

# Depositions and Legal Proceedings in the Remote World: What Attorneys Need to Know About Security and Best Practices

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By Tony Donofrio

Day-to-day work isn't the only thing that's gone virtual in the legal world in the past year. While lawyers may have stopped going into offices, legal cases have continued on. Thankfully, all you need is a device with an Internet connection, a webcam and an audio connection to handle even complex legal proceedings from your home office.

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Here are some of the most important things attorneys need to know about conducting

depositions and legal proceedings in a remote world.

## Ensuring Confidentiality and Privacy

Once video communications became ubiquitous, so did the concern of unwanted guests infiltrating private meetings — indeed the early days of work-from-home were rife with stories of **Zoombombing** that made many tech providers and users of the technology ratchet up their security measures.

What we've learned is that security is not about the platform, but about how the platform is configured and how remote proceedings are conducted. Whether you are hosting legal proceedings on Zoom or any of the other major platforms, you will need to ensure they are configured and managed in a way that ensures the confidentiality and privacy of both the

meeting and the content being produced, such as transcripts, exhibits and audiovisual recordings. The best providers configure their tools and technology to ensure the confidentiality of the proceeding and the content being produced with the following considerations:

- **Access Control.** Only authorized participants are provided access to the proceeding, with the best practice being individual identification and authentication through user IDs and passwords. In addition, the facilitator of the meeting, usually the court reporter or a concierge service, must admit participants from a "waiting room" after ensuring they are appropriate parties.

- **Secure Content Management.** Access to exhibits and recorded content must be strictly controlled with individual user

IDs and passwords required to receive and view exhibits and the record of the proceeding. In addition, the content should always be stored in an encrypted form.

- **Administrative Controls.** Only a small number of authorized staff at the service provider have access to the configuration of the tools and the management of the content.

### **Ensuring Appropriate Conduct of the Proceeding**

With proper preparation and tools, conducting a legal proceeding remotely can closely approximate the process and experience of an in-person meeting. Preparing for the following key differences is critical:

- **Host Control.** Ensuring that no party to the case is in control of the meeting features is important. Allowing any party to mute other parties, distribute content or screen share at-will would cause not only a disruption in the process, but would likely invalidate the neutrality and validity of the process and ultimately affect the record's admissibility in court. The best service providers equip only the reporter or concierge with meeting control privileges.

- **Witness Management.** It is critical to ensure the witness is engaged and not in extraneous communication with counsel or others while on the record. Appropriate stipulations and admonishments by the parties at the outset of the meeting are important in this regard. Setup

and configuration of the virtual meeting room to ensure the witness is in frame, audible and aware that they are fully in frame are just as important. The best providers configure their tools to disallow individual chat features and can supply concierge-managed breakout rooms in their virtual sessions to enable off-the-record discussions with counsel at designated and agreed times during the proceeding. This closely approximates the control of conduct experienced at an in-person proceeding.

### **Secure Exhibit Handling and Management**

Your virtual proceeding software should include a dedicated exhibit-viewing screen where all participants can see any offered exhibits in real time. Exhibits should be ready to be marked before the proceeding begins, and all participants should test any exhibit interaction or annotation tools beforehand. As noted above, all participants accessing exhibits should be individually identified and authenticated to ensure confidentiality and privacy, and the best solution providers support those features. Note that some providers offer the ability to share files via chat functions in the virtual meeting room due to the "ease of use" in doing so. This approach is not advised because it provides no control and audit trail for what content was marked and distributed and who downloaded and received it. Sharing of content via

chat is also a serious cybersecurity risk because these open your devices to potentially corrupt or malicious files.

### **Notice and Stipulation Considerations**

Virtual depositions have the same notice and stipulation requirements as traditional, in-person depositions. Deposition notices should be general enough to allow for remote and/or videotaped taking of the record. The parties should enter into any stipulations before the virtual proceeding begins. A trusted virtual deposition provider should have sample notice and stipulation language you can use if you don't have your own prepared.

### **Effectively Taking the Audiovisual Record of a Proceeding**

If you're like most people, video communications tools like Zoom or Microsoft Teams have become a much bigger part of your life in the past year than they ever were before. Most of these programs come with recording capabilities, so it may be tempting to think they can be used as substitutes for hiring a professional legal videographer.

If you intend to use your video for a trial or other legal proceeding, recordings from videoconferencing tools are insufficient. Among other things, they lack features like time-stamping, the ability to capture only the witness or speaker, and the ability to go on and off the record. Only professional videographers can ensure that the official

legal record is the only thing that's captured and preserved. They'll also produce the final video in a format that's compatible with trial presentation and video synchronization tools.

### Using an Experienced Remote Provider

In the past, you never would have questioned the need to use an experienced court reporter or videographer, so why would you question it just because we're now doing things remotely? You still need your deposition transcript and video to be accurate.

Not every deposition provider is familiar with remote proceedings. Before you hire your court reporter or videographer, make sure you're going with a company that's experienced in handling remote proceedings and can offer all the tools you might need to meet your virtual needs, from setup to final product – including things like the introduction of exhibits, breakout rooms, videography and audio syncing.

### Attorney Best Practices for Remote Depositions and Proceedings

In most aspects, virtual depositions and proceedings will follow all the same rules you're used to when you appear in person. Anything you would do at a normal deposition you should do at a virtual deposition, while also keeping a few extra considerations in mind:

- Mute yourself if and when you're not actively participating.

- Set yourself up in a quiet place with minimal outside disruptions or distractions.

- Position your camera correctly so you're completely visible and appear professional.

- Speak loudly, clearly and slowly so your words can be accurately captured.

- Take extra care not to speak over other participants.

- Resist the temptation to multitask as you might be used to doing while working from home.

- Treat virtual depositions and hearings with the same seriousness and respect you would an in-person deposition or hearing.

By now, most of us have developed a certain level of comfort with our remote setups, often engaging in behavior that we might not necessarily do at the office. Approach a virtual deposition as you would an in-person deposition, and you're likely to avoid most of the biggest pitfalls.

### Preparing for Remote Depositions and Proceedings

Again, you should continue to do anything you would do to prepare for an in-person deposition or proceeding, even if you're now attending from home. Additionally, you should consider preparing a checklist to make sure everything is properly functioning before you start, including:

- Preparing and testing your software and hardware well in advance.

- Planning to connect to your proceeding early so you can trou-

bleshoot any issues and get comfortable with your tools.

- Having all your exhibits ready for distribution, marking and electronic display.

- Making sure electronic breakout rooms are set up and that all parties know how to access them.

- Entering into any stipulations in advance.

- Declaring and agreeing to any rules of conduct before you start.

The reality is that we'll still be operating in a virtual world for the foreseeable future. Hiring an expert virtual provider is the best way to ensure that your next deposition or legal proceeding is a success. With the right tools and expertise on your side, you'll be as comfortable operating virtually as you have been in-person your whole career.

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