

# Tennessee Bar Association 32<sup>nd</sup> Annual Health Law Forum

## Practicing Law in "Covidland"

Lucian Pera, Adams and Reese LLP  
Phil Pomerance, Best Practices Inpatient Care Ltd.  
Sheree Wright, Vanderbilt University

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## **HYPOTHETICAL: And so it begins...**

Carroll Edward is an attorney practicing with a medium sized firm in Nashville, Tennessee. He, along with the entire firm, switched to remote work in March due to the COVID-19 pandemic. He has been working from his home office (the bonus room) since then with his family. His spouse, Samantha Safely, is an in-house attorney with a health care company, Safer Solutions, which also is working remotely from the home office. They have 2 dogs and a 4-year-old son, who is at home while the preschool is closed. Their son has learned to read and answer the phone.

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Carroll and Samantha have been diligently figuring out the logistics of working at home. Samantha is using the home office (which she locks when she is not in it) as she regularly deals with PHI protected under HIPAA. Carroll is working in the bonus room where their son typically plays and does some preschool work online.

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They use the shared home network, and if they have a laptop meltdown, they sometimes use the home computer or their personal iPad. They each have different types of security protocols and are sharing the home printer when they need to have something in hard copy. They "think" that the home network in addition to the security protocols are effective but haven't really asked. The firm has no in-house tech support beyond the basics, and Samantha's tech support is available, but overwhelmed. They have both received basic information and have followed those instructions.

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Several people in their neighborhood have been hacked. They suspect the down time for high school and college students doing remote classes may be the contributor and it very well may be someone in the neighborhood. They figure that they have done enough, but don't ask questions or take further actions.

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Carroll and Samantha regularly have phone or zoom calls during the day. Sometimes, they can hear the other person's call. Carroll has begun to use noise cancelling headphones to allow him to focus better, but Samantha hates wearing them.

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Carroll has a litigation practice and has been doing mediations and depositions via teleconference or videoconference. When he does so, he is self-conscious about wearing the headphones, so typically goes to the quietest room in the house and shuts the door. Sometimes, his wife or son wander in, but are typically very quiet.

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Carroll and Samantha make it a point to not discuss their work, which they had as a family rule before the pandemic. However, it is more difficult when there is no one else around in person. They make a point not to read any materials related to the other person's work and have very different "looks" to the materials they print. They merely give them to the other person if things arrive at the printer at the same time.

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Due to the demands of the family and the lack of support staff for either person at home (although they are available remotely), both of them are having trouble prioritizing and keeping track of deadlines. In fact, Carroll missed a response deadline to a Motion for Summary Judgment when he was having an especially busy time with a major discovery deadline in another case. He has "hit the wall" and has asked if he and his support staff can move back to the office. He has also notified his malpractice carrier.

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They are both still at home. Their son has answered the phone a few times when they were out of the room. So far, there have been no problems. However, they also found him coloring on some confidential documents related to an alleged HIPAA breach which he must have picked up while both of them were on a conference call. They don't think that he understood many of the words, but he did ask what was wrong with "Jane" who had to have a "MRI" for something called "cancer."

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After several months, Carroll and Samantha decide that they need reinforcements and a change of venue. They take a vacation at the grandparents' farm in the state of Alpha, where neither of them is licensed. The trip goes well, and the grandparents are thrilled to have their grandchild on the farm. Carroll and Samantha can practice while they are there without interruption, so they decide to stay for a few months until there is a vaccine widely available. Their supervising attorneys are aware of the location change, but not their clients. Given the virtual office, and the use of virtual backgrounds on video calls, no one even notices.

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Both of them are having trouble communicating effectively with their coworkers and clients. Despite technology, they miss the opportunities to walk down the hall to someone's office or have a face to face meeting. Due to the communications challenges, Carroll has started scheduling regular calls with his clients after one of the firm attorneys received a complaint filed with the Board of Professional Responsibility for a lack of communication regarding a pending suit.

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