



The Know Nothing Party

Taking depositions of the “persons most knowledgeable”



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The lawyer pressed the witness, the entity’s driver-training person most knowledgeable. “You understand the company believes you know the most about how drivers get trained?” The witness agreed. The lawyer continued, “You understand your bus driver did not know the bus’s width? The bus’s length?

The bus’s weight?” The witness conceded each point. “You’d agree that demonstrates the bus driver’s knowledge, according to the company, was deficient?” The witness hemmed and hawed. The witness conveniently became suddenly less knowledgeable ...

A nice tool

The ability to demand an entity produce a witness as the entity’s person most knowledgeable (PMK) on a matter is a civil procedure gift. This might be driver training, worker safety, needlework... There’s no limit on the number of PMK depositions, nor on the categories one can ask. As long as it is reasonably likely to lead to admissible evidence, it is fair game. Finally, seven-hour deposition time limits do not apply to PMKs.

Make a plan

Any case benefits from a discovery plan. Brainstorm what one wants to obtain in the case, and then strategize the critical path for that discovery. Typically, one wants to review documents and prepare exhibits well before PMK depositions. Knowing this, do requests for production well before the deposition notice goes out.

The requests for production typically frame the PMK categories themselves. Ask for all documents reflecting driver training, and then ask for a person most knowledgeable on driver training. You’ll likely have a notice with as many categories as documents asked for. Make sure to include re-request documents as part of the deposition notice. Even if it is redundant, witnesses often show up with new material. Additionally, it allows one to ask how the witness collected the documents. Rare is the witness who has gone to the ends of the earth, and this only comes out through questioning. Does the company have an archive? Was it searched? It is only through detailed questioning that the omissions, and frequently new documents, emerge.

Finally, consider the timing and number of PMK depositions. Sometimes it makes sense to group topics into different notices. The driver training witness may be a different person than bus repair. Keeping the notices separate makes outlining, preparing, and meeting and conferring more focused. It may also behoove one to take the defendant before PMKs. Locking the defendant driver’s errors down before taking the driver training witness can be helpful. It ensures that the driver training witness’s deposition does not become the witness preparation tool for the defendant driver.

Outlining and exhibits

The witness categories frame the deposition outline. Prepare a binder with enough copies of exhibits for the witness and attorneys attending the deposition. Keep it organized, keep it focused, keep it moving. Best practice: keep a running exhibit list for the entire case. Then bring a continuing witness exhibit binder so that one does not have to keep attaching (and paying for) exhibits to other depositions.

The deposition

Video PMK depositions. Every time. The one time you decide it is not worth it will be the time the witness delivers the goods, moves to Madagascar, or develops too-sick-for-trial disease.

Another PMK deposition issue is the dual-role witness. This witness has personal knowledge *and* is a PMK. The simplest way to proceed is to go on the record, cover this, and tell the witness it will be presumed that the witness is speaking as the corporate representative unless the witness clarifies that the answer is only in the witness’s individual role. This streamlines the deposition, keeps it to one deposition, and defaults to broadly binding the company since the witness usually forgets this admonition.

Person least knowledgeable

Invariably, the PMK shows up, expresses some mystification as to why the company thinks that witness is most knowledgeable, and provides a lot of “I don’t know.” This can be an advantage. Confirm that the person knew they were being presented as the person representing the company, that they understood this was significant, that they took it seriously, and that they prepared for it. Then ask what they did to prepare. If they didn’t, they show disdain. If they did and continue to know nothing, they bind the



company to know nothing answers. Sometimes that's enough. Other times, one needs the testimony. If that's the case, ask who else has knowledge. Use the witness to figure out the actual PMK. Unfortunately, the two or three deposition chase-the-PMK routine is a common defense tactic. This is easily overcome if one is diligent, and can frequently backfire when different individuals provide contradictory answers on issues.

Outro

Back to our lawyer and the driver training witness. A bus company whose driver training witness didn't know driver training was not well received by the jury. It fit into the public safety theme, and the jury's verdict let the company know it was not okay.



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