



# REMOTE DEPOSITION TECHNOLOGY & BEST PRACTICES

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# Remote Deposition Technology & Best Practices

*As an industry veteran with over 25 years in the court reporting arena, including experience with the top AMLaw firms, specialty boutique firms and corporate clients -- I have witnessed the evolution of technology and the use of various platforms starting as far back as mid 90's with the first of its kind, Livenote.*



Remote technology was often considered a luxury tool for complex litigation that allowed for remote participation by viewing real-time testimony streaming to locations across the globe. As time progressed, the technology evolved with features for transcript management, interactive communication, and then came full circle with document sharing. Initially, this concept was designed to allow co-counsel, clients and even support staff to oversee depositions from afar. Cost savings played a role in utilization by reducing travel expenses and travel time. Although a convenience, and a cost saving way of conducting depositions, attorneys still preferred a live, in-person interaction with the deponent.

## The Evolution of Technology and Industry Demand

Technology in the space of court reporting has been around for over two decades. However, getting attorneys to “buy in” or use such platforms was not widely accepted. Now that we are in a new era and fighting the unknown, unseen enemy of the COVID-19 virus, this has now become the safest, most convenient way of keeping discovery moving forward. We are seeing more and more depositions being scheduled and more court proceedings taking place, all via remote technology.

Court systems across the country are using such applications as Zoom, Adobe Connect and other platforms to keep the legal system up and running.

In early March, when the COVID-19 virus was front and center, states put in effect “Shelter in Place” orders, having stunned the economy and paralyzed the workforce. Many law firms were working diligently during the first 30 days to get everyone set up to work remotely, while others had some form of remote working protocols already in place. Taking depositions was not the top priority. As time progressed and the orders were extended, lawyers across the country found themselves needing to learn how to safely keep discovery in motion and conduct depositions.

Over the past 60 days, court reporting firms across the country saw a change in deposition settings, and **95%** are now utilizing remote technology.

### Questions Remain:

- Will this be the new norm?
- Will technology now be a necessity and not a luxury?
- For now, it appears to be the standard, but one should still question, are all remote deposition platforms the same?
- Are all court reporting vendors the same?

**E**xperience, service and technology support are more important now, than ever before. Yes, pricing will always be a consideration. Yes, there are still corporations and carriers that dictate who you must use as your court reporting vendor, however in the days, weeks and months to come, will there be a shift in a “freedom of choice”? Will corporations and carriers allow more flexibility? Will they allow for more diversity and inclusion and help support the small business that keep this country running? So much is unknown, but one thing remains the same -- litigation must go on.



Experience



Customer Service

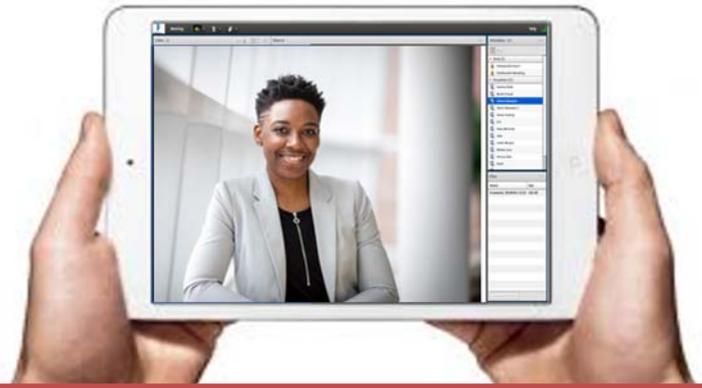


Technology Support

We must continue discovery, and selecting the right vendor is more important now than ever before.



## Choosing a Vendor with Experience in Technology



### Key Components when Choosing a Vendor:

- Do they offer a choice in platforms that are intuitive, easy-to-use?
- Do they offer a secure and private videoconference platform that satisfies the requirements of the user's IT group?
- Do they have proven experience?
- Do they offer a specialized dedicated team to support remote depositions?
- Do they have a network of court reporters and videographers familiar with their platform(s) technology?
- Can they incorporate real-time transcript streaming with their platforms?
- Can they provide traditional videographer capabilities with a post-production product for trial that is compliant with the rules of civil procedure?
- Do they offer complimentary training for all parties to a case and witnesses?
- Do they allow "practice time" in the selected platform in advance of the deposition?
- Do they provide equipment for those with supplemental technology needs?
- Are they consultative on abilities of each platform so that you can make an informed decision on which one to use?



Choosing a vendor that will allow you to access their tools in advance of a deposition to give you the opportunity to practice introducing documents and sharing is a vital consideration while selecting a vendor. As new attorneys, you practice mock depositions, mock trials. This is no different than us learning a new way of conducting depositions. As we become more comfortable and familiar with the various applications, questioning and best practices, remote depositions will be more fluent for all attending. In the beginning, be patient and allow for mistakes or latency.

# Remote Deposition Best Practices

**Minimize use of any form of streaming activity in the home such as Netflix, online gaming or other activities that consume internet utilization during your depositions.** Attorneys working from home are in the pool of most Americans. School closings and having your children at home doing online classes and often some form of internet entertainment puts a strain on internet strength and bandwidth.

**Simulate a conference room where there is a neutral environment with little to no visual distractions.** Be mindful of your environment, noise and physical disruptions in the background and foreground, and others in the home on phones, playtime, online classes, facetime with friends. Prior to COVID-19 and Shelter in Place orders witnesses were generally in a conference room, isolated from distractions, whereas today, that is not the case.

Educate witnesses on simulating the same environment as a law office and how distractions could potentially affect their response time and inadvertently cause them to misspeak or answer incorrectly. Create the following environment:

- A quiet, isolated area with minimal distractions is best.
- Keep the desk or table clear of non-relevant information that could divert your attention.
- Have a glass of water on hand.
- Clear the field. It's human nature to visually inventory the room. Looking at photos on the wall, staring at the background light from a window, so keeping it clear will help with focus.

**Be aware that body language may communicate unintended messages to the opposing counsel.** People tend to be more relaxed "at home" and some of the general rules of preparing your witness can easily be forgotten. Remind your witness to cognizant of body language and eye contact.

**Position the witness squarely in front of the camera.** It can be distracting for the witness to continually be looking at their self on the screen and losing focus on the question, which could result in answering incorrectly.



- Participants should be 24 inches or more from their camera.
- The body should show from the desk up.
- Find a high back, comfortable, stationary chair to prevent repositioning or poor body language by swinging in a moveable chair.
- Train witnesses to look at the camera and not inventory the screen except when viewing documents.

**Assume remote depositions could take longer than before.** Time and timing of actions is changed with remote depositions, so anticipating latency in responding to or asking questions will be necessary. Allow the internet time to catch up, as each participant may have their own bandwidth issues.

## Remote Deposition Best Practices (cont'd)

**Keep programs open so settings are not lost, but also leave the room when taking breaks.** Leaving the space where you are sitting, ensures conversations with your clients and/or witnesses cannot inadvertently be overheard. If you choose to call your client on a break, make sure they have muted their speakers and left the physical room that they were in.

**Consider your document preparation and sharing needs.**

Introducing and sharing documents are the areas that pose the most challenges. The days of making 4 to 5 copies and taking the documents with you to the deposition are over. Therefore, not only the timing, but compatibility, viewing and size of the documents with regards to load time should all be taken into consideration while selecting the right platform and preparing for your deposition.

**PRO TIP:**

Create an electronic folder, just as you would carry one to a deposition, with all the documents you could potentially introduce. Have it in a place that is easy to access, on your local drive.

**Allow for more time to view and annotate documents.** Understand that physically holding and “page flipping” of documents has changed. The witness will be at the mercy of the screen and the timing of the questioning attorney, as to what they will see and when. Allow others in the room the time to “catch up” to what you are referring to. As attorneys are using the tools in these third-party applications to point out specific passages in a document or highlighting portions relevant to the question, it may take more time to complete.



**Best practices... practice, practice, practice the sharing of exhibits.** Loading exhibits in advance can provide more continuity and less time. Such applications as Adobe Connect and WebEx allow you to “build the room” with your documents in advance. For screen share applications such as Zoom, Blue Jean or Lifestyle it’s recommended to have those documents readily available on your desktop, or to use a third-party application for document or exhibit management.

“Passing the witness” or allowing other parties to introduce documents can be a challenge for either type of application.

Variables such as, are the parties adverse? Do they have an issue with sharing their documents in advance? All things to consider when selecting which application you want to use. Screen share applications do tend to allow for more flexibility in this situation.



**Test your equipment with your VPN in advance of the deposition.** VPN issues could interfere with remote video platforms and your ability to access your documents on the network. Ensure you can enable your camera and access your documents on your network drive while using VPN. *It is possible you may have to close your VPN to have access to remote technology and using your camera.* In that event, save all documents to your local desktop and clearly label the folder you need to access on demand.

**Consider doing mock depositions with your team using the platform.** Utilize the same technology you will use during your remote deposition and ensure you will achieve the same desired outcome as if you were pre-COVID 19 and the deposition had all parties in the same room. Coaching the witness in advance using the platform and applying best practices should be considered as the dynamics have changed for them. Mock depositions also allow for learning new techniques, timing and sharing documents to keep proper momentum for the questioning attorney.

**Be understanding that court reporters are making adjustments just like everyone else.** Currently, over 95% of remote depositions have the reporters attending remotely. Civil rules of procedure for state and federal cases still dictate where the reporter will reside for certification purposes. The general rule is that the reporter will be in the venue where the case is filed or in the state where the witness resides. Other states where reporters hold notaries, not certifications have more flexibility. Your vendor should be able to educate you and provide information as to where the reporter will be physically located.

- Remote depositions affect the reporter's ability to "control" the room. The speed of questioning and overlapping conversations all affect the court reporter's ability to record testimony including the questions and objections.
- Marking exhibits is also an area of change. Reporters now must rely upon what is "shared" in the virtual room and not what they have in their hands. When advising the reporter to mark an exhibit, best practices are to clearly identify the document that is easily referenced within in the document itself.

### Opportunities

**💰 Cost savings for you and your client.** As COVID-19 has had such a deep economic impact, our law firms' clients are looking to save dollars wherever they can, while knowing discovery and litigation must go on. Reducing costs such as flights, hotels, and the associated travel time are significant savings. There are also the cost savings of conference rooms in remote areas where we would normally have to secure a room for the witness and parties.

**🔄 Efficiencies created by taking multiple depositions.** Utilizing remote technology, attorneys taking multiple depositions on successive days, or even on a single day, is now more conceivable. Even in cases where the deponents are in different cities, states or countries.

# Choosing the Right Remote Deposition Platform

Remote deposition technology has been around for many years. Historically, this technology was used primarily for deponents who were located in rural areas, health compromised, or where there was limited questioning. It was deemed a simple means to view the witness and question. Now, it is becoming a standard in all types of litigation matters from employment litigation to intellectual property, securities and other highly complex matters where there are multiple parties and a high volume of documents.



Previously, decisions on which platform to choose were solely based on price or ease of use. Some applications are a one-click to join, while others have a simple downloadable file and still others have more layers of security. We encourage clients to learn more about the functionality of the platforms they choose to utilize. And equally as important, learn about the platforms they are asked to use when opposing counsel schedules the deposition.

## Factors when Choosing your Remote Platform

- **Software options** to fit your remote deposition needs. Court reporting firms should be software diverse when it comes to offering multiple third-party applications for remote streaming. This is not a one size fits all mentality.
- **Security** should be of utmost concern. Consult with your court reporting firm on which platform to use is based on the sensitive nature of the case and documents to be used during the deposition. We all should be mindful of protecting our client's data and which solutions best fits the nature of the case as these are legal proceedings. Not all systems offer the same layers of security.
- **Device choice.** Consideration for which device is best to use for your depositions. Most all applications allow for multiple device options. iPads, iPhones and tablets are all easy to use by downloading the platform app on the device.

### Participant

For those who simply participate, hand-held devices are easy and efficient.

### Interactor

For those who intend to share documents or have more interaction in the room, best practices are to use a laptop or PC for better control and access to your documents.

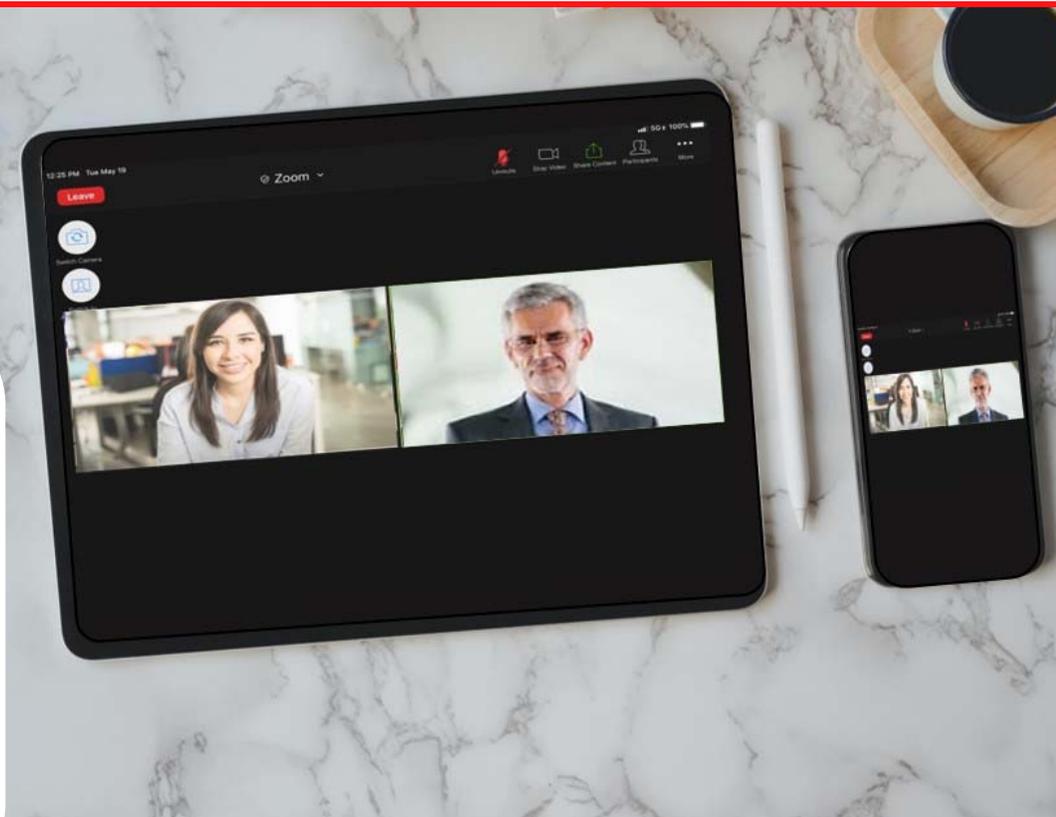
### Deponent

For the deponent, depending on their skill level, one might consider a hand-held device such as an iPad or tablet for ease of use.

## Factors when Choosing your Remote Platform (cont'd)

### Headphones and Earbuds

When using the audio through the platform, best practices are to use headphones or earbuds to provide better clarity. Handheld devices can have their speakers in areas in which you would hold the device, distorting the audio for other participants.



**Audio use.** As we see internet utilization being consumed now more than ever, should one consider using a teleconference bridge instead of through the application, to ensure better audio security and reliability? Although easier through the application and fewer steps, is it the best solution?

When using the audio in the room, ensure you mute your speakers while not speaking, keep cell phone or other devices away from your computer to reduce feedback, and if at all possible to be as close as you can to your internet router when using Wi-Fi.

- To add an additional layer of security, consider using a teleconference bridge. In the event, someone intentionally or unintentionally enters a room that they are not party to, although they could see what is going on, they could not hear.
- For increased reliability, consider a teleconference bridge to minimize issues. With people working remotely, internet utilization is high, and individuals could experience bandwidth issues. Audio through the application could have interference, causing more latency and disruption. In the event video feed goes down or is interrupted, a teleconference bridge allows participants to proceed via telephone without stopping the proceedings.



**Know your rights as a video participant.** Most all platforms offer the ability to “record the session” via video, however, everyone in the room should be aware it is taking place. Everyone in the room must consent.

**Ask these questions:**

- ✓ Is this is being recorded?
- ✓ If so, where is it being stored?
- ✓ For how long and who has access it to it?
- ✓ Further, if it is being recorded and stored could the content now be considered as ESI, electronically stored information?
- ✓ Best practices, if all counsel have consented to record the sessions through the platform, ask that video be stored with the court reporting agency and not the third-party application provider.

- **Bells and whistles.** Almost all platforms have similar bells and whistles. The chat feature is one we caution our clients on. If you choose to use the chat feature, be mindful as to not inadvertently have a conversation with the wrong party. Also, if you do decide to chat and the session is being recorded, is the chat recorded? If so, where does attorney client privilege stand at point?



- **Sharing documents can be a challenge.** Some platforms like Zoom, Blue Jean, and Lifesize are screen share only. Other, more sophisticated platforms such as Adobe Connect and WebEx, allow you to “build the room” in advance with your documents.

**Considerations when sharing documents:**

- ✓ The nature of the document.
  - Interactive documents such as excel files or other third-party applications such as timeline software as well as small number of documents are best utilized through an application with screen share technology.
  - Documents such as contracts, patent applications that need compared easily side-by-side or a large number of documents are better suited through a “Build the room” with documents application.
- ✓ The format of these documents.
  - Will they view properly?
  - Will I be able to access them timely and seamlessly?
  - If single, but large documents both applications would suffice.

All of your document needs should be addressed by your vendor. The court reporting firm should consult you on how each platform will work so that you can determine which on is best suited for your case or witness needs.

# For now, there is new dawn upon all of us as individuals in the legal industry.

How we manage our cases, clients and vendors are changing in ways we never thought possible. Routine tasks such as scheduling flights, booking hotel rooms and meeting face-to-face with our clients to prepare them for the next day's deposition are halted. Having our legal support team print copies of exhibits and package them up for distribution at the deposition has changed completely. Luckily, remote deposition technology supports some sort of normalcy in our industry in order to continue to conduct depositions and legal proceedings.

*Kim Powell is the National Director of Litigation at Pohlman Reporting & Litigation Services. With over 20 years of experience in the legal industry, Kim has worked closely with clients ranging from Fortune 100 corporations, national and international lawfirms, to mid-size boutique firms on how to maximize the benefits of their litigation support vendor relationships. Kim has developed some of the most successful case management teams in the industry, ensuring they deliver an exceptional client experience. Kim can be contacted at [kim.powell@pohlmanusa.com](mailto:kim.powell@pohlmanusa.com).*



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