

129th Civil District Court Standing Order No. 1 Regarding Remote Depositions

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 (the “First Emergency Order”). In the First Emergency Order, the Texas Supreme Court authorized all courts in Texas, subject only to constitutional limitations, to: (a) “[m]odify or suspend any and all deadlines and procedures, whether prescribed by statute, rule or order”; (b) “[a]llow or require anyone involved in any... deposition ... including but not limited to a party, attorney, witness, or court reporter...to participate remotely, such as by teleconferencing, videoconferencing, or other means”; and (c) “[c]onsider as evidence... sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means.”

Pursuant to the First Emergency Order, and in the interest of the safety and welfare of the parties, counsel, witnesses and the public amid the ongoing COVID-19 public health crisis, the Court modifies the procedures of Rule 199 of Texas Rules of Civil Procedure (“TRCP”) and ORDERS that:

1. Participants to any deposition may participate remotely by teleconferencing, videoconferencing or other remote means (the “Remote Connection”).
2. All deposition notices must specify the Remote Connection being used and how to access and utilize the Remote Connection.
3. All deposition notices must specify where the witness will be located when answering questions at the time of the deposition and all individuals who will be physically present with the witness.
4. If any participant to the deposition does not have the capability to access, or is unable to properly participate under, the Remote Connection specified in the deposition notice, then the party noticing the deposition must provide the participant with reasonably appropriate means to access or to properly participate under the specified Remote Connection. Any participant who lacks the capability to access or to properly participate under the specified Remote Connection must notify the noticing party as soon as practicable, but no later than five (5) days before the date of the deposition.

Rule 199.1(a) of the TRCP 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 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 First Emergency Order allowing remote depositions and the use of testimony adduced at those depositions, the Court further modifies the procedures of Rule 199 of the TRCP and ORDERS that:

5. A preference to attend the oral deposition in person instead of by Remote Connection shall not—standing alone—be a ground to file a motion to quash or for protective order, nor shall it stay the deposition.
6. An objection that the deposition will take place by videoconference shall not—standing alone—be a ground to file a motion to quash or for protective order, nor shall it stay the deposition.
7. 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.
8. 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.
9. 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.
10. 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 it is being considered.
11. This Standing Order applies to all depositions noticed after March 30, 2020, and expires on May 8, 2020, unless further extended by this Court.

SIGNED, ENTERED AND ORDERED this 30th day of March, 2020.



Judge Michael Gomez