



COVID-19'S IMPACT ON THE FUTURE OF VIRTUAL DEPOSITIONS

AN INDUSTRY EVOLVING

Historically, face-to-face depositions have been the norm in litigation. Even as technology has advanced over the last several decades, ushering the world into the internet age, legal practice has clung to tradition. In the last 15 years, there has been a steadily growing acceptance of technology's role in litigation due in no small part to the amendments to the Federal Rules of Civil Procedure in 2005, which gave rise to an entire cottage industry of e-discovery, data forensics and data security vendors. Yet despite these advancements, the majority of the litigation workflow has remained in the analogue era.

And then 2020 happened.

With the rapid spread of a global pandemic, industry as a whole ground to halt. Many hoped the suspension of everyday life would be a small blip on their calendars, yet as public health departments continued to tally new cases of COVID-19, it quickly became apparent that this disruption could in fact be a new normal. Court dockets could not support an indefinite standstill, and litigators – as well as their clients – could not afford to put their practices on pause.

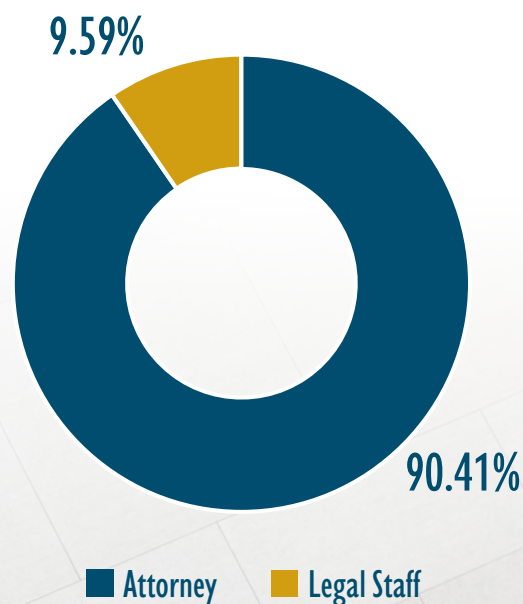
This eBook tells the story of an industry evolving. The information within is sourced from a survey conducted by Esquire Deposition Solutions titled “COVID-19 Impact on Technology for Depositions.” The narrative it tells is about adaptation and triumph in the face of an incredible, shared crisis as well as the future of litigation.



ABOUT THE SURVEY

For the survey, Esquire Deposition Solutions solicited 26,619 legal industry professionals about their experiences with virtual depositions for the period March 2020 to December 2020. 605 professionals responded, representing a 2% response rate. The survey was conducted in December 2020 using Qualtrics. 90.41% of respondents were litigating attorneys. 9.59% were legal staff.

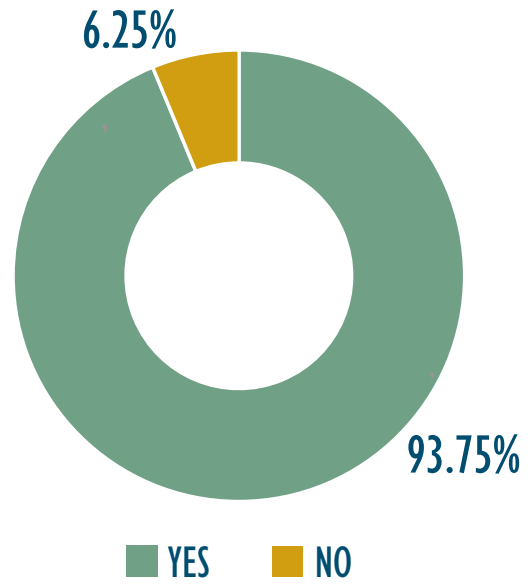
The average number of depositions respondents conduct in a usual year was estimated to be 49.32 per respondents. The lowest number reported was zero, while the highest number reported was 660.



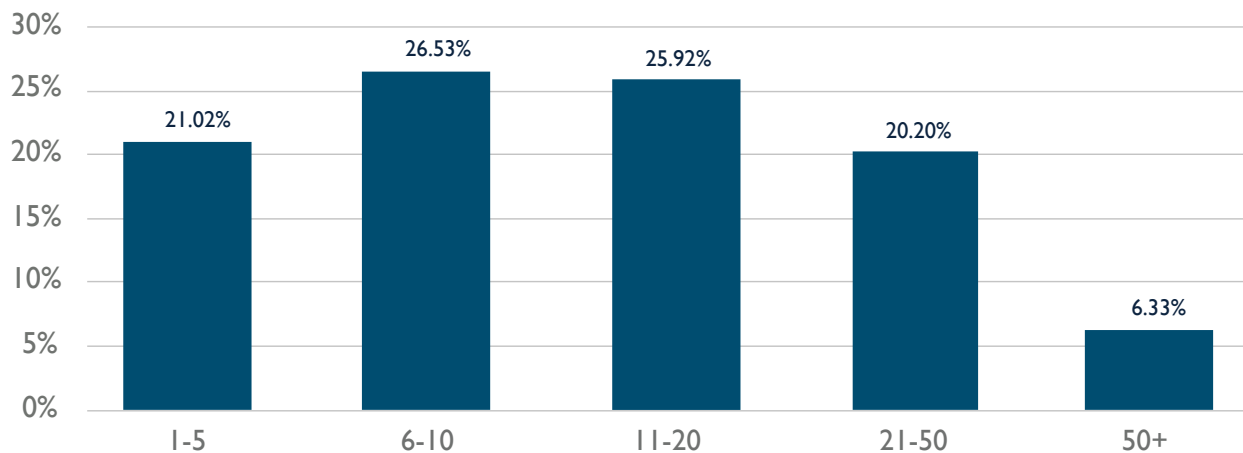
THE MAJORITY CONDUCTED REMOTE DEPOSITIONS

The vast majority of those surveyed conducted remote depositions during the pandemic. In fact, only 6.25% of respondents, or about 38 out of 605, did not conduct any depositions virtually. For the purpose of the survey, we defined a remote/virtual deposition as a deposition where the deponent and court reporter are not physically in the same location, and one or more attendees are attending the deposition via videoconference.

Regarding the number of remote depositions conducted, there was no noticeable trend in terms of count. In fact, there was a fairly even spread among respondents, as the chart below reflects. There was, however, a minority of respondents (6.33%) who were “super users” of virtual depositions, conducting more than 50 throughout the specified dates.



Number of remote depositions conducted since March 2020



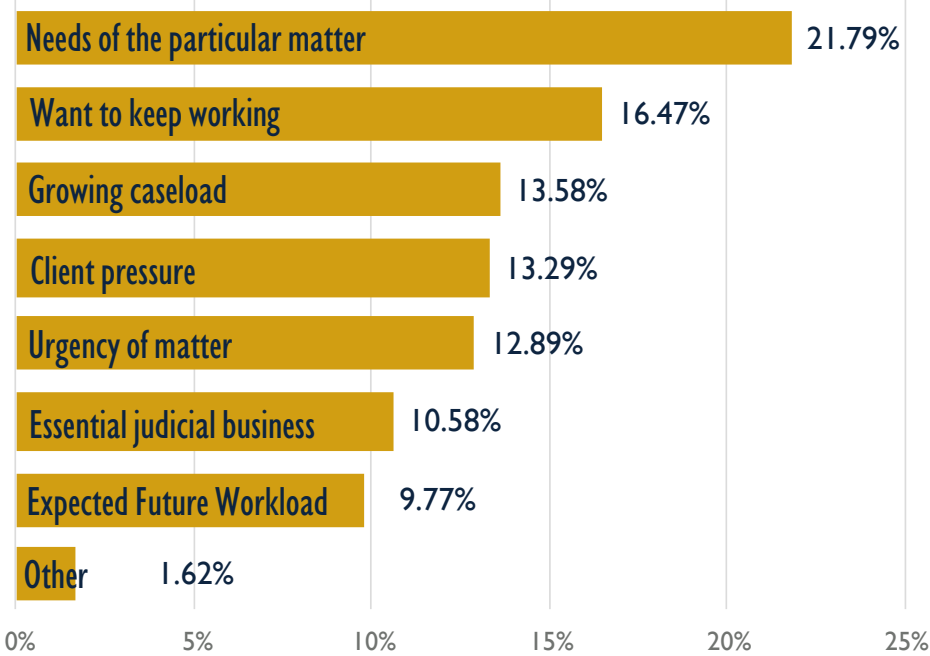
FACTORS FOR MOVING CASES FORWARD

A confluence of factors played a role in pushing law firms to adopt technology to keep their case work moving. Of course, the practice of law is a business, and as a litigating attorney, suspending the litigation workflow equates to suspending one's income. So as a means of survival, litigating attorneys were compelled to conduct depositions virtually, as indicated by 16.47% of respondents. In addition, stopping the litigation workflow does not mean incoming cases are put on pause. In fact, 13.58% cited their ever-growing caseloads as a driving factor for keeping litigation in motion. For some, it wasn't the threat of their current case volume that motivated the move to remote depositions but rather the concern that

they would not be able to adequately service their future caseloads, as indicated by 9.77% of respondents.

A plurality of respondents (21.79%) cited that the needs of a particular matter necessitated using remote depositions, while 12.89% cited the urgency of the matter. 10.58% of respondents cited essential judicial business, and 13.29% cited client pressure. We anticipate that client pressure, particularly with regard to cost containment, will continue to be a motivating factor for relying on virtual depositions. We'll go more in-depth into this prediction when we discuss the future of virtual depositions later in this eBook.

Driving factors for moving cases forward since March 2020

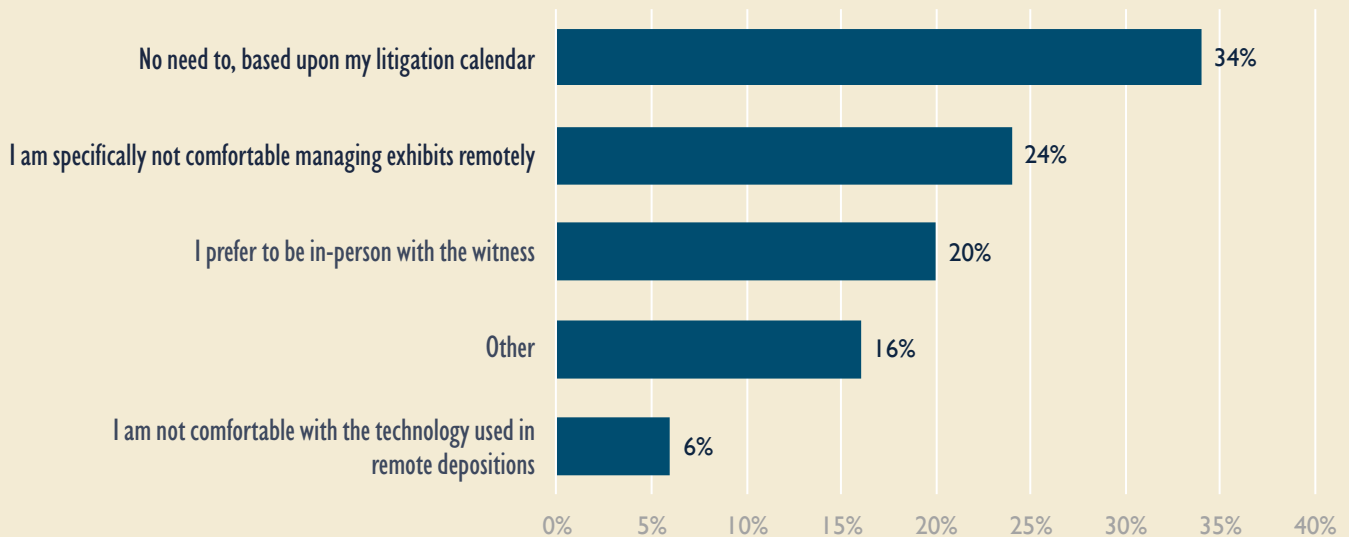


A SMALL MINORITY DID NOT CONDUCT REMOTE DEPOSITIONS

As mentioned, only about 38 respondents did not conduct any virtual depositions during the specified time period. When polled about why this was, a plurality (34%) cited there was no need based on their litigation calendars. However, a significant number of respondents (50%) cited discomfort with some aspect of taking remote depositions. Specifically, 24% cited discomfort with managing exhibits virtually, 20% prefer to be in-person with witnesses during depositions and 6% were not comfortable with the technology used in remote depositions.

These discomforts with remote depositions have validity. Many attorneys worry that the technology will become an interference or distraction during the deposition or that, if the deposing attorney is not in the room, something unethical will occur, such as witness coaching. These concerns are being addressed in a number of ways. For example, Esquire Deposition Solutions offers customers an [exhibit technician](#) who manages exhibits virtually on behalf of counsel. This removes the need for attorneys to become technologists by placing that responsibility on a tech-savvy professional.

Why haven't you conducted a remote deposition?



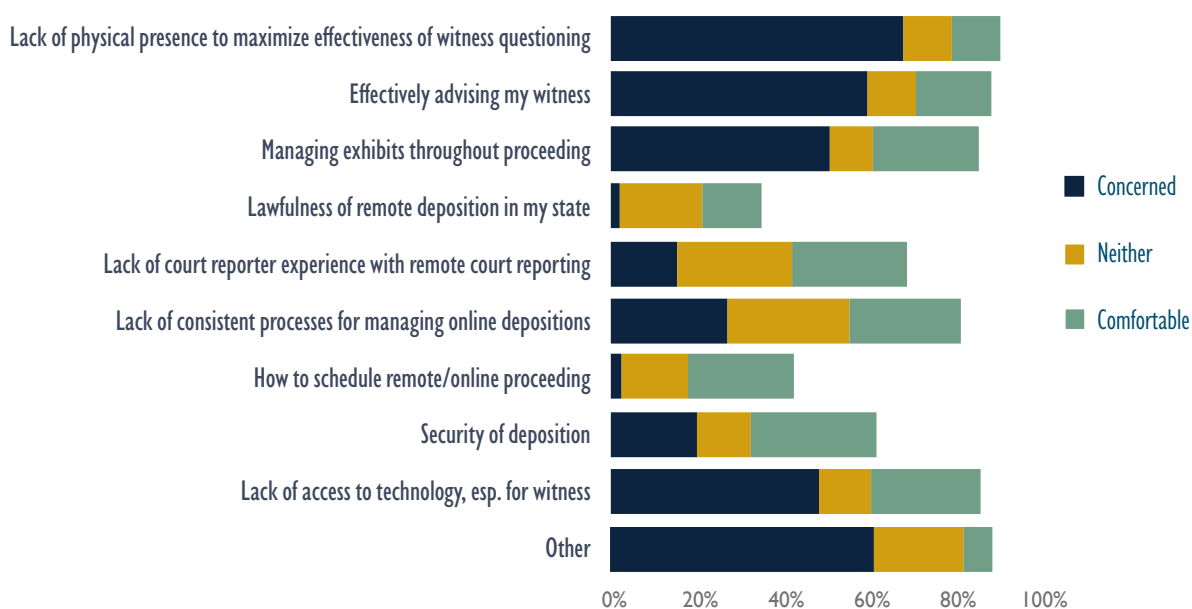
COMFORT AND CONCERN REGARDING ONLINE PROCEEDINGS

Some of the concerns of attorneys who did not conduct remote depositions were shared by attorneys who did. The inability to be present with witnesses and the virtual management of exhibits were both sources of discomfort cited by respondents who conducted remote depositions. More than 60% of respondents cited additional concerns, including technology failure and outside influence on the witness, including the possibility of opposing counsel providing off-camera coaching. We anticipate these concerns will abate over time as the use of remote depositions becomes more commonplace and as new purpose-driven solutions are introduced to the legal marketplace that specifically address these concerns.

Areas where respondents were more comfortable with online proceedings included the state-level legality of such proceedings, scheduling virtual proceedings and security of the deposition. The lack of consistent processes to manage online depositions saw a fairly even split among respondents, which once again could be due to the newness of the technology and its implementation among litigating attorneys.

Collectively, these responses reflect there is some degree of comfort overall with the use of virtual depositions among litigators; however, there are also shared concerns, particularly around deposing of witnesses and the use of exhibits. The legal industry will have to address these concerns as virtual depositions likely become a more common practice.

Concern vs comfort with online proceedings

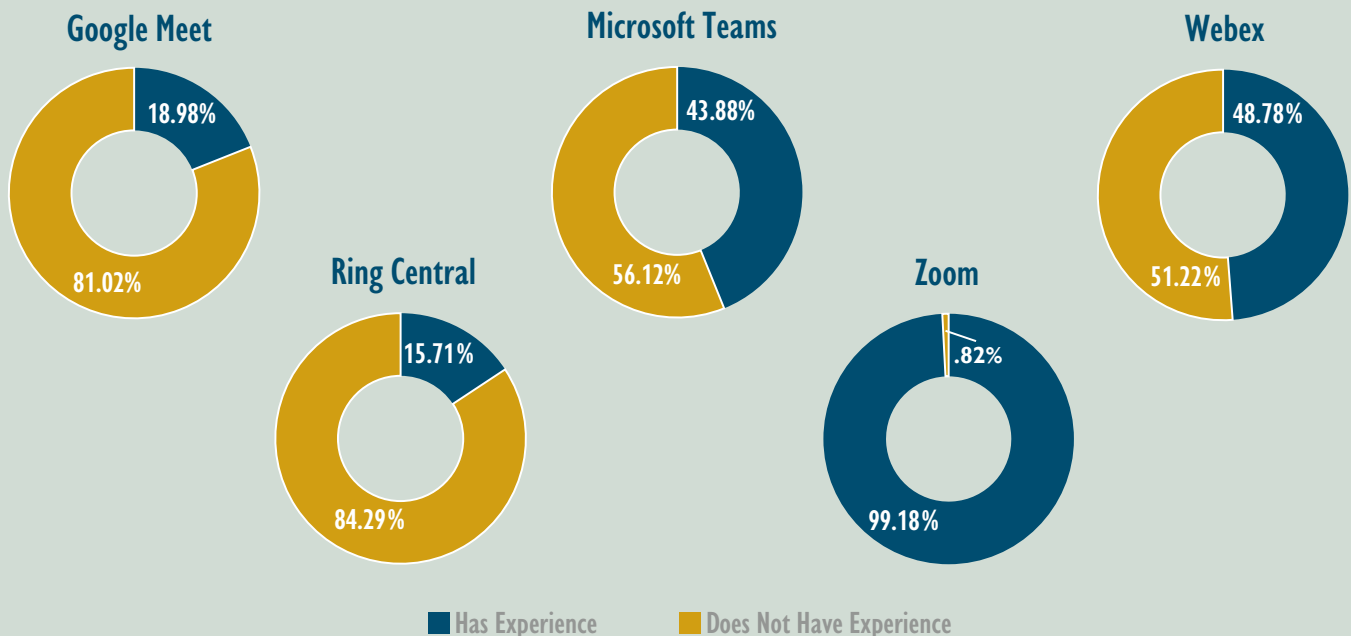


TO ZOOM OR NOT TO ZOOM

Within a year's time, videoconferencing platform Zoom became as ubiquitous to office life as Outlook has been to email or Excel has been to spreadsheets. The data reflects this ubiquity translated to familiarity, as nearly all respondents who had conducted online proceedings had experience doing so via Zoom. In fact, no other videoconferencing platform came close in terms of usage. Webex was a distant runner-up with slightly less than half (48.78%) of respondents having used the platform for online proceedings. Microsoft Teams followed closely behind Webex in terms of usage at 43.88%, while Google Meet trailed far behind.



Experience with videoconferencing/remote proceeding platforms



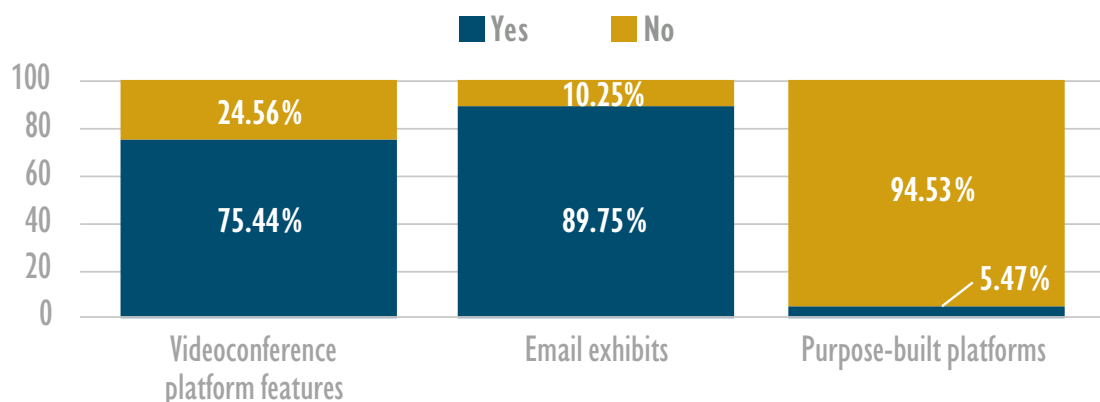
THE CHALLENGE OF MANAGING EXHIBITS

One of the greatest obstacles standing between lawyers and remote depositions is the anxiety around managing electronic exhibits. According to our survey, the vast majority of attorneys who have conducted virtual depositions use either videoconferencing solutions or email to manage exhibits. While platforms like Zoom have some helpful features, such as screen sharing, these solutions were not built with remote depositions in mind, which is likely contributing to the concerns lawyers have. However, [purpose-built platforms](#), i.e., solutions made specifically for the legal industry and have built-in exhibit-management features, are rarely used, with only 5.47% of respondents having prior experience with this technology.

We believe as virtual depositions become a more common practice among professionals that the reliance on purpose-built platforms will increase.



Experience with remote exhibit-sharing platforms



THE FUTURE OF REMOTE DEPOSITIONS

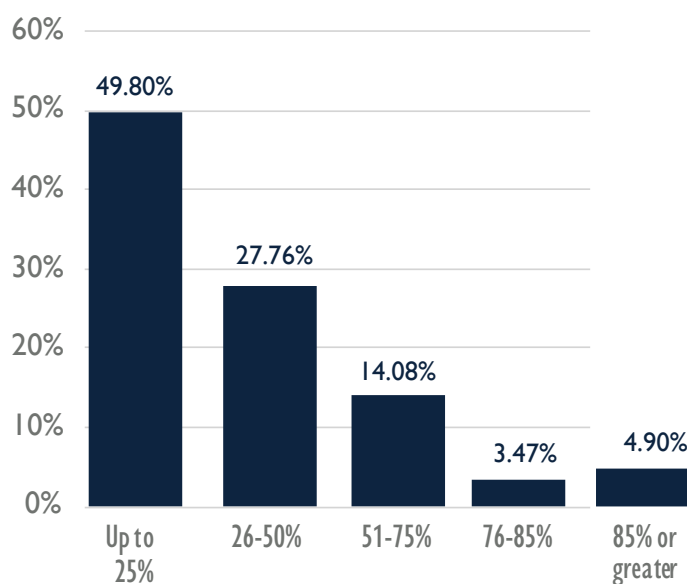
We believe that not only are remote depositions here to stay but that they will become common practice among litigating attorneys. Nearly a quarter of respondents anticipate taking over half of their depositions virtually once business returns to normal, while more than a quarter anticipate taking 26% to 50% of their depositions virtually.

There are a confluence of factors that are giving rise to this trend, and COVID-19 is only one of them.

- **Greater comfort with working remotely in general:** Most of the business world has adapted to the current virtual environment and realized it works. The legal industry is no different.
- **Efficiency/productivity:** One of the most significant factors, efficiency/productivity of virtual depositions enables lawyers to maximize their billable hour by avoiding sinking time into non-billable activities, like travel time.

- **Cost savings:** Another significant factor, [reduction in costs](#), such as airfare and lodging, is appealing to corporate clients, which have been increasingly scrutinizing their legal spend.
- **Generational shifts:** Across the legal industry, older partners are eyeing retirement and preparing to hand over control to the next generation of firm managers. These younger attorneys are generally more open to technological innovation.
- **Logistics:** Large matters can require dozens of depositions from witnesses located throughout the country, if not the world. Using remote depositions eases the logistical burden of scheduling these depositions.
- **Court dockets:** In light of overflowing dockets, courts will likely encourage the continued use of remote depositions to quicken the pace of resolution in court proceedings.

When you are able to again take depositions in person, what percentage do you believe you will continue to take remotely?



WORKING REMOTE IN A POST-PANDEMIC WORLD

Even after the pandemic concludes, it is clear that the business world will remain forever changed, and the legal industry is no exception. Some law firms are already consolidating resources, eliminating staff and shrinking their physical footprints. Entertaining clients in-person at upscale restaurants and upgrading office spaces are expenses that will likely be reduced in order to increase law firm profits, while client demands to cut costs will feed competition to reduce legal services fees, which will require finding more affordable ways to conduct business as usual. All of this points to a greater reliance on a virtual workspace, including the use of remote depositions.

As law firms further embrace the virtual environment, we will likely see technology providers innovate to facilitate this transition. This includes the rollout of more purpose-driven solutions to assist with remote legal work, including remote depositions and exhibit management, as well as a shift to use these purpose-driven solutions over general videoconferencing solutions. Information security, which already is a top-of-mind issue among legal professionals, will continue to be a priority as more work is conducted virtually.

Despite its reputation for being rooted in tradition, the legal industry did manage to adapt successfully to a world rocked by the pandemic. For litigating attorneys, remote depositions played a key role in the survival of their practices. While a return to the old way of doing business might be appealing to some, the truth is that many of these changes will be permanent, and that stands to benefit both law firms and their clients.





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