

WEDNESDAY, JANUARY, 21, 2026

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## Zoom depositions: The good, the bad and the unsettled

Remote depositions offer undeniable efficiencies in time and cost, but they also raise serious concerns about witness coaching and credibility assessment—challenges that require clearer guardrails as Zoom depositions become a permanent fixture of civil litigation.

By Adam M. Carlson

Remote depositions are no longer a pandemic work-around. They are now a permanent feature of civil litigation and their continued use has revealed a growing divide within the bar over whether depositions are best conducted in person or by video conference. That divide often appears generational: younger attorneys tend to prefer Zoom depositions, while more seasoned litigators frequently favor in-person proceedings. Neither camp is categorically right or wrong, but as Zoom depositions become entrenched, courts and practitioners must grapple with both their efficiencies and their vulnerabilities.

### Why Zoom depositions can work better

The benefits of remote depositions are undeniable. Eliminating travel saves time and expense, particularly when the deponent is located out of state or in a distant part of California. Depositions that once required a full day, or days, of logistics can now be conducted within a matter of hours without leaving the office. Exhibits are often easier to manage as well. Rather than arriving with multiple binders and stacks of paper, counsel can share documents



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electronically, scroll through them efficiently, and quickly pull up materials that were not anticipated in advance. This flexibility allows examination to proceed while the topic remains fresh, rather than breaking for copying or postponing follow-up questions.

Remote platforms can also make witnesses more comfortable. Appearing from a familiar environment may reduce anxiety, which, for some examining attorneys, is an advantage

rather than a drawback because relaxed witnesses may speak more freely. There is also the ability to take contemporaneous, typed notes alongside the video feed that allows counsel to track testimony with precision. While real-time court reporting exists for in-person depositions, many attorneys find it easier in a remote setting to review earlier testimony instantly without diverting attention away from the witness.

### The limits of remote depositions

Yet Zoom depositions present real downsides that cannot be ignored. Chief among them is the difficulty of fully assessing how a witness will present in person at either trial or a contested hearing. Subtle cues, such as body language, posture and eye contact, can be flattened or obscured on video. For key witnesses, particularly defendants or decision-makers whose credibility will be central at trial, many attorneys believe that nothing substitutes for evaluating them in person.

There is also a professional dimension that is harder to replicate remotely. In-person depositions can foster collegiality and help build working relationships between counsel. While professionalism is certainly achievable on Zoom, for many practitioners, the connection is more attenuated.

### Witness coaching and the need for clearer guardrails

A serious concern has arisen related to the increased risk of improper witness coaching. In a remote deposition, it is far easier for a defending attorney to be physically present with the witness off-camera, allowing them to signal answers in ways that are difficult to detect. This risk strikes at the core purpose



of a deposition: obtaining the witness's unvarnished testimony as it exists at that moment, not testimony shaped in real time by counsel.

California courts have made clear that coaching a witness during a deposition is improper and sanctionable. Coaching violates Code of Civil Procedure section 2023.010(b), which defines misuse of the discovery process to include failing to comply with deposition procedures. Courts have repeatedly reaffirmed that "[c]oaching a deponent is...a misuse of the discovery process" warranting sanctions. *Tucker v. Pacific Bell Mobile Services* (2010) 186 Cal. App.4th 1548, 1561-1562.

More recently, in *Agnone v. Agnone* (2025) 111 Cal.App.5th 758, the Court of Appeal upheld sanctions where counsel refused to turn on a camera during a Zoom deposition, concluding that the conduct "plainly frustrated the deposition's truth-

seeking function." The court reiterated that trial courts possess broad authority to address discovery abuses, including those not explicitly enumerated in the Discovery Act. (*Id.* at 765-767.)

Professional standards reinforce this principle. Los Angeles Superior Court Guidelines for Civility in Litigation provide that counsel should not "through objections or otherwise, coach the deponent or suggest answers." (L.A. Sup. Ct. Appx. 3.A(e) (8).) Similar guidance appears in local rules across the state. Federal courts have long recognized the same concern, cautioning that a deposition is "a question-and-answer conversation between the deposing lawyer and the witness," not an exchange filtered through counsel. *Hall v. Clifton Precision* (E.D. Pa. 1993) 150 F.R.D. 525, 528.

Remote depositions magnify the difficulty of enforcing these norms.

Even when testimony is truthful, prompting a witness on how to answer undermines the adversary's right to the witness's independent recollection. The proper mechanism for ensuring accuracy is refreshing recollection when appropriate, not real-time guidance. (Evid. Code, § 702.)

This issue can be addressed through local rules, the California Rules of Court, or legislation requiring all attorneys representing the witness to appear on camera or be in a separate room.

### **Conclusion: Choosing the right tool for the witness**

Whether a deposition should be conducted remotely or in person ultimately depends on context. Factors include the importance of the witness, the attorney's preference for the chosen format, the need to evaluate demeanor and practical considerations such as cost and

geography. An out-of-state expert may be well-suited to Zoom. A central party witness may not be. Regardless, handled correctly, Zoom depositions offer not a lesser form of discovery, but a different, and increasingly integral and valuable, one.

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