

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the twenty-seventh day of December, in the year of two thousand and twenty-four:

present,

KIMBERLY S. BUDD)
) Chief Justice
)
FRANK M. GAZIANO)
) Justices
)
SCOTT L. KAFKER)
)
)
DALILA ARGAEZ WENDLANDT)
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SERGE GEORGES, JR.)
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)
ELIZABETH N. DEWAR)
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)
GABRIELLE WOLOHOJIAN)

ORDERED: That the Massachusetts Rules of Civil Procedure adopted by order dated July 13, 1973, as amended, to take effect on July 1, 1974, are hereby amended as follows:

Rule 30(b)(4)

By deleting the current Rule 30(b)(4) and inserting in lieu thereof the Rule 30(b)(4) attached hereto.

The amendments accomplished by this order shall take effect on February 1, 2025.

ORDERED:

KIMBERLY S. BUDD)
) Chief Justice
)
FRANK M. GAZIANO)
) Justices
)
SCOTT L. KAFKER)
)
)
DALILA ARGAEZ WENDLANDT)
)
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SERGE GEORGES, JR.)
)
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ELIZABETH N. DEWAR)
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GABRIELLE WOLOHOJIAN)

Mass. R. Civ. P. 30

(b) Notice of the deposition; other formal requirements

...

(4) By Remote Means. A remote deposition may be taken using a video-conferencing platform or by telephone.

(A) Video-Conferencing Deposition. Subject to the following provisions, by notice of the party seeking to take the deposition, a deposition may be taken in a civil case remotely by video-conferencing platform (video-conferencing deposition) in a manner that allows for the deponent, all other persons entitled to attend, and all other necessary persons (e.g., the officer/court reporter) to participate without attending the deposition in person. Upon motion made by a party or by the person from whom a deposition is sought to the court where the action is pending or to the court in the county or judicial district where the deponent is located, and for good cause shown, the court may issue an order as to the manner in which the deposition will be taken, including that the deposition be taken by video-conferencing, in-person, or in some combination of video-conferencing and in-person.

(i) In addition to any other requirements in the applicable rules, the notice of a video-conferencing deposition shall specify, reasonably in advance of the deposition, the information needed to participate in the deposition, including but not limited to the identification of the video-conferencing platform.

(ii) An officer or other person before whom the video-conferencing 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 identifying the deponent.

(iii) The video-conferencing platform used for the deposition must be able to show a real-time list of those persons attending the deposition, and attendees must make reasonable efforts to be identified on that list. All persons present in the same physical location as the deponent during a video-conferencing deposition must separately log in to the video-conferencing deposition so that they are individually identified during the video-conferencing deposition and the deponent can be shown separately. The sound and video feeds for the deponent, participating counsel for the parties, counsel for the deponent, self-represented parties, and the court reporter must remain on while the video-conferencing deposition is on the record. Other attendees should mute their sound feed and, if not in the same physical location as the deponent, should shut off their video feed when not speaking, after identifying themselves for the record. Only

persons who would be entitled to attend an in-person deposition in the case may observe the video-conferencing deposition. If any person enters the room where the deponent is located during the deposition, the deponent or counsel in the room shall immediately notify the video-conferencing participants and the person who entered the room must either separately log in to the video-conferencing deposition or be otherwise visible to all attendees on the video feed.

- (iv) Where an audio-visual recording of a video-conferencing deposition is conducted pursuant to this rule, the operator/videographer may record remotely, following the procedures set forth in this rule. Unless all parties agree or the court orders otherwise, during the deposition, the operator/videographer will video record only the deponent, 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 deponent is being questioned concerning the exhibit. The deponent 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.
- (B) Telephone Deposition. By leave of court upon motion or by stipulation in writing of all parties, a deposition may be taken by telephone.
- (C) Technical Problems. No objection, instruction, motion, or any matter regarding the conduct of the remote deposition is waived if the attorney or party seeking to make or raise it is prohibited by a technical problem from doing so in timely fashion, provided that it is made or raised promptly after the technical problem is resolved.
- (D) Cooperation and Modification. As set forth in Rule 29, parties and deponents may stipulate to taking a deposition in a manner that modifies the procedures set forth in this rule. Any agreed upon stipulations must be stated on the record or set forth in writing. Parties and deponents must confer and cooperate to the fullest extent possible to attempt to resolve all issues related to remote depositions, including the video-conferencing 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.
- (E) Location of Deposition. For the purposes of this rule and Rules 28(a), 37(a)(1), 37(b)(1), and 45(d), a remote deposition shall be considered taken in the county and at the place where the deponent is located.
- (F) Unavailability and Authority to Compel. Nothing in this rule is intended to: (1) address whether a remote deponent is deemed "unavailable" within the meaning of Rule 32(a)(3) for the purposes of using that witness's deposition at trial; or (2) alter a court's authority to compel testimony of non-party witnesses.

MASSACHUSETTS RULES OF CIVIL PROCEDURE

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION

Reporter's Notes--2025

During the COVID-19 pandemic, the Supreme Judicial Court issued various Orders dealing with the impact of the pandemic on the practice of law. One such Order authorized “remote attendance at depositions in civil cases without stipulation or court order” in light of the “continuing challenges of conducting in-person depositions during the COVID-19 pandemic.” Supreme Judicial Court Updated Order Regarding Remote Depositions, effective October 23, 2020 (replacing Order Regarding Remote Depositions, effective May 26, 2020). The Supreme Judicial Court pandemic-related order permitted litigants to take remote depositions as a matter of right and provided the rules for doing so. As the pandemic wound down, the Standing Advisory Committee on the Rules of Civil Procedure began a review of Rule 30 to determine whether, and how, to revise the Massachusetts Rules of Civil Procedure to accommodate remote deposition practice.

In 2022, the Standing Advisory Committee published for comment a draft providing that in-person depositions should be the default rule, but parties could agree to a remote deposition in lieu of an in-person deposition or a court could order a remote deposition upon motion absent agreement. In 2023, after reviewing comments from the bar, many of which supported retaining the ability to take remote depositions as a matter of right, the Standing Advisory Committee published a second proposal recommending the adoption of a “noticer’s choice” approach. Noticer’s choice would enable the party seeking the deposition to decide in the first instance whether the deposition would be taken in person or remotely. After reviewing comments from the bar regarding the second proposal, the Standing Advisory Committee recommended to the Supreme Judicial Court the adoption of noticer’s choice.

The 2025 amendments to Rule 30(b)(4) do not include detailed requirements regarding remote depositions but rather set forth the basic ground rules involving noticer’s choice. These include the requirement of a list of the names of those persons attending the deposition. Persons entitled to attend a remote deposition are the same as would apply to an in-person deposition. The parties are free to agree to any other arrangement they may deem appropriate. See Rule 30(b)(4)(D).

Rule 30(b)(4) as amended deals with two types of remote depositions, video-conferencing depositions and telephone depositions. The term video-conferencing deposition refers to a deposition taken remotely utilizing a video-conferencing platform (such as Zoom).

Video-Conferencing Depositions. Rule 30(b)(4)(A) adopts noticer’s choice (although the rule itself does not use the term “noticer’s choice”) in connection with a video-conferencing

deposition. The rule allows the party who notices a deposition to elect to conduct a video-conferencing deposition by providing appropriate notice and specified information to all parties and to the deponent.

Any party or the deponent has the right to move in court for an order requiring the deposition to be taken in a manner that differs from that set forth in the notice of deposition. Thus, a court may order for good cause shown that the deposition be taken in-person, remotely, or by a combination of in-person or video-conferencing methods. The motion would be filed in the court where the underlying action is pending or “in the court in the county or judicial district where the deponent is located.”

Factors for a court to consider in ruling on such a motion may include such matters as the equities in favor of, or against, a remote or in-person deposition, health reasons against holding an in-person deposition (for example, a spike in virus-related illnesses that may caution against a group of people gathering in a room for a lengthy period of time), age of the deponent, weather-related events that may impact traveling to a deposition site, costs associated with traveling to an in-person deposition, and access to and familiarity with technology. In addition, consideration may be given to whether the number and types of exhibits and how the deponent may interact with them may make a remote deposition unwieldy.

Cooperation among all parties in planning and conducting a video-conferencing deposition, including how exhibits will be handled, is particularly important, given the technical issues involved. Accordingly, the rule states: “Parties and deponents must confer and cooperate to the fullest extent possible to attempt to resolve all issues related to remote depositions” and they “must cooperate with each other, the court reporter, and the operator/videographer, if any, in planning for and conducting remote depositions.” Rule 30(b)(4)(D).

Telephone Depositions. Rule 30(b)(4)(B) allows a deposition to be taken by telephone by leave of court or by written stipulation. This provision is taken from the first sentence of existing Rule 30(b)(7), with minor changes. The other provision in existing Rule 30(b)(7) regarding the location of a telephone deposition has been moved to proposed Rule 30(b)(4)(E), which now is applicable to both types of remote depositions, video-conferencing depositions and telephone depositions.