

²⁷ FLA. STAT. § 56.29(9).

²⁸ BAICO, 607 B.R. at 759.

²⁹ *Id.* at 760.

³⁰ *Id.*

³¹ *Id.* at 760-61.

³² *Id.* at 761.

³³ *Id.*

³⁴ *Gibson Guitar Corp. v. Tokai Gakki Co., Ltd.*, No. 3:04-CV-0449, 2019 WL 6332170, at *1 (M.D. Tenn. Feb. 27, 2019) (quoting Fed. R. Civ. P. 69(a)(1)).

³⁵ *Lillie v. Hunt (In re Hunt)*, 323 B.R. 665, 666-67 (Bankr.W.D.Tenn.2005) (citing Fed. R. Bankr. 7069 (applying Fed. R. Civ. P. 69(a)(1) to adversary proceedings)).



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Guide to taking Remote Depositions

by Alex Vandiver

Even with vaccinations becoming available, remote depositions are likely a mainstay for the foreseeable future. Therefore, now is a good time to become proficient at taking remote depositions. Whether you are a lawyer new to remote depositions or new to depositions in general, the tips set forth below will help you improve your deposition skills and help you establish yourself as the choice associate at depositions.

1. PLAN EARLY.

Determine who will lead the deposition and who will handle the exhibits. A deposition is a two-person job. The best depositions flow naturally. To accomplish this, the leading attorney needs to listen to the deponent's answers and proceed accordingly—she should not be scrolling through file folders looking for exhibits. It is your job to ensure that the lead attorney does not get lost in the exhibits and lose her momentum as a result.

Decide how to conduct the deposition. Federal Rule of Civil Procedure 29 provides parties wide latitude on how to conduct a deposition but always be sure to check local rules and each judge's practices for additional guidance. Once you have familiarized yourself with the governing rules, then consider the following: Will the reporter be in the same room as the deponent? Will a videographer record the deposition? If the video quality is poor, or the internet connection drops, can the deponent and her attorneys dial into the meeting? The answers to the foregoing questions will help you and the lead attorney decide how to conduct the deposition.

Talk to opposing counsel. You should attempt to speak with opposing counsel regarding how the parties plan to conduct the deposition. For example, you should discuss who will receive copies of the exhibits and when. Once discussed and agreed-upon, you should memorialize the anticipated procedure in a detailed notice. This can help prevent and resolve any subsequent disputes that may arise.

Plan the exhibits. Some lead attorneys draft their own outlines. Other lead attorneys ask the assisting attorney to write a first draft of the deposition outline, particularly if the assisting attorney has been involved with document review in the case. Either way, the lead attorney should plan which exhibits to use and the order in which she wants to review the exhibits with the deponent. The outlines should give the assisting attorney a guide to organizing the exhibits.

Download and label the exhibits. You should start by downloading the exhibits into a local file folder. Then, you should name the exhibits in a

consistent manner to make them easily identifiable in the event that the lead attorney changes course and jumps out of the planned order during the deposition. The most consistent method of identifying and naming documents is usually by the document's bates stamps and dates. For example:

- **Emails:** Name with sent date and bates number (*i.e.*, "2020.04.01_PLT000123").
- **Business Documents:** Name with bates number and written title (*i.e.*, "PLT000124_Business Plan," "PLT000234_Business Org Chart," or "PLT000345_Cert of Incorporation").

Organize the exhibits. You should also organize the exhibits within your file folder. Use a system that makes sense to you and for your case. For example, if you know the order of the exhibits, then you can add numbers at the beginning of the file name to organize the exhibits accordingly:

- "1 – 2020.04.01_PLT000123"
- "2 – PLT000234_Business Org Chart"

If you do not know the exact sequence the exhibits will be used, then you can simply organize the exhibits by topic and assign each topic a number:

- "1 – Partnership Emails – 2020.04.01_PLT000123"
- "2 – PLT000234_Business Org Chart"
- "2 – PLT000345_Cert of Incorporation"

The methods set forth above are just a few examples. You should always use what makes sense to you. However, as a general rule, **do not name a file by its role in the case** (*e.g.*, "Gotcha Email," "THE Email," or "That Incriminating Video"). It is important to remember that everyone can see the file name when you share your screen during the deposition.

2. PREPARE EARLY AND OFTEN.

Review the exhibits with the lead attorney. This is very important. You should take note of any pages or portions of an exhibit that the lead attorney knows that she will use as you will likely need to quickly find these pages or portions of an exhibit during the deposition. Because *depositions are time limited*, every minute that you use looking for a page or portion of the exhibit is a lost minute of questioning the deponent.

For example, imagine an attachment to a pleading. The attachment has its own numbering that was independently created from the pleading to which it was ultimately attached. The lead attorney

Guide to taking remote Depositions continued on page 16

ney says, “Pull up Exhibit B of the Plaintiff’s Complaint. And, then, scroll down to page three.” The complete file is 250 pages long. In this request, you must understand that the lead attorney does not mean for you to pull up page 3 of the Plaintiff’s Complaint. If documents are saved in PDF format, consider using Adobe Acrobat’s bookmark feature for quick navigation of lengthy documents.

Be prepared. Take the time before the deposition to look through the exhibits. Write down the page number of the document—not the written number on the page. You will save yourself the time and stress of scrolling through the document to find the pages or portions of the exhibits that the lead attorney needs.

Check the equipment. You should run a system check to ensure that there is an internet connection at least a day before the deposition just in case any hardware changes are necessary. (Tip: Physically connect your computer to the internet. WIFI is convenient and doable, but a hardwire signal is more reliable.)

Check the environment. You should choose a quiet location and remove distractions. For example, you can lock your chair to avoid fidgeting and angle the camera to avoid disruptions. You should also get good lighting. (Tip: The light source should come from behind the camera. If this is not an option, then consider purchasing a cheap ring light.) If you are working from home and have a pet, consider whether the pet will need to go outside or will demand attention during the deposition, and make plans to minimize potential disruptions.

Make sure everyone has the information to join the meeting. Write down the phone number and access code to dial into the meeting in case of an emergency. You should also consider dialing into the meeting and keeping your telephone on mute in case of an emergency.

Remember to dress and act professionally. We all have Zoom fatigue, but we still need to dress professionally on the top and bottom. Avoid snacking.

3. DURING THE DEPOSITION.

Block distractions. For example, you can use a “Do Not Disturb” sign on the door. You should also mute your telephone. Consider automatic replies on your email, so that others will be notified that you are unreachable because you are in a deposition.

Close the unnecessary. Generally, you only need three things on your computer screen during the deposition: (1) The meeting room (*e.g.*, Webex

or Zoom), (2) the file folder with your exhibits, and (3) your PDF reader (*e.g.*, Adobe Acrobat or Fox-it) with the relevant exhibit open. You do not want emails or other notifications popping onto your screen, which can distract you and others during the deposition.

Only open the exhibits as they are called. Do not have all of the exhibits open. When you offer to share your screen, the system will show you all of your open windows—in *thumbnails*. This is can be both confusing and overwhelming. And most importantly, you do not want to accidentally share the incorrect exhibit or window.

Do not have your notes and/or outline on the screen. Instead of having your notes and/or outline on your screen, you should print them out and have them in front of you. Accidentally showing the wrong exhibits is one thing, but accidentally showing your notes or outline could have a substantial and detrimental impact on your case.

Other parties should mute themselves. Generally, only the attorneys and the witness should have their microphones on throughout the deposition. Everyone else should mute themselves. If the other parties are not on mute, respectfully request that they do so.

4. CONCLUSION

In sum, the key to a great deposition, like many other things in life, is preparation. Take the time before the deposition to review your exhibits, organize them, and figure out a way to neatly present them. Review everything with the lead attorney and witness. Do it twice. Run the system checks. Dress up. And show up. This all may seem tedious. But “Serendipity always rewards the prepared.” – Katori Hall.



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