

The Uncertainty of Uncertified Deposition Recordings: Something New We All Need to Think About

By Lidia B. Ebersole

Remote depositions became more prevalent during the midst of the COVID-19 pandemic. But when court reporters refused to use video to record depositions because they were not certified to do so, some attorneys took the job upon themselves. Though very few attorneys have had a chance to “test” the use of self-recorded video depositions at trial, civil cases are now getting back on the dockets, and so are the questions of admissibility of uncertified videos from remote depositions that took place during the pandemic.

In one Illinois case, a federal judge found that the use of such uncertified video recording bypasses the process outlined in the rules of civil procedure and jeopardizes the integrity of the proceedings. See *Alcorn v. City of Chicago*, 336 F.R.D. 440 (N.D. Ill. Aug. 20, 2020). The judge was unconvinced by the counsel’s arguments that the certified transcript was available for comparison to affirm the accuracy of the video. He pointed out that the practice would be akin to each party “whip[ping] out an iPhone at an in-person deposition,” and presenting competing recordings of the same deposition as both equivalent of the certified transcript prepared by the court reporter. The judge seemed further concerned about the “vantage point” in remote depositions. He noted that in a gallery view situation, the jury could be influenced by the attorneys’ home spaces and children or pets that will occasionally (inevitably) appear on the camera. Conversely, in the speaker view, the screen would flip between the speakers, distracting the jury’s attention from the witness. He concluded that neither option mimics a typical video deposition that gives the jury proper focus at trial and that absent changes in the civil rules, uncertified recordings from video depositions are not admissible in his courtroom.

It is difficult to tell how other courts will rule on the admissibility of such self-recorded online depositions. With appropriate stipulations and adjustments of video-recording settings, problems noted by the federal judge in *Alcorn* could probably be easily resolved. (Keep in mind, the judge did not address whether he would have admitted the recording had both parties stipulated to its admissibility.)

As courts reopen, attempts to use uncertified video deposition recordings at trial will become more common. Until court rules and decisions provide more guidance, it is important to enter proper stipulations to ensure that an uncertified video recording of an online deposition can (or cannot) be used at trial.

Chris Cotter
330.849.6756 | ccotter@ralaw.com

Lidia Ebersole
419.254.5260 | lebersole@ralaw.com

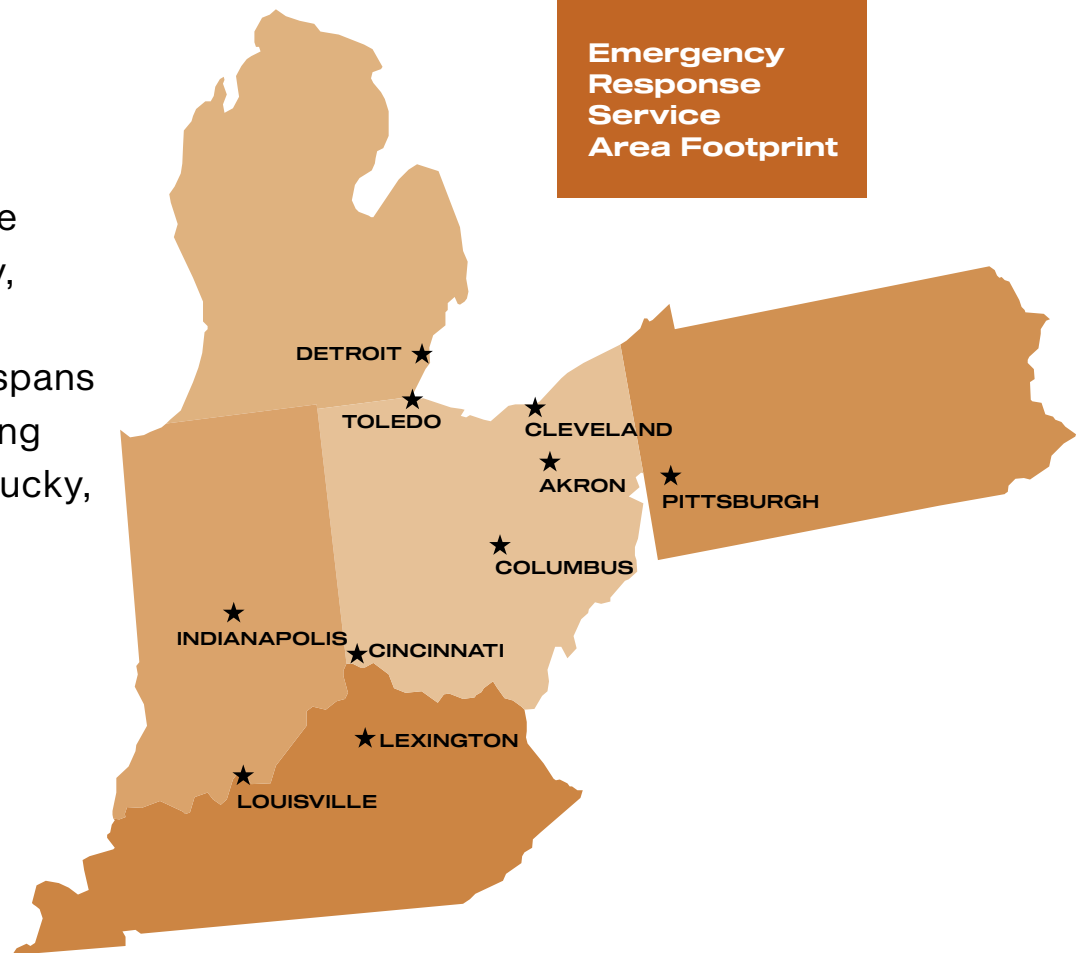


This alert is informational only and should not be construed as legal advice. ©2021 Roetzel & Andress LPA. All rights reserved.
For more information, please contact Roetzel’s Marketing Department at 330.762.7725

Emergency Response & Crisis Management

Our Emergency Response Team

provides comprehensive services, 24 hours a day, 7 days a week across a geographic scope that spans Ohio and into surrounding states that include Kentucky, Indiana, Pennsylvania and Michigan.



Key Contacts:

Northeast OH and Western PA

Chris Cotter

c: 330.819.1127
ccotter@ralaw.com

Indiana

Patrick Healy

c: 513.236.3764
phealy@ralaw.com

Northwest OH and Southern MI

Phil Heebsh

c: 419.708.5390
pheebsh@ralaw.com

Southwest OH and Kentucky

Tyler Jolley

c: 513.401.2219
tjolley@ralaw.com

Central OH and Southeast OH

Phil Sarnowski

c: 330.723.2096
psarnowski@ralaw.com

Emergency Response & Crisis Management Practice Group Manager

Brad Wright

c: 330.472.3656
bwright@ralaw.com



Practical Advice. Real Solutions.
That's the Roetzel way.

