

47. Remote Swearing-in of Witnesses.

The Board was asked whether a certified court reporter can administer an oath to a witness remotely. Currently, there is no clear legal authority expressly barring a court reporter from administering an oath remotely, nor is there authority expressly permitting it. Remote depositions, in general, are permitted by Georgia's Civil Practice Act. "[A] deposition may be taken by telephone or other remote electronic means only upon the stipulation of the parties or by order of the court. For purposes of the requirements of this chapter, a deposition taken by telephone or other remote electronic means is taken in the state and at the place where the deponent is to answer questions." [OCGA § 9-11-30\(b\)\(4\)](#). However, the Act does not address whether a court reporter must be physically present with a witness in order to swear the witness in. No appellate legal authority interpreting this code section to impose a live swearing-in requirement could be located; however, no legal authority interpreting it to bar remote swearing-in was located either.

In contrast to the lack of available authority on court reporters, there is voluminous appellate legal authority on the administration of oaths by notaries. Generally, notaries must be in the same physical location as a witness in order to administer the oath for an affidavit. [Sambor v. Kelly](#), 271 Ga. 133 (1999); [Keane v. Annice Heygood Trevitt Support Trust](#), 285 Ga. Ct. App. 155, (2007). Indeed, one case involving notaries uses some very broad language that could be read to prohibit the remote administration of oaths generally. [Redmond v. Shook](#), 218 Ga. App. 477 (1995). In [Redmond](#), the Court of Appeals considered the validity of an expert affidavit that had been "signed by the expert in Pennsylvania and notarized by the notary public in Georgia." *Id.* at 477. The court held that the affidavit was invalid, stating "[i]n order to make an affidavit, there must be present the officer, the affiant, and the paper, and there must be something done which amounts to the administration of an oath. There must be some solemnity, not mere telephone talk. Long-distance swearing is not permissible. Thus, an oath cannot be administered over the telephone in Georgia. This is the rule in most jurisdictions." *Id.* (internal citations omitted). The case cited for this proposition by the court in [Redmond](#) was [Carnes v. Carnes](#), 138 Ga. 1 (1912). *Id.*

Read broadly; this language would appear to bar the remote administration of oaths generally. However, this case examined the requirements for the oath administered by notaries to create a valid affidavit, not the oath administered by court reporters during depositions or court proceedings. Additionally, in this case, the oath was administered over a telephone line in which only the notary and affiant were on the call. The sophisticated videoconferencing software available today did not exist in 1995, and it is possible that a court today would rule differently if presented with a case hinging on the use of the sophisticated videoconferencing systems available today. Regardless, the case dealt with the notarial oath, not the oath administered by a court reporter, and this Board distinguishes it on those grounds.

While Georgia law is clear that notaries must administer oaths in-person, court reporters are not always notaries and are not generally subject to the same requirements or laws as notaries. Notaries have their section of the code in Chapter 17 of Title 48, while court reporters are regulated by the Court Reporting Act, found in Chapter 14 of Title 15. No appellate legal authority could be located requiring court reporters to become notaries in order to fulfill their duties, nor could we locate any authority holding that court reporters were subject to the same legal requirements as notaries. In fact, a Board of Court

Reporting Advisory Opinion from 1977 opines that the ability of court reporters to administer an oath to a witness is inherent in their power as officers of the court. BCR Advisory Opinion [77-2](#), 1977. Court reporters are officers of the court by statute. [O.C.G.A. § 15-14-21](#). While many court reporters are also notaries, it appears that their ability to swear witnesses inflows from their status as officers of the court, not from their status as notaries.

Additionally, the Civil Practice Act contains a broad provision allowing parties to alter discovery procedures, including depositions, by written stipulation. [O.C.G.A. § 9-11-29](#) states that “[u]nless the court orders otherwise, the parties may, by written stipulation . . . [p]rovide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and, when so taken, may be used like other depositions.” No legal authority could be located that indicated that the remote administration of an oath was not a procedure that could be stipulated in writing under this code section. This language is quite broad and states explicitly that a deposition may be taken “in any manner” so long as the parties agree in writing. *Id.*

Thus, certified court reporters may administer oaths remotely so long as the parties stipulate in writing pursuant to O.C.G.A. § 9-11-29. Further, the oath should be administered via videoconference system, not by telephone, to satisfy any concerns raised by Redmond. While the Board feels that Redmond does not apply to court reporters taking down depositions by videoconferencing system because Redmond dealt with a notarial oath administered by telephone in the mid-1990s, since there is no appellate legal authority expressly limiting Redmond to notaries, the Board recommends that reporters administer oaths remotely only via videoconference and not by telephone. Additionally, where the defending attorney is present in the room with the witness/deponent, the attorney, as an officer of the court, may administer the oath; however, both parties must consent to the oath’s administration by the attorney. Finally, the fact that some reporters are notaries does not change this analysis for those reporters; they may still administer oaths in their capacities as court reporters remotely as described above, but if they administer an oath to a witness signing an affidavit in their capacity as a notary, they must do so in-person.

**Advisory Opinion
2020-01**