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Chapter 15

Effective and Efficient Use of a Company-Representative Witness in Litigation

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Synopsis

§ 15.01. Introduction.

Most witnesses who testify in litigation do so as individuals, either as fact witnesses (testifying to factual matters within their personal knowledge) or as expert witnesses (testifying to opinions on matters within their areas of expertise). A witness can also testify as a representative of a public or private entity, such as a corporation, partnership, limited liability company, association, etc.

When a party to litigation wishes to obtain testimony of an entity — whether or not the entity is a party to the litigation — there are mechanisms by which the party can compel the entity to select and present a person to testify on delineated topics concerning the knowledge within the entity as a whole. For the entity responding to a request for testimony on its behalf, the selection and preparation of its company-representative witness is a process which requires special attention and a full understanding of the rights and responsibilities of the entity, representative, and attorneys preparing and presenting such a witness.

What follows is a discussion of issues that frequently arise in regards to company-representative testimony, and how these issues have been analyzed by various courts. In general, courts expect parties and their counsel to cooperate in discovery, and that expectation applies to company-representative depositions — which, like many aspects of litigation, are governed by standards of "reasonableness."

[1] — Rules Governing Testimony of Company-Representative Witnesses.

Federal or state rules of civil procedure govern the taking of a company representative's testimony, as well as the company's obligations in responding to requests to depose a representative. The rule that applies in federal-court proceedings, Rule 30(b)(6) of the Federal Rules of Civil Procedure, provides as follows: