



## Video Conferencing for Surrogate's Court Depositions

By Robert M. Harper

As technology develops, so too does the prevalence of its use in Surrogate's Court litigation. One noteworthy example is the increasing use of video conferencing for depositions in Surrogate's Court matters. This article discusses the circumstances that may be appropriate to conduct depositions through video conferencing in Surrogate's Court proceedings.

Although the Surrogate's Court Procedure Act is silent on the issue of video conferencing for depositions, the Civil Practice Law and Rules are applicable and provide that the parties may stipulate to conducting depositions by "telephone or other remote electronic means". Absent such a stipulation, case law permits Surrogate's Courts to order video conferencing for depositions when "it would create an undue hardship or it is not feasible as a practical matter to conduct [a] deposition in the venue where the proceeding is pending."

At least two Surrogates have ordered video conferencing for depositions. In *Matter of Singh*, Bronx County Surrogate Lee L. Holzman granted the petitioner's motion for such relief in a proceeding to recover funds distributed from his son's estate. As the motion papers established, the petitioner was 78 years of age, in frail health, and – like his other witnesses – incapable of obtaining a visa to travel from India to the United States

for either a court-ordered deposition or trial.

Despite opposition from the respondent, Surrogate Holzman granted the petitioner's motion, finding that "it would create an undue hardship to preclude the petitioner from pursuing his claim because he cannot obtain a visa to travel to this country." Surrogate Holzman reasoned that the inability of the petitioner and his witnesses to obtain visas was through no fault of their own, but rather resulted from the travel restrictions that arose after the September 11, 2001 terrorist attacks.

More recently, in *Matter of Herman*, Nassau County Surrogate Edward W. McCarty, III, granted a similar motion to permit the video conferencing of a deposition. There, the objectant in an accounting proceeding moved for an order permitting him to testify at a deposition via video conferencing. The basis for the objectant's motion was the notion that he would suffer undue hardship by being taken away from his busy Florida law practice to travel to New York for a deposition.

Surrogate McCarty ruled in the objectant's favor, noting that he had established undue hardship, that the objectant would have to bear the costs of the video conferencing, and that the petitioner had failed to establish any prejudice. In doing so, Surrogate McCarty also rejected the petitioner's assertion of prejudice, which was based upon the peti-

tioner's attorney's belief that he would be unable to obtain rulings

from the court. As Surrogate McCarty explained, a member of the court's law department would be available to render rulings, if needed. Accordingly, the objectant's motion was granted.

The use of video conferencing for depositions may be appropriate in certain Surrogate's Court proceedings. Indeed, conducting depositions via video conference is permissible when the parties so stipulate. It also may be warranted when the party seeking a court order for such relief demonstrates either the existence of undue hardship or the infeasibility of conducting the deposition in the county where the proceeding is pending. As its use becomes more prevalent, the video conferencing of depositions may prove to be a valuable, cost-effective tool for parties to Surrogate's Court litigation.

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