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DEPOSITION SOLUTIONS



GET THE MOST FROM REMOTE DEPOSITIONS

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Improve productivity.

Achieve better outcomes.



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What are remote depositions?

If you're reading this, you're well-acquainted with depositions. Time after time, you've artfully questioned potential witnesses to leverage favorable settlements or lay the foundation for a successful trial. You've probably taken, scheduled, or supervised hundreds, maybe thousands, of them.

Although you're steeped in the art of the deposition, chances are slim you've done a remote deposition. Remote depositions are an exciting, rapidly maturing method for making depositions more cost-effective and strategic.

A remote deposition is any deposition where one or more participants are not together in the same room.

Why is this important? Depositions are critical because the vast majority of civil cases settle, [up to 97% end before trial](#). Depositions are where witnesses and their testimony are tested.

So what is a remote deposition? A remote deposition is any deposition where one or more participants are not together in the same room.

We should mention that going remote isn't an either/or decision. Most attorneys choose to take some depositions remotely and some in person. But even in-person depositions can become "remote depositions" when you invite others to dial in and listen, watch or participate from afar.

Although attorneys have taken telephonic depositions for decades, remote depositions today enable participation in fully interactive, multiparty video conferences.

The first scenario that comes to mind is an attorney and a deponent in separate offices across the country. The deponent is on camera and her testimony is streamed from the

deponent's location to the taking attorney's computer. With the ongoing globalization of litigation, it's increasingly likely these players are on different continents.

Today's remote deposition [online solutions](#) typically include real-time transcription of the testimony, electronic exhibits, secure chat, and more – functions that are securely available in the cloud.

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Why should I care about remote depositions?

There are a few important reasons why you should care about remote depositions. First, they save time for everyone involved. You don't have to get on a plane, stay overnight in a hotel, and sacrifice productivity as you travel. And since time is money, taking depositions remotely saves clients big sums of cash.

In this way, remote depositions provide your clients with better value without compromising the quality of your legal representation. They also help firms respond to the [Association of Corporate Counsel's Value Challenge](#), an industry movement to reduce costs while improving quality.

Remote depositions support work/life balance. Let's say it's July and you're spending the month at your beach house three hours from the city. Why leave your family when you can depose from your home office on the shore?

Remote depositions help law firms. Perhaps yours is one of the many seeing [increased activity in international litigation](#). Remote depositions inject new efficiencies that are critical for absorbing the extra business.

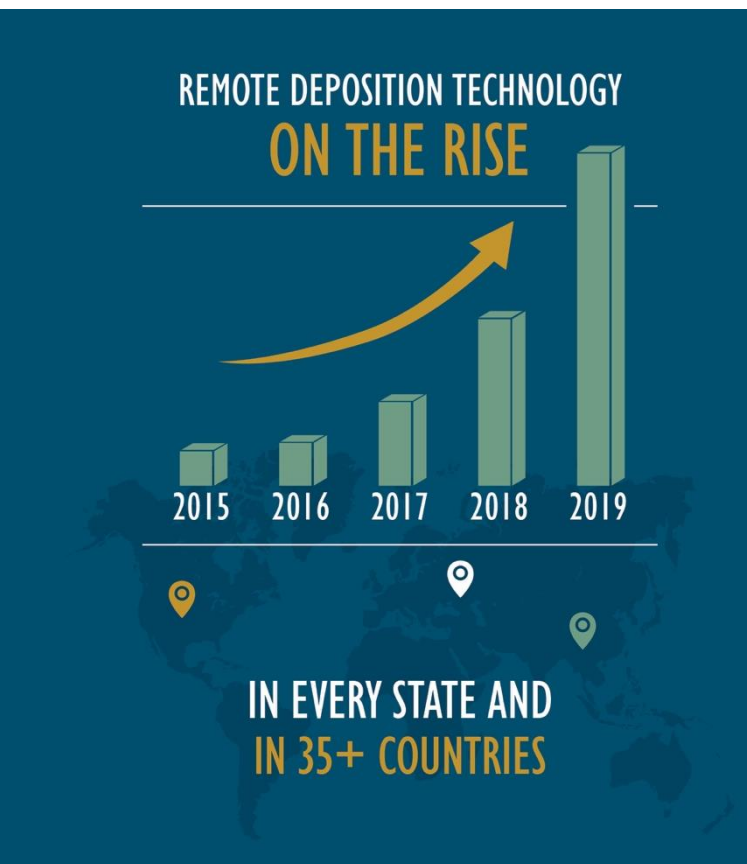
Remote depositions make it easy to involve participants – e.g., clients, experts, or co-counsel – who can improve your outcomes in a case. We'll delve into this more deeply later in this eBook.

Remote depositions enhance your brand. They position you as an innovator to clients – the average age of in-house counsel is [reportedly](#) around 55 and falling – and potential associates who grew up with technology and want to use it at work.

Finally, remote depositions make discovery safe when it would be dangerous to travel to regions in conflict.

Who is doing remote depositions today?

The vast majority of depositions are done the traditional way – in person, face-to-face, with the transcript captured primarily by a court reporter using a steno machine. Other players – clients, firm partners, co-counsel, subject matter experts – wait days or weeks to see the transcript.



One major reason for this is the dated perception that the technology is difficult to use. Maybe this will be complicated. Maybe there will be a glitch. Fortunately, today’s remote deposition technologies are easy to use – for example, employing the cloud instead of local servers and web browsers instead of enterprise applications. This approach eliminates any need for a firm to dedicate IT support to remote depositions. Meanwhile, solution providers have developed intuitive, user-friendly interfaces that make participating in a remote deposition as simple as using Facebook.

There are a couple of other reasons depositions are done the traditional way. One is custom. So much of legal practice – what lawyers are good at and what they know – is legal and abstract. Risk-averse for good reason, attorneys don’t reflexively drop their legal pads in favor of iPads, nor do they rush from the conference table to the cloud.

And most law firms typically lack an institutional orientation toward technology, having focused first on the law. That’s changing, however. We see a recent increase in firms appointing CIOs, COOs and IT staffs.

Remote depositions, however, are on the ascent.

In 2016, we at Esquire serviced approximately 2,500 remote depositions – that’s 20 percent more than we did in 2015. We did them in every state and 25 different countries. From 2017 through 2019, we’ve had double-digit growth in remote deposition activity in every state and more than 35 countries. Although remote depositions still represent a small fraction of the depositions we do, more clients are asking about them and for them, every day.

Best practices for remote depositions

It's easy to capture the bedrock benefits of remote depositions – time savings, money savings, and in some cases (e.g., by tag teaming with a subject matter expert in a different location), better outcomes.

After supporting hundreds of thousands of depositions, we've identified best practices that can ensure you get the *most value possible* from your remote depositions if and when you decide to employ them.

I. To be there or not to be there?

That's a key question. Do you, as the taking attorney, need to be in the same room with the witness? Which depositions make sense to do from afar? Which don't?

There are good reasons for taking depositions in person, with or without making the session available for others to audit. For example, if you're interviewing a key witness in [bet-the-company litigation](#), you'll want to be there in person. If you expect a key witness in any kind of case to be evasive, you might want to be in the same room to pin them down.

The key criteria for deciding whether to do an in-person deposition include travel distance, anticipated length of the deposition, criticality of the witness, cost of participating experts, and preferences of your client.

As always, even if you're in person with the witness, you can invite others on your team to listen, watch, or collaborate.



2. Pick your team.

Who, if anyone, needs to be involved in a remote deposition besides the usual players – the taking attorney, witness, opposing counsel, and court reporter?

It could end up being just these same players or a lot of people. A few years ago, we provided services for a major complex case in which 20 people attended the deposition in the same room as the witness. Another 50 people accessed the session remotely, viewed the video testimony, followed the real-time transcript, listened in, or did some combination of these things. Obviously, 70 attendees constitute overkill for most cases,

but it's a good example of the demand, viability, and ease around remote participation.

Clients are frequent guests in remote depositions, quietly attending sessions led by their outside counsel. A typical client attendee would be a general counsel or assistant general counsel in charge of litigation. Their company might be facing a claim around, say, product liability. The GC can dial in and watch, listen, mark up the transcript, and feed the deposing attorney facts via private, non-discoverable chat. The general counsel can suggest

exhibits or flag witness assertions that need to be challenged. Your client could provide a second opinion on the credibility and veracity of a witness, thereby arriving at an optimal settlement number and tangibly improving the outcome.

Others who might dial in are your own side's **expert witnesses**, **subject matter experts** (like the engineer who invented the product in the liability case), **veteran litigators** who have tried similar cases, or **co-counsel** who for any reason need to physically be somewhere else. These players, too, can help you improve the outcomes of your deposition.

And where is the **court reporter**? It's optimal to have the court reporter with the witness, but they could be with you, with you and the witness, or in a third location altogether.



3. Coordinate with opposing counsel.

As soon as you decide you wish to use remote deposition technology, let your opposing counsel know. Federal rules state that “[t]he parties may stipulate – or the court may on motion order – that a deposition be taken by telephone or other remote means.”

Says the [ABA](#): “Working with opposing counsel can benefit all of those involved in a trial. During the pretrial conference, all parties can discuss trial technology, determine quality standards and even agree to share technology resources.”

4. Choose the right technology.

What do you need for software and hardware to do a remote deposition and to do it right?

The minimum is an iPad for the witness and conferencing software like [Zoom](#) or [WebEx](#). (Avoid Skype, as it’s too easy to [hack](#).)

These software packages, as well as [complete remote deposition solutions](#), ensure that every participant will be identified – no lurking unless you’re in the same room as one of the principals and haven’t identified yourself.

Although you can certainly use room-based videoconferencing systems for remote depositions, gone are the days when you really need such expensive and complex technology.

Remote deposition [solutions](#) integrate:

Real-time transcript streaming, which enables teammates in other locations to audit the deposition, search keywords throughout the session, highlight important passages, and export transcripts afterward. This shared transcript appears on the same screen as the witness.

Electronic exhibits that can be uploaded in advance or on the fly and protected from unauthorized viewers.

Remote Deposition Technology includes:

- Multi-party videoconferencing with secure chat
- Realtime streaming
- Video streaming
- Electronic exhibits

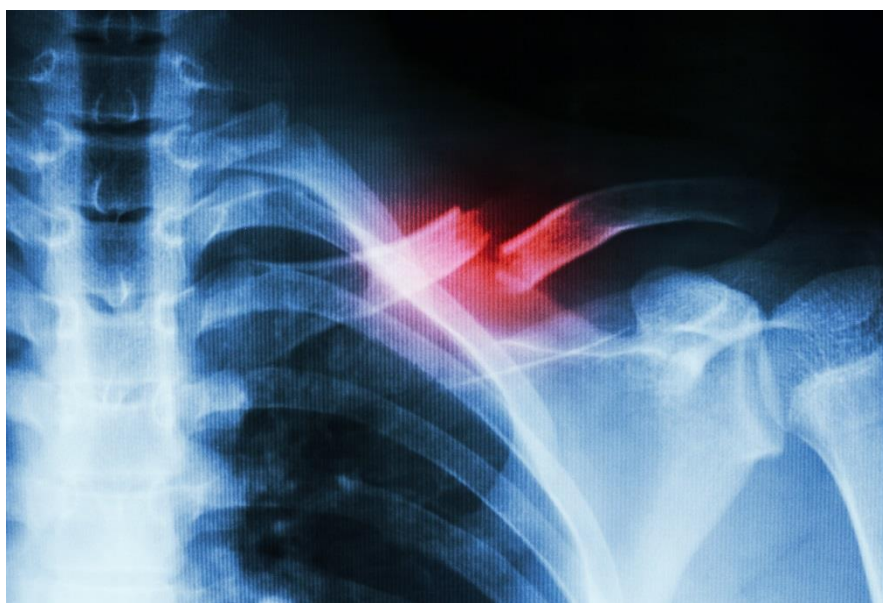
Multi-party videoconferencing, enabling multiple video feeds on the screen.

Enhanced security, including password protection and full encryption.

Secure, private one-to-one or group chat, which enables colleagues and subject matter experts to collaborate.

5. Control and plan your exhibits.

It's a great idea to digitize your exhibits regardless of whether you're doing a remote or traditional deposition.



Several remote deposition solutions have built-in functionality for presenting, submitting, stamping, marking up and downloading [exhibits](#), e.g., emails, accident reports, medical images, laboratory findings and much more.

Did you ever wonder why there's so much document conversion in litigation? Printed business documents are digitized for eDiscovery, printed out for the deposition, and re-digitized afterward. Why? All that conversion isn't necessary.

Using digital exhibits keeps pretrial information electronic, enabling you to experience the same convenience that an iPhone offers over carrying your music around in crates full of vinyl. With this approach, you also avoid shipping your exhibits to the deposition site ahead of time. You save on shipping costs and maintain control of the documents.

At deposition time, deposing attorneys have full control of each exhibit. They can preview it on their own screen until it's time to present the exhibit to the deponent and submit it on the record. To make management and retrieval easy, tag electronic exhibits with keywords pertaining to issues being litigated. Another benefit of electronic exhibits is that they can be reused across depositions. You won't have to wait for originals used in previous depositions to be shipped, scanned and uploaded with transcripts. And you don't



have to ship or carry left-over documents back to your firm, always a possible security risk and added expense.

Some electronic exhibit technology has full integration with [eDiscovery](#) software, enabling you pull any electronically stored information from the entire eDiscovery repository and present it immediately as an exhibit. That can be a powerful weapon in a deposition.

6. Understand the technology risk.

What about technology glitches? Let's face it: you can't prevent a technology glitch any more than you can prevent a flight delay, a flat tire on your taxi, or the witness failing to appear.

Understand, however, that online conferencing software vendors have dramatically improved quality of service over the past five years – calls rarely drop, and bandwidth is dynamically adjusted according to the conditions of the location.

You can reduce your risk, however, by using a service provider. Better service providers have IT support people either staffing the session or on call for issues. They will also test the connection ahead of time. Their goal is to set up the session so that, as with traditional depositions, the attorney can just show up and fire away with questions for the witness. That's the important thing, and really the only thing, the attorney should be worrying about.

But let's say there is a glitch while the deposition is under way. If you take a 15-minute recess to get it squared away, you're still ahead of the game – in terms of cost and convenience – versus flying around the country in person for depositions.

7. Check state and federal rules.

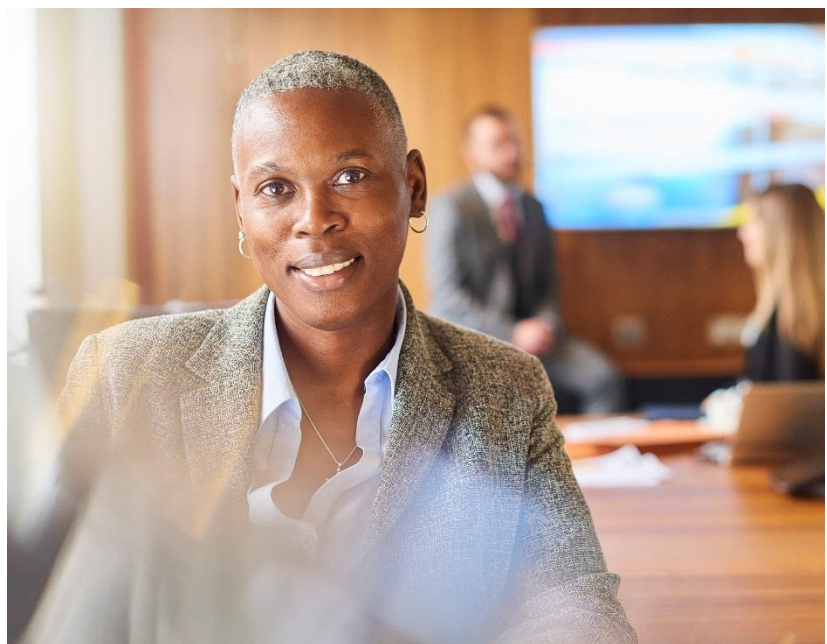
[Here](#)'s a primer from the ABA on the rules around depositions conducted electronically. Generally, if both sides stipulate, there shouldn't be a problem. State lawmakers and the Federal Rules of Civil Procedure have recognized the cost and efficiency benefits of technology. Make sure you know the rules about [swearing in witnesses](#) in your jurisdiction.

8. Prepare on deposition day.

As reliable and robust as remote deposition technology has become, you'll still want someone from your firm to participate in the pre-deposition test conducted by your deposition provider. This step is less to test the software than to ensure participants have an adequate (and accessible) Internet connection, know their passwords, and have the camera switched on, etc.

Conclusion

If you're still doing all your depositions in person and without the remote capabilities described in this eBook, we suggest you give remote depositions a try. Training requirements are minimal – about half an hour for your litigation support person.



You'll save time and money for your clients, make participants happy, engage your tech-savvy millennial associates and, yes, potentially improve your outcomes.

It's that easy. After all, having taken hundreds, even thousands of these, you know best how to successfully depose a witness. Taking depositions remotely just makes the process faster, more productive, and cost-efficient. Hopefully, we've made our case.

Start with these simple steps:

- **Simply call or click to schedule a remote deposition with your favorite provider.**
- **Have a handful of electronic exhibits ready to upload.**
- **Show up and do your thing like you always do.**