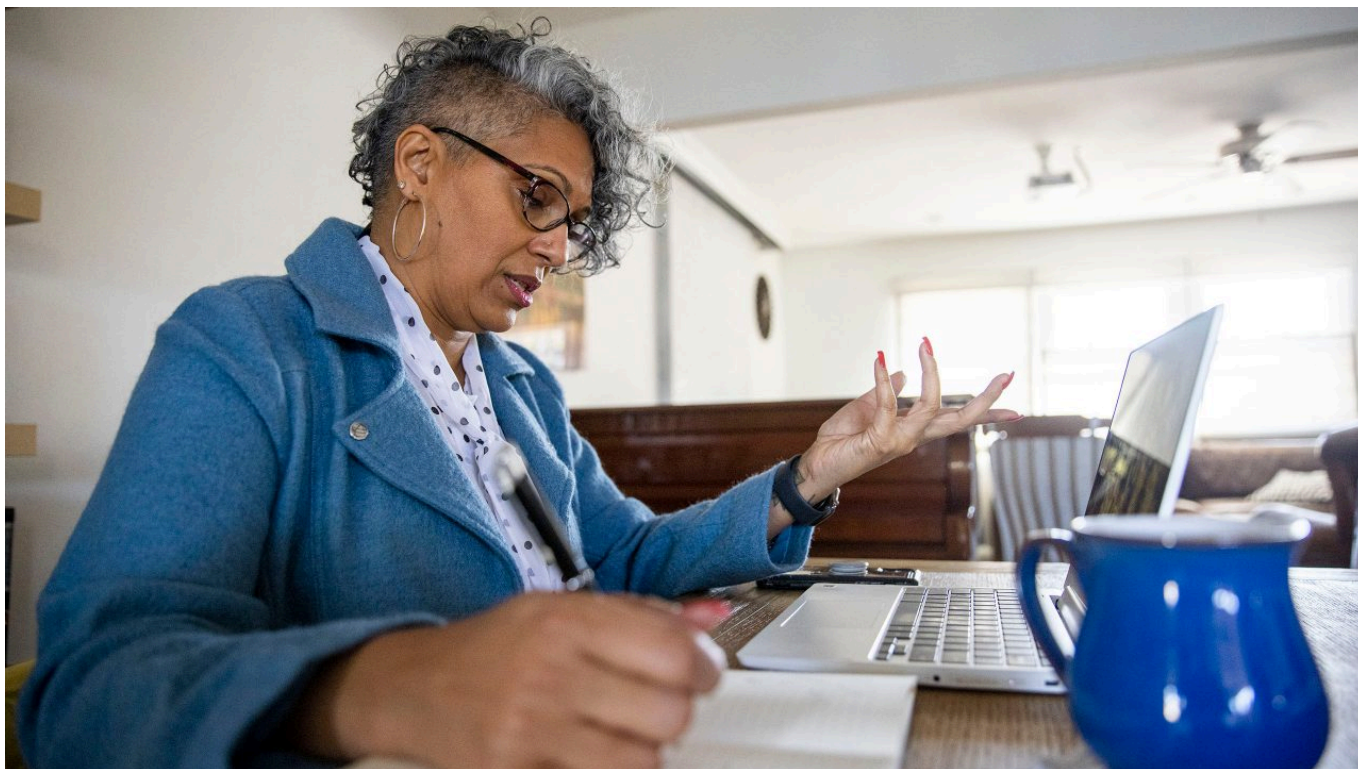


Five More Tips for Conducting Remote Video Depositions

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Remote video depositions—whose prevalence surged during the COVID-19 lockdowns—are here to stay. In this follow-up article to a sister piece on the same topic, we explore additional practical and strategic tips for taking remote video depositions effectively.

1. Technical Issues

In the sister piece to this article, the authors discussed several technical issues, such as making sure the deponent has a computer or tablet with a video camera, an adequate internet connection, and the technical requirements to run necessary software, and this entails doing a test run in advance to make sure your hardware, software, and internet are working properly and asking that the deponent do the same; familiarizing yourself with the videoconferencing software (Zoom, Microsoft Teams, etc.) and its features; and

closing all programs you will not be using during the deposition. Here, we explore a few more practical tips to address any technical issues and, we hope, ensure that no technical difficulties disrupt your deposition.

Make sure that both you and the deponent have a computer or tablet and a cell phone available. If the computer's microphone or speaker is not working well, or the internet connection lacks sufficient bandwidth to handle audio and video simultaneously, anyone experiencing these technical difficulties can mute their computer's microphone and speaker, call into the deposition on their cell phone, and thereby use their computer for video and their cell phone for audio.

Relatedly, while cell phones can be used for audio, cell phones should never be used for video. This is especially true for the deponent. If the deponent attempts to use a cell phone for video, the deponent will likely try to prop up the cell phone against something. If the cell phone is not securely propped up, it may start to shift or slide, which will cause the deponent's face to fall out of the frame of the camera. We recommend that all deposition participants, especially the deponent, use a larger screen, such as a computer or tablet screen, for video and reserve their cell phones for audio use only.

Last, be sure that all deposition participants have power sources available to charge their computers and cell phones.

2. All Remote or None Remote

If you are appearing remotely for the deposition, make sure that all other participating attorneys are appearing remotely as well. It is fine if the deponent appears in person in a court reporter's office or a hotel conference room with only the court reporter and videographer present. But, if another attorney is physically present with the witness, you should be there too. This will prevent any attorney who is physically present with the witness from intentionally or inadvertently coaching the witness outside your line of sight. For the same reason, make sure that all attorneys appearing remotely are visible on video.

3. Prepare Your Exhibits

For an in-person deposition, you would likely have multiple hard copies of each exhibit printed out in separate folders. For a remote deposition, the exhibit preparation process is a bit different. Because you will not be physically present with the deponent, all exhibits must be accessible in electronic (typically PDF) format. We recommend clearly labeling all

exhibits in advance and saving them in a single folder on your computer's desktop. That way you can easily and quickly access them during the deposition.

4. Day-Of and Mid-Deposition Considerations

Before the deposition begins, make sure that all participants' video cameras, microphones, speakers, and internet are in working order; that the deponent's lighting, camera angle, and background are appropriate; and that there are no obvious technical issues. If possible, resolve any technical issues before you go on the record. Also, make a note of what the deponent is wearing. If the deponent's attire may undermine his or her credibility or otherwise help your case, consider zooming out slightly to capture it on video.

Next, once the deposition is under way, keep an eye on the deponent's screen, not only so you can assess the deponent's facial and bodily gestures as he or she answers your questions but also so you can monitor the deponent's camera angle. If the deponent is using an external webcam attached to his or her computer monitor or laptop, sometimes the webcam can start to sag or drift, causing the deponent's face to fall out of the frame. By keeping an eye on the deponent's screen, you can catch and correct this issue quickly. Keep an eye on other attorneys' screens as well to catch any intentional or inadvertent coaching.

Finally, if something seems "off," note it on the record. For example, if you instructed the deponent to let you know if someone comes into the room and you see someone walk behind the deponent during the deposition, ask the deponent to tell you who walked into the room and to let you know when the other person has left the room before continuing with your questions. If the deponent denies there being anyone else in the room, the audio-video recording can be used to impeach the deponent.

5. Timekeeping

Some jurisdictions impose time limits on depositions. In federal court, for example, a deposition is limited to one day of seven hours, unless otherwise stipulated or ordered by the court. While we are typically aware of this limitation during in-person depositions, sometimes we forget about the distinction between record time and actual time during remote video depositions because we are always on video. As a reminder, all time spent "on the record" goes toward the applicable time limit, so make sure to preserve your record time by going off the record for anything that does not need to be on the record.

With these tips in hand, practitioners should find themselves prepared to take remote video depositions confidently and effectively.

This article is a follow-up piece to an ABA Litigation Section practice point titled “[Five Tips for Conducting Remote Video Depositions](#)”—originally published in July 2020 and recently republished in the ABA Litigation Section’s Judicial Intern Opportunity Program’s Fall 2023 newsletter. That article was coauthored by one of the authors here, Mihai Vrasmasu. In this follow-up piece, the authors discuss additional tips for conducting video depositions remotely.

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