

## President's Column:

By Jennie A. Eichelberger



Welcome 2021! I think most everyone will agree with me when I say that I'm happy to say good-bye to the year 2020!! At this time last year, we had

no idea of the challenges that would present itself to us as individuals, our community, and our profession. As I reflect on the past year, I am proud of the obstacles that we overcame and our accomplishments. The upcoming year is full of potential.

Our CABA Board was sad not to be able to hold our Annual Christmas Party due to the COVID-19 numbers. However, we were pleased to be able to match the donations from our members for Toys for Tots. I am pleased to

announce that CABA raised \$2,400 for the Toys for Tots program. Thank you to everyone who donated this year—there was more of a need this past year than ever before.

Starting this month, CABA will be bringing more virtual CLEs to you. Look for an announcement in the upcoming weeks about those opportunities. Once again, these virtual events will be at no cost to our members. Planning continues for our Annual Golf Tournament and the Evening Honoring the Judiciary. We are hopeful that both events will be able to happen as live, in-person events.

I want to give a special thank you to all of the members of CABA's Board, our Executive Director, and our committee chairs and co-chairs. All of these individuals are putting in hard work to make this year a success and bring quality events and programs to you, whether virtual or in-person. 🎯

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- 3 How Zoom Has Changed Litigation, Even at Trial
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## Upcoming Events

**March 22, 2021**

Golf Tournament

**May 13, 2021**

Evening Honoring the Judiciary

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Happy  
New Year

to you and your family!

# The Year of the Asterisk\*

By Terryl Rushing

Pity the 1972 Miami Dolphins. Theirs is the only unbeaten season in the history of the National Football League. But in any list of noteworthy football accomplishments, some football geek will insist on an asterisk after the Dolphins' name there. Why? In 1972, the NFL only played fourteen regular season games. Granted, the Dolphins won them all, as well as two post-season games and the Super Bowl, but that's only seventeen games. Going down the list, you get to the 2007 New England Patriots, who went through eighteen games without a loss. But they get an asterisk, too, since they lost the Super Bowl. (And then there is the strike year, *see The Replacements.*)

Merriam-Webster defines the asterisk as “the character \* thought of as being appended to something (such as an athletic accomplishment included in a record book) typically in order to indicate that there is a limiting fact or consideration which makes that thing less important or impressive than it would otherwise be.” An asterisk, therefore, means that there is something unusual about the circumstances surrounding a statement of fact that should be taken into consideration in assessing its merit. Kind of a “yeah, that’d be impressive, except...”

The Olympics have not gone asterisk-free. In 1980, the United States and several of its allies boycotted the Olympics, allegedly because the Soviet Union invaded Afghanistan. Actually, it was because *we just don't like them*. In 1984, the Soviet Union and several other communist countries boycotted the Olympics, because *they don't like us, either*. What that means, I'm afraid, is that any swimming medal awarded in 1980 and any figure skating medal awarded in 1984 is suspect and deserving of an asterisk.

In the same vein, *anything* that happened in 2020 deserves an asterisk. Sports, of course, took a big hit. This will forever be the season that started late and was truncated early. Teams played with skeleton crews, without their fans,

and, occasionally, without their coaches; playoff teams were sequestered and had only cardboard cutouts and soundtracks to spur them on. In my opinion, all coaches should get a pass for this impossible year, but I'm not the athletic director for Auburn or South Carolina. And if they offered me the job, that would justify a HUGE asterisk. Maybe four or five, along with some exclamation points.

But life is not just about sports, even though many SEC fans would disagree. What about school? This is the year of the virtual asterisk. Are the kids learning anything, other than that their Wi-Fi sucks? I saw a cartoon the other day where a kid was trying to hold completely still for thirty minutes, so his teacher would think his screen froze. Shouldn't all standardized test scores this year come with an asterisk? And what about the kid who brags about having the highest grade in the class? Is he *really* the smartest kid in class, or did his dad shell out for a mesh router?

What about other annual rituals? Take the Miss America Pageant, for example. “And the winner is... Miss American Samoa!” “The first runner up is... well, there is no runner up, there are no other contestants. American Samoa was the only American territory with a low enough Covid number to send a candidate.” (They had no cases as of October; I checked. Of course, they've also shut down the islands.) Here's another unrelated but interesting fact, just chunked in here for free: It has been estimated that a male of Samoan descent is anywhere from 40 to 56 times more likely to play for the NFL than a non-Samoan American. But enough about football. I guess.

On the other hand, there are areas that thrive in the pandemic, but also need an asterisk. PPE manufacturers will likely never see this level of sales again, and someone will need to tamp down the stockholders' expectations. Same with food delivery services and, well, delivery services of any kind. Because of the need to work from home (finally, it pays to be a geezer), office equipment sales must

be booming. Have you tried to find a good webcam lately? I've tried to position my tablet every way I can devise to get a flattering shot for Zoom, but it's not working. Maybe I've just aged ten years in the last nine months.

And, speaking of appearances, I'd like an asterisk next to any medical examination record from this year that mentions weight. I'm from the “here, hold my earrings” school of weight-taking at the doctor's office, and the Quarantine Fifteen is no joke. In fact, when you're five feet tall, the Quarantine Five is noticeable. On the one hand, my schedule has become so wonky that I'm down to one or two meals a day. On the other hand, the entrée is often chips, and the meal can last an hour or two. You may have disciplined yourself not to eat at your desk at the office, but when your desk is the sofa...

To add to the problem, many of us gym regulars have accepted that a face mask and a vigorous workout are antithetical. So, despite desperately missing our exercise buddies, we've plunked down money for some semblance of a home gym. For most of us, that “plunking” was modest—a yoga mat, a couple of weights, new shoes, and three or four running/walking routes mapped through the neighborhood. Well, okay; if you're walking where your neighbors can see you, maybe a new outfit or two. Others “plunked” at a much more extravagant level; Peleton reported its first ever quarterly profit this year, based on a 172% surge in sales, and it now has more than one million subscribers to its streaming classes. Its shares are up more than 220% this year, and somebody'd better be inserting giant, boldface asterisks into *that* annual report!

Church attendance has taken a hit. Some denominations have removed guilt from the situation by decreeing that there be no in-person services. Just like those Zoom meetings where the below-the-waist wardrobe pretty much consists of sweatpants, there's a lot of “pajama church” going on in front of the TV. Some of us have been dispensed of the obligation to attend church, but habit and guilt (did I mention I'm

*Continued on page 3...*

Catholic?) keep some of us showing up. I used to believe that, if I had a fatal wreck on my way to church (in true Roman tradition, I'm *always* running late), I'd go to heaven. Now, I'm thinking that catching Covid in the pew might have the same effect. I'm hoping God is putting an asterisk there.

There is one real, personal benefit to the pandemic. While masked, we're almost unrecognizable. Now, when you see someone at Kroger early in the morning—before a shower and eye makeup—you can scoot past them (six feet away, of course) and hope that they *thought* they recognized you, but

maybe it wasn't... Yeah, it was me, but put an asterisk there.

Mentally and emotionally, we're putting an asterisk beside too many personal milestones: the funerals we couldn't attend, the weddings with no attendants, the visits to the hospital that we could not make, the missed births, graduations, birthdays, and welcome home, soldier celebrations. For each of us, in our life stories, 2020 is full of events that we would have been a part of, if it hadn't been for Covid. We'll have to mark those voids with an asterisk.

So, it's a weird world out there, Bucky, but this will pass. And when it does, we'll

hug and shop and visit and dance (with other people, even). And 2021 will be the year of life, let's mark it with the right symbol-♀ (alt 9765). Stay hopeful, my friends!♀

*\*The Covid 19 Pandemic of 2020 has been a heart wrenching, gut wrenching ride for so many, it almost seems wrong to write an article that pokes fun at any part of it. But humor reminds us that we are still human, still bound together on this planet, and we will get through this, somehow. There is no intent to mock anyone who has suffered, but only to give a momentary smile and respite from this viral nightmare. 🍀*

**SAVE THE DATE**

**May 13**

An Evening HONORING the  
**JUDICIARY**  
Banquet

Thursday, May 13, 2021

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### 2021 HOLIDAYS

- January 1 . . . . . New Year's Day
- January 18 . . . . . Robert E. Lee and Dr. Martin Luther King, Jr.'s Birthday
- February 15 . . . . . George Washington's Birthday
- April 26 . . . . . Confederate Memorial Day
- May 31 . . . . . National Memorial Day and Jefferson Davis's Birthday
- July 4 . . . . . Independence Day
- September 6 . . . . . Labor Day
- November 11 . . . . . Veteran's Day
- November 25 . . . . . Thanksgiving Day
- December 25 . . . . . Christmas Day

# Zoom Expands What’s Possible in Litigation But Has Its Limits

By John F. Hawkins<sup>1</sup>



Zoom was one of the shows we watched on PBS when I was a little boy in daycare only because Sesame Street wasn’t on. About all I can recall is the refrain from the theme song and the fact that it *wasn’t* Sesame Street. Sesame Street had cool stuff like Stevie Wonder and his soulful band playing *Superstition* and Paul Simon doing *Me and Julio Down by the Schoolyard*. B.B. King and Johnny Cash appeared on Sesame Street. None of that happened on Zoom. But PBS was one of only four television stations at the time and the only one targeting children with educational shows—so we watched Zoom.

Now, Zoom means something entirely different to me—in many ways, it has made law practice possible in the COVID-plagued year 2020. Like many of you, I have had many meetings over Zoom that otherwise could not have safely taken place. I have had numerous Court hearings and conferences, including pretrial conferences with Federal Court Judges. I have participated in several successful mediations over Zoom. I have taken discovery depositions, defended expert depositions, and taken trial depositions over Zoom.

More recently, I tried a medical malpractice jury trial in Rankin County Circuit Court during which several experts were “Zoomed in” live to give testimony. This was a complicated

medical malpractice birth injury case and my colleagues Shane Langston, Esq. and Justin Broome, Esq. and I did not expect to try the case this year. But we were able to try the case and get justice for our clients in no small part due to our ability to call experts from across the country to testify by Zoom.

Rankin County Circuit Court Judge Dewey Arthur made it clear that, despite the pandemic, we would try the case this year. When we showed up for the trial on Monday morning November 16, masks on, he announced that, despite the number of expert witnesses and complexity of the issues (including the complexity of the technological issues in the courtroom), we would be done by Friday the 20<sup>th</sup>. Judge Arthur ran his Courtroom efficiently and we concluded the case with plenty of time for the jurors to deliberate, deliver the verdict and easily get home for supper Friday evening.

I’ve seen it written elsewhere that the pandemic has hastened the development and use of Zoom and other technological advancements. Many firms are questioning the need for lavish offices when it has been demonstrated we can successfully conduct business remotely. I have talked with some “old school” lawyer friends who insist that they need to be in the same room with a witness to depose them. There are certainly some situations where the in-person deposition is preferable.

However, from my perspective, I can save my client (and myself) a great deal of time and money using Zoom. As many of you have experienced, it is easy to use exhibits in a Zoom deposition if you prepare in advance. The problem of getting a document dump from the other side the morning of the deposition is exacerbated when trying to depose someone over Zoom—but, then again, it’s much easier to adjourn the deposition and resume later over Zoom should a serious document issue come up or if the parties need court intervention to address a discovery issue.

Zoom is also a great service for mediations—adjusters and litigants from various parts of the state and country can attend the mediation without incurring the time and expense of traveling. Lawyers and their clients can easily move between joint sessions and their own breakout rooms for confidential discussions between themselves and with the mediator and get business done. Gone are the days when mediation cannot be scheduled due to an adjuster or corporate counsel being unable to attend because of travel constraints.

Perhaps most importantly, Zoom allows for the presentation of live witness testimony at trial when travel and in-person meetings are not only expensive and time-consuming but also dangerous. It’s not always ideal and problems will arise. For example, when defense counsel announced in our recent trial that his first expert would testify live via Zoom, I wasn’t sure how I would be able to effectively use documentary evidence during cross. Counsel opposite was accommodating, telling me we were welcome to use his IT guy but “just make sure to get the exhibits you intend to use to him in advance so he has time to load those in the system...” Not ideal.

Another example where Zoom is not ideal is where you need your most important expert witness to meaningfully connect with the jury and teach them about the important issues in the case. Like the problem of showing the jury a video trial deposition, a witness testifying over Zoom simply cannot connect with the jury like she can in person.

Overall, in my experience, Zoom is a valuable service and helpful to law practice. Now, do yourself a favor—go to YouTube and pull up Stevie Wonder doing *Superstition* in 1972 on PBS and remind yourself why Sesame Street is much cooler. 🟩

1. John practices in the areas of personal injury, medical and nursing home negligence, civil rights, employment law, insurance litigation, commercial litigation, healthcare fraud and False Claims Act cases. John is the principal of Hawkins Law P.C., located in Jackson, MS.

# Governor Proposes Phase Out of the Mississippi Income Tax

By Nathan Smith, J.D., LL.M.<sup>1</sup>



Appreciably hot on the heels of Mississippi's largest tax cut, passed in 2016, Governor Tate Reeves has now proposed the complete phase out of the individual income tax in his budget proposal for FY2022. The proposal builds on the 2016 legislation by phasing out the top income tax rate of 5% by 2030, revenue permitting.

Mississippi's income tax was originally passed in 1912. It was, and still is, a graduated income tax, although the current brackets are laughable. The first \$2,000 of income is not taxed. The next \$3,000 of income is taxed at 3%. The next \$5,000 of income is taxed at 4%, while any remaining income over \$10,000 is taxed at 5%. Although the brackets produced a graduated result in 1912, today they only serve to add an additional \$290 of income tax liability for taxpayers earning over \$10,000 in a calendar year.<sup>2</sup>

Any discussion of the Governor's FY2022 tax proposals must necessarily begin with a description of the 2016 legislation, the "Taxpayer Pay Raise Act." Relevant to our discussion, that legislation eliminated the 3% tax bracket in stages. In 2020, the 3% bracket begins at \$3,000 of income. Then, in 2021, the 3% bracket begins at \$4,000. Finally, in 2022, the 3% bracket will be eliminated completely.<sup>3</sup> The net effect of this phase out is a tax savings for the individual taxpayer that amounts to (ahem) \$60 per year, beginning in 2022.

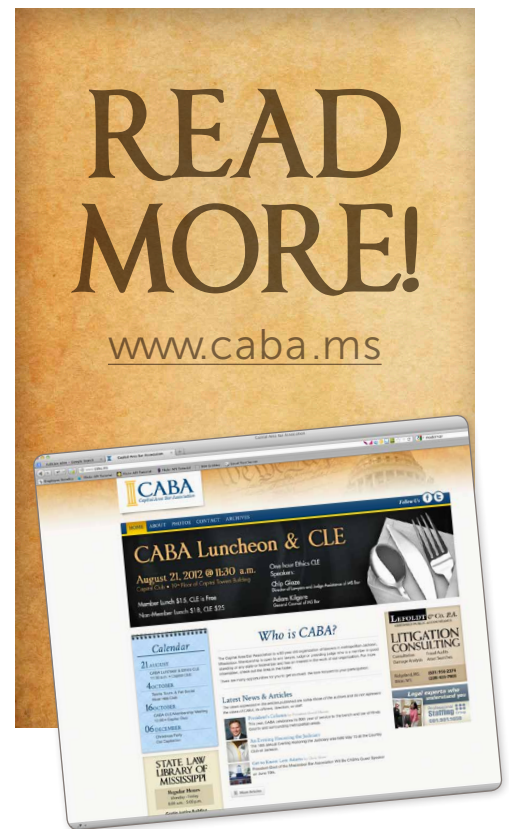
The tax brackets have clearly outlived their usefulness, and it has been suggested that the state simply switch to a flat 5% individual income tax. The Governor went one step further, however, and proposed the elimination of the 5% bracket as well as all the others. He did not offer a revenue offset for the lost income, arguing instead that the reduced income would offset itself by increased business activity in the state. How much lost income, you may ask? Well, in FY 2019, the State of Mississippi collected approximately \$1.9 billion in revenue from the individual income tax. This made up about 43 percent of the state's total tax collection, far more than any other tax category.<sup>4</sup>

Clearly the Governor cannot repeal the income tax by executive fiat, and such was not the intent of his announcement. He does enjoy broad support in the current legislature, though, so the idea that this proposal will become law is very plausible.

Assuming the proposal is put into effect, the elephant in the room will be replacement of the \$1.9 billion in lost revenue. The previous 2016 legislation has ultimately decreased, not increased, state revenue.<sup>5</sup> It is reasonable to assume that the much more drastic measure of eliminating individual income tax will result in a significant loss of revenue that may never be replaced. The speculation required to guesstimate the total lost income that will result is beyond the scope of this article.

That being said, this author is of the opinion that, if the Mississippi income tax is repealed, the legislature will eventually seek to at least partially offset the revenue loss by means of increasing the sales tax rate. Other

states, such as Tennessee and Florida, do not have an income tax, but have higher sales tax rates that produce revenue similar to what would be earned by an income tax. The sales tax is ultimately a consumption tax, so it remains to be seen how an increased sales tax will affect buying habits in Mississippi. The state is able to far more effectively tax internet sales than ever before, and thus the sales tax is almost inescapable. An increased sales tax rate in Mississippi may be the future. ➡



1. Nathan Smith is a tax lawyer and the Director of Planned Giving at the University of Mississippi Medical Center.  
 2. Do not worry, there is no math on the final.  
 3. The Taxpayer Pay Raise Act also eliminates the

Franchise Tax in stages. Few are sad to see it go.  
 4. See "Will Mississippi Be the Next State to Phase Out its Income Tax?", <https://taxfoundation.org/mississippi-income-tax-phase-out> (retrieved December 11, 2020).

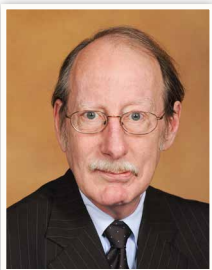
5. Whether that legislation was ever intended to completely offset by means of increased in-state business activity is another question.

# » On Computing

Focused on the Contemporary Lawyer



## Helpful Cross-Platform Apps...



By Joel Howell

You may find cross-platform apps helpful to your practice. These are apps that are compatible with more than one operating system and function across multiple mobile platforms. Here are both new and enhanced versions.

**TrialLine** offers web-based timeline creation.

Due to the pandemic, visual hearings are becoming more popular, and TrialLine can do just that, by letting each conferee see the timeline on their own screen, eliminating the confusion that can come with presenting a complicated timeline from a distanced screen.

The latest version of **Zola Suite**, integrates Google Suite and Microsoft 365 along with RPost for encryption and proof of delivery. It allows for intelligent (built-in) email management which automatically associates with matter-related contact and files to the related matter. Users can convert emails into tasks with one click, and automatically track time and create time entries as you draft messages. Through Zola's end-to-end accounting features (including a general ledger) users can issue checks, create journal entries, and batch apply payments. Additionally, users have the ability to download bank and credit card activity from over 5000 institutions and have access to advanced reporting (including financial statements, compensation, WIP, and productivity).

**Word LX** is an add-on which is designed to save time and allow for consistency across a firm's documents. With this newest version, users can generate the content of documents through Clause Builder to allow for faster formatting and editing. Contact information can be easily integrated using contact files housed in Office Outlook, allowing for quick file set up. Users can improve the quality of their work product through creating consistency across all the firm's documents and allows for firm-wide collaboration (including different offices).

While Google can suffice for many of your personal search engine needs, lawyers need more rigorous searches for pre-engagement, due diligence, and case work. Through **Tracers** "Person ID," users can search each person that is in the Tracers database and all associated public records. Users can also access court records, residences, social media profiles, as well as records from courts and government offices that have yet to be published online. With scalable options, Tracers is

accessible to any size law firm, allowing for those who need a thousand searches and day to those who need a few per week.

**CourtLink** allows for easily searchable records. Now with CourtLink, users can search through digitized records via the Lexis Advance platform. The most current version integrates CourtLink search features with LexisNexis' notification system, allowing users to track client's names anytime they might have something filed against them. Users can search by litigants, judge, law firm, and many other fields.

**Lawyaw** is a cloud-based document assembly software that allows users to create a cloud-based legal template bank. Using document automation, users can quickly and easily create documents that fit their needs. First, users start with a model document, select which text will be change, then choose the type of field in the Template Builder. Also, Lawyaw will save time on data entry, because it stores all previous data for reuse and integration with Clio. Users can also send documents out to clients for signature in minutes.

**Zola CRM** focuses on marketing, allowing users to keep prospects and clients in the same database. It integrates with Zola suite (mentioned above), allowing users to covert leads into clients, and eliminating multiple entries for the same person. Users are able to manage and cultivate leads, automate intake, track referrals, and possibly retain more clients. Such features include, the ability to identify and cultivate high-value prospects, automatically track where leads are coming from, organizing leads by source, practice areas, and potential revenue, convert those leads into Zola Suite, generating metrics to guide your practice.

**Panoramic** allows users to incorporate project management with knowledge management. How this works: a new lawyer in your office is given the task of completing a pleading. That young lawyer then would use the workflow and accompanying templates in Panoramic to draft that pleading and all other documents needed to complete the task. That young lawyer can consult a Practical Law resources to do further research to know if they are on the right track. Through Panoramic, you can give the client the up-front cost estimate generated from Panoramic through your firm's archived billing data. As an administrator, users can check the young lawyer's progress to know if it exceeded the allotted time or not.

**Actionstep Express** is a cloud-based application for billing and

*Continued on page 7...*


practice management. This product is also designed to grow with users, from Action Express to Practice Pro then all the way up to Practice Pro + Accounting. Actionstep Express gives administrators up to 50 pre-designed reports that give administrators oversight on the activities across your firm. Users can be guided through application “triggers” that automatically assign tasks and sets deadlines. There are pre-built workflows for various practice areas, such as client intake, document management, conflict checking, time tracking, and billing.

**PCLaw Go** is an app designed for time entry that is client specific. This is a joint venture between LexisNexis and LEAP which allows users to enter time billing information and look up client information. It allows global search to starting and track time, as well as setting multiple timers simultaneously.

**Zipp Whip** software that is designed to allow texting other than by phone. Some notable features include the ability to text-enable your land line, send and receive texts on a computer or mobile devices, integration with the applications you use daily, and automation tools. Users can schedule text messages (this is particularly helpful when sending out reminders about appointment times or billing). It also allows auto replies.

**Trial Works** is known for its case management software, but has

new features like SMS messaging, while working within the Trial Works software. However, there are some negatives to this feature such as a lack of group texting, the cell phone number must be entered into a specific location in order to work, and the software cannot receive a newly generated message from a client directly through the program.

**Text Me** is an app available across virtually all platforms (Google Play, Apple, and Amazon). Users have access to unlimited texts and calls to the US and Canada while using your own number. Users are also able to send pictures, voice, and video messages. This app is available on iPods, iPads, or tablets, making any device cable of having phone capabilities. Users can also send Dropbox photos and videos via SMS directly from the app. Users can also use multiple numbers from the same account, allowing them to keep all the different parts of your life separate and safe. A notable feature is the ability to create an international number to use when traveling or simply to chat with friends or clients overseas. 



Questions or comments?

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