

County Commissioners and Personnel Matters

BIPO

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NEW MEXICO
COUNTIES

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Employment Issues

**Are you a policy maker or a
supervisor?**

Legislative Immunity from suit

- Government officials are immune for all actions taken "in the sphere of legitimate legislative activity" (*Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998)).
- A legislative act generally involves policymaking rather than mere administrative application of existing policies.

Legislative Immunity from suit

- A decision is more likely administrative if the facts used to make a decision are *specific* rather than *general*.
- If the decision affects specific individuals rather than the general population, it is more apt to be administrative in nature. (*Smith v. Lomax*, 45 F.3d 402 (11th Cir. 1995))

Legislative Immunity from suit

Potential or alleged motives are not relevant when determining whether an act is legislative (*State Emps. Bargaining Agent Coal. v. Rowland*, 494 F.3d 71, 90 (2d Cir. 2007)).

Motives of supervisors are always relevant in employment suits.

No good deed goes unpunished is often true in employment matters

Despite your good intentions, if you involve yourself in individual personnel matters you will taint the process and create potential civil rights claims against you and your county.

Passing an ordinance = policy making =
legislative immunity=

Policy Maker vs Supervisor



Policy Maker vs Supervisor

Passing a note to County Manager
requesting an employee be disciplined
=supervisor=no legislative immunity =



Policy Maker VS Supervisor

Suggesting to the County Manager your lesser qualified friend/family member be hired=supervisor=no legislative immunity

=



Policy Maker VS Supervisor

Asking the County Manager to adopt an anti-bullying policy = policy maker = legislative immunity =



Policy Maker VS Supervisor

Asking the County Manager to fire a
bully=supervisor= no legislative immunity

=



Legislative Immunity

Your happiness is our Goal!



**What should
you do?**

Your brother works for the county road department. He injured his back while hunting last winter and has been on light duty. Now he tells you that his supervisor is insisting that he take on additional duties that require him to lift...

**What should
you do?**

Discrimination cases now cost employers over $\frac{1}{2}$ a billion dollars to resolve each year. Most involve sexual harassment. You suspect the county manager is making unwanted sexual advances...

**What should
you do?**

Your county is having trouble finding a really good person to run the senior center program. You have a good friend who would be perfect for the job...

**True or
False?**

One of a commissioner's responsibilities is to stick up for employees who are being unjustly disciplined?

**True or
False?**

A commissioner should direct the termination of an employee who is not qualified for their job.

Horror Stories

- The commissioner who found out via Facebook that an employee was terminated then called the employee to find out what happened.
- The commissioner who lent money to an employee then wanted the employee to get a raise so he could afford to pay back.
- The commissioner who adopts a pay plan then asks for exceptions for particular employees.

Horror Stories

- **The commissioner who drinks alcohol with employees then asks for dirt on the manager.**
- **The commissioner who discusses personnel matters with employees.**
- **The commissioner who directs road department workers to blade certain roads.**

Horror Stories

- **The commissioner who conducts his own investigations into individual employee matters.**
- **The commissioner who texts employees about problems at the county.**
- **The commissioner who discloses what was discussed in executive session.**

Zoom & Gloom

The new world of telework and zoom meetings requires increased vigilance to avoid liability and embarrassment.

Employment Laws

All of the employment laws prohibiting discrimination and harassment in the workplace apply to Zoom work meetings.

Employment Laws

Experts say workers are facing discrimination, bullying and harassment in online gathering spaces, just as they did in the conference room. Law360 11-13-20

Avoid unlawful discrimination and harassment claims

"Using videoconferencing and Zoom, it almost lends itself to giving people a platform to be offensive," Users can feel bolder behind a digital buffer, and combined with the fact that they're staring at people's faces, he said that can often lead to disrespect. Philippe Weiss, of Seyfarth Shaw LLP

Avoid unlawful discrimination and harassment claims

Inappropriate side chats:

- making fun of the way their colleagues look on screen.
- comments on physical appearance and jokes and nicknames based on physical appearance.
- putting colleagues into categories of "close-up" or "camera off,"

Avoid unlawful discrimination and harassment claims

Snipes about an older worker's ability to use technology demonstrates age bias and adding a LOL or a happy face to the comment won't excuse the behavior in court.

**Avoid
unlawful
discrimination and
harassment
claims**

**Zoom Backgrounds can create
liability.**

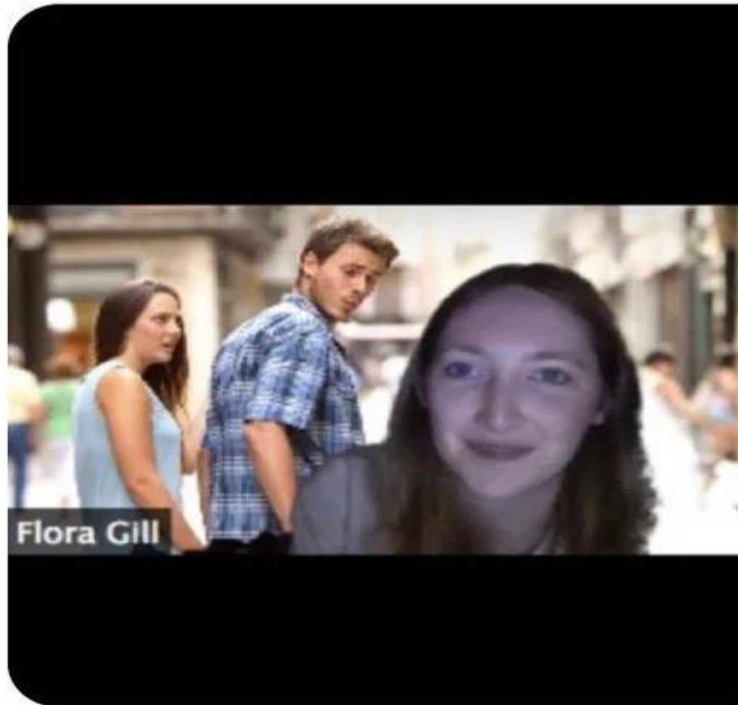
**View the Zoom backdrop as you
would your in-office desk.**



Flora E Gill
@FloraEGill



Ah crap...



Hide

Professionalism

Today at 10:02

Dear Flora,

While I thought your Zoom background was funny (I have seen the 'Memes' and think they're very good), I am concerned it doesn't project the air of professionalism you should be striving for. Perhaps just your apartment next time?

Stay well,



What's in
your
background
?

Camera on or off?

- **During a meeting always assume your camera is on.**

Camera Off?

Respected journalist Jeffrey Toobin was suspended from *The New Yorker* and placed on leave from his legal analyst role at CNN after colleagues reported him for exposing himself during a Zoom video chat.

"I made an embarrassingly stupid mistake, believing I was off-camera," Toobin told *Vice.com*, which broke the story. The incident occurred last week during a video talk with members of *The New Yorker* and WNYC radio. The married father of three was said to be seen onscreen masturbating. *Newsweek* 10/20/20

Camera Off?

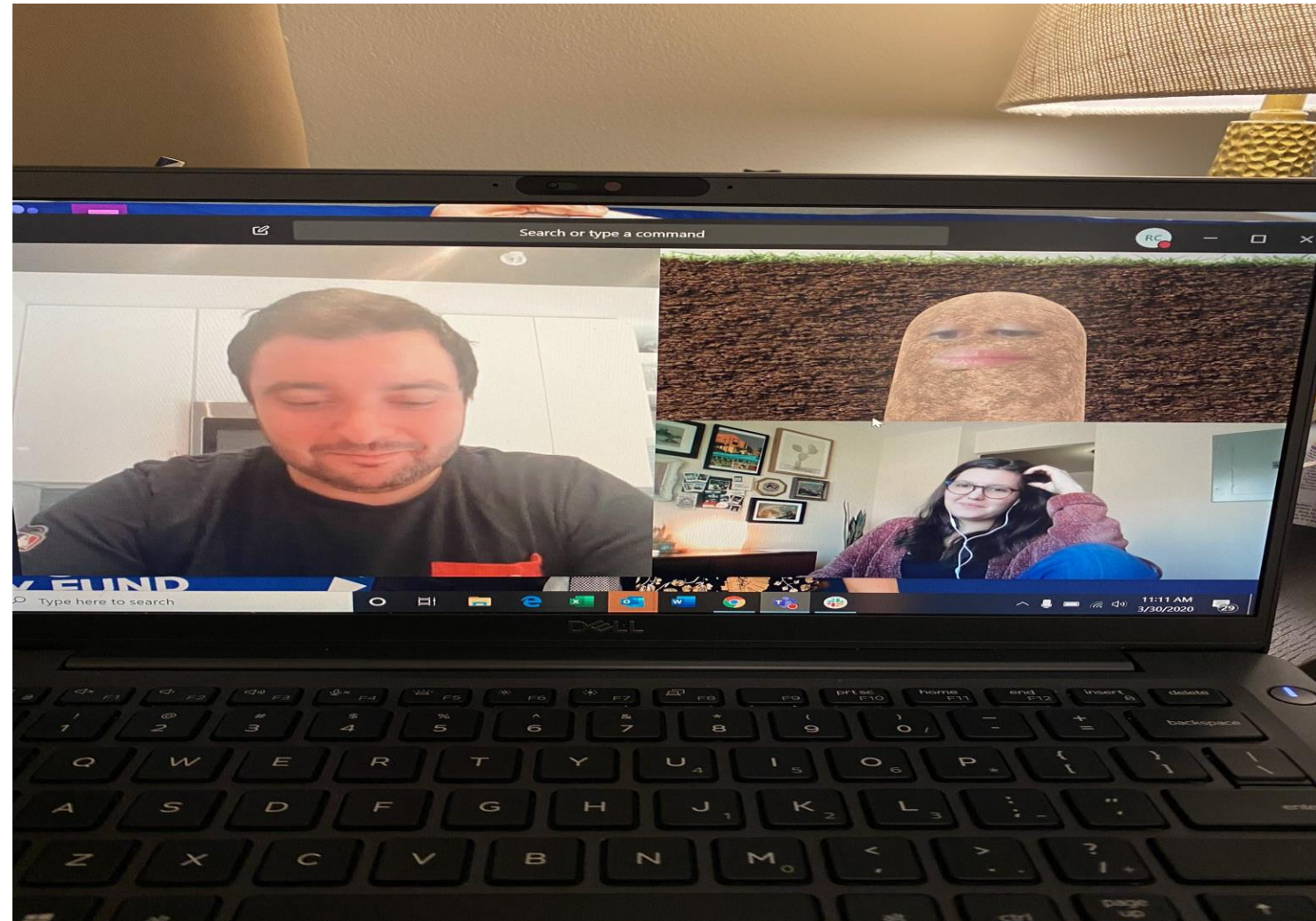
A village chief from Cavite, Philippines, was caught having sex with his treasurer during a Zoom call. The chief, Jesus Estil, thought his camera was turned off, but he was in full view of other officials, one of whom recorded it, and the video soon found its way onto social media.
Newsweek 10-20-2020

Multitasking

A slightly less controversial Zoom mishap happened a month earlier when Bernardo Bustillo, a councilor in the Spanish town Torrelavega, decided he needed to shower but didn't want to miss a meeting. He brought his laptop into the bathroom and inadvertently showed himself lathering up.
Newsweek 10-20-20

Harmless,
unless
you're an
elected
official?

my boss turned herself into a potato on our Microsoft teams meeting and can't figure out how to turn the setting off, so she was just stuck like this the entire meeting



Virtual backgrounds can create liability

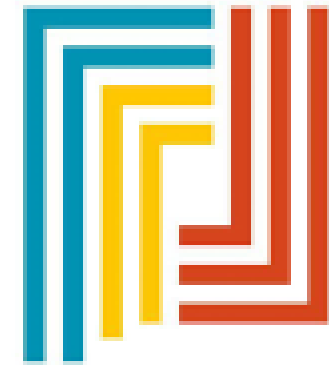
- If it wouldn't be appropriate in your office, it won't be appropriate in your Zoom background.

A virtual jail cell backdrop is funny, but not if your seeking a second term



Thank you!

Progress happens
when all 33 come
together.



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