

LITIGATION MINUTE: HOW TO PREPARE FOR A VIRTUAL DEPOSITION

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WHAT YOU NEED TO KNOW IN A MINUTE OR LESS

The COVID-19 pandemic has forced those in the legal profession to transition to a virtual world in many respects. One example of this transition is conducting remote or “virtual” depositions. Given the expediency and efficiency of virtual proceedings, we are likely to see the continued use of virtual depositions after the pandemic ends. While virtual depositions present certain challenges, they are also time- and cost-effective.

Conduct a trial run

Practicing the process before the deposition will ensure that each party's computer works and that there are no technological or internet problems. During the trial run, it is important to go over key tips for virtual depositions, such as having the witness take several seconds before responding to questions to avoid talking over others and to give counsel time to raise any necessary objections. Instruct the witness that there may be a lag, and practice going over questions to establish a rhythm if that makes the witness more comfortable. In depositions with confidential documents or information, it is important to make sure the deposition platform has adequate security features.

Confirm surroundings

Because WebEx and other virtual platforms use Internet bandwidth, the witness might want to call in using a cell phone for the audio, using the computer for only the video, so that they are not using Wi-Fi bandwidth for the audio portion. At the outset of the deposition, ask the witness to confirm on the record that there is no one else in the room, and consider having the witness show their surroundings on the camera to ensure that the witness is not under any outside influence during the deposition. Because different jurisdictions have different rules regarding depositions, counsel should also decide and state on record which jurisdiction's law will apply if it is not clear.

Provide instructions

Since parties and counsel are participating from different locations, it is important to make sure the witness is not referring to another document or being coached remotely about answers to give during the course of the deposition. Ask the witness to have a clear desk and not to use the computer for anything other than the deposition connection. When taking the deposition of the other party's witness, ask these questions on the record and expressly instruct the witness not to open any other windows on the computer and not to communicate through email, instant messaging, or other features during the deposition.

Take advantage of virtual depositions

Although virtual depositions may raise novel challenges, they can be less time consuming and less costly for all parties. Virtual depositions eliminate the need for travel, which can be a significant expense. In addition, during the pandemic, where witnesses would be required to wear masks during in-person appearances, virtual depositions allow counsel to see facial expressions and better evaluate witnesses' credibility and how they will come across at trial.

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