I. History of Rule 1.310(b)(6) and its Federal Rule 30(b)(6) Counterpart

Rule 1.310(b)(6) is patterned closely after Federal Rule 30(b)(6), as amended in 1970. Because the Florida rule is substantially similar to its Federal counterpart, cases interpreting the application of Rule 30(b)(6) provide interpretive guidance. *Carriage Hill Condominium, Inc. v. JBH Roofing & Constructors*, 109 So.3d 329, 334 n.1 (Fla. 4th DCA 2013), citing *Plantation-Simon, Inc. v. Bahloul*, 596 So.2d 1159, 1160 (Fla. 4th DCA 1992). This available source of precedent is valuable, since there is a paucity of Florida case law interpreting Rule 1.310(b)(6).[1]

In adopting Rule 1.310(b)(6), it must be presumed that the drafters intended for it to serve the same purposes as Rule 30(b)(6). Rule 30(b)(6) was designed to: (1) reduce the difficulty in determining whether a person deposed is a managing agent; (2) curb the "bandying" by which various officers of a corporation are deposed and, in turn, each disclaims knowledge of facts that are clearly known by someone in the organization; and (3) protect the corporation or agency by eliminating unnecessary and unproductive depositions. *Cates v. LTV Aerospace Corp*., 480 F.2d 620, 623 (5th Cir. 1973), citing Advisory Committee Notes to Rule 30(b)(6).

II. Text of Rule 1.310(b)(6) - Purpose Interpreted

Rule 1.310(b)(6) provides:

> (6) In the notice a party may name as the deponent a public or private corporation, a partnership or association, or a governmental agency, and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons

---

[1]A Westlaw search identifies only 23 cases citing Rule 1.310(b)(6), only a handful of which contain any substantive analysis of the rule. The recent *Carriage Hill Condominium* case is the only case in Florida that contains any significant discussion about how the rule should be interpreted. Moreover, the Committee Notes and Court Commentary to Rule 1.310 are conspicuously silent about subsection (b)(6), other than to note in passing that it was added as part of the 1972 amendments to the rule.

> who consent to do so, to testify on its behalf and may state the matters on which each person designated will testify. The persons so designated shall testify about matters *known or reasonably available to the organization*. This subdivision does not preclude taking a deposition by any other procedure authorized in these rules. (Emphasis added).

Federal cases interpreting Rule 30(b)(6) have emphasized the rule's broad command that the deponent must be ready and able to speak for the corporation not only on matters that are clearly known to it as an entity, but also must be prepared to provide information that is *reasonably available* to the organization and which the deponent can obtain by conducting research or gathering such information from sources within or outside of the corporation. *United States v. Magnesium Corporation of America*, 2006 WL 6924985 at *4 (D. Utah 2006)(duty to prepare 30(b)(6) witness "requires a good faith effort [by] the designate to find out the relevant facts-to collect information, review documents, and interview employees with personal knowledge"); *Wilson v. Lakner*, 228 F.R.D. 524, 528-529 (D. Md. 2005)("While the rule may not require absolute perfection in preparation-it speaks after all of matters known or 'reasonably available to the organization'-it nevertheless certainly requires a good faith effort on the part of the designate to find out the relevant facts-to collect information, review documents, and interview employees with personal knowledge just as a corporate party is expected to do in answering interrogatories"). The duty to prepare the corporate designee for deposition goes beyond matters personally known to the designee or matters in which that designee was personally involved, and extends to information that is reasonably available to the corporation, whether from documents, present or past employees, or other sources. *Poole v. Textron, Inc.,* 192 F.R.D. 494, 504 (D. Md. 2000), citing *United States v. Taylor,* 166 F.R.D. 356, 361 (M.D.N.C.1996). As will be discussed further in this memorandum, the duty of preparing the designee/deponent may well involve conducting the same kind of probing inquiry that

might be performed in the context of a risk management evaluation or internal post-incident investigation, and is subject to work product and attorney-client privilege only within narrow parameters. *Wilson, supra*, at 529 (Where the Court stated in discussing the duty of preparing the corporate representative for deposition: "The work product doctrine provides no shield to the hospital in this regard. While counsel's own investigation into the facts of the case is substantially protected by the doctrine, and while the proceedings of any investigation conducted for purposes of risk assessment or peer review may be privileged by reason of the Maryland statute, the fact remains that a designated witness or witnesses must still be prepared to respond to the 30(b)(6) notice. If that preparation means tracking much the same investigative ground that counsel and the risk management/peer review committee have already traversed, but independently of that investigation, so be it").

III. Rule 1.310(b)(6) - Parameters of Application

There are two cases - one a Federal District Court case out of the Southern District of Florida interpreting Rule 30(b)(6) and the other the recent *Carriage Hill Condominium* case from Florida, *supra* - which together provide about as concise a "Reader's Digest" summary of the applicable law relating to corporate representative depositions as can be found in reported case law. These cases cite prior Federal Court precedent, and provide an excellent primer on the parameters for interpretation and application of Rule 1.310(b)(6).

In *QBE Insurance Corporation v. Jorda Enterprises, Inc.*, 277 F.R.D. 676 (S.D. Fla 2012), U.S. Magistrate District Judge Goodman prefaced his analysis of a motion for sanctions for failure to produce a properly-prepared 30(b)(6) witness by providing a capsule summary of Federal law on the issue. Before setting forth 39 guidelines culled from the case law, Judge Goodman noted at 687:

If the case law outlining the guiding principles of 30(b)(6) depositions

> could be summarized into a *de facto* Bible governing corporate depositions, then the litigation commandments and fundamental passages about pre-trial discovery would likely contain the following advice:

Judge Goodman then went on to list the "commandments" and precepts, many of which are helpful in defining the scope of the responsibility of the Defendants in this case to produce a corporate representative who could provide meaningful testimony on the designated matters. The *Carriage Hill Condominium* case echos many of the same guiding principles.

A starting proposition is that a corporation has an *affirmative duty* to produce a witness or witnesses who are properly prepared to serve as the voice of the corporation, and who can provide binding answers on its behalf. *Carriage Hill Condominium* at 334, citing *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 126 (M.D.N.C.1989). In exchange for the ability to control who appears on behalf of the corporation, the entity is required to "have the right person present at the deposition." *Carriage Hill Condominium* at 335, citing *King v. Pratt & Whitney*, 161 F.R.D. 475, 476 (S.D. Fla. 1995).

Producing the right person (or persons) involves more than simply showing up at the deposition with a deponent who is knowledgeable on some of the designated topics of inquiry, or who may have personal knowledge of some of the facts and events at issue. It involves the duty to fully prepare the witness to address *all* of the designated matters - not just some of them, whether the witness has personal knowledge relating to the topic areas or not. As one Court put it in evaluating a Defendant's failure to produce the right designee(s):

> But perhaps most troubling was Textron's indifferent attitude to areas that the designee could not cover. A party cannot take a laissez faire approach to the inquiry. That is, producing a designee and seeing what he has to say or what he can cover. A party does not meet its obligations under Rule 26 or 30(b)(6) by figuratively "throwing up its hands in a gesture of helplessness" as Mr. Powell, the corporate

> designee did in this case. If the originally designated spokesman for the corporation lacks knowledge in the identified areas of inquiry, that does not become the inquiring party's problem, but demonstrates the responding party's failure of duty.

Poole ex rel. Elliott v. Textron, Inc., 192 F.R.D. 494, 504-505 (D. Md. 2000).

Along the same lines, a corporate representative who cannot unevasively respond to the designated topics of inquiry, or who claims lack of knowledge or information, does so at the potential peril of the party offering the witness. Although there may be rare circumstances where information requested is not available despite diligence in attempting to obtain it, "I don't know" generally is not an acceptable response to questions that reasonably relate to the designated areas of inquiry. *See generally, QBE Insurance Corporation v. Jorda Enterprises, supra* (recognizing that "I don't know" responses can themselves bind the corporation, and prevent it from thereafter taking a position at trial, including the introduction of testimony and exhibits, on those issues for which the corporate designee was unable to provide 30(b)(6) testimony); *Function Media, LLC v. Google, Inc.,* 2010 WL 276093 (E.D. Texas 2010)(limiting the Defendant's presentation of evidence at trial about matters to which the corporate representative responded "I don't know", even though the information was obtained by the opposing party from other witnesses, at least in part); *Meyer Corp. U.S. v. Alfay Designs, Inc.*, 2012 WL 3536987 (E.D.N.Y. 2012)(requiring the corporate party to produce another 30(b)(6) representative and awarding attorney's fees and costs where corporate representative did not know answers to many of the questions relating to the designated topic areas); *Triple Crown America, Inc. v. Biosynth AG*, 1999 WL 492661 (E.D. Pa. 1999)(requiring the corporate party to produce a properly-prepared witness for a "do-over" at the corporation's expense where the corporate representative answered "I don't know" or "I don't recall" to over 200 questions); *Black Horse Lane Assoc., L.P. v. Dow Chemical Corp*., 228 F.3d 275 (3rd Cir. 2000)(upholding the lower

court's award of monetary sanctions under Rule 37 where the corporate representative was not prepared for the deposition and responded "I have no idea" to numerous questions). In *Black Horse Lane*, the Court noted:

> In reality if a Rule 30(b)(6) witness is unable to give useful information he is no more present for the deposition than would be a deponent who physically appears for the deposition but sleeps through it. Indeed, we believe that the purpose behind Rule 30(b)(6) undoubtedly is frustrated in the situation in which a corporate party produces a witness who is unable and/or unwilling to provide the necessary factual information on the entity's behalf. *Id*. at 304.

The duty to prepare the witness to appear as corporate representative does not involve extraordinary efforts, only reasonably diligent ones. The standard to which a corporation is held in seeing that it produces a well-prepared witness has been described repeatedly in the case law as follows:

> [C]ompanies 'have a duty to make a *conscientious, good-faith effort* to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to *fully and unevasively answer questions* about the designated subject matter.' (Emphasis added).

Sprint Commc'ns Co., L.P. v. Theglobe.com, Inc., 236 F.R.D. 524, 527 (D.Kan.2006) (quoting *Starlight Int'l, Inc., v. Herlihy,* 186 F.R.D. 626, 639 (D.Kan.1999)). Because the rule explicitly requires a company to have persons testify on its behalf as to *all matters reasonably available to it,* the conscientious, good-faith effort has been interpreted to "implicitly require persons to review all matters known or reasonably available to [the corporation] in preparation for the [Rule] 30(b)(6) deposition." *Id.* at 527-28 (quoting *T & W Funding Co. XII, L.L.C. v. Pennant Rent-A-Car,* 210 F.R.D. 730, 735 (D.Kan.2002)). "In other words, personal knowledge of the designated subject matter by the selected deponent is of no consequence", since the party being deposed is obligated to become educated on the designated matters. *Id.* at 528.

In essence, the corporation being deposed through its designee(s) is required and expected to "create" a witness or witnesses with responsive knowledge. *QBE Insurance Corporation v. Jorda Enterprises*, *supra*, at 689, citing *Wilson v. Lakner, supra*, at 528. Not only does the corporation have an affirmative duty to prepare the witness in whatever manner it deems most effective, the witness himself has the responsibility to make sure he can fully respond to the designated topics of inquiry by educating himself regarding the corporation. *Concerned Citizens of Belle Haven v. Belle Haven Club*, 223 F.R.D. 39, 43 (D. Conn. 2004); *Calzaturficio S.C.A.R.P.A.S.P.A. v. Fabiano Shoe Company, Inc*., 201 F.R.D. 33, 36 (D. Mass. 2001).

IV. Application of Work Product and Attorney-Client Privileges to Rule 1.310(b)(6) Depositions