

# How to Conduct an Effective Remote Deposition

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Adjusting to life during a global pandemic, we have found ways to effectively do almost everything remotely – even depositions. Online depositions will likely remain in use long after the pandemic has passed, especially since more attorneys have grown comfortable with them over the past year. And instead of being a less than desirable alternative to in person depositions, online depositions have several advantages, including being more cost effective and easier to schedule, particularly when involving parties in different cities, states, or countries. They do require some planning though, especially in regard to exhibit preparation and distribution, and can be daunting for people who are uncomfortable with technology.

So, what should you do to guarantee an effective remote deposition?

## **1. Choose a platform**

When it comes to conducting an online deposition, consider your needs, but also what platforms may be easiest for your client or the person being deposed to navigate.

Depositions can be conducted on the free versions of widely available video conferencing platforms, such as Zoom or WebEx, but these often have time limitations and security issues. I recommend using an online platform designed specifically for conducting remote depositions, such as Veritext Legal Solutions or Planet Depos. While these have higher costs, they provide increased security, an easy way to introduce exhibits, and additional options that are common for in-person depositions, like videography and real time transcript feeds.

If you are using a platform for the first time, spend some time training on it to make sure you know all the features. If you are not particularly technology savvy, consider having an associate or paralegal on hand to help with the technology angle so you can focus on the content of the deposition. Some platforms even provide technology assistance during the deposition for an added fee.

## **2. Decide on your location**

You can choose to conduct the deposition in person with the client, but consider whether you will be able to safely socially distance or if you will need to wear masks. Will wearing a mask during the deposition make it difficult for the client to speak or be heard? Will it make the client uncomfortable for any reason and thus potentially affect his or her testimony?

An easy alternative is for you to take the deposition in a different location than where your client is. This could be in the very next room, or both of you can be at home or in your personal offices. This is ultimately the client's decision, but you can make a suggestion based on which option you think is best. Personally, I find that being in the same room as the client offers a sense of comfort to the client and the ability to more easily communicate during breaks.

Regardless of where you choose to do the deposition from, make sure everything is camera ready, for both you and your client. Find a private space where you will not be interrupted; lock your door if necessary. Make sure the background is decluttered and neutral, and do not use a virtual background as they can be distracting. Make sure there is adequate light shining on your face, whether that is from a natural source like a window or an artificial light source (like a ring light) behind your camera. Test out your set up on a practice video call and adjust as necessary.

Position the video screen of the deponent as close to your camera as possible, that way it will appear to them that you are looking at them when speaking, helping to retain their attention and focus.

Using a headset is best for audio, as it provides the clearest sound. A wireless headset is recommended, as it permits movement during the deposition if necessary. Just make sure it is fully charged beforehand. And have a bottle of water and some Tylenol nearby—a full day of staring at a screen can certainly cause a headache, so it is good to have these items within arm's reach.

### **3. Choose how to share your exhibits**

There are a few options for sharing exhibits, and each one has pros and cons.

The best option is to use the exhibit sharing tools provided with the remote deposition platform. These platforms have been designed to make sharing and introducing exhibits during the deposition easy. You will likely have a private folder into which you can pre-load any exhibits you may use during the deposition. During the deposition, you will then choose which exhibits you want to introduce. When you introduce an exhibit, it will appear in a shared folder that every party to the deposition has access too. Many platforms even add an "exhibit sticker" to the document and allow you to position that so it isn't blocking any part of the content. These platforms keep everything organized and are intuitive in their use.

An alternative is to provide paper copies to all parties in advance of the online deposition. Some people may prefer this method, since this permits you to reference the paper documents during the deposition as you would in an in-person deposition. However, in a remote deposition, paper exhibits must be sent to all parties in advance to ensure everyone

has them during the actual deposition. This therefore removes the advantageous element of surprise and is not recommended.

Another option is to email the exhibits in real time during the deposition. This method preserves the element of surprise, but it is clunky, since it relies on the hope that everyone's email account is working properly and receives the emailed exhibit at the same time. Additionally, some email systems will not permit the sending or receipt of larger files, which could cause delays and frustrations during the deposition.

The final option is to use "screen share" to share the exhibit with the parties during the online deposition. This does preserve the surprise factor, but opposing counsel may object that neither they nor their client has the ability to control the exhibit (and therefore read portions of it that you are not sharing on your screen). Additionally, I am always weary about sharing my screen during a deposition. Be extra careful if you choose this option that the screen you are sharing is clear of anything except the exhibit—or else you may unwittingly share with everyone your deposition notes or outline.

#### **4. Additional Technology Related Considerations**

It can be difficult for a court reporter to transcribe everything that is said in person, so the added issues of internet speed, buffering and audio problems during remote depositions make it that much more necessary to speak slowly and not interrupt. Also be aware that technology can cause delays, so the conversation may not flow as seamlessly as it would if the deposition were in person.

At the beginning of the deposition, ask some foundational questions to ensure the deponent will not later allege he or she could not hear or see properly during the deposition. For example, you can ask if the witness can hear you clearly and, if that changes at any point, to let you know.

Since you will only see the deponent's shoulders and face, check to see who else is in the room with the deponent and if he or she has any notes or papers with them.

Ensure private chat functions are disabled so no one is feeding the deponent answers during the deposition. Make sure you can see your deponent's lawyer on the screen as well and pay attention to if any signals are being given to the deponent.

If you are defending the deposition, you may need to be on mute if you are in the same room as your client to avoid feedback, but be ready to unmute quickly if you need to object. Alternatively, most video platforms offer options to dial in by telephone. If you have a speaker phone by which you can call in to the deposition, you can use that for audio (rather than your

respective computers) for the whole room and avoid the feedback issue described above.

Technology fatigue is also real, so don't be afraid to ask for a break if you or your client need a few minutes to step away from the screen.

With just a little extra forethought and planning, any attorney can take advantage of technology and conduct an effective remote deposition. Give it a try. You may realize you like it more than in-person depositions. And your client will certainly appreciate the savings in commuting costs.

## PEOPLE

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## SERVICES

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