

Video Deposition Tips During the COVID-19 Shutdown

During this pandemic and period of court closures, video depositions are becoming necessary to complete the discovery process. A video deposition requires a different approach in preparing your witness to testify, including the witness's familiarity with the technology being used during the deposition. Below are 15 tips to prepare your client for a video deposition:

1. Location, location, location – have your witness choose a quiet location where there will be no noises or interruptions during the deposition.
2. Remove distractions - make sure your witness has nothing distracting in the room or background that could distract a potential juror's attention if the video deposition is being recorded and used for trial.
3. Camera angle – the witness should look directly into the camera. Eye contact is critical to a juror's perception of a witness's credibility. A useful tip is to have the witness keep a post-it note on the top of the monitor as a reminder to look directly into the camera.
4. Lighting – positioning a laptop with a window directly behind the witness can cause darkness around the witness's face limiting visibility. The best possible lighting is to position the laptop facing away from the window with the natural light shining on the witness's face.
5. Posture – the witness should sit up with a strong and professional posture. Slouching and looking lax can result in the witness's credibility to be questioned by a juror.
6. Stay hydrated – not only should the witness drink water to stay hydrated, but testifying with a dry throat can throw off the witness's pace and damage his or her credibility.
7. Breaks – Similar to a regular deposition, the witness should take routine breaks when needed (not during a pending question). With a video deposition, make sure to have your witness mute the computer when on a break.
8. Volume – the witness's voice should remain at a constant volume for the jury to hear and the answers to questions should not trail off.
9. Nonverbal body language – the witness may be lulled into casual habits by the effect of testifying virtually, but the witness needs to remember everything is being caught on camera. The witness should be wary of the usual culprits, from unconscious lips smacks to rapid blinking to nervous laughter, to avoid annoying the jury or damaging the witness's credibility.
10. Dress the part – your witness should dress like they would in the courtroom for trial.
11. Know your audience – although the witness is answering questions from counsel, the video testimony may be footage used in trial. Following the tips above will assist in your witness appearing as credible as possible.
12. Practice makes perfect – your witness should do a practice run (or two) to make sure that he or she is comfortable with the technology, that the application or program is working correctly, such as sound and streaming quality.
13. Tech check – have your witness check internet speed and sound on the day of the deposition.
14. Notifications – on the day of the deposition make sure the witness has all cell phone, computer, and notifications turned off to not interrupt or disturb the video testimony. The “Do Not Disturb” function is practical and useful.
15. Technology is not perfect – make sure you and your witness are prepared to adapt and have a contingency plan in the event of potential buffering, drag, or even a dropped connection.

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