

# What to Do When Your Employer Designates You as a Corporate Representative for Deposition

*By Thomas Kane and Lauren Brophy Cooper*

After receiving a litigation hold notice many months ago, you've finally stopped panicking about your employer's lawsuit. That is until you're told that you've been designated as a "corporate representative" to testify at a deposition on behalf of your employer.<sup>1</sup> Your dread sinks in yet again. What does this mean? What do you need to do? Here are the basics on corporate designee depositions, and some simple tips on how to handle a corporate representative deposition designation, including recent guidance from the Eleventh Circuit Court of Appeals.

## What is a Corporate Designee Deposition?

When a company is a party to a lawsuit, it may receive a notice seeking the deposition of a corporate representative. The reason for this is obvious—the company is not a person who can offer testimony, like an individual can. Instead, the opposing party issues a notice outlining various topics to be covered at the deposition, and the company is required to identify individuals who have knowledge and can testify about the noticed topics. These topics may range from corporate policies and procedures, to events specifically at issue in the litigation. The mechanism to issue such a notice in federal court is Fed. R. Civ. P. 30(b)(6), and state courts often have a similar rule that permits such a notice.

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## Why Were You Chosen?

If you were chosen by your employer to testify on one or more topics in the deposition notice, it is because your employer believes you are the most knowledgeable person at the company about the topic. Perhaps you are the person responsible for drafting or enforcing certain policies, or perhaps you were intimately involved in the events that gave rise to the lawsuit. Or, it may be that everyone with knowledge has left the company, and you are the most logical person to testify.

Most importantly, when you are chosen as a corporate representative, you are not being asked to testify based on your personal knowledge or recollection. Instead, you are speaking on behalf of the company, and your testimony on the topics for which you are designated will bind the company as a whole.

## How Do You Prepare?

Because you are speaking on behalf of your employer—and not in your individual capacity—you are required to educate yourself on the topics for which you'll be giving testimony. This is very different than a personal deposition, where your poor memory is a non-issue.<sup>2</sup> Instead, you must do what is necessary so that you have sufficient knowledge to testify about a given topic, including reviewing important documents and emails, and even speaking with other individuals at your company that may be able to share additional information. Your preparation is important, as an unprepared corporate representative may be subject to additional days of deposition testimony, or even sanctions, including monetary fines and dismissal of certain claims.

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## Can a Company Avoid Designating a Corporate Representative for Deposition?

You might be thinking—can't a company avoid a corporate representative deposition altogether, and simply offer the depositions of individual employees? While that might be tempting, the short answer is no. In a June 2023 decision, the Eleventh Circuit Court of Appeals found that even a government agency is required to designate individuals as corporate representatives for deposition, and affirmed the District Court's imposition of sanctions against the government agency for failure to do so.

In *Consumer Financial Protection Bureau v. Brown*, the Consumer Financial Protection Bureau (CFPB) sought to avoid the corporate designee deposition issued by certain defendants in a Fair Debt Collection Practices Act suit. 69 F.4th 1321 (11th Cir. 2023).<sup>3</sup> The CFPB argued that a corporate designee deposition was unnecessary because it already provided the information sought in the deposition in other forms of discovery, including interrogatories, and that the deposition would intrude upon CFPB's attorney work-product protection. The CFPB sought a protective order, which the District Court denied.

During multiple corporate designee depositions of its witness, the CFPB put up numerous roadblocks that prevented the testimony of its witness, including lodging more than 70 work product objections, and equipping its witness with "memory aids" to read from in response to certain questions. In one such instance, a witness read from a "memory aid" for nearly an hour, and would have read another 93 pages but for the objections lodged by defendants. The CFPB also instructed its corporate representative not to answer simply fact-based, yes-or-no, and follow-up questions.

As a result of the foregoing conduct, the District Court sanctioned the CFPB, finding that the CFPB "put up as much opposition at every turn" related to its corporate designee deposition. The District Court struck all of the CFPB's claims against certain defendants, and dismissed them from the case.

On appeal, the Eleventh Circuit affirmed, finding that the District Court did not abuse its discretion in sanctioning the CFPB for its conduct during the corporate designee depositions. The Eleventh Circuit found that "[t]he CFPB was determined to avoid 30(b)(6) depositions" and "employed tactics that the district court repeatedly forbade." Such conduct warranted the dismissal of CFPB's claims against certain defendants.

## Final Takeaways for Corporate Designee Depositions

It might be tempting to try and avoid a corporate representative deposition under Fed. R. Civ. P. 30(b)(6) or similar rule in state courts. But such depositions are not only important to a litigation, and courts will likely require such a deposition. If you are chosen to testify at a deposition as a corporate representative, don't panic. Take the time to prepare, review documents and speak to other corporate employees, and answer the questions to the best of your ability and knowledge during the deposition.

## Notes

1. <https://www.commerciallitigationupdate.com/2022/11/04/what-to-do-when-your-employer-sends-you-a-litigation-hold-notice/>.
2. <https://www.commerciallitigationupdate.com/2022/05/18/what-to-do-when-you-have-to-give-a-deposition-for-your-employer/>.
3. <https://casetext.com/case/consumer-fin-prot-bureau-v-brown>.