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REMOTE CONTROL: HOW TO BEST PREPARE FOR
AND MAXIMIZE EFFECTIVENESS IN REMOTE DEPOSITIONS
AND COURT PROCEEDINGS
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RESISTING REMOTE DEPOSITIONS
OF A CORPORATE REPRESENTATIVE

RESISTING REMOTE DEPOSITIONS OF A CORPORATE REPRESENTATIVE

- Overview of Applicable Rules
- Disadvantages / Advantages to Conducting a Remote Deposition of a Corporate Representative
- Strategies for Resisting Court Orders Directing Remote Depositions of a Corporate Representative

30(B)(6) DEPOSITIONS OF CORPORATE REPRESENTATIVES ARE PERMISSIBLE BY “REMOTE MEANS”

Federal Rule of Civil Procedure 30(b)(4) provides:

By Remote Means. The parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place where the deponent answers the questions.

30(B)(6) DEPOSITIONS OF CORPORATE REPRESENTATIVES ARE PERMISSIBLE BY “REMOTE MEANS”

In the wake of the COVID-19 crisis, certain federal judges have supplemented their individual rules to permit *all* depositions to be taken by remote means.

DUTIES OF OFFICER – FEDERAL RULE OF CIVIL PROCEDURE 30(B)(5)

(A) *Before the Deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under [Rule 28](#). The officer must begin the deposition with an on-the-record statement that includes:

- (i) the officer's name and business address;
- (ii) the date, time, and place of the deposition;
- (iii) the deponent's name;
- (iv) the officer's administration of the oath or affirmation to the deponent; and
- (v) the identity of all persons present.

DUTIES OF OFFICER – FEDERAL RULE OF CIVIL PROCEDURE 30(B)(5)

Although the parties can stipulate otherwise, federal courts have held that a deposition is deemed to have been conducted before an officer if that officer “*attends the deposition via the same remote means (e.g., telephone conference call or video conference) used to connect all other remote participants, and so long as all participants can clearly hear and be heard by all other participants.*” *Sinceno v. Riverside Church in City of New York*, 2020 WL 1302053 (S.D.N.Y. Mar. 18, 2020).

DISADVANTAGES TO CONDUCTING A REMOTE DEPOSITION OF CORPORATE REPRESENTATIVE

- Risk of audio / visual issues involving testimony and use of deposition exhibits
- Advance disclosure of deposition exhibits may provide a roadmap for the deposition to opposing counsel
- Inability to see the witness “in person”
- Risk of opposing counsel “coaching” the witness
- HIPAA Compliance relative to private healthcare information may implicate the need for HIPAA compliance by the software provider

ADVANTAGES TO CONDUCTING A REMOTE DEPOSITION OF CORPORATE REPRESENTATIVE

- No travel limits risk of exposure
- Increased preparation time may result in a more effective deposition (including the disclosure of deposition exhibits)
- Allows the opportunity to observe and critique your witness
- Arguments on the record and outside the presence of the witness can be done in virtual breakout rooms

STRATEGIES FOR RESISTING COURT DIRECTIVES ORDERING REMOTE DEPOSITIONS OF CORPORATE REPRESENTATIVES

- Create a clear record making your position known to the Court and opposing counsel (i.e., the deposition should be adjourned until the COVID pandemic ceases)
- Establish how the client would be unfairly prejudiced if remote depositions are to proceed
- Avoid any appearance of gamesmanship with respect to any request to conduct corporate representative depositions in person
- If compelled, request additional time from the Court with which to prepare your witness



PREPARING THE
CORPORATE WITNESS



REMOTE IS THE NEW “NORMAL”

- COVID has been used to:
- Initiate depositions
- Prevent depositions
- Bottom Line:
- More remote proceedings and clients may inquire/require remote preparations

YESTERDAY/TODAY

Conversation with the witness

VS.

Written outline of issues to cover

PREPARATIONS NOW MORE IMPORTANT THAN EVER

- Hardware considerations
- Bandwidth considerations
- The particular software program
- All to be discussed before the first session
- Practice with the program and format

SCHEDULING CONSIDERATIONS

- Number of sessions planned
- Length of each session
- “Fatigue factor”
- Distraction factor
- Privilege issues

FIRST SESSION

- Explain the preparation process
- Discuss video deposition setup
- Discuss “delays”
- S/he is in control – emphasize this
- What stipulations/agreements were reached with counsel

FIRST SESSION (CONT'D)

- Discuss the case
- Discuss role of the corporate representative
 - General
 - This case
- Discuss factual investigation that was done and by whom

THE DOCUMENTS

- Paper or electronic
- Best approaches to select and provide documents in either form
- How will they be shown to the witness during the deposition
- How will you use them

NOTES

- Whiteboard feature
- Screen sharing
- Attorney client communication issues
- Attorney work product issues

MOCK QUESTIONING

- Timing and pace issues
- Who is in charge here: easier for witness to control in this setting

PRE-DEPOSITION CONFERENCE

- Exhibits - The plaintiff's responsibility that should not burden the witness
- Stipulations or discussions with opposing counsel

REMEMBER THE COURT REPORTER

- Where will the reporter be located
- Exhibits – when sent and how shown to witness
- Exhibit sharing on screen
- Real time transcripts

BREAKS

- Ensure witness understands how to “mute” video and audio
- Plan for how to be in contact during breaks
- 360 degree camera

REPTILIAN THEORY APPLIED TO CORPORATE REPRESENTATIVE

- Reptile approach seeks to point out a general safety rule, which is higher than the reasonable standard of care
- Demonstrate how the defendant broke the safety rule with an attitude that puts us all at risk

DEFENSES TO REPTILIAN THEORY

- Define “safety”
- Examples from the pandemic
 - Safety: stay home
 - Some people go to work
 - More people go to work
 - All people begin to go out “safely”
- Continuum of choices – not a yes or no

DEFENSES TO REPTILIAN THEORY

- Emphasis must be placed on the facts and circumstances of the particular case
- Emphasis must be placed on this particular plaintiff and whether the defendant caused harm in this case

POP UP QUESTION

- The Reptile Theory Relates to:
 - A. Snakes
 - B. Lizards
 - C. Turtles
 - D. Jurors



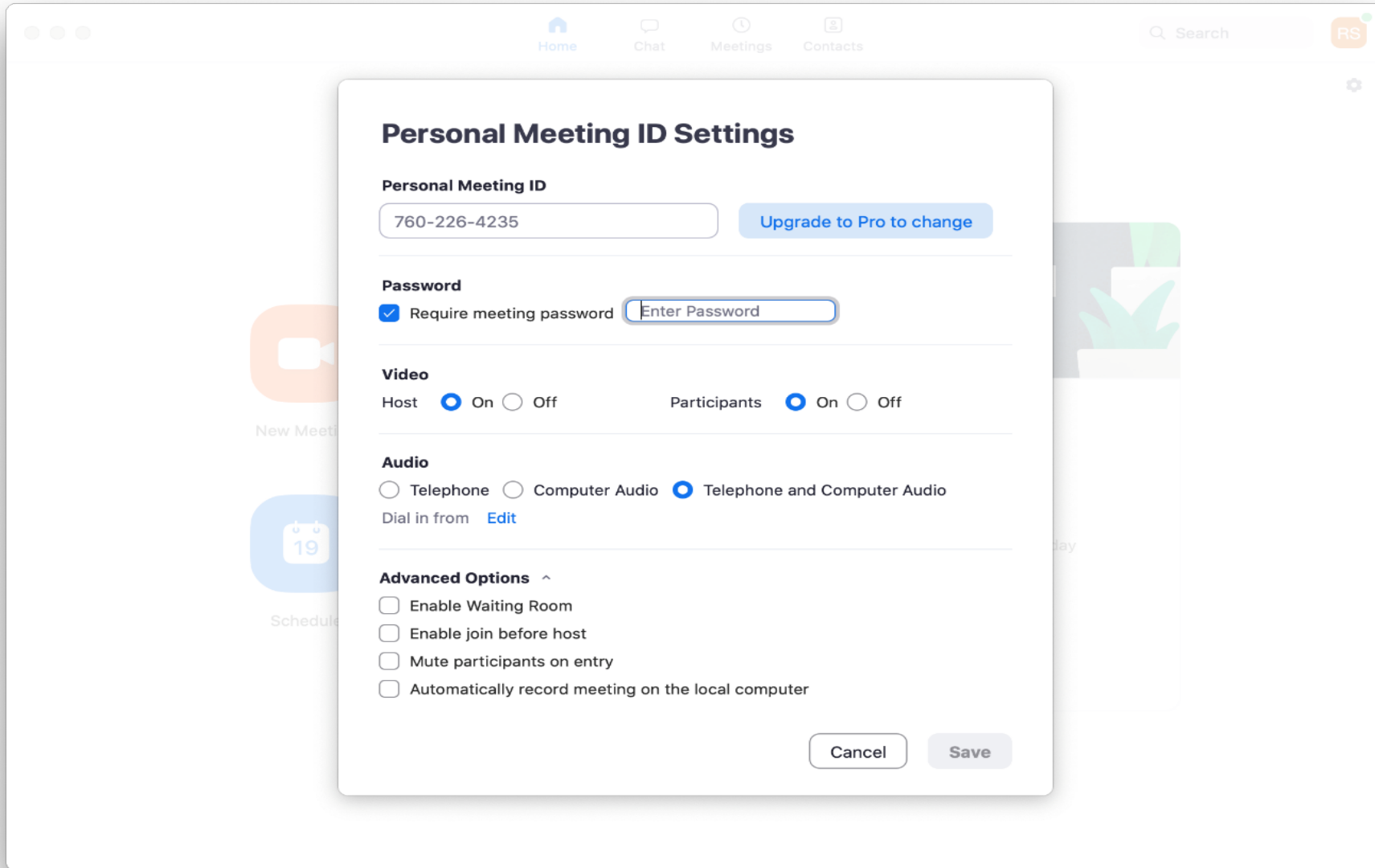
TIPS FOR REMOTE DEPOSITIONS
AND COURT APPEARANCES



VIDEOCONFERENCING PLATFORMS

- Zoom
- Google Meet
- Facebook Messenger Rooms
- Court reporter service application, such as Veritext Virtual

SECURITY FEATURES



LOGISTICS

- Lighting
- Background
- Clothing
- Setting
- Microphone and speakers
- Network speed
- Notifications

PREPARE

- Prepare your witness
- Prepare your exhibits
- Prepare your file
- File materials should be easily available
- Digital materials should be organized and searchable

PRACTICE

- Exhibits
- Speaking
- Sharing

HANDLING EXHIBITS

- Format
- Folders
- Producing exhibits during proceeding

SHARING ON ZOOM



Basic Advanced

Desktop 1

Whiteboard

iPhone/iPad via AirPlay

iPhone/iPad via Cable

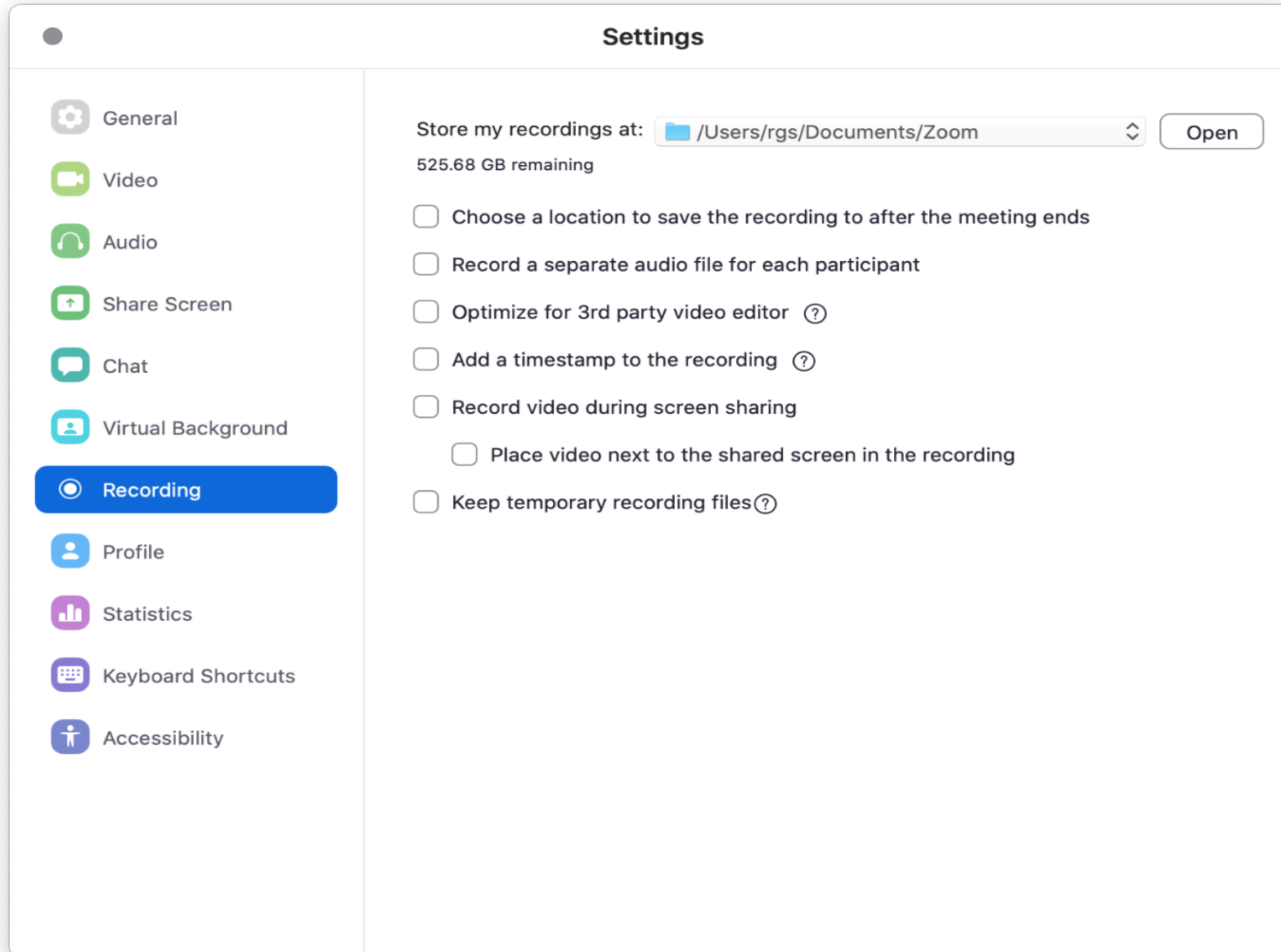
Acrobat Pro DC - Dr. Hunaid Dollar...

Preview - x-ray-thumbs-up_1600-...

Share computer sound Optimize Screen Share for Video Clip [Share](#)

The image shows the Zoom screen sharing selection window. It has two tabs: 'Basic' (selected) and 'Advanced'. Under 'Basic', there are six options: 'Desktop 1' (a video thumbnail of a man), 'Whiteboard' (a blue pen icon), 'iPhone/iPad via AirPlay' (a white smartphone icon), 'iPhone/iPad via Cable' (a white smartphone icon with a blue lightning bolt), 'Acrobat Pro DC - Dr. Hunaid Dollar...' (a thumbnail of a document), and 'Preview - x-ray-thumbs-up_1600-...' (a thumbnail of an x-ray). At the bottom, there are two checkboxes: 'Share computer sound' and 'Optimize Screen Share for Video Clip', both of which are unchecked. A blue 'Share' button is located at the bottom right.

RECORDING ON ZOOM



The image shows the Zoom application settings window, specifically the 'Recording' section. On the left, a sidebar lists various settings categories: General, Video, Audio, Share Screen, Chat, Virtual Background, Recording (highlighted in blue), Profile, Statistics, Keyboard Shortcuts, and Accessibility. The main content area is titled 'Settings' and shows recording options. At the top, it indicates the recording location is '/Users/rgs/Documents/Zoom' with an 'Open' button and shows '525.68 GB remaining'. Below this are several checkboxes for recording preferences, all of which are currently unchecked.

Settings

Store my recordings at:
525.68 GB remaining

- Choose a location to save the recording to after the meeting ends
- Record a separate audio file for each participant
- Optimize for 3rd party video editor [?](#)
- Add a timestamp to the recording [?](#)
- Record video during screen sharing
 - Place video next to the shared screen in the recording
- Keep temporary recording files [?](#)

HEARINGS

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9042

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 20-007

FIRST EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant’s consent:

a. Modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than 30 days after the Governor’s state of disaster has been lifted;

b. Allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, or court reporter, but not including a juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means;

2.b. Allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, or court reporter, but not including a juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means;

- c. Consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;
- d. Conduct proceedings away from the court's usual location, but in the county of venue, and only with reasonable notice and access to the participants and the public;



⚠ COURT CORONAVIRUS INFORMATION

[EMERGENCY ORDERS](#)

[COURT GUIDANCE](#)

[ELECTRONIC HEARINGS \(ZOOM\)](#)

[YOUTUBE CHANNEL DIRECTORY](#)

Zoom Information and YouTube Support

In order to facilitate court activities, the Office of Court Administration is providing Judges the ability to stream and host court proceedings via Zoom and YouTube. Under the Open Courts Provision of the Texas Constitution, it requires that all courts maintain public access. Only State of Texas Judges are eligible for access to the OCA provided Zoom accounts. To request access or inquire about a previous request please contact: zoomhelp@txcourts.gov

New Zoom accounts are being activated on a rolling basis several times daily. OCA staff are working diligently to ensure that all Texas Judges gain access as soon as possible.

Information Webinar

[Webinar Recording](#)

Initial Setup

In order for Judges to use Zoom, the initial setup must be completed. **DO NOT RECORD**

- [Zoom initial setup and use](#)
- [YouTube Channel setup](#) / Watermark "DO NOT RECORD"
- [Dropbox Setup](#)
- [Linking Zoom to stream on YouTube](#)

Getting Started with Zoom

The Office of Court Administration advises users new to Zoom to watch these videos before getting started with Zoom.

- [Zoom 101 - Sign Up and Download Meeting Client](#)
- [Joining a Meeting](#)
- [Schedule a Meeting](#)
- [Schedule a Meeting in Outlook](#)
- [Meeting Controls](#)
- [Host and Co-host Controls](#)
- [Joining and Combining Audio/Video](#)
- [Using Break-out Rooms](#)
- [Using Virtual Backgrounds](#)
- [Simultaneous Interpretations for Meetings](#)
- [Using Dropbox to share files](#)
- [Best Practices for Self-Represented Litigants](#)
- [Background and Legal Standards - Public Right to Access to Remote Hearings During COVID-19 Pandemic](#)
- [Live Stream Benchmark](#)

Tips for Successful Hearings

- Dress in a soft solid color (like a black robe for judges). If a tie is worn, use a solid tie rather than one with a pattern.
- When speaking, remember to look directly at the webcam, not at the screen.
- Position the camera at your eye level or slightly above eye level.
- Be mindful of what is behind you, choose a solid neutral wall if possible.
- Check the lighting. Light from a window behind you might blind the camera, making you look dark. Light above you in the center of a room might also cast shadows. Ideally, position a lamp, or sit facing a window, where light is directly on your face. Also be aware that your monitor casts light that can make you look blue.
- Remind the participants to speak one at a time and to pause prior to speaking in case there is any audio/video lag.
- Encourage the participants to mute themselves or mute them yourself when not speaking in order to avoid any potential background noise.
- Only email the link to the hearing to those participating in the hearing, encourage the public to view the hearings on the court's YouTube channel. Consider using a password for the hearings.
- Test your connection and setup with Zoom by testing your connection with a [test meeting](#).

Frequently Asked Questions

Account Setup

- How long does it take from the time we use the survey monkey for until our account is provisioned? Approximately 1 business day – OCA staff are provisioning accounts as quickly as possible.

151st CIVIL DISTRICT COURT
HARRIS COUNTY, TEXAS
SPECIAL STANDING ORDER NO. _____

STATE OF TEXAS)
)
COUNTY OF HARRIS)

Time: MAR 24 2020
By: Jerrita Burgess, Texas
Deputy District Clerk
FILED

ORDER REGARDING REMOTE ORAL DEPOSITIONS BY VIDEOCONFERENCE

Pursuant to 199.1(b) of the Texas Rules of Civil Procedure (the "Rules"), "a party may take an oral deposition by telephone or other remote electronic means if the party gives reasonable prior written notice of intent to do so." In addition, the Texas Supreme Court's First Emergency Order Regarding the Covid-19 State of Disaster ("First Emergency Order"), subject only to constitutional limitations and without a participant's consent, authorized all courts in Texas: (a) "[m]odify or suspend any and all deadlines and procedures, whether by prescribed by statute, rule or order"; (b) "[a]llow or require anyone involved in any... deposition... including but not limited to a party, attorney, witness, or court reporter...to participate remotely, such as by teleconferencing, videoconferencing, or other means"; and (c) "[c]onsider as evidence... sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means."

In light of the Texas Supreme Court's First Emergency Order, and in the interest of the safety and welfare of the public, attorneys, court reporters, and clients amid the ongoing concerns and escalation of COVID-19, balanced with the important interest of litigants to keep cases moving forward, this Court ORDERS the following:

1. All oral depositions may be taken, and all authorized participants may participate, by remote video connection.
2. All notices of an intent to take an oral deposition by remote video connection must specify how to access and utilize the remote video connection (i.e., Zoom or other video conference application). The notice must also specify where the witness will be located when answering questions at the time of the deposition.
3. If the witness does not have the capability to access and utilize the remote video connection specified in the notice, then the party noticing the deposition must provide the witness with appropriate access or equipment

1. All oral depositions may be taken, and all authorized participants may participate, by remote video connection.

4. It shall not be grounds for a motion to quash...that a party, attorney...does not agree to the remote deposition...

5. The witness may be placed under oath remotely...



JUDICIAL PREFERENCES – REMOTE PROCEEDINGS

Prepared for Civil District Hearings CLE
April 14, 2020 • SABA Signature CLE Series

COURT	HRG INFO PROVIDED	DOCUMENT SUBMISSION	FILE NAMING	OBJECTIONS	RECORD ON ZOOM?	OPEN COURTS COMPLIANCE	COURT-SPECIFIC SETTINGS	OTHER PREFERENCES
37TH Dist. Court Judge Michael Mery	Via email.	Via email to clerk, judge & court reporter.	Include case style and/or cause #.	Raise blue "Zoom" hand or physical hand.	No.	Zoom hearing broadcast into courtroom itself.	Email clerk; DO NOT cc Judge.	Be patient. Be alert. Be prepared. You can do it!
45TH Dist. Court Judge Mary Lou Alvarez	Via both email and phone, if needed.	Via email.	No preference.	Orally lodge when deemed timely.	No.	Email clerk to obtain telephone call in number and Zoom access code.	Call clerk.	Please provide emails for yourself & opposing party to avoid delays; & please confer as much as possible.
57TH Dist. Court Judge Antonia Arteaga	Via email.	For basic motions & responses, via email to court, cc opposing counsel; if voluminous, then via Google Drive or Dropbox link.	No preference.	Depends.	Depends.	Zoom live streamed into courtroom; clerk to provide ID upon request; and link posted in Comments on YouTube page as listed on OCA website.	No preference, but most simply, email clerk as usual.	Please follow local rules & confer before hearing; if >1 week w/o a ruling/order, call Court; respect & kindness between O/Cs; learn Zoom to enhance case.
73RD Dist. Court Judge David A. Canales	Via both email and phone, if needed.	Via 1) Google Drive (preferred), 2) Dropbox, or 3) if preferred by parties, email to judge, cc court reporter.	No preference.	Raise blue "Zoom" hand or physical hand.	At times, but only to assist court reporter with accuracy.	Via live stream onto YouTube page at https://www.youtube.com/channel/UCVpJCVCYCF4HNu134aEGfDvg	Email clerk; cc Judge.	I disable Zoom Chats; and I invoke The Rule and ask all witnesses show me no one else is in the room so they are not distracted or influenced.
131ST Dist. Court Judge Norma Gonzales	Via Zoom Invite.	if voluminous, parties may agree to use a shared drive link of their choice; if emailed cc court reporter & judge.	Will likely discuss with parties and court reporter before hearing.	Orally lodge when deemed timely.	No.	Zoom streamed into open court on big screen w/ bailiff present in court. Clerk or Judge provide ID to anyone who requests via email or call.	Email clerk; cc Judge.	None.
150TH Dist. Court Judge Monique Diaz	Via both email and phone, if needed	Via a shared Google Drive link provided to parties by court.	Include case style and/or cause #.	Orally lodge when deemed timely.	No.	Via Zoom link in Comments of YouTube page at www.youtube.com/channel/UCP2r4i5aQpN7_2sRt5y4w3g .	Call or email clerk.	Please review materials provided with today's presentation.

MISCELLANEOUS

- Consider whether the court reporter will be with the witness or elsewhere. In Texas, the court reporter can be remote.
- Discourage witness coaching:
 - Disable the chat function in the software.
 - Get stipulations among counsel beforehand.
 - Adjust the camera to show more of the witness, such that it would capture them reading other sources, etc.
- Practice with any interpreter as well.

QUESTIONS?

- Use the dialogue box on the right side of your screen to submit any questions to the presenters.

THANK YOU! IF YOU HAVE ANY
QUESTIONS, PLEASE CONTACT ONE OF
THE PRESENTERS.



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