

OFF THE RECORD

The New Normal: Navigating Remote Depositions and Hearings

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When the pandemic first pushed lawyers into remote litigation, most assumed the remote deposition or hearing were temporary stop gaps meant to band aid over hold ups in discovery. Now, it seems virtual depositions and hearings are part of the fabric of modern practice. Making referrals to other firms not necessarily in a potential new client's neighborhood necessarily comes with a proviso that much of the law is practiced remotely now. To adapt to a mechanism that is clearly here to stay, attorneys must pair strong advocacy with technical and ethical awareness.

The Benefits

Remote proceedings have clear advantages. Travel costs are minimal, clients save on billable hours, and scheduling conflicts are easier to resolve. This expands access to legal assistance to those who may not have previously been able to afford it. And experts who once faced prohibitive travel costs can now contribute from anywhere. Efficiency is undeniable and, when handled well, technology reduces friction in the litigation process.

The Challenges

However, when technology seems to be working against you, rather than with you, it can be one of the biggest hurdles. Dropped connections, poor audio, and a

lack of consistency in access can disrupt key testimony. Depositions that are handled online also suffer from problems with exhibit handling. Gone are the days of a smooth handoff with copies to counsel; now, exhibits require careful consideration, renaming documents ahead of time, and wasted dialogue that includes things like: "Can you see that on your screen?" "Is there a way you can make that bigger?" or even the dreaded, "I don't see the document, but I see something else."

Concerns about witness coaching also remain serious. In a virtual setting, it is harder to know if someone off screen is influencing testimony. Finally, remote settings risk undermining professionalism. A deposition from the front seat of a car or from the kitchen table, in casual attire, can dilute the formality litigation demands.

Ethical and Procedural Considerations

Dealing with the challenges of remote technology implicates several core duties. ABA Professional Rule 1.1 requires competence, which now includes some degree of fluency with technology. Rule 1.6 requires confidentiality, which seems to at least touch on the handling of sensitive documents, particularly online where hackers and scams are so prevalent. Of course, candor and integrity remain paramount. Rule 3.3, which requires candor to the tribunal, and Rule 8.4,



which requires attorneys to maintain the professionalism becoming of an attorney, apply whether counsel is standing in a courtroom or speaking into a webcam.

Attorneys must also continue to heed local rules and standing orders which increasingly include rules dealing with the handling of technology for things like exhibits, disclosures, and objections in remote proceedings.

Practical Tips for Success

Preparation remains the best safeguard against disaster. Test the technology you plan to use for a remote deposition or a remote hearing before the time has come to move forward. Confirm your internet is strong (preferably a hard-wired connection rather than a wireless one) and that your camera and audio are clear before starting. Run a mock session with an understanding colleague or a witness you intend to ask questions of at a hearing.

Control the environment: a quiet space with good lighting reinforces credibility in front of the Court. Plan for your exhibits. If sharing your screen is a foreign task to you, practice it like you would with any other skill. (Again, an understanding colleague may be necessary.) Pre-mark and rename your exhibits so the court reporter

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does not have to sift through documents with automatically assigned alpha-numeric file names that most technology assigns upon scanning.

Analyze whether a remote appearance is a good fit for your circumstance. While a cost-benefit analysis must be done, there are some cases where a remote hearing or deposition is not appropriate. If the deposition is document intensive with expansive documents, trying to manage that remotely may not be a good idea.

Lastly, maintain your presence and professionalism. Dress and act as you would in person if you were appearing in

court. Simply because the setting is less formal, does not mean professionalism should suffer. Request your clients to take the remote proceeding just as seriously.

Looking Forward to the Future

Remote depositions and hearings are not going away in the post-pandemic era. They bring efficiency and access, but also demand diligence, preparation, and ethical care. Lawyers who treat virtual proceedings with the same seriousness as in-person litigation will not only adapt but will continue to thrive in this new era of advocacy.

