



Depositions of corporate representatives in Florida

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Because a corporation is a legal fiction that must act through its employees, officers, and directors, eliciting testimony from a corporation can be tricky. Rule 1.310(b)(6) of the Florida Rules of Civil Procedure governs depositions of a “public or private corporation, a partnership or association, or a governmental agency” and is modeled after Rule 30(b)(6) of the Federal Rules of Civil Procedure. If the corporation is already named as a party to the litigation and has been served in the case, a corporate representative deposition may be taken “by simple notice and without the necessity of serving the official with a witness subpoena.” *Plantation-Simon Inc. v. Bahloul*, 596 So. 2d 1159, 1162 (Fla. 4th DCA 1992).

Under Rule 1.310, the party seeking a deposition must describe in the notice of deposition or subpoena the subject matters for examination with reasonable particularity. *Carriage Hills Condo., Inc. v. JBH Roofing & Constructors, Inc.*, 109 So. 3d 329, 334 (Fla. 4th DCA 2013). While the testimony of the corporate representative is binding upon the corporation, the corporation may designate one or more persons to testify on its behalf. Despite the common misconception, the corporation is not required to designate the witness with the most knowledge of the subject matter. In fact, the witness is not required to have any personal knowledge whatsoever. Thus, the rule affords the corporation with the latitude to designate its corporate representatives to be deposed. However, Rule 1.310 requires the corporation to reasonably prepare its representative to testify on the specified subject matters through documents, past employees, or other sources to enable the witness to “give complete, knowledgeable, and binding answers on behalf of the corporation.” *Carriage Hills Condo.*, 109 So. 3d at 334. If the designated corporate representative is unable to answer questions regarding the designated subject matters, the corporation has failed to comply with its Rule 1.310(b)(6) obligation and may be subject to sanctions by the court. *Id.*

Further, the party seeking the discovery is not necessarily limited to deposing only the corporate representative(s) designated by the corporation. The requesting party may seek to depose a specific corporate representative subject to the trial court’s discretion to issue a protective order. *Plantation-Simon*, 596 So. 2d at 1160. For example, in the relatively recent case of *Sybac Solar, GMBH v. 6th Street Solar Energy Park of Gainesville, LLC*, 217 So. 3d 1068 (Fla. 2d DCA 2017), the trial court departed from the essential elements of law when it failed to consider whether a corporate representative’s interests were too adverse to the corporation’s interests such that he or she could not be a proper spokesperson for the corporation. In *Sybac Solar*, the corporate representative and the corporation were named defendants in a separate defamation case and had taken adverse positions in that defamation case.