

PROCLAMATION

First Judicial District Bar Association

MAY 2021

2020-2021

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1st Judicial District Bar Association
PO Box 1733 Wheat Ridge, CO, 80034
303-279-5568 Phone and Fax
Web Site: 1stjd.org
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JAMS -NEUTRALS YOU KNOW,
PROFESSIONALS YOU CAN TRUST

Open House July 1

2021-2022 1st JD Bar Association
Board of Trustees and Board of
Governors



PRESIDENT'S COLUMN

Samantha Lillehoff

“Even if remote work turns out to be less productive on some metrics than others, reducing carbon-based emissions or the improving work-life balance could make up for it.”

— Mark W. Johnson and Josh Suskewicz, Harvard Business Review

In a post-COVID world, remote work is not only acceptable, but likely inevitable. Some have been more enthusiastic than others about this change in professional norms. Many advantages of remotely practicing law have become apparent since February 2020: increased productivity for some, lessened distractions, no commutes or resulting health and environmental impacts, reduced client costs, and more opportunities to work and/or live in new markets and locations, to name a few. On the other hand, some have also experienced drawbacks, like increasingly obfuscated boundaries between “work” and “home,” the health and financial costs of inadequate home office set-ups, and the professional impacts of decreased face-time and networking opportunities with clients and colleagues. The extent to which working from home could be a benefit or a detriment seems like it would vary greatly between one attorney and another, let alone from one practice area to another. In a perfect world, I think, legal professionals would be able to choose for themselves whether and how frequently to work from home.

Apart from personal and practical considerations, there are ethical implications to remote work that all attorneys should keep in mind. The American Bar Association’s Standing Committee on Ethics and Professional Responsibility gave guidance regarding these ethical implications when it issued Formal Opinion 498 on March 10, 2021.¹ Formal Opinion 498 states that, “[w]hile the ABA Model Rules of Professional Conduct permit virtual practice, the Rules provide some minimum requirements and some of the Comments suggest best practices for virtual practice, particularly in the areas of competence, confidentiality, and supervision.” (Emphasis added.)

Concerning competence, ABA Model Rule 1.1’s mandate that attorneys practice competently has unique implications in the context of remote work, like requirements concerning an attorney’s knowledge of VPN technology, secure internet connections, file encryption, and automatic vs. manual backup of emails and work product. Turning to confidentiality, ABA Model Rule 1.6 describes a lawyer’s duty of confidentially

¹ https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-498.pdf

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Presidents Column

to all clients and the corollary duty to “make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” Thus, attorneys working remotely must take care to prevent family, friends, or other visitors of the attorney’s home from overhearing confidential conversations or accessing sensitive documents. It is also worth considering whether, in the interests of confidentiality and privilege, any smart home listening technology, like Alexa, should be disabled or removed from the home. Regarding supervision, ABA Model Rules 5.1 and 5.3 detail an attorney’s ethical obligations to properly supervise subordinate attorneys and nonlawyer assistants. Attorneys should proactively consider how to address the challenges of supervising subordinate attorneys and nonlawyer assistants while some or all of these parties work remotely. How frequent should telephonic or video check-ins occur? How proficient are you in giving, and your subordinate in timely responding to, instructions sent via email?

In addition to the concerns of competence, confidentiality, and supervision, remotely practicing attorneys should take care to ensure compliance with other professional and legal requirements. For example, attorneys who are physically present in one state and working remotely for an employer or on a matter concerning another state or jurisdiction should take care to not run afoul of policies like ABA Model Rule 5.5’s provisions governing the unauthorized and/or multijurisdictional practice of law. Another example concerns those of us representing clients subject to Colorado statutory requirements governing open meetings and preservation and disclosure of public records. In these circumstances, both attorneys and clients should take care to avoid noncompliance with applicable statutory requirements when using virtual meeting technology like Zoom or using text communication apps that either automatically self-delete or do not automatically save all text communications.

We are almost certainly going to be impacted by remote work indefinitely, whether we, our colleagues, our judicial bodies, or our clients work remotely for some or all of the time. By taking into account the ethical considerations unique to attorneys, as well as personal and practical factors, we can use remote work as a tool to facilitate our professional and personal flourishing.

Article from the May 9, 2021, Denver Post By Shelly Bradbury

JeffCo DA is first in Colorado to review past convictions for equity, not just innocence.

Two other Colorado prosecutor's offices have conviction review units, but they only focus on claims of innocence

Seven years ago, John Eastman cashed a forged \$163 check at a bank in Arvada, presenting a stolen driver's license to the teller.

He was caught and pleaded guilty to identity theft. Because of his extensive criminal history, he was classified as a habitual offender and sentenced to 24 years in prison.

"Frankly, a long time ago Mr. Eastman was thrown away as a human being and never given a chance," said Jenn Kilpatrick, director of conviction integrity and equity at the First Judicial District Attorney's Office in Golden. "And that is unfair."

Kilpatrick is heading the fledgling Conviction Integrity Unit formed this year by newly elected District Attorney Alexis King. The unit is the first in Colorado to consider not only claims of actual innocence — people who say they were wrongly convicted — but also more general claims of inequity or injustice in sentencing, according to the National Registry of Exonerations, which tracks units across the country.

To read the entire article go to:

<https://www.denverpost.com/2021/05/09/colorado-conviction-integrity-unit/>

SAVE THE DATE

**1st JD Bar Association Day of Golf at Hiwan Golf Club
Thursday, September 23, 2021 Shotgun start 12:30
Happy Hour after the event
DETAILS TO COME**



1ST JD BAR ASSOCIATION
Virtual CLE
Monday June 14, 2021
12:00 pm – 1:00 pm

CLE Members \$10 Non- Members \$15



**Help Me Help You:
A Mediator's Guide to Successful Mediation
Presented by Justin Ross, Ross & Associates, P.C.**

Virtual CLE Presented via Ring Central
Register at

<https://1stjd.org/events/#!event/2021/6/14/help-me-help-you-a-mediator-a-pos-s-guide-to-successful-mediation-presented-by-justin-ross>

OR
admin@1stjd.org

Sign in information will be sent to you after registration.
CLE Credit Requested

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410 17TH STREET, #2440 • DENVER, CO 80202
WEB: jamsdenver.com • PHONE: 303.534.1254



BRADLEY DEVITT HAAS & WATKINS, P.C.

GOLDEN LAWYERS



OPEN HOUSE
Thursday, July 1, 2021
4:30 - 7:00

2201 Ford Street
Golden, Colorado 80401

Serving beer, wine, soft beverages and water
along with light hors d'oeuvres

The Open House will be hosted in compliance
with the governor and local mandates
regarding masks and/or social distancing.

Please register here

<https://1stjd.org/events/#!event/2021/7/1/open-house-july-1-2021-4-30-to-7-00-at-bradley-devitt-haas-and-watkins>

Welcome your 2021-2022 Board of Trustees and Board of Governors

First Judicial District Bar Association Board

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