

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,

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

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:

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

**(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.