

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DERRICK SCHAEFFER,)	
)	
Plaintiff,)	19 C 7711
)	
v.)	Judge Robert M. Dow Jr.
)	
CITY OF CHICAGO, OFFICER JAMES A.)		Magistrate Judge Jeffrey T. Gilbert
BRANDON #7634, OFFICER MARIO)		
PEREZ #18936, OFFICER JAMES)		
KINSEY # 16189, and DET. JOCELYN)		
GREGOIRE-WATKINS, #20974,)	
)	
Defendants.)	

**DEFENDANTS' EXPLANATION IN SUPPORT OF THEIR PROTOCOL FOR
RECORDING DEPOSITIONS ON THE ZOOM PLATFORM**

Defendants City of Chicago (“the City”), by and through its attorney, Celia Meza, Acting Corporation Counsel for the City of Chicago, and Officer James A. Brandon # 7634, Officer Mario Perez # 18936, Officer James Kinsey # 16189 and Detective Jocelyn Gregoire-Watkins # 20974, by one of their attorneys, Evan K. Scott, Assistant Corporation Counsel, (collectively, “Defendants”) submit the following explanation in support of their protocol for recording depositions taken on the Zoom platform::

The Court should enter Defendants’ protocol because it provides a workable solution that is guided by the Federal Rules of Civil Procedure. Defendants’ protocol provides that depositions may be recorded on the Zoom platform by a certified videographer using the “Spotlight View” function, which focuses the camera view solely on the deponent for the entirety of the deposition. Defendants’ protocol ensures that a disinterested third-party,

designated as a Rule 28 officer, affirms the accuracy of the recording and vouches for the integrity of the recording that the parties receive.

Plaintiff, on the other hand, proposes that the party noticing a deposition be allowed to record the deposition himself and then disseminate that recording to the other parties after the deposition is complete. Plaintiff's protocol is untenable. To start, the Federal Rules of Civil Procedure do not allow the parties, absent an agreement, to depose witnesses under the circumstances proposed by Plaintiff. Rule 28(a) states that a deposition must be taken before "an officer authorized to administer oaths either by federal law or by the law in the place of examination" or "a person appointed by the court where the action is pending to administer oaths and take testimony." Rule 28(c) expressly disqualifies an attorney for the parties to qualify as an officer under Rule 28. FED. R. CIV. P. 28(c) ("[a] deposition must not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action."].

Plaintiff may argue that the "officer requirement" does not apply to video recordings. He would be wrong. Under Rule 30(b)(5)(b), the officer is responsible for ensuring that the deponent's and attorney's appearance or demeanor is not distorted through recording techniques, and Rule 30(f) provides that the officer "must retain the stenographic notes of a deposition taken stenographically or a copy of the recording of a deposition taken by another method." FED. R. CIV. P. 30(f)(1), (3). Simply put, the Federal Rules repeatedly state that a deposition must be transcribed and recorded before an "officer" – not an interested party.

Plaintiff wants to unilaterally create an uncertified video recording and use it for whatever purpose he sees fit so that he can save money. The fact that Plaintiff may save money under his protocol is not a valid reason to circumvent the officer requirement. In fact, the rules *expect* the parties to pay for recordings. *See Fed.R.Civ.P. 30(b)(3) ("[w]hen paid reasonable charges, the officers must furnish a copy of the transcript or recording to any party or the deponent.")*. The fact that depositions are currently being conducted remotely is not a valid reason to abandon the rules either. Indeed, Rule 30(b)(4) contemplates that depositions may be conducted remotely, and nothing in that rule or any other rule provides that a party may unilaterally decide to ignore the “officer requirement” because a party is conducting a remote deposition. The rationales for Plaintiff’s protocol are not only inconsistent with the Federal Rules, they also are impossible to apply consistently. For example, if Plaintiff’s counsel is permitted to ignore the officer requirement when he is deposing someone remotely, is he permitted to ignore the officer requirement when he is deposing someone in person? If Plaintiff’s counsel is permitted to personally record depositions on the Zoom platform so that Plaintiff can save money, is he allowed to personally record depositions on his cell phone if Zoom starts charging membership fees? If Plaintiff’s counsel is permitted to personally record depositions on Zoom to avoid the expense of hiring a videographer, is he also allowed to transcribe the deposition himself to avoid the expense of a court reporter? Using Plaintiff’s reasoning, the answer to each of these questions would have to be “yes.”

It is no surprise, then, that Plaintiff’s protocol would create a plethora of problems, some of which were outlined in *Alcorn v. City of Chicago, et. al.*, Case No. 17CV5859, 336

F.R.D. 440 (N.D.Ill. August 20, 2020). It would create a situation where well-meaning attorneys could make mistakes and unscrupulous attorneys could seek to gain partisan advantage in numerous ways. Attorneys could record matters that should not be documented, including attorney-client conversations. They could stop recording portions of the deposition to unfairly keep things off the record. They could inadvertently start or stop the recording at wrong points. They could employ editing tricks to warp the meaning or tone of statements by the deponent, or the deponent's appearance. They could insert or delete objections to benefit the party making the recording. They can manipulate aspects of the recordings to embarrass the deponent or counsel. Further, by definition, the recording attorney has sole control and custody of the recording at first. The opposing parties might not fully realize how or when an uncertified recording was being made, or how its integrity and accuracy might be compromised. They would either be effectively required to fact-check the party's deposition recording or maintain their own. In yet another concern, what happens if a witness or a party wishes to challenge the accuracy or integrity of the uncertified video recording? Will counsel take the stand to vouch for its validity? As the *Alcorn* court reasoned, situations like these are untenable.

Thus, Defendants' position is that if Plaintiff wishes to videotape depositions, he should be required to use an independent videographer who will make available an official, certified video. This position is not only consistent with the Federal Rules of Civil Procedure, but also avoids any of the problems discussed above and in *Alcorn*. If Plaintiff does not want to hire a videographer to conduct and certify a deposition, he should not get to have a video recording of the deposition. After all, a party is not allowed to transcribe a deposition simply because they do not want to hire a court reporter. Plaintiff should not be

allowed to circumvent the rules to avoid a litigation expense. If Plaintiff wants a video recording of the deposition, he needs to hire a videographer to conduct and certify the video deposition in compliance with the Federal Rules of Civil Procedure. Defendants ask that the Court enter their protocol for recording depositions on the Zoom platform.

Dated: January 21, 2020

Respectfully submitted,

CELIA MEZA
Acting Corporation Counsel, City of Chicago

By: /s/ Raoul Vertick Mowatt
Raoul Vertick Mowatt
Assistant Corporation Counsel

Iris Y. Chavira, Assistant Corporation Counsel Supervisor
Stephanie A. Sotomayor, Assistant Corporation Counsel
City of Chicago Department of Law
Federal Civil Rights Litigation Division
2 North LaSalle Street, Suite 420
Chicago, Illinois 60602
(312) 744-3293
Attorney No. 6302587
raoul.mowatt@cityofchicago.org

By: /s/ Evan K. Scott
Evan K. Scott
Assistant Corporation Counsel

Gregory Beck, Assistant Corporation Counsel Supervisor
Jessica Ziswa, Assistant Corporation Counsel
City of Chicago Department of Law
Federal Civil Rights Litigation Division
2 North LaSalle Street, Suite 420
Chicago, Illinois 60602
(312) 744-9031
Attorney No. 6325854
evan.scott@cityofchicago.org

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2021, I served the foregoing document upon all counsel of record by filing a copy with the Clerk of the Northern District of Illinois using the Court's electronic filing system.

/s/ Raoul Vertick Mowatt
Raoul Vertick Mowatt