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SUPREME JUDICIAL COURT RULES

Order in re: COVID-19 (coronavirus) pandemic

Supreme Judicial Court updated order regarding remote depositions

ADOPTED DATE:

10/23/2020

EFFECTIVE DATE:

10/23/2020

UPDATES:

Issued and effective October 23, 2020 (https://www.mass.gov/media/2198461/download)

Repealing and replacing the Order regarding remote depositions.

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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 authorizing remote attendance at depositions in civil cases without stipulation or court order. Effective October 23, 2020, this Order shall repeal and replace the Order Regarding Remote Depositions, which was issued and effective on May 26, 2020.

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 to attempt to resolve all issues related to remote depositions, including the video platform that will be used and the handling of exhibits during the remote deposition. The parties and deponents must cooperate with each other, the court reporter, and the operator/videographer, if any, in planning for and conducting remote depositions.
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, the operator/videographer may record remotely, following the procedures set forth in Rule 30A. Unless all parties agree or the court orders otherwise, during the deposition, the operator/videographer will video record only the witness, except that, at the request of the questioning attorney or self-represented party, a split screen may be used as necessary to record an exhibit while the witness is being questioned concerning the exhibit. The witness must be provided a video feed of the

questioning attorney or self-represented party. No person other than the operator/videographer and court reporter may record the deposition by video or audio means.

11. The parties 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.

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

Downloads

SJC updated order regarding remote depositions

(https://www.mass.gov/doc/sjc-updated-order-regarding-remote-depositions/download) (PDF 185.34 KB)

UPDATES:

Issued and effective October 23, 2020 (https://www.mass.gov/media/2198461/download)

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