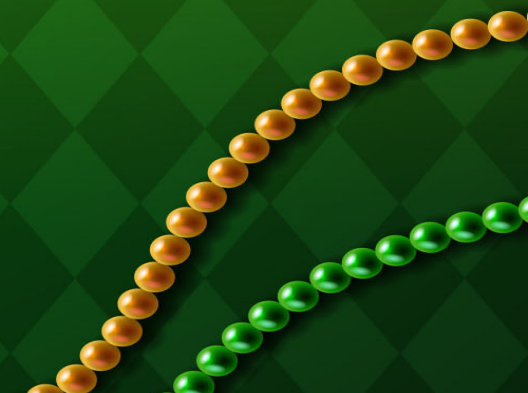




The **Carnivale** *of Risk*

**Pandora's Box - Remote Depositions,
Hearings, Arbitrations and Trials; Why We
Will Never Completely Return to "Normal"**

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WILLIAM
DAVIS

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SAANTA ROSA

WDAVIS@HANNABROPHY.COM

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The California Lawyer's Association deemed Bill Workers' Compensation Defense Attorney of the Year in 2019. He has been a practicing attorney for nearly 30 years.

Bill started his legal career defending public entities in Federal civil rights actions and defending businesses in civil suits. He was also a corporate attorney and led an in house Legal Department. He has been defending workers' compensation claims on behalf of self-insureds, insurance companies, public entities, and TPAs for 19 years. Bill successfully argued the *City of Petaluma v. WCAB (Lindh)* case before the Court of Appeal He frequently lectures the workers' compensation state and national communities on a variety of cutting edge topics.

SERVICES

Workers' Compensation Defense

AWARDS & RANKINGS

California Lawyer's Association Workers Compensation Defense Attorney of the Year for 2019.

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SEYMOUR B. EVERETT III

PARTNER

 714-679-1621

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Seymour "Sy" Everett is a founding partner of Everett Dorey LLP. A full-service civil litigation firm with offices throughout California. Mr. Everett is one of the state's leading trial attorneys and is routinely retained in complex and challenging cases throughout the state. Notably, he was lead trial counsel in one of the Country's first "socially distanced" jury trials during the Pandemic. Mr. Everett is a member of the American Board of Trial Advocates ("ABOTA"), a highly respected group of trial attorneys dedicated to the preservation of the right to trial by jury. He serves as National Trial Counsel for major product manufacturers in cases throughout the country. Mr. Everett also holds the CPCU designation and is a regular speaker at legal seminars for fortune 500 Companies and Public Entities and is a former adjunct professor at USC School of Law. He is also a "Super Lawyer", which is an exclusive list, recognizing no more than 5% of the attorneys in the state. He obtained his undergraduate degree from UCLA and his law degree from Seton Hall University. He is admitted to practice in all courts in California, including Federal District Courts. Mr. Everett has argued before numerous Appellate Courts and has multiple published decisions.

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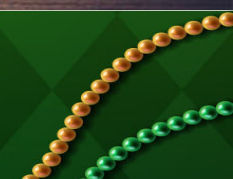
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Cost savings
Due Process
Convenience
Lack of connection



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The *Carnivale* of Risk

Court closures



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State courts are suspending criminal and civil trials.
Other significant hearings are expected to take place via video conferencing.



Superior Court of California County of Sonoma

Shelly J. Averill
Presiding Judge

ACCESS, SERVICE, JUSTICE

Arlene D. Junior
Court Executive Officer

Robert M. LaForge
Assistant Presiding Judge

PRESS RELEASE

January 5, 2022

SONOMA COUNTY SUPERIOR COURT: COURT CONTINUES SOME JURY TRIALS AMID COVID-19 SURGE

All criminal trials postponed unless the defendants in these cases exercise their constitutional right to a speedy trial. All civil jury trials are continued.

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The Carnivale of Risk

Federal courts are also suspending criminal and civil trials.
Other significant hearings are expected to take place via video conferencing.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN RE:
CORONAVIRUS PUBLIC EMERGENCY
AUTHORIZING VIDEO-
TELECONFERENCING AND TELEPHONE
CONFERENCING FOR CRIMINAL
PROCEEDINGS UNDER SECTION 15002
OF THE CORONAVIRUS AID, RELIEF,
AND ECONOMIC SECURITY (CARES)
ACT

GENERAL ORDER NO. 640

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the matter of)
CRIMINAL CASE PROCEEDINGS)
DURING THE COVID-19 PUBLIC)
EMERGENCY)

**Order of the
Chief Judge No. 63-G**

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The *Carnivale* of Risk

WCAB returns to in person trials, Expedited Hearings, and lien trials. Other significant hearings are to take place via phone conferencing.



NEWSLINE

Release Number: 2021-87

Date: September 1, 2021

DWC Announces Return of In-Person Hearings



NEWSLINE

Release Number: 2022-05

Date: January 11, 2022

DWC Announces Return to Virtual Hearings

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The *Carnivale* of Risk

US Supreme Court & Virtual litigation

Washington, D.C. Friday, January 7, 2022

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:00 a.m.

CHIEF JUSTICE ROBERTS: Justice Sotomayor is participating remotely this morning, as, in this application, Mr. Flowers from Ohio will also be participating remotely.

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The Courts have established virtual litigation guidelines for Hearings and trials

[Admonitions and Instructions re: Court Hearings by Audio/Video Conferences for San Francisco Superior Court](#)

<https://sfsuperiorcourt.org/admonitions-and-instructions>

[LACourt Connect User Guide](#)

<https://www.lacourt.org/documents/LACCWhatyouneedUG.pdf>

[Superior Court of California, County of San Diego Limited Civil Hearings Guidelines.](#)

<https://www.sdcourt.ca.gov/sdcourt/civil2/limitedcivilvirtualhearings>

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Stay In Place Orders are Lifted – What's The Future of Online and In Person Trials

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Superior Court and WCAB Rules Governing Virtual Litigation

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On December 29, 2021, the Judicial Council suspended the majority of California Rules of Court, rule 3.670 and added California Rules of Court, rule 3.672, effective January 1, 2022.

California Rules of Court, 3.672, allows trial courts to create their own local rules for remote appearances, "so long as the procedures are consistent with the requirements of Code of Civil Procedure 3.67.75, posted on the court's website, and include the following provisions:

- A. A requirement that notice of intent to appear remotely be given to the court and to all parties or persons entitled to receive notice of the proceedings;
- B. A clear description of the amount of notice required; and
- C. For evidentiary hearing and trials, an opportunity for parties to oppose the remote proceedings.

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WCAB Rules of Practice and Procedure:

§ 10745. Setting the Case.

The Workers' Compensation Appeals Board, upon the receipt of a Declaration of Readiness to Proceed, may, in its discretion, set the case for a type of proceeding other than that requested. The Workers' Compensation Appeals Board may, on its own motion with or without notice, set any case for any type of hearing and may order that hearings be conducted electronically.

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WCAB Rules of Practice and Procedure:

§ 10815. Electronic Hearings Before the Workers' Compensation Appeals Board.

- (a) Any matter may be set for an electronic hearing as set forth in rule 10745.
- (b) Any party may object to an electronic hearing by filing a written objection showing good cause after service of a notice that a hearing will be conducted electronically.
- (c) After an objection to a notice that a hearing will be conducted electronically is filed, the presiding workers' compensation judge of the district office having venue may set the issue of whether the hearing will be conducted electronically for a hearing.
- (d) If the presiding workers' compensation judge of the district office having venue takes no action on the objection before the hearing, it will be deemed deferred as an issue for the hearing before the assigned workers' compensation judge.

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WCAB Rules of Practice and Procedure:

§ 10817. Electronic Testimony Before the Workers' Compensation Appeals Board.

(a) If a witness intends to testify electronically, a petition showing good cause shall be filed pursuant to rule 10510 by the witness or by the party offering the witness's testimony before the hearing, and shall identify the witness and contain the witness's full legal name, mailing address, email address and telephone number.

(b) For any hearing that is conducted electronically pursuant to rule 10815, all testimony will be presumed to be electronic testimony with no petition required, unless otherwise requested, ordered or allowed.

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Litigating in an online world



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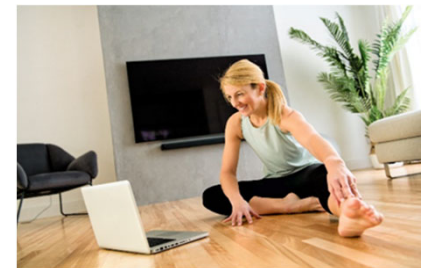




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Problems Encountered with Remote Trials

- Distracted jurors
- Challenges with exhibit exchange
- Multiple technology difficulties
- Improper juror contact
- Complexity of online deliberations



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Conducting Jury Selection Online

- What does it look like?
- Exploring bias
- Connecting with the jury
- Presenting physical evidence
- What do the jurors think about all of this?

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Witness Examination

- Work with witnesses on their online set-up
- Perform mock examinations under “trial conditions”
- Pre-negotiate exchange of exhibits
- Consider Zoom attention spans
 - Outline and benchmark examination
 - Short and tight examinations where possible



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Pros and Cons of Online Jury Trials

Pros

- Cost savings
- Juror comfort level
- Time saving for jurors
- Travel not required for witnesses
- Jurors do not get to know each other

Cons

- Confidentiality concerns
- Difficulty in creating rapport with the panel
- Flow of discussion in voir dire a challenge
- Jurors do not get to know each other

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Litigating in Person Orange County Superior Court



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Los Angeles Superior Court



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How Can In Person Be Done Effectively?

- Are jurors responding to their jury summons?
- Juror questionnaires are critical
- Masks and social distancing can be managed
- The “trial plan” or protocol
 - Court staff
 - Logistics generally

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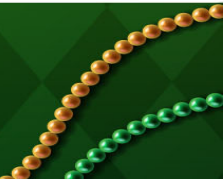


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In-Person Jury Trials



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Case Background

- 52 year old female
- Familial status: married; grandmother
- Profession: realtor
- Trip and fall on city side walk; 2 inch differential
- Injuries:
 - Facial lacerations
 - Fractured elbow (bone loss) - surgery
 - Torn hip labrum
- Plaintiff's pre-trial demand - \$10 million

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Courtroom Policies and Procedures

- Trials take place in designated “large court rooms”
- Closed to visitors – only attorneys/parties/witnesses
- Masks worn by everyone
- Plexiglass around judge, staff and witness box
- Social distance - jurors spread out – 6 feet minimum
- Multiple counsel tables
- Trial is “live streamed” on “YouTube”

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Work Collaboratively to Create a Plan

- In-person trials are new for judges and their staff
- Work collaboratively with your Judge and opposing counsel to create an action plan
- Discuss the court's policies and procedures with colleagues, clients and witnesses
- Be prepared – no downtime

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Trial Preparation

- Discuss with your team. If one person gets sick, it jeopardizes the entire trial – “contact tracing”
- Full supply of masks
- Coordinate masks (blue surgical masks)
- Discuss masks policy with client
- Social distance in/out of court – 6 feet
- Supply of wipes and hand sanitizer
- Identify restaurants/cafeteria

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Voir Dire

- Maximum number of jurors in courtroom – 16 max
- Consider voir dire in juror waiting room
- Commit to jurors: “We are in this together. We will wear masks. We are healthy. We will social distance.”
- Address Covid:
 - Who is worried about Covid-19?
 - Who has been vaccinated?
 - Who is concerned with getting Covid-19 during the trial?
 - Can you remain attentive, fair and impartial for the duration of the trial?

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Voir Dire



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Know the Courtroom

- Location of jurors – not in the box
- Jurors spread around the courtroom; most behind counsel; only three in the box
- Placement of the podium (find an area visible to all jurors)
- Video screen must be visible to the entire courtroom
- Plexi-glass impacts visual and audio
- Chambers will be different
- Witnesses are wearing mask – consider witness stand-up

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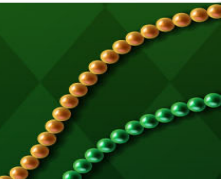


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Live Stream Trial

- Clients can observe and monitor
- Command center at your office observing the trial
- Be aware of the location of video cameras
- Be aware of hot microphones

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Audio Visual



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Closing Argument

- Position the podium
- Rely upon PowerPoint to connect with socially distanced jury
- Make sure all jurors can see and hear you

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Deliberations

- No jury room – all items removed from courtroom and jury deliberates take place in courtroom
- Consider multiple sets of exhibits
- Consider multiple sets instructions
- Questions during deliberations in chambers or hallway

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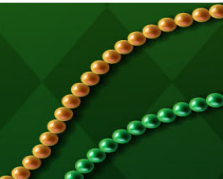




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Depositions

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Rules for remote depositions:

California Rules of Court, rule 3.1010(a) states, "Any party may take an oral deposition by telephone, videoconference, or other remote electronic means, provided:

1. Notice is served with the notice of deposition or the subpoena;
2. That party makes all arrangements for any other party to participate in the deposition in an equivalent manner. But each party so appearing must pay all expenses incurred by it or properly allocated to it;
3. Any party or attorney of record may be physically present at the deposition at the location of the deponent with written notice of such appearance served by personal delivery, email, or fax, at least five court days before the deposition, and subject to Code of Civil Procedure section 2025.420. An attorney for the deponent may be physically present with the deponent without notice."

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Pros of Virtual Litigation:

- Courts and attorney have already been forced to adopt dramatically and now have the infrastructure in place
- Keeps courts open and other litigation (depos, mediations, arbitrations) moving forward
- Cost savings
- Time savings
- Better witness availability
- Ability to appear at multiple venues in one day.
- Witness not wearing a mask

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Cons of Virtual litigation:

- Inefficient?
- Remote appearances restrict the number of hearings an attorney can attend in a day because a lawyer can be on the phone with only one judge at a time. Prior to closing the Boards for personal appearances, an attorney could handle multiple hearings in the morning and another set of hearings in the afternoon. With remote or telephonic appearances, an attorney may be stuck with only for one case in the morning and one in the afternoon.
- Meeting opposing counsel at the Board in person is more effective in resolving issues than speaking over the phone or by email, you can also work thru other cases, and you develop relationships.

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**What software are the
Courts & Boards using?**

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We know that at least some courts use Zoom



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Some have their own unique programs



Effective September 7, 2021, the \$15 cost-recovery fee for LACourtConnect will be waived and all audio/video remote appearances will be free of charge.

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Some use WebEx



<https://us-courts.webex.com/>

<https://www.riverside.courts.ca.gov/PublicNotices/Webex-Appearances-Public-Access.pdf?rev=05-29-2020-05:52:23pm>

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In March 2020, Lifesize enabled users to sign up for a “freemium” subscription.

Effective October 15, 2021, Lifesize required that all “freemium” account holders either become a part of their organization's paid subscription or establish an individual paid subscription.

Can still use a Lifesize Guest application from their website or by joining a meeting as a guest from your web browser.

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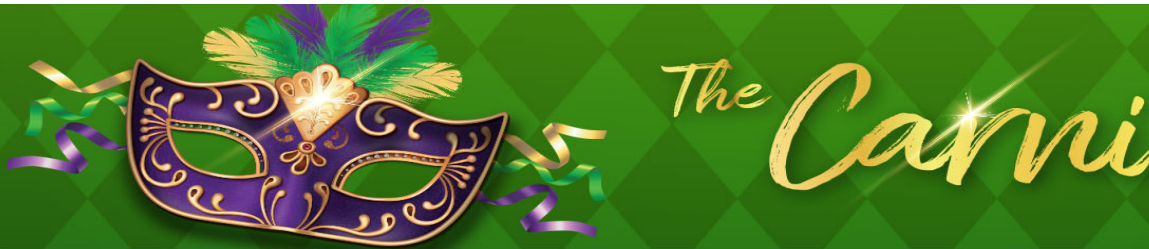
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The Decline and Fall of Court Appearance Decorum

SUMMARY OF ARTICLE BY HON. MICHAEL L. STERN

48TH CONFERENCE & EXPO
February 27 – March 2, 2022





Introduction

The Daily Journal (Thursday - August 19, 2021) published an article by Los Angeles Superior Court judge, The Honorable Michael L. Stern.

In this column, Stern gives several anecdotal examples of how attorneys no longer follow court decorum in the court call age of COVID-19.

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February 27 – March 2, 2022

LOS ANGELES

Daily Journal

www.dailyjournal.com

THURSDAY, AUGUST 19, 2021

LOS ANGELES, CALIFORNIA

COLLEEN TOY WHITE, 1944-2021
Ventura County Superior Court Judge was a champion of community courts.

OSCAR L. BARRON, LARRY T. LOONEY, L.P.
SHERWOOD BUREAU
10000 WILSON AVENUE, SUITE 500
IRVINE, CALIF. 92618-1054

Page 2

Brief says appellate attorneys fear objecting to ruling delays.
Appellate attorney Jan B. Eisenberg argued he has standing to sue the 9th District Court of Appeal over delays in issuing criminal decisions.
Page 3

Let's not forget about criminal justice reform
As we face the most challenging public health crisis of our lifetime, we should not forget how that crisis intersects with and exacerbates another longstanding crisis: mass incarceration. By John Mills
Page 4

5 busy reasons to file and sue your lawyer
Even with the best of communications between client and attorney, legal malpractice cases will be filed. Little California lacks a few "weapons" that shouldn't lead to the filing of a suit.
Page 4

GUEST COLUMN

The decline and fall of court appearance decorum

By Michael L. Stern

As COVID-19 forces counsel to make remote court appearances, an unfortunate casualty of the pandemic is that some attorneys are not observing time-honored professional etiquette and traditional practices of appropriate conduct and dress.

From the first day of law school, it is ingrained in lawyers that legal pro-

fessional conduct or attire draws attention from ritual discourse. Respect is afforded by professional court actions and garb.

While the Los Angeles County Superior Court has adopted a modified "business casual" attire policy for remote appearances, recent experience indicates that some attorneys believe that courts have abandoned all pretenses of formality in dress and

they call in for a remote appearance. Such attorneys fall into various categories.

Dressed for Success: It is understandable that lawyers have hurried down at home during the pandemic and some have neglected their formal wardrobe. But a relaxed dress standard does not justify some attorneys appearing in rumpled polo shirts or t-shirts, as if they have just

have thought about the quality of his representation if he had known that his attorney wore a Old English beer T-shirt, conspicuously punctuated with holes. For that matter, the word should get out to lawyers who think that colorful Hawaiian shirts are acceptable court apparel.

At the other end of the spectrum, there is the gentleman barber who loosened his appearance slightly. If outfitted in a conservative-looking suit jacket, crisp button-down white shirt and a striking red necktie. Before the camera turned off, he noticed his chair had broken. He didn't reveal that he was past wearing pants and was decked out in boxer shorts.

One thing more than one judge has been stumped to open the lin-

esgerens sometimes continue for an entire proceeding.

Sip and Sharp: After many remote appearances, we have learned that it is easier to follow the arguments of attorneys who aren't nervously picking up a coffee mug every 15 seconds to be interrupted with a little more java. For some, the imperative sip-sip-sip of handling a \$4 cup of Starbucks seems more important than arguing a summary.

One lawyer counted down by about finally telling him that the constant sip-sip-sip was "unpleasant" of his coffee cup was outright annoying. But at least that attorney did not have to contend with the worst clients of lawyers, who assert their constitu-

The **Snacksters:** No attorney would dream of spreading out a meal on the counsel table in a courtroom, sit down and eat. So why do some have no hesitation about finishing breakfast or indulging in a mid-morning snack during a video court appearance? Can't they please beg enough to finish their client's vital legal business before resuming their munching? There are too many instances to mention of counsel covertly leaning into a video camera while awaiting on a plumb lunch, which or without cream cheese is uncertain, or chowing down on other delectable delicacies while addressing the court. Some lawyers embarrassedly have had their mouths so full that they could barely respond to

Court appearance decorum gone awry during COVID

Continued from page 1

out is the attorney on video who was listening to the oral argument between other counsel while holding a large ripe banana. He meticulously peeled off the skin, one side after another, and bite-by-bite, methodically chewed on each tasty morsel with obvious satisfaction. The challenge for the judge was to avoid focusing on the banana demolition derby at the expense of missing the salient points of the ongoing argument. A tough one.

Road Runners: It has been said that there are attorneys who practice law by cellphone while driving around town. By noon, they've made enough calls and billed enough time for a week so that they can hit the golf course.

Even if such stories aren't to be believed, driving-while-appearing does happen. But it is hardly conducive to making an effective remote court appearance. The tell-tale sign of this practice is the din of traffic, which can short-circuit everyone's ability to hear. When the court suggests quieting the background racket, counsel have been known to matter-of-factly say something like "I'll shut the window" or "This is a busy part of town." Lawyers should appreciate that the court and opposing counsel have set aside calendar time for important purposes, not an attorney's convenience.

Multitaskers: One's hat must be off for those who can accomplish more than one task at a time. Nonetheless, judges and others are driven to distraction when video-appearing counsel incessantly bang away on their cellphones as court business is conducted.

Are cellphone-wielding attorneys keeping notes on the proceeding? Doubtful. One surmises that they are either catching up on their texting or engaged in the heat of battle of a video game. In-your-face texters drive people nuts. And they never share the importance of their texting or who's winning in the video game.

Mess Makers: One wonders how counsel who appear on video with their desks piled high with paper and bric-a-brac can ever keep things straight. To say the least, such sights are disconcerting. Those who appear drowning in a sea of stuff do not seem to realize that they are not sending the best message to the court or others.

A person's surroundings are a suggestion of who they are. Offering a neutral, non-distracting environment for a video appearance can go a long way towards promoting a good image for the judge and other counsel. It also looks professional and ultimately can lead to better case results.

Cave Dwellers: Perhaps not everyone has a friend good enough to tell them that the poor lighting on their remote video appearance makes it difficult to see them through the dark haze. But a fair number of attorneys could be told that they have been making video appearances where they can be recognized on camera as no more than murky profiles.

Someone should whisper in the ears of the "attorneys of darkness" that there is a cheap fix for this shadowy problem. For the cost of less than a tenth of a billing hour, one can buy a small desk lamp specifically designed for Teams or Zoom calls that will allow an attorney to stand out and shine as the center of attention.

Oblivious to the World: Counsel should be acutely aware of their immediate surroundings when they dial in for a court appearance. There have been myriad odd situations in remote proceedings where the attention has shifted away from the appearing attorney to unusual indoor or outside backgrounds, interesting or bizarre artwork, ringing cellphones and other persons interrupting.

In one instance, an exasperated judge looked behind the kitchen table where counsel had set up his computer and saw piles of dirty dishes in the sink and on a countertop. The immediate thought was "Yuk. How disrespectful. If I could, I'd come right

over and clean up your act." Being judicious, the judge refrained and said nothing. Such circumstances can be avoided with a little thoughtfulness and planning.

No remote appearance ever will be the same as stepping forward to the counsel table and announcing readiness to a court. This surely is the future for many court appearances. But common sense dictates that counsel should do their very best to ensure that their remote appearances are as "court-like" as possible.

For their clients' interests and their own professional benefit, attorneys should strive to make remote court appearances really count. This requires thinking twice about the true meaning of the expression "making an appearance." ■

Michael Stern is a Judge of the Los Angeles County Superior Court.

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DRESSED FOR SUCCESS

- Although the LA Superior Court has adopted a modified “business casual” attire, it does not justify attorneys appearing in rumpled polo shirts or t-shirts
- One attorney appeared wearing a Dos Equis beer T-shirt conspicuously punctuated with holes
- Hawaiian shirts have also made an appearance
- Another attorney rolled away from the camera too quickly and revealed that while he was conservatively dressed in a suit and tie, he was wearing nothing but boxer shorts on his bottom half!



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February 27 – March 2, 2022

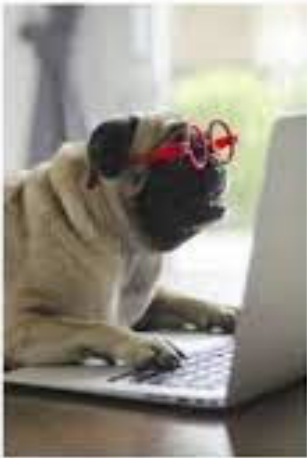
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DOG DAYS & BATH TIME

Zoom meeting,
with video



Zoom meeting,
audio only



A cat was also
seen bathing
itself in the
background
throughout the
entirety of a
court call



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SIP AND SLURP

- It is much easier to follow an attorney's argument when they aren't nervously picking up a coffee mug every 12 seconds
- One lawyer countered with a shot at opposing counsel by finally telling him that the constant "weight-lifting" of his coffee cup was annoying
- Many lawyers have also taken to asserting their constitutional right to guzzle their brew in large, noisy gulps



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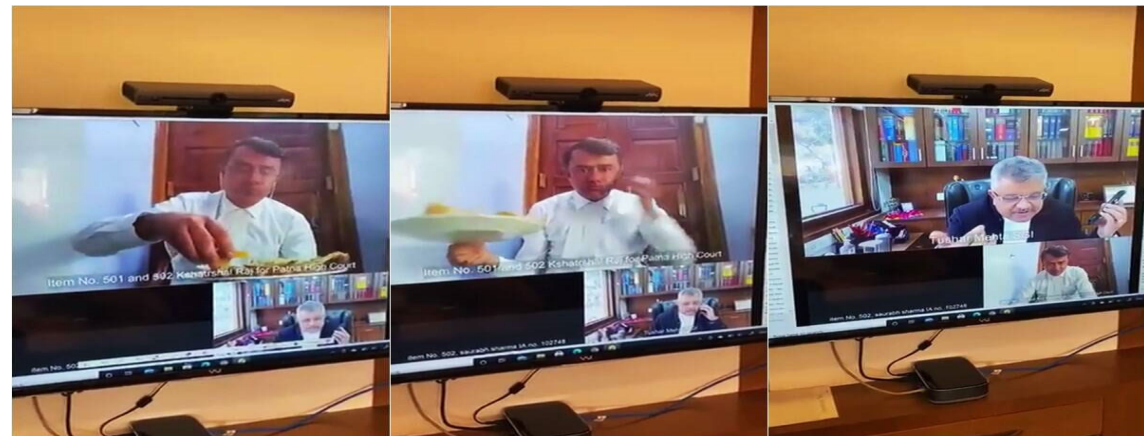




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THE SNACKSTERS

- If you were in a court room, would you be eating your lunch on the counsel table? No. But that doesn't stop attorneys from indulging during a video call!
- Many instances of counsel leaning into the camera while munching on a bagel or chowing down other delicacies while addressing the court. One lawyer had his mouth so full, he could barely respond to a question



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ROAD RUNNERS

- Regardless of what you've heard, driving-while-appearing does happen.
- The telltale sign is the din of traffic which can short-circuit everyone's ability to hear
- They are known to matter-of-factly state:
 - *"I'll shut the window"*
 - *"This is a busy part of town"*



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MULTI-TASKERS



- Judges are driven to distraction when video-appearing counsel incessantly bang away on their cellphones
- Are cellphone-wielding attorneys keeping notes on the proceeding? Doubtful.
- They're likely catching up on their texting or engaged in the heat of battle of a video game!

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MESS MAKERS

- Those Attorneys who appear drowning in a sea of stuff do not realize that they are not sending the best message to the court or others
- A person's surroundings are a suggestion of who they are.
- Appearing with clutter in the background or on their desk, make one question if the attorney can keep things straight.
- Offering a neutral non-distracting environment is much more professional and can go a long way towards promoting a good image for the judge and other counsel.



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CAVE DWELLERS

- A fair number of attorneys have been making video appearances where they can be recognized on camera as no more than murky profiles
- For the cost of less than a tenth of a billing hour, these “attorneys of darkness” can buy a small desk lamp that will allow an attorney to stand out and shine as the center of attention.



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Oblivious to the World

- Counsel should be aware of their immediate surroundings when they dial in for a court appearance
- There have been many odd situations where the attention has shifted away from the appearing attorney to unusual indoor or outdoor background noise, bizarre artwork, ringing cellphones, and other persons interrupting



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Think Twice About The True Meaning Of “Making An Appearance”

- No court appearance will be the same as stepping forward to the counsel table and announcing readiness to the court, but common sense dictates that counsel should do their best to ensure that their remote appearance is as “court-like” as possible.
- Attorneys should strive to make remote court appearances really count.



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Not Best Practices - Trial

Screen name:

Michigan judge boots man with
'Buttfucker 3000' as screenname from
Zoom hearing

<https://www.metrotimes.com/news-hits/archives/2021/05/12/michigan-judge-boots-man-with-buttfucker-3000-as-screenname-from-zoom-hearing>



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Not Best Practices – Oral Argument

Use the mute button:



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Not Best Practices - Trial

Appropriate court attire:



←This is the Judge!

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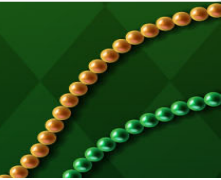
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Not Best Practices - Trial

Virtual backgrounds:



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Not Best Practices - Trial

One client was in a bikini by a pool while another chugged a beer. ([Louisville Courier Journal](#))

A lawyer fell asleep and began snoring loudly during motion hour. ([Louisville Courier Journal](#))

A lawyer smoked a cigar during docket call. ([Louisville Courier Journal](#))

A lawyer enjoyed a glass of wine at a hearing about a parent's problem drinking. ([Louisville Courier Journal](#))

Several participants have shown up naked, including one defendant without pants. ([Louisville Courier Journal](#))

A client who had been in a car accident did her Zoom deposition while driving. ([Louisville Courier Journal](#) and [ABA Journal](#)).

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Best practices - Trial

- Courtroom behavior and appearance are expected to be the same as in-person proceedings.
- All participants should be in separate/remote locations, but if participants choose to be in the same location, each individual must have a separate camera so that the court can see all participants simultaneously.
- All participants should appear via both video and audio with their cameras always on and operational, unless otherwise instructed.
- Nonspeaking participants should mute their microphone to allow the video feed to focus on the participants that are speaking.
- All participants should exchange contact information, such as cell phone numbers and/or email addresses, with the court prior to the appearance and discuss a protocol for reconnecting if any technical issues arise.

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The *Carnivale* of Risk

Best practices - Trial

- Witnesses that testify remotely should be required to swear or affirm that they will not communicate with or receive messages from attorneys or others while testifying.
- Witnesses that testify remotely may be required to turn off or render inoperable or silent any electronic devices, other than those used to participate in the virtual trial.
- To ensure proper protocols, the court may ask to view the room in which the witness is testifying prior to the testimony beginning, and periodically thereafter.
- Consider requesting that witnesses push back from the table with their arms and upper torso visible.
- No one may take photographs or recordings of the proceedings.

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The *Carnivale* of Risk

Best practices - Trial

No one may take photographs or recordings of the proceedings.

ADVISORY:

Several court hearings are being conducted virtually. Virtual hearings SHALL NOT be photographed, recorded (audio or video), or rebroadcast without prior written judicial authorization consistent with California Rules of Court, rule 1.150, and San Diego Superior Court General Order of the Presiding Department, Order No. 010121-02. Any unauthorized recording, photography, or rebroadcast without prior written judicial authorization may be a basis for a citation for contempt of court or an order imposing monetary or other sanctions as provided by law. (Cal. Rules of Court, rule 1.150(f).)

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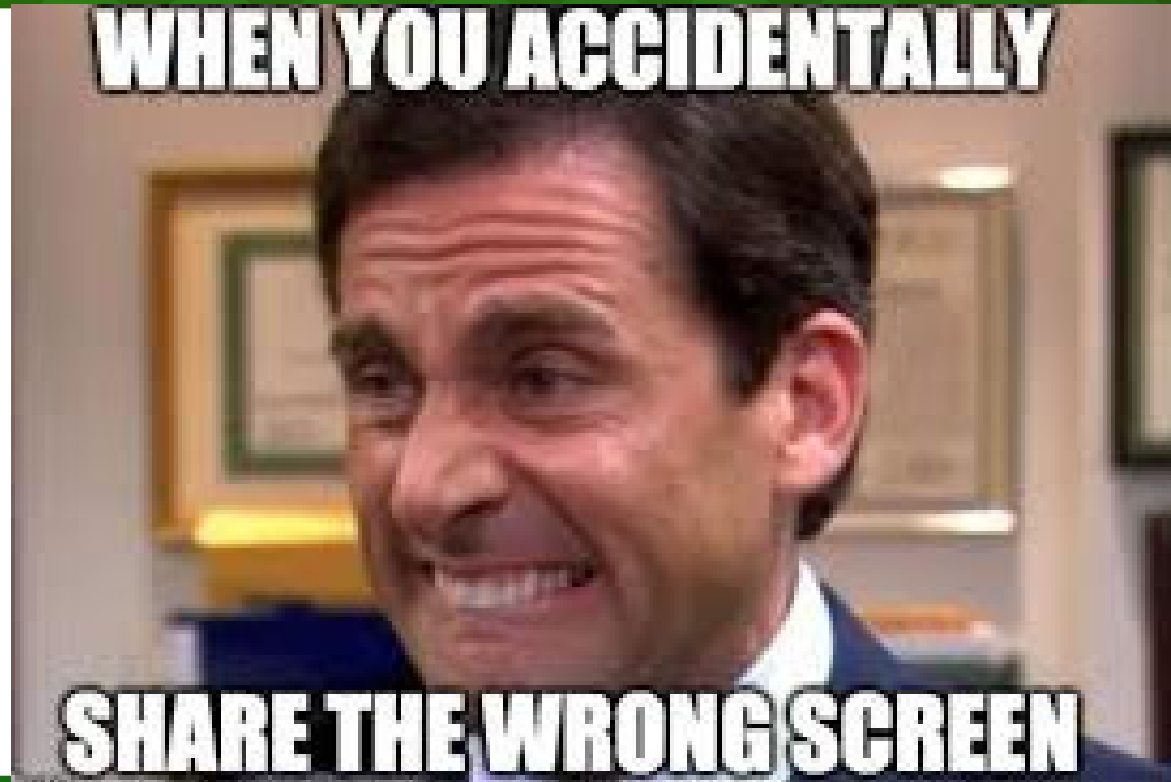




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Best practices - Trial

Close down unneeded programs:



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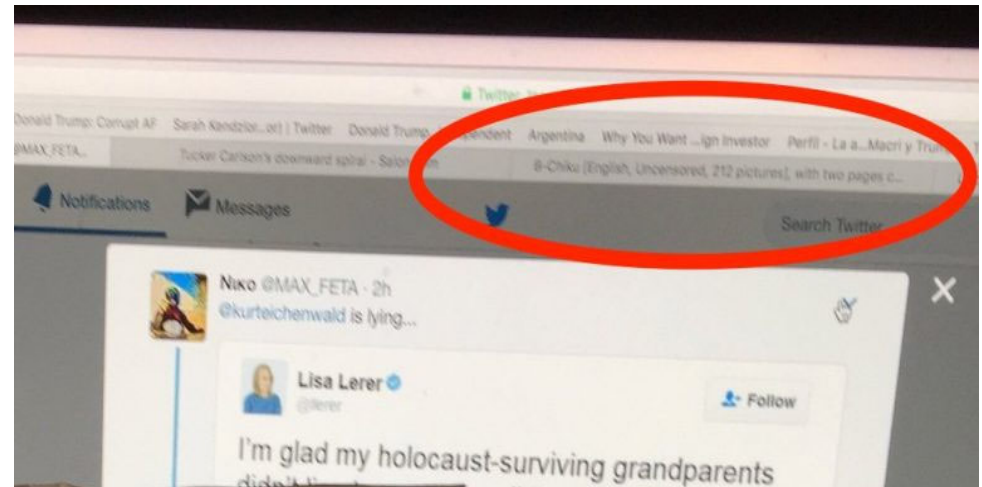
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Best practices - Trial

Close unneeded files:



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Best practices - Trial

Find a private and quite space:



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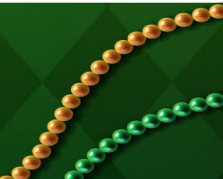
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Best practices - Trial

Find a private and quite space and lock the door:



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The *Carnivale* of Risk

Best practices - Depositions

- All participants should appear via both video and audio with their cameras always on and operational, unless otherwise instructed.
- Nonspeaking participants should mute their microphone to allow the video feed to focus on the participants that are speaking.
- All participants should exchange contact information, such as cell phone numbers and/or email addresses, with the court prior to the appearance and discuss a protocol for reconnecting if any technical issues arise.
- Witnesses that testify remotely should be required to swear or affirm that they will not communicate with or receive messages from attorneys or others while testifying.

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The *Carnivale* of Risk

Best practices - Depositions

- Witnesses that testify remotely should be required to turn off or render inoperable or silent any electronic devices, other than those used to participate in the virtual trial.
- Ask to view the room in which the witness is testifying prior to the testimony beginning, and periodically thereafter.
- Consider requesting that witnesses push back from the table with their arms and upper torso visible.
- No one may take photographs or recordings of the proceedings.
- Have Exhibits ready and easily accessible during deposition. (PDFs in an accessible file, video ready).
- Close background programs.

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The *Carnivale* of Risk

Best practices - Depositions

- In an in-person deposition, you would be entitled to look at any notes that the witness has brought to the session, and would know if counsel is coaching the witness. In a remote deposition, it is not possible to be sure that the witness is consulting notes taped to the screen or wall across from him, or covertly receiving text messages from his attorney.
- Have the witness testify on the record at the beginning of the deposition that he has no programs open and will not be consulting any notes, texts, emails, chats, or anything of the sort during the deposition. Close with this as well confirming that they did not.
- Request that the witness identify all persons in the room for the court reporter.

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Best practices - Depositions



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Best practices - Depositions

- Manage screensharing options. In Zoom, change screensharing to "Host Only."
- Auto-Lock Personal Room for secure meetings. This prevents all attendees in your lobby from automatically joining the meeting. The host will see a notification when attendees are waiting in the lobby and, as host, will need to authorize the attendees to join. In Webex this can be done from My Webex > Preferences > My Personal Room on your Webex site.
- Do not share a link to a video teleconference or classroom on an unrestricted publicly available social media post. Provide the link directly to specific attendees.
- Do not allow attendees or panelists to join before host. This setting is typically set by default by the Site Administrator for meetings.
- Consider a hybrid depo to resolve technical issues (i.e., one party at court reporter's office).

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Best practices - Depositions

- Consider turning on the “waiting room” feature for your meeting so that you can scan who wants to join before letting everyone into the conference.
- Set Personal Room Notifications before a meeting to receive an email notification when attendees are waiting for a meeting to begin. You will then be able to review the participant list and expel any unauthorized attendees.
- Lock the meeting once all attendees have joined the meeting. A lock will prevent additional attendees from joining. Hosts can lock/unlock the meeting at any time while the session is in progress.
- Use Entry and Exit Tones or Announce Name Features to prevent someone from joining the audio portion of your meeting without your knowledge.
- Require no masks. The ability to address demeanor is critical in determining credibility.

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The *Carnivale* of Risk

Best practices - Depositions

- Do not assume you can just record the deposition so it would be redundant to hire a videographer to record the session. Violates FRCP 28 and 30
- Zoom records the entire screen with every participant visible rather than just focusing on the witness.
- Zoom is not turned on and off when the parties go on and off the record.
- Zoom recordings cannot be used as evidence at trial because they can be manipulated by anyone who has access to the recording
- Zoom recordings can easily be edited. The Zoom website states "Lucky for you, the Zoom recording formats – MP4 and M4A – are easy to edit in virtually any editing software".
- There is no impartial party monitoring zoom recording for sound levels and quality.

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Virtual Litigation is the New Normal



Pandora's box has been opened, and there is no going back!

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Complete Session Surveys on the App

Find the App, Click on Events, Click on Browse by Day, Click on the Specific Session, Click on Rate Event. See Below for Screen Shots.

