



GETTING AN ADMISSIBLE TRANSCRIPT REMOTELY: THE BLACK LETTER LAW ON CALIFORNIA REMOTE DEPOSITIONS & OPTIONS

Civil Procedure section 2025.310:

- (a) A person may take, and any person ***other than the deponent may attend***, a deposition by telephone or other remote electronic means.
- (b) The court may expressly provide that a ***nonparty deponent may appear at the deposition by telephone if it finds there is good cause and no prejudice to any party***. A ***party deponent*** shall appear at the deposition in person and be ***in the presence of the deposition officer***.
- (c) The procedures to implement this section shall be established by court order in the specific action or proceeding or by the California Rules of Court.

2019 California Rules of Court: Rule 3.1010. Oral depositions by telephone, videoconference, or other remote electronic means:

(a) Taking depositions

Any party may take an oral deposition by telephone, videoconference, or other remote electronic means, provided:

- (1) Notice is served with the notice of deposition or the subpoena;
- (2) That party makes all arrangements for any other party to participate in the deposition in an equivalent manner. However, each party so appearing must pay all expenses incurred by it or properly allocated to it;
- (3) Any party may be personally present at the deposition without giving prior notice.

(b) Appearing and participating in depositions

Any party may appear and participate in an oral deposition by telephone, videoconference, or other remote electronic means, provided:

- (1) Written notice of such appearance is served by personal delivery, e-mail, or fax at least three court days before the deposition;
- (2) The party so appearing makes all arrangements and pays all expenses incurred for the appearance.

(c) Party deponent's appearance

A party deponent must appear at his or her deposition in person **and be in the presence of the deposition officer.**

(d) Nonparty deponent's appearance

A **nonparty** deponent may appear at his or her deposition by telephone, videoconference, or other remote electronic means **with court approval upon a finding of good cause and no prejudice to any party.** The deponent must be sworn **in the presence of the deposition officer or by any other means stipulated to by the parties** or ordered by the court. Any party may be personally present at the deposition.

(e) Court orders

On motion by any person, the court in a specific action may make such other orders as it deems appropriate.

California Code of Civil Procedure section 2093(b):

(b) (1) A shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code **has the power to administer oaths and affirmations and may perform the duties of the deposition officer** pursuant to Chapter 9 (commencing with Section 2025.010) of Title 4. The certified shorthand reporter is entitled to receive fees for services rendered during a deposition, including fees for deposition services, as specified in subdivision (c) of Section 8211 of the Government Code.

(2) This subdivision also applies **to depositions taken by telephone or other remote electronic means** as specified in Chapter 2 (commencing with Section 2017.010) and Chapter 9 (commencing with Section 2025.010) of Title 4

OPTIONS FOR GETTING AN ADMISSABLE TRANSCRIPT BY USING A COURT REPORTER REMOTELY

OPTION 1:

Stipulate to a party witness being in one location, court reporter/deposition officer in another, lawyers in other locations. (Would not safeguard against witness tampering.)

OPTION 2:

Stipulate to a party witness being in one location, deposition officer (notary or anyone who can administer the oath) in the same location as the party, court reporter and lawyers in other locations. (Deposition officer in the room prevents tampering.)

OPTION 3:

Follow Code and Rule. Nonparty remote deposition taken with court approval with the swearing in by the deposition officer arranged by stipulation. For party depositions, the lawyer taking deposition, defending it, and the witness need to be in the same room with the deposition officer (can be notary) but if ***a deposition officer is in the room, the court reporter can be in another location.***

BEST PRACTICES

It is common practice for remote depositions taken, say, via videoconferencing, to rely upon the stipulation and not seek court approval. Consider memorializing the stipulation on the record, just to be sure. It's also a good idea to send exhibits to each participating attorney and court reporter in advance of a remote deposition, as sending voluminous exhibits through video-conferencing software may be cumbersome.