

We suggest that counsel noticing the deposition be sure that the various means of conducting and recording the deposition are addressed up front in the deposition notice.

Some states have specific requirements for what a deposition notice must state regarding the methods of recording testimony, and we strongly urge counsel to always review the legal requirements for a deposition notice.

Even in states where the rules of procedure do not have specific requirements for a deposition notice, we recommend that the notice advise all parties of the possible methods of recording the deposition. We offer the following suggested notice language with the understanding that it is, of course, always the responsibility of the noticing attorney to confirm that the notice complies with applicable law.

“The parties acknowledge that: (a) this deposition may be recorded by stenographic, videographic, or voice recording means; (b) the testimony may be transcribed and certified by a stenographer, certified digital reporter, or a qualified transcriptionist; and (c) the deposition may be conducted remotely, where the deposition officer is not physically located with the witness and the oath is administered remotely.”