

Memorandum

To: Supreme Court Advisory Committee

From: Discovery subcommittee

June 19, 2020

The Supreme Court referred the following matter to our subcommittee:

Texas Rule of Civil Procedure 199. Rule 199 already permits remote depositions, but the Court asks the Committee to reexamine the remote deposition procedures in light of COVID-19. An email from Guy Choate and a news article are attached. The Committee should be prepared to discuss at its June 19, 2020, meeting.

Lawyers have taken many remote depositions during the Covid-19 crisis. Anecdotally this process has been largely successful. The major issues with remote depositions are; the handling of exhibits, the quality of the sound/video, and court reporters' records that might not be as accurate.

No changes recommended.

Rule 199.1 allows remote depositions with prior written notice. Rule 199.5(a)(2) provides the details for the remote deposition and allows in person attendance at the discretion of the party. The rule, as written, provides flexibility. Some parties can attend remotely, and some parties can attend in person. Our subcommittee believes this flexible rule should remain.

The subcommittee does not support a rule that would mandate that all parties appear remotely at the discretion of the person noticing the deposition.

Administration of the oath.

Current rule 199.1 requires that the oath be administered where the witness is, rather than over the phone or computer. This changed during the Covid-19 shutdown. The subcommittee recommends changing this procedure so that the court reporter can remotely administer the oath where the reporter can actually see the witness, as in a zoom deposition.

Where should the court reporter be?

Once Covid-19 is over, we may want to consider whether the best practice would be for the court reporter to be in the presence of the witness during a remote deposition.

This might create better records and might prevent any potential remote coaching of the witness.