



10 recommended tips for remote depositions

Litigation, Arbitration and Investigations Alert

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While in-person depositions have many advantages, some courts increasingly are requiring remote depositions to mitigate delays during the coronavirus disease 2019 (COVID-19) pandemic. To help adapt to this process, we provide these 10 recommended tips for consideration when taking or defending remote depositions:

1. **Governing rules.** Know the rules governing the deposition; for example, federal and state rules may permit the parties to stipulate certain items while other rules may not be altered by stipulation. Almost all states now have orders allowing witnesses to be sworn in remotely. However, some states still require that the court reporter be physically present in the state where the case is pending.
2. **Notice.** Confirm the deposition notice accurately depicts any party stipulations, starting times and limitations, and locations of the parties. Send calendar notices that account for time zone differences.
3. **Technology.** Select and become familiar with the virtual platform. Practice using the technology to ensure familiarity with the remote process. Prepare for any backup systems, and ensure availability of IT assistance for glitches that may arise during the deposition. Consider having two screens: one to view the deposition participants

and another to view exhibits.

4. **Vendors.** Consider hiring an external vendor to handle all the technical aspects of the deposition, including the exhibits. Many court reporting services have platforms and software available.
5. **Exhibits.** Agree with opposing counsel on the type of and procedure for exhibits – including uploading and custody – and communicate these agreements with the court reporter. Determine whether available technology will allow exhibits to be transmitted, marked, and used during the deposition without providing them in advance; otherwise, make appropriate arrangements for such exhibits to be provided to opposing counsel and the court reporter in advance, with appropriate safeguards (eg, password protection) to prevent review prior to commencement of the deposition.
6. **Preparation.** Consider a runthrough with the witness, in addition to the usual witness preparation, to help the witness understand the remote process. All deposition participants should be encouraged to dress professionally and maintain appropriate and professional visual surroundings.
7. **Deposition environment.** When the deposition begins, and after interim breaks, consider commencing all sessions by identifying which participants (if any) in addition to the testifying witness and counsel may be in the virtual meeting room. It may also be important to discuss any special rules related to the remote deposition environment, such as making a verbal notation on the record if anyone enters the room unannounced, and to confirm that the witness and all participants commit to compliance with these rules.
8. **Maintaining the record.** Make a record of issues that could warrant terminating the deposition or otherwise necessitate a future ruling from the court, such as faulty technology, nonresponsive witness, improper communications between the testifying witness and counsel, or violating the stipulations.
9. **Video, audio, and written recording.** Confirm that only the court reporter and videographer will record the deposition. Be mindful that audio and/or video recording may continue during breaks. Lawyers are urged to take all appropriate steps to maintain privilege and privacy and use breaks and breakout rooms appropriately, as they would in other depositions.
10. **Post-deposition procedure.** Have a procedure planned to tie up post-deposition loose ends, such as witness review and signature, exhibit custody, or transcript filing.

If you have any questions regarding these new requirements and their implications, please contact the author or your DLA Piper relationship attorney.

Please visit our Coronavirus Resource Center and subscribe to our mailing list to receive alerts, webinar invitations and other publications to help you navigate this challenging time.

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