

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.