EMERGENCY ALERTS

Coronavirus Update

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SUPREME JUDICIAL COURT RULES

Order in re: COVID-19 (coronavirus) pandemic

Supreme Judicial Court Order for the administering of oaths at depositions via remote audio-video communication equipment

EFFECTIVE DATE:

03/20/2020

UPDATES:

Effective March 20, 2020 (https://www.mass.gov/media/2110551/download)

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Order

In light of the public health concerns regarding the COVID-19 (coronavirus) pandemic and the actions ordered by the Governor in connection therewith, the Supreme Judicial Court, pursuant to its

superintendence and rule making authority, issues the following ORDER to protect the public health by reducing the risk of exposure to the virus and slow the spread of the disease.

1. By rule, the court has the authority to appoint a person before whom a deposition shall be taken and to administer an oath to the deponent. See, e.g., Mass. R. Civ. P. 28(a); and Mass. Dom. Rel. P. R. 28(a). "A person so appointed has power to administer oaths and take testimony." Mass. R. Civ. P. 28(a). See Mass. Dom. Rel. P. R. 28(a) (same).
2. Until further order of the court, at any deposition taken pursuant to a Massachusetts State court rule, including, without limitation, Mass. R. Civ. P. 27, 29, 30, 30A, and 31, Mass. R. Crim. P. 35, and Mass. Dom. Rel. P. R. 27, 29, 30, 30A, and 31, or pursuant to an order of court, an officer or other person before whom the deposition is to be taken is hereby authorized by the court 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 via audio-video communication equipment or technology for purposes of positively identifying the deponent.
3. This court order is intended to avoid a situation where the officer or other person before whom the deposition is to be taken is actually or impliedly precluded, by statute, rule, or otherwise, from administering oaths and taking testimony if not in the presence of the deponent. For example, a notary public is precluded by statute from administering an oath or affirmation if the deponent is not in the notary public's presence at the time. See G. L. c. 222, § 16(a)(i). As a result of this order, however, an officer or other person before whom a deposition is to be taken, who happens to be a notary, would be authorized to administer oaths and take testimony without being in the presence of the deponent; such authority would arise from this order, not any status as a notary.
4. Parties are also reminded that, by rule, and "[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 maybe used like other depositions; and (2) modify the procedures provided by these rules for other methods of discovery." Mass. R. Civ. P. 29. See Mass. Dom. Rel. P. R. 29 (same). If the parties so stipulate to the person before whom the deposition may be taken, that person has the authority to administer oaths. See, e.g., Mass. R. Civ. P. 28(a) (the "term'officer' as used in Rules 30, 31 and 32 includes a person appointed by the court *or designated by the parties under Rule 29*") (emphasis added); Mass. Dom. Rel. P. R. 28(a) (same).

Downloads

Supreme Judicial Court Order in re COVID-19 for the Administering of Oaths at Depositions
(https://www.mass.gov/doc/supreme-judicial-court-order-in-re-covid-19-for-the-administering-of-oaths-at-depositions/download)
(PDF 114.27 KB)

UPDATES:

Effective March 20, 2020 (https://www.mass.gov/media/2110551/download)

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