

2014 Winning at Deposition: Skills and Strategy

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Taking the Deposition of a Corporate Representative

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DEPOSITIONS OF CORPORATE REPRESENTATIVES

I. TEXAS RULES OF CIVIL PROCEDURE

A. The Notice

Texas Rule 199.2(b)(1) applies to depositions of organizations that are parties, and reads as follows:

- (1) Identity of Witness; Organizations. The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must--a reasonable time before the deposition--designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify. Each individual designated must testify as to matters that are known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by these rules.

Rule 176.6(b) pertains to depositions of non-party organizations, and reads as follows:

(b) *Organizations*. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

The wording of Rule 176.6(b) is slightly different than rule 199.2(b)(1) in that it does not specifically state that the non-party organization must “set forth, for each individual designated, the matters on which the individual will testify.”

Subject to the rules on “apex depositions” discussed below, these rules do not preclude a party from noticing the deposition of a specific employee or officer of an organization. *Hospital Corp. v. Farrar*, 733 S.W.2d 393, 395 (Tex.App. – Ft. Worth 1987, no pet.).

B. Compelling Attendance

Rule 199.3 provides:

A party may compel the witness to attend the oral deposition by serving the witness with a subpoena under Rule 176. If the witness is a party or is retained by, employed by, or otherwise subject to the control of a party, however, service of the notice of oral deposition upon the party's attorney has the same effect as a subpoena served on the witness.

“Control” for purposes of Rule 199.3 means the type of control that organizations would have over employees or retained experts. *In re Reaud*, 286 S.W.3d 574, 580 (Tex.App.–Beaumont 2009, no pet.). Independent contractors and outside directors are not subject to the control of an organization for purposes of this rule. *Id.*; *In re Carnival Corp.*, 193 S.W.3d 229, 235 (Tex.App.–Houston [1st Dist.] 2006, no pet.)

C. Place of the Deposition

Rule 199.2(b)(2) provides:

(2) Time and Place. The notice must state a reasonable time and place for the oral deposition. The place may be in:

- (A) the county of the witness's residence;
- (B) the county where the witness is employed or regularly transacts business in person;
- (C) the county of suit, if the witness is a party or a person designated by a party under Rule 199.2(b)(1);
- (D) the county where the witness was served with the subpoena, or within 150 miles of the place of service, if the witness is not a resident of Texas or is a transient person; or
- (E) subject to the foregoing, at any other convenient place directed by the court in which the cause is pending.

The fact that a person is a corporate employee or officer does not allow their deposition to be taken in the county of suit if they have not been designated by the corporation as a corporate representative under Rule 199.2(b)(1). *In re Western Star Trucks US, Inc.*, 112 S.W.3d 756, 764 (Tex.App.–Eastland 2003, no pet.). Thus, if the notice is for an individual who is an officer or employee of an organization, rather than a notice for the deposition of an organization, the party noticing the deposition cannot take advantage of the county of suit provision.

“Convenience” for purposes of Rule 199.2(b)(2) is determined from the perspective of the witness. *Grass v. Golden*, 153 S.W.3d 659, 662 (Tex.App.–Tyler 2004, no pet.).

Rule 199.2(b)(2) only applies to witnesses designated by parties. A witness designated by a non-party may only be deposed at a location that is 150 miles from where the person resides or is served. Rule 176.3; *In re Prince*, 2006 WL 3589484, 4 (Tex.App.–Hous. [14th Dist.] 2006).

E. Documents

If the deposition notice seeks production of documents, and if the organization is a party, the request for documents must comply with rules 193 and 196, which means that the notice must be served at least 30 days before the documents have to be produced. Tex.R.Civ.P. 199.2(b)(5).

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