



Conducting Remote Depositions

Presented by:
Leatt Gilboa
9/22/2020

Agenda

- **Remote Deposition Options (5 minutes)**
- **Expectations for Remote Deposition (10 minutes)**
- **Admissibility of Remote Deposition (10 minutes)**
- **Admonitions (10 minutes)**
- **Technical FAQs (10 minutes)**
- **Current Event Updates: Remote Hearings & Going Back to In Person Depositions(5 minutes)**
- **Questions and Answers (10 minutes)**



Be Advised



This presentation, the informational booklet and our website contain general legal information and should not be construed as legal advice.

Your remote deposition provider is not responsible for WiFi connectivity and reliability. Contact your internet service provider and I.T. department before scheduling a remote deposition to avoid any technical and connection issues.



Coronavirus- A New Era

Looking Ahead

- Immense Backlogs
- Significant strain on a steep court reporter shortage
- Massive rise in litigation cost

Remote Deposition Options



Zoom Enabled Virtual Conference

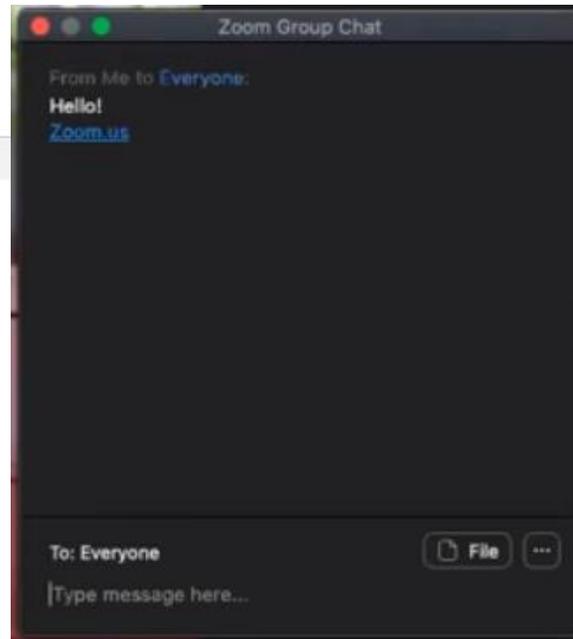
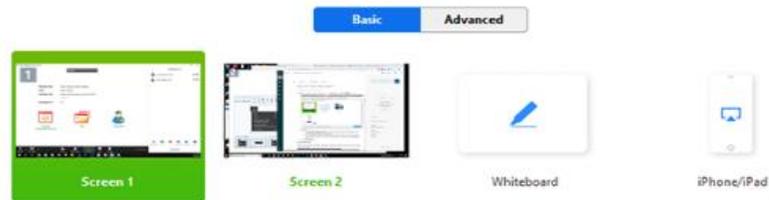
- Recommended service:
 - A shareable link to the remote session
 - Testing for each participant the day before your deposition
 - A professional videographer to set up and monitor the virtual conference start to finish

Sharing your screen

1. Click the **Share Screen** button located in your meeting controls.

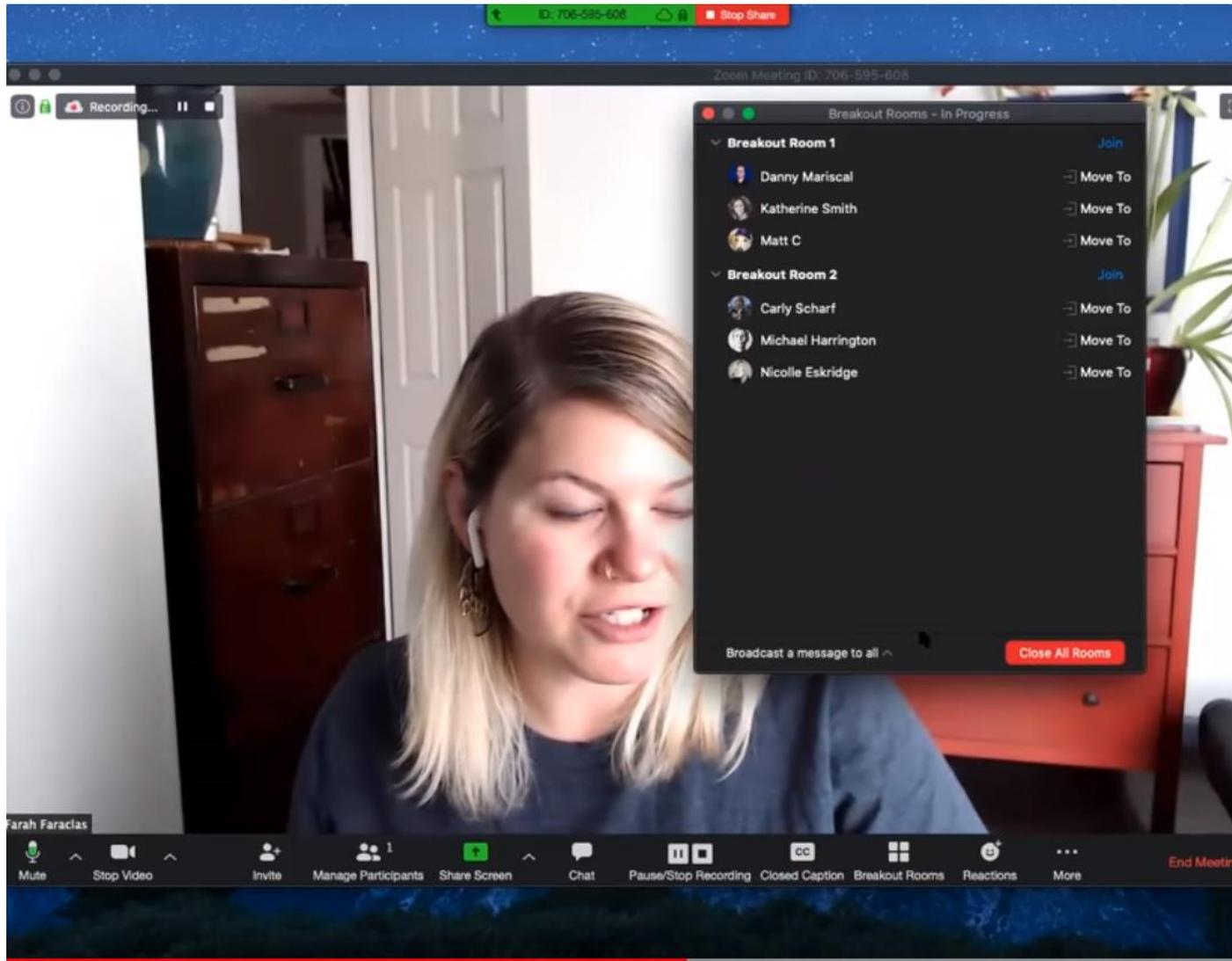


2. Select the screen you want to share. You can also choose an individual application that is already open on your computer, the desktop, a [whiteboard](#), or an [iPhone/iPad](#).



Remote Exhibit Management

- Manage Exhibits Yourself or Have a Videographer Manage Exhibits for You
- Sharing Files vs. Sharing Your Screen
- Reporters can: print out your exhibits to mark regularly, or digitally mark with Adobe Acrobat add-ons



Opt for Small Breakout Rooms

- Manage Exhibits Yourself or Have a Videographer Manage Exhibits for You
- Sharing Files vs. Sharing Your Screen



Remote Realtime Streaming

- Use two monitors for a multi-screen view
- Shrink your windows to appear side-by-side on your screen
- Easily toggle between windows using hotkeys



Remote Interpreting

A close-up photograph of a person's hands using a multi-line office phone on a wooden desk. The person is wearing a blue suit jacket and a white shirt. The phone is black with a display screen and a keypad. A laptop keyboard is visible in the foreground, and a computer monitor is partially visible in the background.

Telephonic Only

- Best suited for:
 - CNA's
 - Workers' Comp
 - Small hearings

Expectations for Remote Depositions

Pre- Deposition Preparation

- Share participant emails and electronic exhibits with your agency
- Arrange for pre-deposition testing of hardware, wifi strength, and audio quality
- Practice a mock remote deposition!

Best Practices for Your Remote Deposition

- Log in 15 minutes early to ensure a timely start
- Avoid busy backgrounds: a solid color background is ideal
- Mute cell phone and other devices to prevent unnecessary noise on the recording, or audio feedback
- Ensure pets and children are safe and in a different room
- If you must step away, turn off both audio and video prior to breaking away (your videographer can help you monitor this.)
- **Avoid cross-talk and speak clearly!**

Admissibility of Remote Depositions

Court Encouragement Predates COVID-19

1. A desire to save money is good cause to depose...by telephone or other remote means
2. The burden is on the opposing party to show how they would be prejudiced
3. Experimentation in new methods of recording depositions should be encouraged

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION: August 31, 2011

<https://casetext.com/case/guillen-v-bank-of-america-corp-2>

COVID-19 Updates

On March 27, 2020 Governor Newsom issued an executive order that allows for remote depositions in every case.

<https://www.gov.ca.gov/2020/03/27/governor-newsom-issues-executive-order-on-judicial-council-emergency-authority/>

Noticing Method: Federal Code

https://www.law.cornell.edu/rules/frcp/rule_30

- METHOD OF RECORDING
- (A) Method Stated in the Notice. The party who notices the deposition **must state in the notice the method for recording the testimony.** Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or stenographic means. The noticing party bears the recording costs. Any party may arrange to transcribe a deposition.
- (B) Additional Method. **With prior notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to that specified in the original notice.** That party bears the expense of the additional record or transcript unless the court orders otherwise.

Noticing Method: California Code

https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=CCP&division=&title=4.&part=4.&chapter=9.&article=2.

- Any intention by the party noticing the deposition to record the testimony by audio or video technology, in addition to recording the testimony by the stenographic method as required by Section 2025.330 and any intention to record the testimony by stenographic method through the instant visual display of the testimony. If the deposition will be conducted using instant visual display, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance. Any party or attorney requesting the provision of the instant visual display of the testimony, or rough draft transcripts, shall pay the reasonable cost of those services, which may be no greater than the costs charged to any other party or attorney.

Deposition Notice Language

TO DEFENDANT {NAME} AND TO ITS ATTORNEYS OF RECORD, PLEASE TAKE NOTICE that pursuant to C.C.P. section 2025.210, Plaintiff {NAME} (“Plaintiff”), will by and through his counsel of record, take the deposition of the person(s) most knowledgeable of Defendant {NAME} (“Defendant”) in the above action at the office of {LOCATION} on {DATE AND TIME}. The deposition shall be taken stenographically and shall be conducted under the supervision of an officer who is authorized to administer an oath, and may be taken remotely via videoconference and remotely recorded.

The above language has been suggested for use to incorporate virtual conferencing into your deposition. Clients should determine appropriate language to comply with court requirements. The below is offered as a guideline only.

On the Record Stipulation Language

Clients should determine appropriate language to comply with court requirements. The below is offered as a guideline only.

This deposition is taken pursuant to court rules and pursuant to notice. With regards to Rule 30 (b)(4), the deposition is taken place via remote video deposition utilizing remote internet-based services.

- WHEREAS, it is agreed pursuant to and stipulated by the parties regarding Federal Rule 29, that all parties hereby stipulate and waive any objection they might have as to the form and format of the deposition. Specifically, any objections to utilizing this electronic internet-based service to obtain this testimony.
- WHEREAS, the parties hereby stipulate and waive any objections of the oath administration to the witness being conducted by a signed affidavit, which is going to be attached here too as plaintiff's Exhibit 1, which is deemed to be an ongoing and continuing obligation to provide testimony in a truthful and honest manner under the penalty of perjury.
- WHEREAS, the parties hereby stipulate and waive any objection to the format of ESI electronic exhibits and deem them to be an original copy with the electronic date and time stamp.
- WHEREAS, each such party shall not assert that any such content is inadmissible in any court or in connection with any such proceeding and shall not object to the other party's use or introduction of any such content in any such Proceeding.

Reporter Read-On Language

- "Before we proceed, I will ask counsel to agree on the record that under the current National Emergency pursuant to Section 319 of the Public Health Service Act, there is no objection to this deposition officer administering a binding oath to the witness remotely. Please state your agreement on the record."
- "Before we proceed, I will ask counsel to agree on the record that under the current National Emergency pursuant to Section 319 of the Public Health Service Act, there is no objection to this deposition officer administering a binding oath to the witness by phone. Please state your agreement on the record."
- "Before we proceed, I will ask counsel to agree on the record that under the current National Emergency pursuant to Section 319 of the Public Health Service Act, there is no objection to this deposition officer administering a binding oath to the witness by videoconference. Please state your agreement on the record."
- "Before we proceed, I will ask counsel to agree on the record that under the current National Emergency pursuant to Section 319 of the Public Health Service Act, there is no objection to this deposition officer administering a binding oath to A witness not appearing personally before me. Please state your agreement on the record."

Admonitions

- Penalty of Perjury
- Ask very clear questions- investigate!
- No unknown recording
- Managing the witness
- Repeat at the end!

Put it in your notice- Discuss it upfront!

- The witness and his/her counsel are prohibited from being in the same room
- Each person attending shall always have their cameras and audio turned on while on the record
- While on the record, the witness is prohibited from communicating with anyone other than the deposing counsel
- The witness may not use secondary screens
- While on the record, the witness will move any cell phone device out of reach

Technical FAQs

Data Security: Zoom

Zoom is a third-party vendor and applies industry standards to ensure the integrity of their data.

- How to keep your meetings secure?
 - Your own session password
 - Waiting rooms
 - Locking the meeting
 - Host ejections
 - Limit screen share and private chat

Please review additional on their site: zoom.us/security

Data Security: Your Agency

Every Agency maintains its own security standards. For example, First Legal maintains compliance with:

- PII (Personally Identifiable Information)
- Federal and State security requirements
- HIPAA (Health Insurance Portability and Accountability Act)



Additional Hardware?

- Speakers
- Microphones
- Webcams

Your Main Takeaway

Practice, Practice, Practice!

Remote Hearings



<https://courtcall.com/arbitration-resolution-services/>

Going Back to In Person Depos



**More
Questions?**

**Contact
Us!**

Calendar@FirstLegal.com
855.348.4997

FirstLegalDepositions.com