

Deposition Preparation When Your Peers or Your Boss are the Witness

43rd Annual Corporate Counsel Institute

University of Texas Law School, April 30, 2021

Annapoorni R. Sankaran, Holland & Knight LLP

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“Yes.”

“No.”

“I don’t know.”

“I don’t recall.”

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Scenario: Your Company is Party to a Litigation

- Your company is either the plaintiff or defendant in a civil case.
- Discovery in the case will include answering interrogatories, producing documents and depositions.
- You will identify the employees with relevant knowledge in the case when you issue a legal hold.
- Are executives in the company involved in the facts of the case? Do they have personal knowledge?

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Do You Want a C Suite Executive's Deposition?

- What *unique* information does the executive have?
- Does it help your claims or defenses?
- Are there other witnesses with this same information?
- What type of witness will she or he be?
- Will you need the executive's testimony for summary judgment or at trial?



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The Notice Arrives

- Your outside counsel informs you that a notice of deposition has been served by an opposing party.
- The deposition notice can name the executive individually.
- Or it can seek a corporate representative with the most knowledge with respect to identified topics – and that person happens to be a corporate executive.

Can The Deposition Be Stopped?

- The Apex doctrine allows a party to seek a protective order to preclude the deposition of its top executives.
- There is no *per se* rule prohibiting the deposition of a corporate executive.
- The apex doctrine has been adopted by most, but not all states.

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First appeared as part of the conference materials for the
43rd Annual Corporate Counsel Institute session

"Deposition Preparation When Your Peers or Your Boss are the Witness"