

Massachusetts Rules of Civil Procedure

emphasis added

Rule 30(b)(4):

“Any oral deposition may be recorded by (i) stenographic **or** (ii) stenographic **and** audio-visual means.”

“With prior notice to the deponent and other parties, any party may designate **another method** for recording the testimony **in addition** to that specified in the original notice.”

“By leave of court **upon motion** with notice and an opportunity to be heard in opposition, **or by stipulation in writing** of all parties, a party taking an oral deposition may have the testimony recorded by other than stenographic or stenographic and audio-visual means.”

Rule 30(b)(4) additionally says:

“The stipulation or order shall designate the **person** before whom the deposition shall be taken, the **manner of recording**, **preserving** and **filing** the deposition, and may include other provisions to **assure that the recorded testimony will be accurate and trustworthy.**”

“person” – not agency/firm/entity

“manner of recording” – noting DR

“preserving” – who retains the audio

“filing” – not necessary anymore in MA

“assure...accurate and trustworthy” – how?

Potential effects:

Attorneys who simply change the language on their notices are taking the risk that it will:

*not be thoroughly read by opposing counsel;

*cause confusion/a disruption when deposition takes place without a stenographer;

*result in the deposition being canceled/rescheduled because it was not noticed properly, which will create wasted fees and time – and then would have to go through the appropriate steps under Rule 30 in order to allow a digital recording.