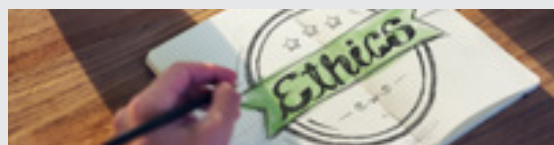


Q&A

LAWYER LIABILITY AND ETHICS



COVID-19 & Reinventing the Legal Practice



**Jessica Beckwith,
Lewis Brisbois**

**Jessica Lienau
Beckwith**

Zoom depositions. No redwells or stacks of printed documents. An assistant you cannot speak to in person. These are just some of the novel challenges that attorneys are facing due to the COVID-19 pandemic. In a world where people are losing loved ones or facing extended hospitalizations due to the pandemic, an attorney's frustration over the inability to practice law in a way they are comfortable with may seem inconsequential, but attorneys must proactively devise a plan to competently and ethically practice in this "new normal".

The pandemic has been challenging to many lawyers on a professional or personal level, or both. By being intentional about devising a new work plan instead of being swept into the new wave of practicing law kicking and screaming, lawyers are more likely to meet their ethical obligations and not face professional burn out.

Competent Representation of Clients:

Arizona Rules of Professional Conduct, Rules 1.1 and 1.4 require a lawyer to be competent and to communicate with clients. Competence is not directly challenged by the pandemic unless the lawyer must, for the first time, learn new technologies being employed by the courts, mediators and in depositions, such as Zoom. Many lawyers have been trained or have educated themselves with technology best practices before the pandemic, which can easily be implemented at home. However, if you do not already know how to use these technologies, it would behoove you to educate yourself now through online courses.

The pandemic has caused many lawyers, who have spent their entire careers working in a physical office setting, to move their practices to their home (which may be populated with

kids learning online, spouses working from home, elderly family moved in, and/or dogs barking). Lawyers are continuing to work full-time to serve their clients, while simultaneously serving as teachers, housekeepers, chefs and caregivers. Further, lawyers generally do not have the ability to escape their homes and head to a coffee shop due to the sensitive and confidential nature of most of the communications in a law practice.

These challenges can lead to burn out. Many attorneys pride themselves on being available to clients at all times. However, the pandemic may require the attorney to set certain hours each day where they can have quiet, alone time to take calls (versus trying to take a call when they are also supposed to be preparing lunch for their children who are at home). Further, because of frequent interruptions many attorneys face while working at home, they may need to plan days in advance to devote to working on matters with strict deadlines. Procrastination (always an occupational hazard) mixed with interruptions during a pandemic can lead to missing deadlines (and a failure to competently represent clients).

Communication with clients may look different during the pandemic and lawyers may find themselves needing to explain matters that were never an issue before. For example, if a lawyer who is generally used to having clients dropping off sensitive documents to the office may now need to have clients send those documents electronically, which means the lawyer must discuss options with clients that ensure protection of client confidential information. Different methods – email, dropbox, secure file sharing – have different levels of encryption and security and the lawyer must make sure that they are meeting their ethical duty to both understand the different technologies (Comment 6, Rule 1.1) and to protect the client's confidential information (Rule 1.6).

Lawyers may also need to explain to clients

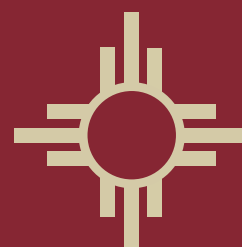
the changes in the courts due to the pandemic including delays, online or telephonic hearings or settlement conferences and the need to grant extensions to opposing counsel. These delays may drive up fees and costs to the client. A lawyer must provide the client sufficient information to participate in decision making concerning the representation and the means by which objectives are pursued. (Rule 1.4(a) and (b).) A recent article published on the American Bar Association website cautions lawyers that compliance with Rule 1.4 means that a lawyer must meaningfully discuss with his or her client the manner in which the pandemic may impact case strategy.

Succession planning is a challenge faced by almost every firm due to the country's (and the legal industry's) aging population. Due to the pandemic, it is even more important (even for those attorneys who are not "aging"). Further, many attorneys rely on one or two individuals to help with client trust accounting or docketing and may not know how to use the system themselves and may not have a backup plan if one of these individuals gets sick or can no

longer work. At a minimum, attorneys need to create redundancies for these systems, whether it is training another staff member as a backup, creating a document that explains how to use certain systems, or learning how to use the systems themselves. Certain functionalities, such as trust account reconciliations, cannot wait for months while a bookkeeper may be ill or while the attorney searches for a new bookkeeper.

Although a Zoom deposition preparation may have sounded absurd a year ago, it is the current new "normal." And just how lawyers transitioned from library to online legal research and from mailing letters to sending emails, we must strive to wear our new pandemic hats with professionalism while keeping our ethical duties in the forefront of our minds. ■

Jessica Beckwith is an attorney with Lewis Brisbois Bisgaard & Smith LLP. She is an attorney regulation and ethics attorney admitted to practice in Arizona and California. She can be reached at jessica.beckwith@lewisbrisbois.com or 213.680.5100.

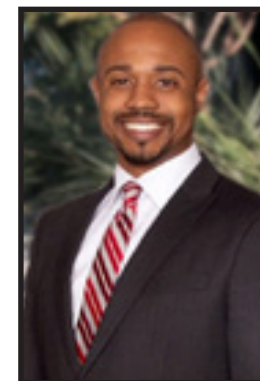


Zia Trust, Inc.
The Advisors' Trust Company®

We're Adding to our Fiduciary Team

Zia Trust, Inc. is thrilled to welcome **Rachel Zaslow, J.D.** as the newest Trust Officer in our Phoenix branch.

Rachel brings experience as a former practicing estate planning attorney and Trust Officer at two Phoenix banks. Rachel is adept in the areas of trust and estate administration, special needs and elder planning, and public benefits.



Rachel will work alongside Trust Officers **David Long, J.D.** & **Josh Moore, M.S.** to serve Arizona clients.

We work alongside your clients' investment advisor

602.633.7999



www.ziitrust.com

11811 N. Tatum Blvd., Ste. 1062, Phoenix AZ 85028



FIRSTLEGAL

FILE thru TRIAL

MAGGIE SMOTHERS
Phoenix | West Valley
C / 602.245.2865
O / 602.248.9700
E / msmothers@firstlegal.com

BRIDGET BROWN
East Valley | Scottsdale | Tucson
C / 602.299.8613
O / 520.798.2200
E / bbrown@firstlegal.com

**Court & Process
Depositions
Records
Digital
Investigations**

www.firstlegal.com
800.889.0111