

Technology for Remote Depositions

Agenda – 1 hour

1. Requirements for taking remote depositions (5 min)
 - a. Important rules
 - i. California Emergency Rule 11 states the deponent is not required to present with the deposition officer
 - b. Technical
 - c. Physical
2. Best Practices (10 min)
 - a. Decorum
 - b. Civility
 - c. Functionality
 - d. Practicalities
3. Witness Preparation (5 min)
 - a. Pre-Deposition preparation
 - i. Important to consult with court reporting company ahead of time to ensure your method will work for entering exhibits into the record.
 - ii. If using PDFs, best to save the file with the next-in-order exhibit number in the name
 - b. in deposition best practices
4. Exhibit Sharing Methods(35 min)
 - a. Email exhibits to the court reporter, counsel and witness ahead of time
 - b. Email exhibits to the court reporter ahead of time and email to counsel and witness during the deposition.
 - c. Mail them to counsel and witness ahead of time and get them to the court reporter (mail/email), potentially in sealed envelopes
 - d. Screen share and then ensuring exhibits are provided to court reporter after
 - e. Exhibit share – Live Demo
5. Post deposition (5 min)
 - a. Handling a digital record
 - b. End deliverables

Remote Proceedings

Preparation, Tools and Tactics

1 GENERAL
CLE CREDIT



REMOTE DEPOSITIONS ARE **NOT A NEW FRONTIER**, BUT, FOR MANY IT IS A **NEW WAY OF PRACTICING LAW**. DISCOVER HOW YOU CAN TAKE YOUR PROCEEDING PRACTICES FROM THE PHYSICAL WORLD TO A VIRTUAL SETTING.

WORKING REMOTELY IS THE NEW NORMAL

But what does it take to continue to litigate in this digital world? This class will provide best practices and key considerations for preparing for your virtual proceeding, demonstrations in remote and exhibit sharing tools, discussions on how to keep your remote proceeding secure, and more!

PREPARING FOR YOUR REMOTE PROCEEDING

- Checklist of Key Considerations
- Preparation and Equipment Testing
- Stipulation Considerations
- Breakout Room Considerations
- Introducing and Marking Exhibits
- Addressing Technical Issues

A LOOK AT THE COMPONENTS

- Video
- Audio
- Exhibits
- Realtime
- Videographer

TECHNICAL REQUIREMENTS AND SETUPS

- Available Technologies
- Recommended Bandwidth and Testing
- Updating Your Notice Language
- Staying Secure
- Connecting to a Session and other Logistics
- An Insider Demonstration

PREPARING THE WITNESS

- Suggested Conduct and Settings
- Varying Participant Views
- Admonitions: What to Consider

REPORTER OPENING STATEMENTS

- Swearing in the Witness
- Exhibit Distribution and Best Practices

RESOURCES

- Current Articles
- Practice Guide
- Video Tutorials
- Checklists

REGISTER FOR THIS WEBINAR AT: WWW.VERITEXT.COM/CLE



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*NOTE: The following sample notice of deposition language is for informational purposes only and not for the purpose of providing legal advice. We strongly encourage you to review your local, state and any emergency COVID-19 rules regarding the procedural requirements for noticing and conducting remote depositions. Those rules may require stipulation of counsel, court order or other jurisdictional procedural requirement.

1 Jane Attorney; SBN 234234
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2 123 Any Street
Anytown, State 92663
3 Tel: (555) 555-555
Attorney for the Defendant
4

5
6 **COURT IDENTIFIER INFORMATION**
7 **UNITED STATE DISTRICT COURT OR**
8 **SUPERIOR COURT OF [STATE NAME]**

9 **COUNTY OF [NAME]**

10 **[COURT DIVISION INFORMATION IF APPLICABLE]**

11 JOHN SMITH,) Case No.: 03CL42341
Plaintiff,)
12)
13 vs.) **[SAMPLE]**
14 JANE DOE.) **NOTICE OF TAKING REMOTE**
Defendant.) **VIRTUAL DEPOSITION IN LIEU OF IN-**
15) **PERSON APPEARANCE**
16)
17)

18 To each party and to their respective counsel:

19 Please take notice that due to the disruptions to travel and accompanying shelter-in-place
20 orders caused by the COVID-19 outbreak, the deposition of JOHN SMITH will be taking place
21 via remote means on [date] and will be coordinated by Veritext Legal Solutions, with a business
22 address of [suggest you utilize the physical address of Veritext location nearest your office] .
23 [Optional: The deponent will be located at (address if appropriate to provide (e.g. residential,
24 office, etc.))]

25 Contact Veritext’s calendar team at [email@veritext.com] to retrieve the necessary
26 credentials to access the remote deposition, as well as information related to any technical
27 assistance you may require to assist with carrying out the virtual deposition. We encourage you
28 to access www.veritext.com/remote for additional remote deposition information.

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1 Alternatively, if circumstances then permit, the matter may be taken in whole or part in-
2 person and virtually. Those who wish to appear in the physical presence of another do so at their
3 own election; however, this noticing party is not requiring the in-person physical attendance of
4 counsel, the witness or any other party to this action.

5 The deposition will be taken, via remote means, before an officer authorized to
6 administer the oath to the deponent. That officer may be remote or in the physical presence of
7 the deponent. If the latter, a revised notice to each party and to counsel of record will be
8 provided. This deposition will commence at [time] and continue from day to day thereafter until
9 completed.

10 **NOTICE IS FURTHER GIVEN** that we reserve the right to conduct this deposition
11 utilizing the secure web-based deposition option afforded by Veritext or in the alternative video
12 teleconferencing (VTC) services or telephonically to provide remote/virtual access for those
13 parties wishing to participate in the deposition via the internet and/or telephone. Also take notice
14 that we reserve the right to record the deposition either by stenographic means by a court reporter
15 certified to record depositions or a digital reporter utilizing state-of-the-art digital recording
16 equipment. Both the court reporter and digital reporter are authorized to administer the oath and
17 serve as the deposition officer in the State of [state]. Take note that the deposition officer may
18 also be remote and out of the presence of the deponent via one of the options above for the
19 purposes of providing the oath/affirmation to the deponent and capturing the proceeding. We
20 further reserve the right to utilize the following: (1) Record the deposition utilizing audio or
21 video technology; (2) Instant visual display such that the reporter's writing of the proceeding will
22 be available to all who are a party to this proceeding to request and receive it in realtime; (3)
23 Exhibit Capture (picture-in-picture) technology in which any exhibit reviewed by the deponent
24 during the deposition can be captured visually; and (4) To conduct this deposition utilizing a
25 paperless exhibit display process called Exhibit Share or a similar paperless virtual display
26 platform. The parties are advised that in lieu of a paper set of exhibits they may be provided and
27 displayed digitally to the deposition officer, deponent, parties and counsel. The exhibits will be
28

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1 compiled by the deposition officer for the purposes of exhibit stamping, and ultimate production
2 of the final certified transcript.

3 Please contact the noticing attorney at least five (5) calendar days prior to the deposition
4 to advise that it is your desire to appear via this remote participating means so that the necessary
5 credentials, call-in numbers, firm name, email address, services, testing and information, if
6 necessary, can be arranged and provided to you prior to the proceeding(s).

7 A list of all parties or attorneys for parties on whom this Notice of Deposition is being
8 served is shown on the accompanying proof of service.

9 ///

10 Date: 03/20/2020

Jane Attorney
Attorney for the Defendant

SUGGESTED WORDING: ATTORNEY ADMONITION

The following is suggested language only for inclusion in your admonition prior to the commencement of a virtual deposition.

Please tailor the below to your setting, situation, style, etc. Counsel could put the following on the record and incorporate it into their traditional admonition with regard to the format of the deposition, requesting best testimony, asking for an estimate and not a guess, etc.:

Suggestion 1:

Attorney:

As part of my admonition today, due to our remote setting, I wanted to convey my expectations regarding communications between counsel and your client. It's apparent that we're not in the same room and I will only be able to view your client as compared to you both if I were there in person. I, in no way, wish to inhibit, you and your client from having communications with one another; however, I do ask that while we are on the record that you refrain from the use of any communications to assist your client like hand signals, text messages, passing of notes, etc. That sure doesn't mean you can't object nor any other responses you may have if we were in the same room. If you wish to take a break and the timing is appropriate, I am fine with that, but, as I mentioned, I'm looking to prevent communications from occurring that would not be expected to occur if we were all in the same room together.

Suggestion 2:

Attorney:

As part of my admonition today, I want to make clear the expectations of communications with the deponent. During this proceeding, counsel and the deponent/client will have an opportunity to speak off record at the appropriate time as if this was a deposition taking place in person. However, in this virtual setting, the expectation is that counsel will not be communicating with the deponent during this deposition while I'm on the record via text, email or other electronic means or vice-a-versa. Those exchanges can be viewed as taking place in my presence and not subject to the protections of attorney client privilege, sort of like you passing a note in front of me should we all be in the same room. It is also my understanding that the deponent is not with anyone else physically in the room/location where they are providing their testimony. If there is anyone present with the deponent, at any time, let's put on the record who is with the deponent.