

SAMPLE STIPUATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Plaintiff(s)/Government

v.

Civil/Criminal No. [Case #]

Defendant(s)

STANDARD REMOTE DEPOSITION STIPULATIONS

The Plaintiff(s)/Government and Defendant(s) (collectively, the “Parties”) jointly stipulate to the following protocol for conducting a remote videoconference deposition (“remote deposition”) of _____ in the above-captioned case:

1. The Parties agree to use a stenographic service provider that is equipped to conduct remote-deposition services. The Parties agree that an employee of the stenographic service provider may attend each remote deposition to troubleshoot any technological issues that may arise and to administer virtual breakout rooms.
2. A remote deposition may be video recorded upon agreement of the Parties. The Parties shall determine in advance of the deposition the method and means of any video recording.
3. The Party that noticed the deposition shall be responsible for procuring stenographic services for the remote deposition. The Parties shall bear their own costs for the transcript and/or video record of the deposition unless other arrangements have been made and agreed to by the Parties.
4. The Party that noticed the deposition shall provide the stenographic service provider with a copy of this Stipulation at least forty-eight hours in advance of the deposition.
5. The deponent shall endeavor to have technology sufficient to participate in a remote deposition (e.g., a webcam and computer or telephone audio), and bandwidth sufficient to sustain the remote deposition. If the deponent is not physically present with his/her attorney or is unrepresented, there shall be no individuals present with him/her, or who can hear or see the deponent giving testimony, who have not been disclosed and identified on the record. The videoconference software shall be the only application open on the deponent’s electronic device,

and the deponent may not possess or access any materials, in paper or electronic format, other than approved exhibits or other materials agreed to by the Parties.

6. If the deponent is represented, it is the obligation of deponent's counsel to ensure that the deponent is aware of, and can satisfy, the requirements of these protocols, including ensuring that the deponent has the required technology to participate in a remote deposition. If a non-party deponent is unrepresented, counsel noticing the deposition must (a) ensure that the deponent is aware of, and can satisfy, the requirements of these protocols, (b) supply the necessary technology if the deponent lacks the required technology to participate in a remote deposition.

7. The Parties, together with counsel for the deponent if represented, agree to work collaboratively and in good faith to assess each deponent's technological abilities and to identify and attempt to resolve any issues at least twenty-four hours in advance of the deposition. The Parties agree to include the court reporter in this assessment as necessary.

8. The Parties shall work in a collaborative manner to schedule remote depositions of non-parties. The Party noticing any non-party deposition shall provide this stipulation to the non-party with the deposition subpoena or, if the Parties and non-party agree to a remote deposition after service of the subpoena, within twenty-four hours of reaching that agreement. If the court has issued a relevant protective order in the case, the Party noticing the non-party deposition shall also provide a copy of the protective order to the non-party, or to counsel for the non-party if represented, prior to the deposition.

9. On an agreed upon date certain, the Parties agree that any of the following methods for sharing deposition exhibits in advance of the deposition may be employed for a remote deposition (or a combination of one or more methods):

- (i) Counsel noticing the deposition may send exhibits that may be used during the deposition in an electronic format, in an agreed upon time and manner, to the Parties, the non-party deponent or counsel if represented, and the court reporter. To the extent practicable, the Parties shall agree in advance of the deposition on the manner in which they will share documents that are presented to a deponent but were not included in the pre-deposition exhibit disclosure.

(ii) Counsel noticing the deposition may choose to mail physical copies of the exhibits that may be used during the deposition to the Parties, the non-party deponent or counsel if represented, and the court reporter.

10. The Parties agree that any of the following methods for displaying deposition exhibits during the deposition may be employed for a remote deposition (or a combination of one or more methods):

(i) Counsel noticing the deposition may agree to screenshare or use a presentation mode to present documentary exhibits to the deponent during the deposition. Counsel may show physical evidence by holding up the item and allowing the deponent to view the evidence.

(ii) Should the exhibit not render itself capable of screensharing or viewing on the screen, counsel may choose to display a portion of the exhibit or refer to the exhibit and allow the deponent to review a paper or electronic copy that was shared prior to the deposition.

11. Remote depositions shall be recorded by stenographic means consistent with the requirements of Fed. R. Civ. P. 30(b)(3), but the court reporter need not be physically present with the deponent. The Parties agree not to challenge the validity of any oath administered by the court reporter, even if the court reporter is not a notary public in the state where the deponent resides or where the deponent is physically present when the deposition takes place.

12. The Parties agree that the court reporter is an "Officer" as defined by Fed. R. Civ. P. 28(a)(2) and shall be permitted to administer the oath to the deponent during the remote deposition. The deponent will be required to provide government-issued identification satisfactory to the court reporter, and this identification must be legible on the video screen.

13. At the beginning of each deposition, consistent with Fed. R. Civ. P. 30(b)(5)(A), the court reporter shall "begin the deposition with an on-the-record statement that includes: (i) the officer's name and company affiliation; (ii) the date, time, and place of the deposition; (iii) the deponent's name; (iv) the officer's administration of the oath or affirmation to the deponent; and (v) the identity of all persons present."

14. Each person attending a remote deposition shall be clearly visible to all other participants, their statements shall be audible to all participants, and they should strive to ensure their environment is free from noise and distractions.

15. Throughout the course of the deposition, no counsel (or any other person) shall initiate a private conference, including through text message, electronic mail, or the chat feature in the videoconferencing system, with any deponent.

16. During breaks in the deposition, the Parties may use the videoconference service breakout room feature provided by stenographic service provider. Conversations in the breakout rooms shall not be recorded. The breakout rooms shall be established by the stenographic service provider prior to the deposition and controlled by the stenographic service provider.

17. The Parties also agree to work collaboratively to address and troubleshoot technological issues that arise during a deposition and to make reasonable accommodations to resolve those issues. This provision shall not be interpreted to compel any Party to proceed with a deposition when the deponent cannot hear or understand the other participants or when the participants cannot hear or understand the deponent.

18. The court reporter will stenographically record the testimony, and the court reporter's transcript shall constitute the official record. If the deposition is video recorded upon agreement of the Parties, the court reporter may be given a copy of the video recording and may review the video recording to improve the accuracy of any written transcript.

19. The Parties agree that remote depositions may be used at trial or a hearing to the same extent that an in-person deposition may be used at trial or a hearing. The Parties reserve all other objections to the use of any deposition testimony at trial.

Date

Plaintiff/Government Counsel Signature

Date

Defendant Counsel Signature

[Add Counsel/Parties Signatures and Date Signed As Needed]