



Improving eDiscovery through Remote and Hybrid Depositions

How modern technology is aiding in reducing the resources required for recording and utilizing testimony



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Introduction



New technology is creating an environment in which professionals can record (or memorialize) depositions and other legal proceedings in ways that decrease the wait time and costs involved in discovery.

Propelled by the pandemic, parties and their counsel are adopting new methods to enhance efficiency, speed case resolution, and improve case outcomes.

Before the emergence of COVID-19, few attorneys were leveraging the true benefits of remote depositions. This was partly based on the misconception that being in the same rooms as the witness was essential.

Another contributing factor was the limited options available for conducting proceedings online. While the use of Zoom, Webex, Microsoft Teams, or other video conferencing software might have been a viable way to save on travel time and expense, these technologies were not widely accepted or all that advantageous.

These applications were not designed to make the process any easier either.

Over time, as many were forced to stay at home and quarantine, we saw the emergence of add-ons and apps designed to make the process somewhat more manageable but added unnecessary expense and complexity to the process. Even as the tools improved, many attorneys were still reluctant to adopt this new way of taking depositions.

Technological advancements gradually corrected the flaws in remote legal work, and remote depositions are becoming the “new normal,” especially in cases and industries where expedience is crucial to prevailing outcomes. Though it may be “business as usual” for some, the legal world will never be the same.

Remote and Hybrid vs. In-Person Depositions

The limitations imposed by the pandemic caused the legal industry to reconsider when and how often in-person depositions are truly necessary. How, exactly, are remote, hybrid, and in-person depositions defined?

We're all familiar with the processes involved with in-person depositions.

Remote depositions leverage video conferencing technology or specialty platforms to conduct depositions where participants can attend from their homes or offices. They also have many other significant benefits over traditional in-person depositions.

No Travel Expenses

No one is required to be in the same location, which means reduced travel times and costs. Attorneys can direct more attention to their billable hours, rather than worry about non-billable hours spent in transit; and corporations save by avoiding the need to reimburse travel-related expenses of their firms' attorneys.

Expedience

Litigation moves faster, meaning attorneys are more efficient with their time. Discovery schedules can also be sped up by increasing momentum and reducing scheduling conflicts with opposing counsel.

More Witness Options

Litigators are less restricted in their ability to strategically choose expert witnesses for their credentials and expertise without regard for their geographic location or how willing they are to travel.

Flexibility

Accessible from just about any location that has a reliable broadband connection and a suitable environment for recording, remote depositions are simply more convenient for most participants.

Remote and Hybrid vs. In-Person Depositions

Increased Adaptability

It is also easier to invite additional parties. This might include arbitrators, judges, or other participants whose presence could potentially assist in resolving any deposition-related disputes, in-house counsel, or paralegals tasked with flagging key pieces of testimony as it occurs.

More Accessible and Secure Deliverables

Proceedings conducted on purposefully designed technology platforms built for managing testimony yield more easily attainable deliverables with improved turnaround times. Deliverables are safely and securely stored in the cloud, never leaving the technology's platform, while also being accessible to multiple members of a legal team.

Improved Scheduling

Remote depositions are often much more easily scheduled. Remote participation is faster and increases the pool of available reporters, interpreters, and other support professionals.

Legally Supported

As remote depositions become increasingly common, they are also strongly supported in the federal system and most all other jurisdictions as well. Now a mainstay of the industry, remote depositions cannot be challenged because they were conducted remotely instead of in person.

The very first rule of the Federal Rules of Civil Procedure calls for the “just, speedy, and inexpensive determination of every action and proceeding.”

Hybrid depositions take a conventional setting with the additional data-collection benefits of using a remote deposition platform. These can also support one or more off-site participants, much like with a remote proceeding.

Remote and Hybrid vs. In-Person Depositions

Those who only remember poorly coordinated remote depositions during the early days of the pandemic may still be unwise to the emerging advantages of keeping everything in the cloud.

Thanks to new developments in deposition taking and testimony management, it is now easier than ever to maintain a repository of deposition collateral. Access to deliverables via a technology platform is considerably faster, and it is infinitely easier to search for and locate key testimony across multiple matters.

Circumventing the Stenographer Shortage

With remote and hybrid depositions, the ongoing and increasingly problematic stenographer shortage is made inconsequential in states where stenographers are no longer required, as digital court reporters and even artificial intelligence come into play.

A report from the Speech to Text Institute indicates that while a mere 200 new stenographers enter the workforce, a staggering 1,120 retire annually. Concurrently, the litigation market is in a constant state of growth.

In cases where a stenographer is required, remote proceedings can lessen the pressure and time constraints of attending multiple depositions in person.

The ability to work from home or from a single office location increases the availability of support professionals and the number of jobs stenographers can effectively take.

Streamlining How Testimony is Taken

With the many improvements made to eDiscovery tools and methods in recent years, it's not uncommon for there to be an increased demand for depositions. As more relevant pieces of ESI (electronically stored information) become available, additional witnesses or more substantive information are often unearthed.

With these factors causing an increased need to conduct more depositions, the necessity for a streamlined approach to taking and managing testimony becomes readily apparent.

Technology-enabled depositions aid litigators, researchers, and other legal professionals in taking a more interactive approach when gathering testimony. When utilizing deposition software designed for testimony management – whether for remote or hybrid proceedings – everything is made easily accessible online.

Depositions taken using new, technological enhancements, such as AI-generated real-time roughs with integrated flagging and note-taking tools and built-in cloud storage for files and exhibits, have benefits that can be immediately taken advantage of at the same time as testimony is taken.

Witnesses and other participants can annotate exhibits in real-time, and some platforms allow attorneys to request instant playback of testimony as opposed to needing to ask a stenographer for a readback.



Speeding Up the Process of Utilizing Deposition Collateral

Time is of the essence, especially in extended litigation cycles, so many firms and corporations are leveraging technology in order to ensure they are keeping matters moving forward at a much faster pace. Expediting litigation cycles is federally mandated as well as strategically, logistically and financially beneficial to most parties involved.

In some cases, many deliverables, with the exception of the final certified transcript, are available within minutes of the completion of a proceeding. This can include a rough, searchable transcript as well as video of the witness and all submitted exhibits. Quickly available post-deposition deliverables significantly expedites the process of utilizing deposition collateral for eDiscovery.

In fact, most of the waiting game can be essentially eliminated by collecting and storing all collateral in the cloud in real time. In cases where no certified transcript is required, turnaround time is virtually nonexistent, and no further costs are incurred.

Speeding up the processes involved in litigation means pushing through matters at a much faster pace, which in turn lessens overall expenses as well.



Increased Pressure to Reduce Costs

The rise of remote depositions is a major driving force in lowering costs associated with obtaining testimony. Many clients have seen significant savings, especially in instances where travel would have been involved.

However, travel expenditures aren't the only costs being reduced, or even eliminated, by leveraging technology for legal proceedings. Conducting proceedings remotely also cuts down on lost wages from reduced productivity, and saves on costs associated with additional support staff, such as videographers.

More and more firms are now requesting digital transcripts in lieu of hard copies, saving money on printing and delivery costs as well.

By replacing stenographers with digital court reporters and modern tools, costs can be reduced by as much as 20% compared to using traditional methods. Further reductions can also be found as ordering expensive certified transcripts even becomes optional in some cases, saving up to 40% on court reporting costs.



Building a Better Repository

As technology has evolved, cloud-based platforms have become the predominant method of managing the eDiscovery process when it comes to ESI. Most firms have been well-equipped to facilitate document reviewers' collaboration from varying locations. However, while this aspect of eDiscovery was already in practice prior to the pandemic; modern methods of testimony management still lagged exponentially.

When in-person depositions became essentially impossible, the deposition phase of the discovery process took an immediate hit. As these and other proceedings ultimately moved online, even as a temporary measure, it became obvious how unwieldy the available tools really were at the time.

A major boon to the industry, improving these tools not only meant eliminating logistical and strategic implications of going remote, but it also generated positive long-term outcomes. The need for better testimony-taking tools ultimately led to better management solutions for the assets generated.

Now, one of the most significant benefits of conducting remote and hybrid depositions is the ability to use a digital testimony management platform to build out a library of content. From expert witness testimony on recurrent topics to an aggregation of depositions in cases with extended litigation, online solutions that offer advanced search capabilities provide a wealth of valuable information at your fingertips.

When the same platform is used across all depositions — remote or hybrid — the advantages become clearer. Cross-matter searches can be conducted without waiting for deliverables. Testimony is more easily synchronized to video footage — without delays, and without the need for the added expense of a trial tech.

Video clips can be created without requiring outside assistance. And, of course, this material can be accessed from just about anywhere. These benefits enable attorneys to be more directly and efficiently involved in the eDiscovery process, thereby lowering costs while also generating better outcomes for their clients.



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