

Avoiding a Person Least Knowledgeable

By Audrey Priolo, Litigation Procedure Attorney

Depositions of company representatives often referred to as PMK depositions, are often a point of contention between opposing parties. The defending attorney typically claims opposing counsel failed to clearly define the deposition topics. The propounding party often finds the wrong person is produced and many times get stuck taking a deposition of someone who possesses little to no useful information. This deposition dance is a waste of both sides' time and resources. The Committee on Rules of Practice and Procedure is attempting to make the process better in December 2020 by adding language to FRCP 30(b)(6):

“Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination.”

The committee's note explains candid exchanges may clarify and focus issues allowing the organization to designate and prepare the appropriate witness and avoid later disagreements. It is unclear if this will make the PMK Deposition process easier or more difficult, or both. As with every change, there will be both good and bad. If both sides are acting with noble intentions, this meet and confer is a great tool to avoid wasting the time of both sides with useless depositions. However, the meet and confer requirement will make dealing with contentious counsel even more difficult. If one side is merely playing games with discovery, this adds another tool to the abusive litigation toolbox. Only time will tell whether this amendment will be a helpful or hurtful addition. Regardless, counsel should be aware of this significant change as it will affect the timing and scheduling of Federal PMK deposition once the rule takes effect.

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