

Depositions using Videoconferencing

Videoconferencing is a method whereby people in different geographical locations can have a meeting, conduct a deposition or have a witness testify at trial - and see and hear one another - using computers and communications.

Videoconferencing allows for examination of witnesses at remote locations whether for a deposition or for trial. The witness does not have to travel to the court or deposition and incur all the lost time, cost and travel difficulties. The parties at the legal proceeding can see and hear the witness at the remote location and vice versa. The witness can be placed under oath and the lawyers can see and hear the witness during the examination. The equipment consists of a video camera and monitor at each end of the conference, as well as document conferencing equipment if documents or other materials are used during the examination. High speed telecommunication connections - wire or wireless - are needed for quality videoconferencing. A complete record of the deposition or court proceedings can be made of the examination.

Considerations of whether to use videoconferencing

Technical considerations:

- Is the witness located near a videoconferencing facility with a high speed bandwidth connection? Companies such as Kinko's, court reporting firms, law firms and facilities listed in the yellow pages may all be available for a few hundred dollars per hour. They will provide the camera, monitor, connection, and oftentimes document conferencing equipment.
- Sometimes you can rent the equipment to install at a particular location near a high-speed connection. It may take several weeks to install a high speed connection.
- Does the court or deposition facility have an adequate high-speed connection? If not, it is unlikely that the court will permit counsel to run special lines into the building.

Witness considerations

- If the remote witness is your witness, make sure they are appropriately dressed, sit straight, do not smoke, eat or drink, and answers questions as if he or she was in the

courtroom. If possible, have a small monitor for the witness at the remote location that will display the image he is projecting. Advise the witness that biting ones fingernails, tapping finger, and other mannerisms may be adversely reflected on the monitor.

- If the witness at the remote location is not your witness, then determine for the record who is in the room, what documents the witness has and what other equipment is in the room.

- Since the conference is in a video format, the session can be recorded on a VCR or in a digital format using new camcorders and cameras. Determine if the parties agree to this and also have available a set of earphones for the court reporter who is making a record of the proceedings. The court reporter will be able to block out the background noise.

- Exhibits can be displayed at the remote end by switching to a visual presenter camera. A visual presenter camera is a video camera that is used to display exhibits. The witness will see the document on his end on the monitor.

- If the witness is a predicate or foundational witness involving non-contentious matters, the witness may be perfectly suited for a videoconferencing session.

- If the equipment is always available, then one or the other side may take witnesses out of order to prevent recesses or other delays. This may or may not be advantageous to your case.

- It is risky to depose a hostile, contentious or biased witness by videoconference. Also, expert witnesses may not be suitable for videoconferencing testimony. It is more difficult to see by video their nonverbal communication, which may be vitally important to you.

- When questioning a witness, you will generally not know what notes or other materials he has with him. It is generally more difficult to control a remote witness.

- Also, the questioning of a witness must proceed slowly because there will be a slight pause between the question of the lawyer and the answer of the witness. This occurrence can be seen nightly on a news program when the reporter is at a remote location. After asking the question, give the witness an opportunity to answer the question and make sure the witness is finished. Otherwise, you will have a muddled examination and will have run-on and multiple questions. Make a deliberate pause at the end of each of your questions and wait for the witness to respond.

- In a trial setting, if one party makes an objection to the question then the judge must have a kill switch to terminate the testimony until the objection is ruled upon. Otherwise, the witness will begin answering the question and may never hear the objection. A videoconference is not like a telephone conference where one audio objection can interrupt the other party. Usually, the witness does not hear the objection. This kill or off switch should terminate the video and audio transmission. It should also be used during hearings, bench conferences, recesses, and any other time the jury or witness would be looking at the monitor.

- In a deposition, exhibits can present difficulties if the witness does not have the document. Make sure the witness has a complete set of documents and that fax is available or a visual presenter (also referred to as an Elmo, visual presenter or Doar).

Type of legal proceeding

- Settlement conferences, arbitrations, mediations, status conferences, discovery motions, and other procedural motions can be tailored for videoconferencing for lawyers, clients, or witnesses and prevent them from having to travel long distances.

Setup for the legal proceeding

- It is recommended that a large 37" or 45" monitor be used to display the video at both ends of the conference. The monitor would be located to allow all parties to see the witness.

- Operator - it is suggested that someone who is familiar with the equipment be at each side of the videoconferencing. The vendor will generally operate the equipment. It is suggested that lawyers not operate the videoconferencing equipment.

- The video monitor in the courtroom will be in the line of sight of all participants as the witness testifies through the monitor. Make an appropriate record for appeal purposes as to the nature of the examination. The camera shot of the witness - head, upper body, full body - and the examining lawyer are governed by negotiation or local practice and rule.

- The video monitor may have inset windows to provide the parties a view of what the other side is seeing.

- Turn on the equipment at least 20 minutes before the scheduled conference. Sometimes it can work perfectly for three days and then the fourth day there are problems.

- Backup - in the event the video does not work, go to an audio conferencing using the regular telephone line. Again, make sure the audio equipment in the courtroom and the remote witness has the necessary equipment, telephone calling cards if necessary, etc.