



Christopher Day <christopherday227@gmail.com>

Questions

Hicks, Heidi (DOS) <Heidi.Hicks@dos.ny.gov>
To: "christopherday227@gmail.com" <christopherday227@gmail.com>

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Mr. Day,

Thank you for contacting the Department of State (the "Department"). In your letter you ask the following: 1) during a civil deposition may a notary swear a witness remotely; and 2) whether the probation against Sunday depositions is still good law.

With respect to civil depositions, a notary may under the specific provisions of Article 31 of the CPLR and in compliance therewith, swear in a remote witnesses. The Department notes, that if a notary is not acting pursuant to a special provision of law (e.g., Art. 31 of the CPLR) the general provisions of the Executive Law will apply and a remote swearing is not authorized. The reason, in part, why remote swearing under the CPLR is apparently allowed, is because there are other witnesses to the deposition that can attest to the witnesses' testimony/presence, whereas when a notary acts to officiate a document (i.e., not a deposition pursuant to the CPLR) there is often no other evidence as to the authenticity of the act, therefore requiring presence upon proof of identification adds additional security.

With respect to Sunday depositions, the basis for that conclusion is found at Section 5 of the Judiciary Law which provides: "A court shall not be opened, or transact any business on Sunday, nor shall a court transact any business on a Saturday in any case where such day is kept as a holy day by any party to the case, except to receive a verdict or discharge a jury and for the receipt by the criminal court of the city of New York or a court of special sessions of a plea of guilty and the pronouncement of sentence thereon in any case in which such court has jurisdiction. An adjournment of a court on Saturday, unless made after a cause has been committed to a jury, must be to some other day than Sunday. But this section does not prevent the exercise of the jurisdiction of a magistrate, where it is necessary to preserve the peace, or, in a criminal case, to arrest, commit or discharge a person charged with an offense, or the granting of an injunction order by a justice of the supreme court when in his judgment it is necessary to prevent irreparable injury or the service of a summons with or without a complaint if accompanied by an injunction order and an order of such justice permitting service on that day." This statute has been interpreted by the Attorney General to prohibit Sunday depositions. See, 1964 N.Y. Op. (Inf.) Att'y Gen. 103. There have been no statutory changes since the opinion, thus it is still good law.

The Department hopes you found the above information helpful.

Thank you.

Heidi Hicks

Office Assistant 3, Division of Licensing Services

[New York State Department Of State](#)

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Gmail - Questions

One Commerce Plaza. Albany, NY 12231

518-474-8867 | heidi.hicks@dos.ny.gov

www.dos.ny.gov