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## Options for Deposing a Witness in Brazil

When most people think of Brazil they think of beautiful beaches and the colors of Carnival. When I think of Brazil I think of tricky depositions and creative thinking.

Brazil currently forbids the taking of depositions for use in U.S. courts. Although this can sound like a no win situation there are options to getting the testimony you need. Here is the official statement from the Department of State – <http://travel.state.gov/content/travel/english/legal-considerations/judicial/country/brazil.html>:

*Brazil is not a party to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters. The United States is not a party to the evidence provisions of the Inter-American Convention on Letters Rogatory and Additional Protocol. Brazilian authorities do not permit persons, such as American*

*attorneys, to take depositions for use in a court in the United States before a U.S. consular officer, with the assistance of a Brazilian attorney, or in any other manner. Brazilian law views the taking of depositions for use in foreign courts as an act that may be undertaken in Brazil only by Brazilian judicial authorities. The Government of Brazil asserts that, under Brazilian Constitutional Law, only Brazilian judicial authorities are competent to perform acts of a judicial nature in Brazil. Brazil has advised it would deem taking depositions in Brazil by foreign persons to be a violation of Brazil's judicial sovereignty. Such action potentially could result in the arrest, detention, expulsion, or deportation of the American attorney or other American participants. The United States recognizes the right of judicial sovereignty of foreign governments based on customary international law and practice. It is the State Department's understanding that the Brazilian prohibition on taking depositions by foreign persons extends to telephone or video teleconference depositions initiated from the United States of a witness in Brazil. The U.S. Embassy or Consulates in Brazil could in no way participate in, or otherwise sanction, such a proceeding. The State Department advises U.S. citizens contemplating participation in such a proceeding, without Brazil's concurrence, obtained through diplomatic channels, to consider carefully the possible legal consequences of doing so. Requests for Brazilian judicial assistance in taking a deposition must be addressed to the Ministry of Justice (Ministerio da Justica, Esplanada dos Ministerios – Bloco T, 70064-900 – Brasilia, DF, Brazil and should be made after consultation with a Brazilian attorney.*

So what are your options? Luckily here at Optima Juris we have helped many clients with deposition requirements in Brazil and have a few solutions to help you get what you need.

## **Travel to a Different Country**

The easiest way to get around the problem is to have your witness travel to another country where there are no restrictions on deposing willing witnesses. Brazilians can travel freely throughout much of Latin America and the following are a few good options to consider:

### **Mexico**

Optima Juris is the only firm with local reporters in Mexico, and voluntary depositions may be conducted in Mexico regardless of your witness' nationality, as long as no duress is used. Your depositions may be conducted by U.S. consular offices, or by private attorneys at a hotel or office of your choosing. For more information regarding depositions in Mexico please visit Travel State Gov website –

<http://travel.state.gov/content/travel/english/legal-considerations/judicial/country/mexico.html>

### **Panama, El Salvador, Colombia, Costa Rica and Cayman Islands**

These countries are all good options as an alternative to Brazil because organizing depositions is relatively straight forward and without any difficult caveats. We have excellent and professional

interpreters in these countries, and capable of providing traveling court reporters, and videographers if you so require.

## **Videoconferencing**

If you have the budget for it and don't want to travel, videoconferencing can be a cushy way to go. Videoconferencing facilities provide large, comfortable conference rooms, with high-quality sound systems, big television screens, and – most importantly – very high bandwidth data connections that let you take a deposition from the U.S. as if the foreign-based witness was right there with you.

If you have a deposition location with good Internet, PC-based videoconferencing solutions like Skype, WebEx, GoToMeeting, as well as streaming software like LiveDeposition, can also be a good option. Just make sure that your local Internet connection is fast and reliable, and be sure to test it in advance. Optima Juris is a leader in using technology to facilitate international depositions anywhere on the planet; feel free to [ask us](#) should you have any technology-related questions!

## **Telephone**

The telephone is a piece of technology, which still reaps rewards for depositions abroad. This admittedly low tech, but still oft-used solution is a great way to depose witnesses from remote locations.

A large number of depositions that I organize abroad feature one or more attorneys who choose to participate by telephone in order to save their clients the expense of flying in. Almost any hotel conference room or business center abroad can provide a good quality speaker phone system that will allow you to speak with, and clearly listen to, the local witness and any travel-weary attorneys who might be participating on-site. You simply dial in, conduct your depo, and hang up – you're done!

## **Questions**

Optima Juris is the leading provider of U.S. depositions in Latin America and we are happy to assist you in any way possible. Please feel free to contact us at any time at: [depos@optimajuris.com](mailto:depos@optimajuris.com).

Optima Juris has over 15 years of experience covering depositions in every country and city on the planet. We are proud to be the -first and only U.S. -firm exclusively dedicated to depositions abroad. We do not cover depositions in the States, and never compete with our domestic agency partners. Contact us with any questions you may have about international depositions. We are always here to help with tips, advice and information.

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