

PUBLICATION

Remote Depositions: A Great Tool for Litigators During Coronavirus

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Litigators can strike a balance between actively moving their cases forward and adhering to coronavirus guidance and orders by remotely conducting depositions. To conduct a successful remote deposition, litigators should consider the following factors:

1. Vendor and Platform

Many court reporting services offer their own remote deposition platforms. Once the parties agree to hold a remote deposition, send the court reporting service contact information for the participating parties so that it can coordinate sending out test invitations to the participants prior to the deposition. As long as the parties have access to the internet, and a device with a camera and audio, they will be able to attend. It is best practice to work with the vendor at least one week prior to the deposition and "arrive early" to the online meeting.

Two of the largest remote deposition platforms are [Planet Depos](#) and [Veritext Legal Solutions](#). These platforms offer pre-deposition trainings and have posted video recordings of the technology to demonstrate the ease of use. Both also have advanced exhibit technology which allows easy admission and annotation of exhibits as well as the ability to view the deposition transcript in real time. Planet Depos utilizes Zoom and advertises that its software is end-to-end encrypted, and FedRAMP (Moderate) and SOC2 rated. Veritext Legal Solutions' technology meets Health Insurance Portability and Accountability Act (HIPAA) security standards and meets federal and state requirements related to Personally Identifiable Information (PII).

2. The Process for Managing Exhibits Remotely

To manage exhibits remotely, forward the exhibits to the court reporting service for the court reporter's disclosure during the deposition; or to the court reporting service and all counsel/*pro se* deponents. The best practice is to provide hard copy exhibits to the court reporter and opposing counsel in a sealed envelope. Then, stipulate that any hard copies of exhibits will be opened, on camera, once the deposition begins. If the court reporter is not in the same room with the deponent, confirm that the court reporter received the exhibits, the exhibits are accessible and that the exhibits are formatted properly. Best practice is to consult with/defer to the court reporter on all issues related to production and management of exhibits, subject to potential issues such preferences could cause the deponent/your client.

3. The Deposition Timeline

Days Before the Deposition: What to Consider?

When documents ordinarily would be produced at the deposition, best practice dictates that the parties negotiate an agreement that the documents will be produced a certain number of days prior to the deposition. Such production effectively acknowledges that the deponent complied with the subpoena or local/court rule requiring the deponent to "bring" requested documents to the deposition. Remote deposition requires integration with various audio/video equipment and best practice now demands multiple new considerations, such as:

- Where the deponent will be physically located during the proceeding;

- How the deponent plans to connect to the remote deposition;
- Whether the deponent has the necessary video equipment to conduct the proceeding;
- Whether the proper video conference link was properly distributed to all parties, including any of your clients;
- Whether the court reporter will physically appear with the deponent during questioning; and
- Working with your court reporting service to run some practice questions between all connections and present a representative exhibit.

Finally, best practice is to create a backup plan in the event the video system fails. Should this occur, you can switch to a telephonic deposition (typically, this is done by working with your court reporter), and you'll want to try it beforehand so that the transition to phone as seamless as possible. Before resuming the deposition telephonically, remember to place on the record the time the system crashed, the time the telephonic deposition began and that the parties have all agreed to continue the deposition telephonically.

Day of the Deposition: What to Consider?

The deposition's propriety and integrity must be maintained. The following are suggested best practices to achieve those ends:

- Place a stipulation on the record that the deposition will be conducted remotely by videoconference and that the oath will be administered remotely;
- Where applicable, orally cite to the rule in your jurisdiction that allows for oaths to be orally administered in that format;
- Request on the record that all electronic devices *not* necessary for the deposition be put on silent;
- Demand that the deponent be visible on screen at all times;
- Request that chat functions be solely controlled by the court reporter; and
- Obtain an affirmation from the deponent that they will not communicate with anyone outside of the deposition in any form for the duration.

Many jurisdictions place limits on counsel's ability to conduct a deposition longer than eight hours. Consider stipulating to extend such time to allow for procedural hurdles, increased frequency of breaks, potential technical difficulties, presentation of exhibits, etc.

During the Deposition: What to Consider?

During the actual deposition, it is important to conduct the procedure purposely to ensure that everything is recorded correctly. The following best practices will help ensure accuracy and minimize errors:

- Allow the court reporter ample time to put all appearances on the record;
- If not speaking on the record, mute your microphone to avoid background noise and other distractions;
- Speak slowly and one at a time;
- Read slowly from documents and request that the deponent spell out the names of each identifier (name, street, witness, etc.) to ensure an accurate record; and
- Review the procedural differences that were agreed to so there is no confusion as to how exhibits will be disseminated, whether the record will remain open, etc.

While technological issues can always arise, proper preparation will ensure that your remote deposition goes as smoothly as possible. Consider these best practices when putting your plan together and preparing your

client. If you have any questions about remote depositions, please contact the authors or any member of Baker Donelson's [Trials Team](#).