In the past few months, numerous articles have been published online advising meeting hosts to take specific precautions to protect against Zoom-bombing. Although recent, most of these articles are now obsolete due to the many more-recent changes Zoom has made to its privacy settings and features. To stay up-to-date, visit the Settings & Controls section of the Meetings & Webinars category in the Zoom Help Center: <https://support.zoom.us/hc/en-us/sections/201740116-Settings-Controls>.

#### *Lock Your Meeting*

By locking the meeting, hosts can keep out any new participants who attempt to join. This feature is located under the new security icon at the bottom of the screen. (“In-Meeting Security Options,” Zoom Help Center, <https://support.zoom.us/hc/en-us/articles/360041848151-In-meeting-security-options>.)

#### *Require Guests to be Logged in to Zoom*

Hosts can set up a meeting so that only guests who are logged in to Zoom are allowed to join. If someone who isn’t logged in tries to join, they will get a message instructing them to sign in. (“Authentication Profiles For Meetings And Webinars,” Zoom Help Center, <https://support.zoom.us/hc/en-us/articles/360037117472-Authentication-Profiles-for-meetings-and-webinars>.)



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### **ZOOM’S OTHER PROBLEMS**

Zoom-bombing is not the only issue Zoom is dealing with. It’s in hot water for other things too, including disclosing users’ personal information to third parties and making misrepresentations about the type of encryption it uses.

#### **Unauthorized Disclosure Of Personal Information To Third Parties**

In March, a lawsuit was filed against Zoom in the Northern District of California alleging that it collected and then disclosed to third parties (including Facebook) users’ personal information without authorization or even adequate notice. (*Cullen vs. Zoom Video Communications, Inc.*, N.D.Cal. Case No. 5:20-cv-02155-SVK.) That case has since been combined with seven other proposed class actions against Zoom. (Zegers, “8 Zoom Privacy Suits Tied Together in Calif.,” *Law360* (Apr. 27, 2020) <https://www.law360.com/articles/1267477>.)

According to the New York Attorney General, Zoom has already “taken steps to stop sharing user data with Facebook.” (Press Release, “New York State Office of the Attorney General: Attorney General James Secures New Protections, Security Safeguards for All Zoom Users” (May 7, 2020) <https://ag.ny.gov/press-release/2020/attorney-general-james-secures-new-protections-security-safeguards-all-zoom-users>.) Additionally, Zoom’s blog reported that it updated its privacy policy and permanently removed the LinkedIn Sales Navigator app. (Yuan, “A Message to Our Users,” *Zoom Blog* (Apr. 1, 2020) <https://blog.zoom.us/wordpress/2020/04/01/a-message-to-our-users/>.)

#### **Misrepresentation About Using E2E Encryption**

In April, the U.S. Senate requested that the FTC investigate Zoom for making deceptive representations regarding the type of encryption its communication system uses. In a letter to the FTC dated April 3, which NPR obtained and made available on its website, Senator Sherrod Brown stated that Zoom falsely claimed to use end-to-end (E2E) encryption when

*Continued on page 10*

*Continued from page 9*

in fact it uses in-transit encryption. As explained in the letter, with in-transit encryption, the service provider stores an unencrypted copy of the user's message on its devices. With E2E encryption, no copy of the user's message is retained. Why does this matter? Because, according to Brown, retaining copies of users' messages gives Zoom "the technical ability to spy on private video meetings." (Bond, "U.S. Senator Says Zoom Deceived Users Over its Security Claims," *NPR* (Apr. 3, 2020) <https://www.npr.org/2020/04/03/826968159/senator-zoom-deceived-users-over-its-security-claims>.)

It appears that Zoom is acting fast to resolve this problem. On May 7, it announced that it acquired Keybase "to help us build end-to-end encryption that can reach current Zoom scalability." (Yuan, "Zoom Acquires Keybase and Announces Goal of Development the Most Broadly Used Enterprise End-to End Encryption Offering," *Zoom Blog* (May 7, 2020) <https://blog.zoom.us/wordpress/2020/05/07/zoom-acquires-keybase-and-announces-goal-of-developing-the-most-broadly-used-enterprise-end-to-end-encryption-offering/>.)

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## BARRISTERS' CORNER: ATTEMPTING TO ESTABLISH COURT UNIFORMITY DURING COVID-19: AN OVERVIEW OF THE CALIFORNIA JUDICIAL COUNCIL'S EMERGENCY RULES

by Kristine A. Tijam

A 1926 amendment to Article VI of the California Constitution established the Judicial Council, which sets and administers policies for California's entire state court system. One of the Council's primary goals, according to the proposition summary, was "to regulate court practice and procedure and exercise functions provided by law." The Judicial Council's report for its first emergency meeting on March 28 noted that the two state senators who submitted the initial ballot argument for the Council's creation argued that it would be "charged with the duty of seeing that justice is being properly administered." Further, the ballot argument stated that, when a remedy for the administration is needed, "[I]t will be the duty of the council to propose a remedy, and if this cannot be done without an amendment to the laws the council will recommend to the legislature any change in the law which it deems necessary."

On March 27, Governor Gavin Newsom issued Executive Order N-38-20, which gave the Judicial Council authority to take necessary action to respond to the COVID-19 pandemic, including by adopting emergency rules that otherwise would be inconsistent with statutes concerning civil practice or procedure. The Executive Order also suspended statutes to the extent they would conflict with such emergency rules. Since the onset of COVID-19, individual courts' varied responses to the pandemic prompted the Judicial Council to issue a series of emergency rules to create uniformity.

On March 28, the Judicial Council's first emergency meeting since the COVID-19 outbreak directed the superior courts to use technology, when possible, to conduct judicial proceedings and court operations remotely. This included authorizing remote appearances, electronic exchange and authentication of documents in evidence, e-filing, and e-service. Similarly, the Judicial Council called for prioritizing the use of technology to ensure defendants are not held in custody, and children are not held in custody or removed from the custody of their parents or guardians, without timely due process of law or in violation of constitutional rights.

The Judicial Council conducted its second emergency meeting on April 6, wherein it approved eleven temporary emergency rules. Notably, some of these emergency rules included suspending the entry of defaults in eviction cases, suspending judicial foreclosures, extending the timeframes for specified temporary restraining orders, and tolling the statutes of limitations for all civil causes of action from April 6, until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.

On April 17, the Judicial Council adopted Emergency Rule 12 governing mandatory and permissive electronic service. This rule, which applies to all general civil cases and proceedings under the Family and Probate Codes, mandates that represented parties accept electronic service of a notice or document that may be served by mail, express mail, overnight delivery or facsimile transmission. It also requires the serving party to confirm by telephone or email the appropriate electronic service address for counsel being served. The Rule mandates compliance with a represented party's request for electronic service so long as the requesting party "provides an electronic service address and a copy of this rule."

On the other hand, Rule 12 only calls for *permissive* electronic service as to unrepresented parties. The unrepresented party must first consent to electronic service, confirmed in writing.

Rule 12 is silent on its face regarding any changes to the calculation of deadlines for electronic service. As such, Code of Civil Procedure section 1010.6, which adds two *court* days subject to the subsection's exceptions, still arguably governs. Of course, parties are free to stipulate to alternative arrangements, such as an extension of time. For example, many attorneys have elected to add five calendar days instead of the shortened period prescribed by section 1010.6.

Rule 12, like almost all of the emergency rules, provides it will sunset 90 days after the Governor declares that the state of emergency related to the COVID-19

pandemic is lifted, or until amended or repealed by the Judicial Council.

The Judicial Council most recently adopted Emergency Rule 13 on April 20. Rule 13 primarily states that an order modifying or terminating a support order may be made effective as of the date the request and supporting papers are mailed or otherwise served on the other party or counsel, except as provided in Family Code section 3653(b).

Needless to say, the Judicial Council's emergency rules cannot resolve all discrepancies in the courts across the state. Issues such as filings, closures and rescheduling of hearings remain far from uniform, largely due to differing interpretations of the Chief Justice's orders and courts' unique physical internal setups, caseloads and capabilities.

Notably, these unprecedented times compel the authoritative bodies of the legal system to navigate the difficulties presented by COVID-19 and issue directives accordingly. As we have all undoubtedly experienced, COVID-19 has presented unique challenges on individual and widespread levels. It remains to be seen how the Judicial Council and courts further evolve their procedural and substantive regulations to address the new challenges of practicing amidst this pandemic, while balancing important rights, duties, and obligations. As this article is not an exhaustive list of the Judicial Council's emergency rules and their intricacies, please visit <https://www.courts.ca.gov/documents/appendix-i.pdf> for further review.



**Kristine A. Tijam** is an associate attorney at Procter, Shyer & Winter, LLP in Camarillo. She practices civil litigation and serves on the Barristers Board as a member-at-large.



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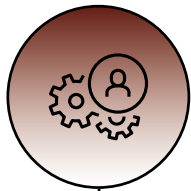
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# WE ALL MAKE MISTAKES

by Randall Delling



I received an email two weeks ago asking if I was taking new cases. I responded that I am. I am a third-year attorney. Due to my age when I became an attorney, I encountered difficulty finding a job, so I opened my own firm. Mercifully, I have been busy every day. We all need to take new cases. I don't fault myself for wanting to help another person. I write today to tell you this story so you won't make the same mistake I did.

The set-up was that a \$2.5 million contract for goods from a large company had been breached by another large company that was allegedly unable to fill the order. To fill the order, the vendor sought a 50 percent deposit that was allegedly paid. In my preliminary investigation of the case, I was sent a copy of the contract allegedly signed by both representatives of the companies involved. I researched the companies and their executives, and all the names checked out. The contract appeared to be valid. So far so good.

I was sent a chain of emails, allegedly from the representatives of both companies, discussing the reimbursement of the \$1.25 million deposit. It had been months, and approximately \$800,000 was left. I was being retained to write a demand letter for that outstanding balance with a possible future lawsuit for recovery. Based on my preliminary investigation, it all looked good on the surface. I sent an engagement letter that was returned to me allegedly signed by an executive of the purchasing company.

Despite my preliminary investigation, I had a nagging feeling there was something wrong. Call it spider sense. This was too easy. It felt wrong. Two days later, a check arrived at my office via Federal Express. I expected it to be my retainer. Instead, it was drafted for an odd and surprisingly large amount of money allegedly from the vendor, and it was made out to my trust account. Here is where I became extremely suspicious. The check looked good. It had the company logo of the vendor and appeared to be authentic. But the strange amount had me asking questions of myself and my investigation of the matter. I emailed the client to inquire about the details, and they explained that they had made a deal with the vendor and this was a partial payment. I still had not spoken to the vendor, and I had not sent the demand letter. In fact, the demand letter was not drafted at this time.

I went to my bank and deposited the check in my trust account. This was a mistake I will not make in the future. My bank put a ten-day hold on the funds and made \$5,000 available immediately. When I informed my client, they asked me to send the \$5,000 by wire. I was given an account number, routing number, address of the bank in Houston, and the name and address of the alleged title company that was going to handle the transfer. Now my sense of something wrong was going off big time.

I looked up the bank address on Google maps. Sure enough, that was a Bank of

America branch in Houston. I looked up the title company. It does not exist. I looked up the address of the title company. It was a tailor and alteration shop in Houston. Now I knew. I had been duped, but I had discovered my mistake, and immediately took action. Had I wired the \$5,000, I would have lost the money. Thankfully, I did not.

I called the vendor and made my way to their accounts payable department. I told them the story, and they searched their outgoing checks for my trust account and my name. Guess what? I was not anywhere to be found in their records. Next call, my bank. I informed the manager about my discovery and put a stop on the deposit. I did not wire the \$5,000. I sent a copy of the check to the vendor, and I notified the other party of the fraud using their company executive's name and forged signatures. Obviously, I am not getting paid, and I did not lose anything except the time I spent investigating. I must admit it was fun beating these criminals. They played me, and I won. Believe me, when I wrote them to tell them to you-know-what, I was laughing hysterically.

The adage, "If it feels too easy and too good to be true, it probably is," has played out here in my third year as an attorney. I hope passing on this story to all of you will keep someone else from falling into a trap like this. There are people out there attempting to defraud attorneys 48 hours per day fourteen days per week. It is a profitable business, and they are rarely caught. They simply move on to the next target. I just had one attempt to take advantage of me. Thankfully, I won this round. Keep your head up, your eyes open and remain vigilant looking for the truth. It just might save you some heartache and some hard cash.



**Randall Delling** is a Simi Valley attorney, a former high school principal and a licensed contractor. He is a member of CITATIONS' editorial board.

## HEALTH LAW IN A PANDEMIC

by Carol Mack



I teach health law to undergraduates. So far this semester, among other things, we have learned about hospital regulation and licensing, HIPAA privacy rules, EMTALA (Emergency Medical Treatment and Active Labor Act), and laws designed to prevent fraud and abuse such as the False Claims Act and Stark Law. Now I have to tell my students to forget everything – it's all changed!

When a national Public Health Emergency was declared on Jan. 31, regulatory agencies immediately moved to maximize the facilities and personnel available to fight the pandemic. They have done this many ways, including by relaxing a number of regulations and creating new rules for hospitals and health care workers.

Take, for instance, the Centers for Medicare & Medicaid Services (CMS) rules for hospitals. The media is full of stories of conference centers and gymnasiums now being converted into hospitals. How is this possible, given how heavily regulated health care facilities are? The CMS Hospitals Without Walls program specifically allows hospitals to provide services beyond their current structures and in sites not currently licensed as health care facilities, such as dormitories, gymnasiums and hotels. Blanket waivers allow hospitals to provide room and board, nursing and other hospital

services at remote locations. In addition, some non-skilled nursing facilities may be temporarily certified as skilled nursing facilities if there is a need to isolate patients due to COVID-19 exposure. In accordance with this guidance, Ventura County hospitals have established hospital Holding Units for patients from long-term care facilities who need to be isolated.

In terms of staffing, CMS has temporarily waived requirements that practitioners providing consultation via audio-visual technology (telehealth) be licensed in the state where they provide services. Also, practitioners such as physical therapists, in addition to physicians and nurse practitioners, are now authorized to use telehealth. Physicians may also now use telecommunication to supervise nurse practitioners in some settings, rather than being physically present. Thus, CMS has quickly removed some of the existing barriers to the expansion of telehealth.

EMTALA is a federal anti-dumping law that requires emergency rooms to screen and stabilize all patients before transferring them to another facility. There are fines of up to \$50,000 for violations by hospitals and physicians. In the pandemic, however, there may be a need to send patients with suspected cases to a facility designed for isolation. CMS has now issued an

EMTALA waiver that allows a hospital to conduct screening at an alternative site designated for suspected COVID-19 cases. The requirement to conduct a medical screening is unchanged, however. Hospitals may encourage the public to go to off-campus sites for screening but must screen any patient who comes to the emergency department. CMS now also allows hospitals to isolate patients by having them wait in their cars outside of the emergency room, provided appropriate monitoring is done. Community Memorial Hospital uses this option.

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 includes privacy rules preventing disclosure of patients' personally identifiable health information by hospitals and other "covered entities." In 2009, these rules were expanded to apply also to "business associates," or those who are not employees of the hospital but have access to medical information. In the current pandemic, these rules have been relaxed to an extent. For example, private health information about COVID-19 may now be disclosed to first responders or others who may have been exposed. In addition, talking with family members without first obtaining a patient's permission will be allowed during the current emergency. Another change allows telehealth providers to conduct meetings with technologies such as Zoom, FaceTime and Skype even if they may not meet all HIPAA requirements. For now, business associates are also not limited by the terms of their contracts when disclosing medical information to public health officials. And, the Office of Civil Rights (OCR) has announced that it will use discretion in penalizing HIPAA violations by community-based testing sites, provided they evidence good-faith efforts to adhere to the privacy rules. In Ventura County, these rules would apply to the testing sites at the Oxnard Performing Arts Center and Conejo Creek Park. It is worth noting, however, that OCR has also just issued a guidance that reiterates the need for health care providers to obtain a valid HIPAA authorization first from any patient whose information or identity is made available to the media.



Two important federal laws that define fraud in health care are the False Claims Act and the Stark Law. The False Claims Act, also known as the Lincoln Law, was enacted during the Civil War to combat fraud by contractors to the Union Army. It makes it illegal to present a false claim for payment to the government and usually refers to Medicare or Medicaid fraud but could also mean misuse of Provider Relief Funds. During the current emergency, the Department of Justice is focusing its investigations on wrongdoing related to the pandemic, such as sales of fake testing kits and nonexistent protective equipment and billing for fraudulent COVID-19 treatments.

The Stark Law (named after California Congressman Pete Stark), or Ethics in Patient Referral Act, prohibits physicians from referring patients to facilities in which they have a financial interest. Recently, CMS issued a series of blanket waivers in cases where an arrangement is specifically related to the pandemic

and fulfills one of eighteen enumerated requirements. These waivers may allow, for example, the provision of free telehealth equipment to physicians.

Many of the above regulations were made retroactive, and are expected to remain in place only for the extent of the national Public Health Emergency. However, there are some changes that will likely live beyond the current pandemic. For example, the relaxing of regulations for telehealth may well continue as more states will facilitate the licensing of out-of-state practitioners through licensure compacts. Also, relaxing restrictions on physician supervision of nurse practitioners in some settings could continue. Nurse practitioners in California have attempted for many years to enact legislation that would allow them to practice independently. Such a bill is currently before the California State Senate and may be influenced by the pandemic experience.

In summary, many of the changed regulations will be rescinded when the world goes back to normal, but as there will certainly be a new normal for health care, some may have lasting effects.



**Carol Mack, RN, Ph.D.**, is a retired attorney who teaches health law at California State University, Channel Islands. She is a member of CITATIONS' editorial board.

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Rumor has it that the Ventura County Superior Court is predicting no civil trials until 2021. In this ever-changing landscape that is COVID-19, *CITATIONS* will keep you apprised of the latest with our local courts.

Venable and New York Law School have partnered to offer a virtual summer program on the interplay of COVID and the law. The eight-week program will focus on various topics, including employment, commercial contracts, public health, data privacy and the rights of detainees. (Penton, "Venable and NY Law School Craft COVID-19 Summer Course," *Law360* (May 18, 2020) <https://www.law360.com/articles/1274002/venable-and-ny-law-school-craft-covid-19-summer-course>.)

We all want to support local small businesses, but as to restaurants, it's best to steer clear of third-party delivery services like DoorDash and Grubhub, which charge a steep fee from the restaurants, consequently slashing the restaurants' profit, if any. Opt instead for direct pick-up or curbside or first-party delivery (if offered). Luckily, there are a couple databases detailing VC's open restaurants. Check out <http://venturachamber.com/restaurants-open-and-offering-to-go-and-delivery/> and <http://www.totallylocalvc.com/eat-local-resource-list/> for more information.

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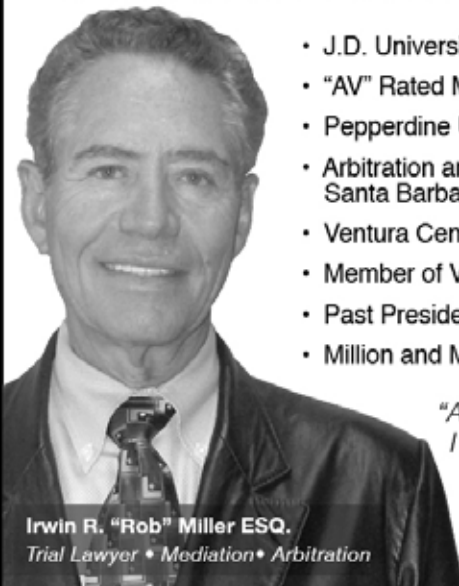
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**VCBA ZOOM EVENTS**

**Guarding Against  
 Ethical Pitfalls in  
 Legal Research**

Learn how rapid advances in legal research technology implicate your ethical obligations, and how to use keyword searches, A.I.-based searches, and other tools to fulfill those obligations. This webinar will cover the California Rules of Professional Conduct and the ABA Model Rules that are implicated by legal research and legal technology.

**Date: Tuesday, June 2nd**  
**Time: 11:00am**

ZOOM Meeting  
 Register in advance for this webinar.  
 Event is Free to Members  
 Non-Members: \$25.00

**Professional  
 Responsibility Ethics  
 & Technology**

- A Lawyer's Professional Responsibilities Towards Technology - ABA Rules\*
- What are the States Doing?
- Practical Strategies for Complying
- Best Practices and Takeaways
- Q & A

**Date: Thursday, June 11th**  
**Time: 1:00pm**

ZOOM Meeting  
 Register in advance for this webinar.  
 Event is Free to Members  
 Non-Members: \$25.00



# SAVE THE DATE

CELA and FAIR present:

## 9th Annual Diversity Leadership Summit

### *The Resilience of Employment Law: Adapting and Surviving in the COVID-19 Economy*

**Webinar 1: June 23, 2020 from 2 – 4 p.m.**

**Panel 1 - Why Employment Law Is a Smart Choice for Your Career and Tips on Maintaining Your Mental Health As a Litigator**

**Panel 2 - Bias Busters: Recognizing and Eliminating Bias in the Legal Profession**

**Webinar 2: June 30, 2020 from 2 – 4 p.m.**

Panel discussing job strategies and professional etiquette followed by a networking breakout session with seasoned attorneys who have weathered economic recessions, giving tips on how to adapt

## ABOUT

Our Summit is an annual conference to promote diversity and leadership in the legal profession, geared towards diverse law students and attorneys working in the employment space. The Summit is a FREE event and includes networking opportunities, MCLE credit (pending), and written materials. Sponsored by the California Employment Lawyers Association (CELA) and the Foundation for Advocacy Inclusion & Resources (FAIR).



**Foundation for  
Advocacy  
Inclusion &  
Resources**

Funded by a grant awarded to FAIR by the California Lawyers Association Labor & Employment Law Section. CELA is an approved State Bar of California MCLE provider.



When times get crazy, just remember what really matters: Family, friends and helping others. Blessings from the Lehrs during these troubled times!



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