

Courts Are Ordering Remote Depositions as the COVID-19 Pandemic Continues

Part Three of the Series Addressing How Technology Is Changing the Litigation Landscape

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The COVID-19 pandemic has generally put a stop to in-person depositions nationwide. Many litigants and their attorneys have also resisted attempts to proceed with remote video depositions, some holding out for the pandemic to subside and for the return of in-person business as usual while others are resistant to using new or unfamiliar virtual video technology. However, with COVID-19 cases still increasing nationwide, courts are beginning to mandate that depositions proceed remotely regardless of these apprehensions. It looks like remote video depositions may become part of a new set of best practices and perhaps mandatory in some circumstances for the foreseeable future.

The Supreme Court of New Jersey, for example, has ordered that “[t]o the extent practicable . . . depositions should continue to be conducted remotely using necessary and available video technology.” The court has not explicitly mandated remote depositions, but has certainly encouraged trial courts to do so, indicating in orders litigants are “strongly encouraged” to depose witnesses remotely. Other jurisdictions, such as Philadelphia’s First Judicial District, have given trial court’s similar authority and flexibility.

Recently, a trial court in Middlesex County, New Jersey granted a motion to compel a defense deposition of the plaintiff to proceed remotely, if not in person, over the objection of plaintiff’s counsel in a slip-and-fall case. This is one of the first such rulings in this area. The plaintiff’s counsel objected to the remote deposition on the grounds that his client was elderly with a heavy accent, had no technology knowledge, and had no internet access. That would seem to be a pretty good argument that a remote deposition would be impracticable. However, the defendant bolstered their case with an offer to cover the cost of renting and delivering a remote deposition technology package to the plaintiff, complete with a tablet, phone, speaker, internet hotspot and remote training beforehand. Although the trial court acknowledged the plaintiff’s “significant hardship,” the court ordered that the deposition proceed remotely if not in person.

Disputes over remote depositions will need to be resolved on a case-by-case basis in light of the particular needs of the parties and the case. The COVID-19 pandemic is a unique circumstance. But well before the pandemic, courts have ordered depositions to take place remotely where warranted by the circumstances. Federal Rule of Civil Procedure 30(b)(4), for example, explicitly empowers trial courts to order remote depositions. When disputes arise, federal courts generally focus on whether the party opposing the remote deposition can demonstrate sufficient prejudice, and whether there is sufficient assurance that the deposition will produce accurate and trustworthy testimony.

It should be anticipated that courts will begin to order remote depositions more readily as judges, attorneys, and members of the public become more comfortable with remote technology and understand that cases will need to move forward despite the pandemic. Please know that White and Williams lawyers have substantial experience with remote video depositions and were at the forefront of addressing this issue at the onset of the pandemic. Our attorneys are ready to assist with any decision making and/or preparation for remote video depositions.

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As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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