



How to Defend a Corporate Representative

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General Rule

- ▶ (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.

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Why does this procedure exist?

- ▶ Corporate representative deposition an added facility for discovery, one which may be advantageous to both sides as well as an improvement in the deposition process.
- ▶ Reduce the difficulties in determining, prior to the taking of a deposition, whether a particular employee or agent is a “managing agent.”
- ▶ Curb “bandying” by which corporate officers are deposed in turn but each disclaims knowledge of facts that are clearly known to persons in the organization
- ▶ Assist organizations by preventing an unnecessarily large number of their officers from being deposed by a party uncertain of who in the organization has knowledge

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What triggers a corporate representative deposition?

- ▶ The notice of deposition **with topics**
- ▶ The noticing party has the burden to “describe with reasonable particularity the matters on which examination is requested”
- ▶ The federal rules explicitly require conferral in good faith over the topics
- ▶ A subpoena to a non party requires the serving party to advise about the duty to confer and duty to designate persons

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Narrowing the scope of topics

- ▶ General restraints on discovery apply
 - ▶ Avoid unreasonably cumulative or duplicative discovery
 - ▶ Obtainable from some other source that is more convenient, less burdensome, or less expensive
- ▶ Privileged matters

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Who can be a representative?

- ▶ 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.
- ▶ You are in control of the designation; not plaintiff
- ▶ "matters that are known or reasonably available to the organization" does not equal person "most knowledgeable."

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First appeared as part of the conference materials for the
2024 The Car Crash Seminar session
"How to Defend a Corporate Representative"