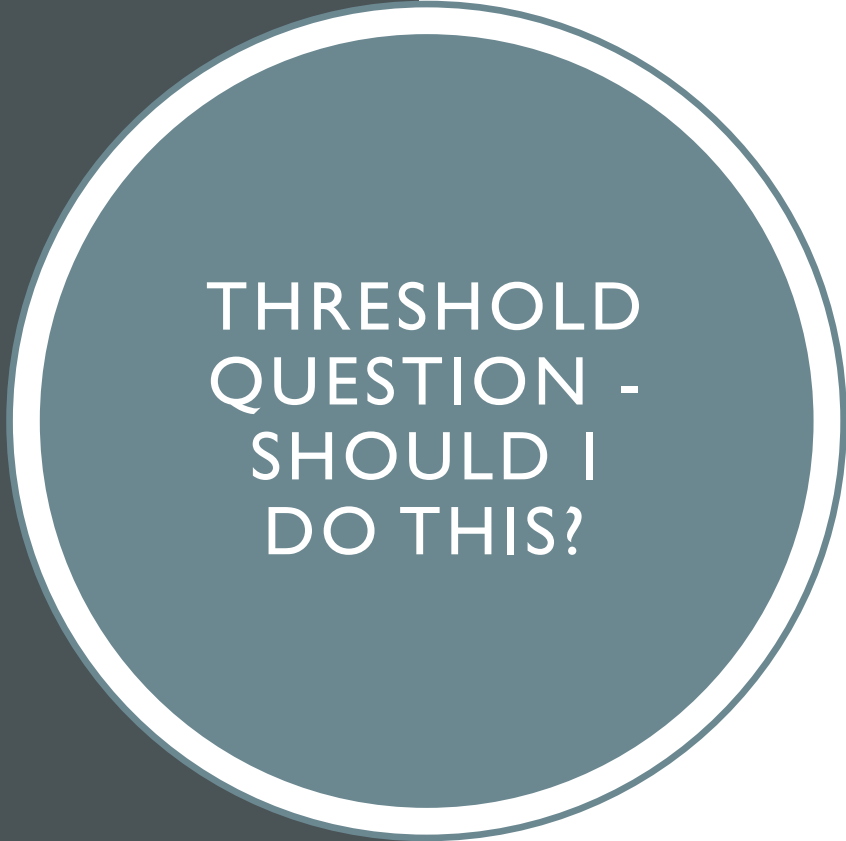


CONDUCTING ZOOM VIDEO DEPOSITIONS

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THRESHOLD
QUESTION -
SHOULD I
DO THIS?

- ANSWER- PROBABLY YES.
 - Timing– Can you wait or do you need to move the case forward for your client?
 - Nature of the Witness - What type of witness will the deponent be? Friendly? Hostile? Critical to your case? Lay witness or expert?
 - Does the witness have access to a stable internet connection and can use the technology appropriately?



SELECTING THE RIGHT ZOOM

- **DON'T USE THE FREE VERSION OF ZOOM**
 - Pro v. Business v. Enterprise
 - Key Functionality of Each Option
 - Chat function
 - Breakout rooms
 - Ability to publish, edit exhibits, etc.
 - Security Considerations



SUITABLE
ENVIRONMENT
& EQUIPMENT

- Background free of distractions and overly personal items. Consider a virtual background (Zoom or select one of your own).
- Adequate Lighting
- Camera at eye level
- Secure space-no risk of wandering kids or pets

THIS IS A BAD BACKGROUND





SUITABLE EQUIPMENT CONT.

- Stable Internet
- Use telephone in lieu of internet audio
- Camera and Microphone check
 - Cam Link 4K
- Equip yourself–
 - Dress as you would were this happening in person. - <https://www.bizjournals.com/bizwomen/news/latest-news/2020/05/10-percent-of-people-going-pantless-on-video-calls.html?page=all>.





HOW TO USE EXHIBITS?

- Paper copies
 - Pro – Easier for some witnesses to use.
 - Con – Gives away the advantage of surprise and will need to be sent well in advance to avoid late delivery.
- Pre-Deposition Electronic Delivery (e.g. through Dropbox)
 - Pro – You can guarantee delivery by a certain date.
 - Con – Gives away the advantage of surprise and may be difficult for some deponents to navigate.



EXHIBITS CONT.

- Electronic Delivery During the Deposition –
 - Combine with hard copies to witness and opposing counsel in sealed envelopes
 - Pro – You gain the advantage of surprise like a regular deposition
 - Con – If the witness is friendly, there may be value to providing s/he with an early copy of the exhibits to maximize the individual's testimony. You might need them to authenticate several documents.
- Need Help?
 - Court reporting company's technician
 - An assistant from your firm



USING SCREEN SHARE TO PRESENT EXHIBITS

- Clear desktop of any personal backgrounds or extraneous programs/windows
- Screen share on multiple monitors
- Organize exhibits in a folder on your desktop for quick access
- Before sharing a specific exhibit, it must be open on your computer (or everyone can see your list of exhibits)
- To go to the next exhibit, Stop Sharing, open new exhibit and click on share



STIPULATIONS -
A GOOD
ALTERNATIVE
TO SEEKING A
COURT ORDER

- Federal Rule of Civil Procedure 29 allows that “[u]nless the court orders otherwise, the parties may stipulate that a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition.”
- District of Columbia Superior Court Rule of Civil Procedure 30(4)-(5) indicates that “[t]he parties may stipulate—or the court may on motion order—that a deposition be taken by telephone or other remote means Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28.”
- District of Columbia Superior Court Rule of Civil Procedure 29 uses this same language as FRCP 29, allowing that “[u]nless the court orders otherwise, the parties may stipulate that a deposition may be taken before any person, at any time or place, on any notice, and in the manner specified—in which event it may be used in the same way as any other deposition.”



STIPULATIONS CONT.

- Topics to Cover in the Stipulation -
 - Agree that the depositions taken remotely may be used as if they were in person depositions and that the oath can be administered remotely.
 - Identify the platform (zoom, webex).
 - Identify the court reporting company and any other third-party vendors providing tech support.
 - Require a practice session with counsel and witness to ensure proper technology.
 - Consider if you will need extra time to deal with tech issues and new procedures.
 - Create a procedure for making objections.
 - Lay out who will be recorded during the depositions.
 - Get an agreement that opposing counsel will not coach the witness during the deposition.
 - Dictate how exhibits will be provided.
 - Protective Order considerations.




PREPARING FOR THE DEPOSITION

- Practice with your Client or a colleague
 - Using the mute button
 - Using screen share
- Come up with a plan for Tech–apocalypse
 - What to do if a technical snafu occurs?
 - Get contact info for everyone, including the court reporter.
 - Option to conduct the deposition over the phone or reschedule



CONTROLLING THE WITNESS OVER VIDEO

- Ask the deponent foundational questions to eliminate possible challenges to the testimony later
 - Are you in an environment suitable for giving testimony? Notify me if that changes.
 - Can you hear me clearly? Notify me if that changes.
 - Notify me if you experience any issues with this platform.
 - Are you alone? Notify me if that changes.
 - Turn off all cell phones and other smart devices in the room such as tablets, watches etc. as well as programs on their computer
 - Do you have any notes in front of you?
- Eye contact is key -
 - Look at the camera and put the video of the deponent as close to the camera as possible.
 - Place electronic outline on screen to avoid looking down but **MINIMIZE OUTLINE WHEN PRESENTING EXHIBITS!!!**



AVOIDING
INAPPROPRIATE
BEHAVIOR
FROM
OPPOSING
COUNSEL

- Disable private chat feature
- Agreement that counsel will not coach his/her client during the deposition.
- If the lawyer and client are in the same location, a camera must be on the lawyer as well.



OTHER TIPS

- Speak slowly, this can help remediate any delays in the feed.
- Practice Practice Practice with your client or colleague
 - Using the mute button
 - Practice Screen Share/exhibits
- Do you want/need the video feed from the deposition to be recorded for use at trial?



RESOURCES
DRAWN
FROM.....

- <https://federalbarcle.org/product/conducting-a-video-deposition-critical-issues-every-attorney-should-know-including-using-technology-handling-exhibits-and-defending-your-client/>
- <https://www.jdsupra.com/legalnews/navigating-remote-depositions-a-74166/>
- <https://planetdepos.com/remote-depositions/>
- <https://planetdepos.com/top-tips-zoom-remote-deposition/>
- <https://www.natlawreview.com/article/tips-taking-depositions-videoconference-age-covid-19>
- <https://www.natlawreview.com/article/my-zoom-deposition-next-month-no-problem>
- <https://www.bakerdonelson.com/navigating-remote-depositions-a-practitioners-guide>
- https://nysd.uscourts.gov/sites/default/files/practice_documents/RWL%20Lehrburger%20Sample%20Remote%20Deposition%20Protocol.pdf Sample stipulation.
- <https://www.youtube.com/watch?v=>