



Remote Depositions: Now & in the Long Term

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Tom Wiegand – MoloLamken LLP
Laura McNally – Loeb & Loeb LLP
Lisa Bohl – MoloLamken LLP



Agenda

- Rules/Oath
- Strategies for Taking Remote Depositions
- Strategies for Defending Remote Depositions
- The Future of Remote Depositions



Rules/Oath: Federal

- Generally, an “officer” must be physically present to put a deponent under oath
 - “Unless the parties stipulate otherwise, a deposition must be conducted *before an officer* appointed or designated under Rule 28.” Rule 30(b)(5)
- Exception: Parties can stipulate, or court can order, “that a deposition may be taken by telephone or other remote means.” Rule 30(b)(4); see Rule 29
- Specify remote means and manner of recording in notice - Rule 30(b)(3)



Rules/Oath: Federal

- Rule 30(b)(4) provides that, in a remote deposition, “the deposition takes place where the deponent answers the questions” for the purpose of Rule 28(a)
- Rule 28(a)(1)(A) requires a deposition to be taken by “an officer authorized to administer oaths either by federal law or by the law in the place of examination”
 - Check whether the relevant state has enacted measures allowing notaries to issue oaths remotely
 - Illinois Executive Order 2020-14 (Mar. 26, 2020) permits remote “notarial acts”



Rules/Oath: State

- In Illinois, “[t]he officer before whom the deposition is to be taken shall put the witness on oath.” Rule 206(f)
- But parties may take depositions “by telephone, videoconference, or other remote electronic means.” Rule 206(h)
 - “The deponent shall be in the presence of the officer administering the oath . . . , unless otherwise agreed by the parties.” Rule 206(h)(1)
 - Exhibits “shall be provided to the officer administering the oath and *all other parties* within a reasonable period of time prior to the deposition.” Rule 206(h)(2)



Rules/Oath: Illinois

- Illinois Supreme Court Rule 206(h) was temporarily amended on April 29, 2020
 - Deponent need not be in the presence of officer administering oath
 - Exhibits need not be provided beforehand if “the deposition participants are able to view the exhibits in real time”
 - Time spent addressing tech issues “shall not count against the time limit for the deposition”
 - Amendments in place “until further order of the Court”



Rules/Oath: Stipulation

- Consider stipulating that oath can be administered remotely
 - *The court reporter and videographer are not physically present in the deposition room and will record this deposition remotely*
 - *The court reporter need only be authorized to administer oaths under federal law, in the jurisdiction where this lawsuit is pending, or in the jurisdiction where the witness is located during this deposition*
 - *So long as the court reporter can positively identify the witness, the court reporter may administer the oath remotely by audiovisual communication rather than in person*



Taking Remote Depositions: Technology

- Physical equipment – test in advance, can be sent overnight by reporting agency (hotspot, webcam)
- Consider having the court-reporting agency provide videoconference services
 - Vendors provide tech support, hot seat operator, videographer
- Consider using conference line for audio in case internet connection lags
- Use a large monitor (or two monitors) to simultaneously watch the witness, exhibits, etc.



Taking Remote Depositions: Stipulation

- Consider stipulating to rules
 - *No attorney or other person will be in the room with the witness during the deposition, and the witness will state on the record under penalty of perjury that, during the deposition, the witness will neither receive communications nor access information from any source not generally observable on the record by all parties through the technology used to conduct the deposition*
 - *Should the witness or the lead attorney taking or defending the deposition suffer a sustained technological failure while on the record, the parties will be deemed to have agreed to a break at the time of the technological failure and will resume the deposition whenever the witness or attorney returns*
- Review Comments to Ill. Sup. Ct. R. 206(h)



Taking Remote Depositions: Opening Sequence

- (Increased) importance of not talking over others, look out for lags in connection
- Don't multi-task (email, social media) or open other screens
- Don't communicate with others in any capacity (text, email), including your attorney
- Turn off your devices (cell phone, tablets, Apple watch)
- Ask for a break if others enter the room, or if something else unexpected happens
- Speak up if you can't hear or understand



Taking Remote Depositions: Exhibits

- Options for uploading, marking, and managing exhibits
 - Attorneys can handle
 - Assistant or paralegal can handle
 - Third-party vendor can provide hot seat operator (email exhibits to vendor in advance)
- Send exhibit to participants through software platform when introducing – ask vendor for options (e.g., chat)
- If an obvious exhibit will be used, can send to witness in advance
- Can agree that witness will only open exhibits on video during the deposition



Taking Remote Depositions: Exhibits

- Using exhibits
 - Direct witness to specific portions of the document, as you would at trial
 - Give control to witness to review the exhibit
 - Can upload, blow up, or annotate exhibits



Taking Remote Depositions: Controlling the Witness

- Be aware of what appears on witness's screen
- Decide how to configure your own screen
- Look into the camera
- Disable chat



Taking Remote Depositions: Making the Record

- Still important to have a clear transcript
- If hiring videographer, clarify with vendor what video will be recorded
 - Cannot hit "record" on your own for admissible video
- Breakout rooms
 - Can invite specific participants, and video can be recorded (or not)



Defending Remote Depositions: Witness Prep

- Prepare even more with a witness before a video deposition
 - Practice questions and exhibits with technology
 - Have witness dress up for prep



Defending Remote Depositions: Objections

- Importance of objections – witness does not feel your physical presence
 - Do not mute your audio or hide your video
 - Signal objection with physical gesture
- Be aware of what appears on witness's screen



Remote Depositions: Prepare for the Unexpected

- Offline fact-checking
 - Use second screen
 - Assistant can mute audio and turn off camera
- Prepare strategy for introducing an unexpected exhibit



The Future of Remote Depositions

- Remote depositions are here to stay
 - Cheaper
 - Time-efficient
 - What if witness objects to showing up in person?



The Future of Remote Depositions

- Live or remote deposition?
 - Importance of having a live deponent
 - Number of exhibits
 - Complexity of issues and exhibits
 - Tech-savviness of deponent
 - Whether other participants will be live or remote



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