



R.K. Sandill

Judge, 127th District Court

**127th DISTRICT COURT ORDER REGARDING
REMOTE DEPOSITIONS**

I. The Texas Supreme Court Issues Emergency Order Regarding COVID-19 State of Disaster.

On March 13, 2020, the Supreme Court of Texas and the Court of Criminal Appeals of Texas issued their joint “First Emergency Order Regarding the COVID-19 State of Disaster” (Misc. Docket No. 20-9042, “Emergency Order.”). In its Emergency Order, the Supreme Court authorized all courts in Texas to “[a]llow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, or court reporter, but not including a juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means.” Additionally, the Supreme Court authorized all courts in Texas to “[c]onsider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means.”

The Supreme Court’s Emergency Order recognizes that the COVID-19 pandemic presents exigent circumstances that justify vesting trial courts with discretion to modify or suspend procedures subject only to constitutional limitations. Thus, as permitted by the Emergency Order, this Court ORDERS that, in addition to the notice requirements set forth in Texas Rule of Civil Procedure 199.2:

1. All depositions may be noticed to take place remotely;
2. Participants to any deposition may participate remotely by teleconferencing, videoconferencing or other remote means (the “Remote Connection”).
3. All deposition notices must specify the Remote Connection being used and how to access and utilize the Remote Connection.
4. All deposition notices must specify the witness’s location during the deposition and the participants who will be physically present with the witness.

5. If any Participant to the deposition does not have the capability to access the Remote Connection or is unable to properly participate via the Remote Connection specified in the deposition notice, then the party noticing the deposition must provide that participant(s) with the appropriate means necessary to access and participate via the Remote Connection. Any Participant without the necessary capability to access the Remote Connection must notify the noticing Party of this issue as soon as practical, but no later than five (5) days before the date of the deposition.

II. Texas Rules of Civil Procedure 199.1 and 199.4.

Rule 199.1 currently provides that “[a] party may take the testimony of any person or entity by deposition on oral examination before any officer authorized by law to take depositions.”

Rule 199.4 of the Texas Rules of Civil Procedure provides that “[a] party may object to the time and place designated for an oral deposition by motion for protective order or by motion to quash the notice of the deposition. If the motion is filed by the third business day after service of the notice of deposition, an objection to the time and place of a deposition stays the oral deposition until the motion can be determined.”

To facilitate the implementation of the Supreme Court’s Emergency Order allowing remote depositions and the use of testimony adduced at those depositions, the Court ORDERS that:

1. A preference to attend the oral deposition in person shall not—standing alone—be a ground to file a motion to quash or for protective order, nor shall it stay the deposition.
2. An objection that the deposition will take place by videoconference shall no—standing alone—be a ground to file a motion to quash or for protective order, nor shall it stay the deposition.
3. The officer authorized by law to take depositions (usually a court reporter) need not be located with any participant to the deposition and may place the witness under oath by Remote Connection.
4. Any deposition given or taken by Remote Connection may be considered as evidence for any purpose in the case. Upon motion or objection setting forth the specific reason(s) why the deposition cannot be considered fair or reliable, the Court may, in its discretion, exclude all or a portion of the deposition.

5. A copy of this Order must be attached to all deposition notices, but the failure to attach such notice shall not be grounds for a motion to quash or for protective order.
6. A party may request to opt-out of this Standing Order with a motion setting forth the specific reason(s) why the case, or certain witnesses in the case, should not be subject to this Standing Order. A request to opt-out does not affect this Standing Order while the opt-out motion is being considered.
7. This Standing Order applies to depositions noticed after March 30, 2020.

In issuing this ORDER, the Court has weighed the rights of the parties, including the parties' rights to attend depositions in person, the procedural rights afforded parties by Rule 199.4, as well as the Parties' rights to proceed with discovery – even during the COVID-19 pandemic.

Signed March 30, 2020.

A handwritten signature in black ink, appearing to read 'R.K. Sandill', written over a horizontal line.

R.K. Sandill,
Judge, 127th District Court