

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

Derrick Schaeffer,	)	
	)	
Plaintiff,	)	Case No. 19 C 7711
	)	
vs.	)	Jeffrey T. Gilbert
	)	Magistrate Judge
City of Chicago, et al.	)	
	)	
Defendants.	)	

ORDER

The Court hereby adopts and enters Plaintiff’s Proposed Protocol for Recording Depositions Taken on the Zoom Platform [ECF No. 108], over Defendants’ objection [ECF Nos. 109, 110], with a modification to Plaintiff’s proposed paragraph number 8 and by adding a new paragraph 9, as follows:

“8. Admissibility or use of any portion of a video recording made under this protocol will be determined by the trial court.

9. Any video recording made of a Zoom deposition in accordance with this Order shall be used only for purposes of this case and for no other purpose.”

The parties shall comply with this Protocol for any depositions taken and recorded in this case using the Zoom video platform. *See* FED.R.CIV.P. 26(c), 30(b)(3), 30(b)(4), 30(d)(3). Plaintiff shall submit to the Court’s Proposed Order e-folder a Word version of the Protocol with the Court’s modifications so it can be entered as a standalone order.

In the Court’s view, paragraph 8 of the Protocol, which reserves to a later time Defendants’ objections to the admissibility and/or use of video recordings of depositions taken on the Zoom platform, is a practical and workable response to all of Defendants’ objections to Plaintiff’s proposed Protocol. *See Alcorn v. City of Chicago*, 336 F.R.D. 440, 444-45 (N.D. Ill. 2020).

Although Judge Harjani in *Alcorn* allowed the plaintiff in that case to record depositions taken on the Zoom platform using the “Spotlight” feature with a stipulation that she would not use the video recording as evidence in that case, the Court here opts to leave the issue of the admissibility and/or use of the video recording to the discretion of the trial judge as Plaintiff has proposed. The parties and the trial court will have more information than this Court has now about any Zoom video recordings taken of deponents in this case. The Court will be able to see and hear the recordings, listen to any party’s objection to the manner in which the recordings were made, and rule on any objections to the use or admissibility of the recordings in that context. In addition, the law in this area may develop further than it is now developed on this issue, in the months or years before trial in this case, given the ubiquity of Zoom depositions during the time of COVID-19, and those developments could be helpful to the trial judge in deciding whether and how a video recording of a Zoom deposition not taken by a certified videographer might be used at trial.

The Court has ample discretion to enter this Protocol under Federal Rules of Civil Procedure 26(c), 30(b)(3), 30(b)(4), and 30(d)(3). *See also Alcorn v. City of Chicago*, 336 F.R.D. at 442. Defendants’ objections to Plaintiff using the “Spotlight” feature in Zoom to make a video recording of a deposition taken on the Zoom platform are overruled. The depositions will be taken before and transcribed by a certified court reporter in accordance with paragraph 1 of the Protocol. If Defendants want a certified videographer to record a deposition, nothing in the Protocol prevents them from doing so, if that can be done safely and effectively. *See* FED.R.CIV.P. 30(b)(3)(B). The Court sees no prejudice to Defendants by allowing Plaintiff to make video recordings of Zoom depositions in accordance with the Protocol it is approving today.

Contrary to Defendants’ argument, this is not an open invitation for anyone to record a deposition in whatever manner they want without any rules or guidelines. The Protocol the Court

is approving today creates a structure for the parties to follow in recording the depositions they are taking on the Zoom platform. Plaintiff's proposed Protocol is wholly responsive to the Court's order of January 12, 2021 [ECF No. 101] and the Court's directions on the record that day. *See* Transcript of January 12, 2021 Hearing [ECF No. 105]. Defendants' objections to Plaintiff's proposed Protocol are simply a rehash of the arguments the Court rejected during the January 12, 2021 hearing and in their Joint Motion for a Protective Order [ECF No. 95] which the Court granted in part but without prejudice to Plaintiff proposing the Protocol the Court approves in this Order.

Accordingly, the Court hereby adopts and enters Plaintiff's Proposed Protocol for Recording Depositions Taken on the Zoom Platform [ECF No. 108], over Defendants' objection [ECF Nos. 109, 110], with a modification to paragraph 8 of Plaintiff's Proposed Protocol and the addition of a new paragraph 9 as set forth in this Order. Plaintiff shall submit to the Court's Proposed Order e-folder a Word version of the Protocol with the Court's modifications so it can be entered as a standalone order.

It is so ordered.

A handwritten signature in black ink, appearing to read "Jeffrey T. Gilbert", is written over a horizontal line.

Magistrate Judge Jeffrey T. Gilbert

Dated: January 22, 2021