COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss. OE-144

In Re: COVID-19 (Coronavirus) Pandemic

ORDER REGARDING REMOTE DEPOSITIONS

This Order authorizes remote attendance at depositions in civil cases without stipulation or court order.

Due to the continuing challenges of conducting in-person depositions during the COVID-19 pandemic, the Supreme Judicial Court, pursuant to its superintendence and rule-making authority, issues the following ORDER.

1. Any deposition taken in a civil case pursuant to Mass. R. Civ. P. 30 and 30A, and pursuant to Court Department rules and standing orders, may be conducted remotely (remote deposition), that is, in a manner that allows for the deponent, all other persons entitled to attend (e.g., the parties, counsel for the parties, counsel for the deponent), and all other necessary persons (e.g., the officer/court reporter) to participate without attending the deposition in person.

2. Neither a stipulation of the parties nor a court order is required to conduct a remote deposition.

3. The desire of counsel, a party, or a deponent to appear in person shall not alone be sufficient grounds to quash a notice for a remote deposition or to refuse to make a witness available for a remote deposition.

4. A remote deposition may be conducted by a video-conferencing platform, or by another means agreed to by the parties. In addition to any other requirements in the applicable rules, the notice of a remote deposition shall specify the information needed to participate in the remote deposition.

5. As provided in the Supreme Judicial Court Order for the Administering of Oaths at Depositions via Remote Audio-Video Communication Equipment dated March 20, 2020, an officer or other person before whom the deposition is to be taken is authorized to administer oaths and take testimony without being in the presence of the deponent, so long as the officer or other person before whom the deposition is to be taken can both see and hear the deponent for purposes of positively identifying the deponent.

6. Any person who views or listens to a remote deposition, at any time during the deposition, shall be identified for the record.

7. A remote deposition shall be considered taken in the county and at the place where the deponent is located.

8. Parties and deponents are directed to confer and cooperate to the fullest extent possible, including regarding the exchange and use of exhibits and documents, to attempt to resolve all issues related to remote depositions, and are reminded that "[u]nless the court orders otherwise, the parties may by written stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and (2) modify the procedures provided by these rules for other methods of discovery." Mass. R. Civ. P. 29.

9. Depositions may be conducted by telephone by leave of court or by written stipulation of all parties under Mass. R. Civ. P. 30(b)(7).

10. Where an audio-visual recording of a deposition is conducted pursuant to Mass. R. Civ. P. 30A, although the court reporter may be in a remote location, the operator/videographer must be physically present with the witness unless otherwise agreed to by the parties.

This ORDER is effective immediately and until further ORDER of the Court.

RALPH D. GANTS) Chief Justice

BARBARA A. LENK)

FRANK M. GAZIANO) Justices

DAVID A. LOWY)

KIMBERLY S. BUDD)

ELSPETH B. CYPHER)

SCOTT L. KAFKER)

Entered: May 26, 2020

Effective: May 26, 2020