

Locke Lord QuickStudy: An Apex Doctrine for All?

Locke Lord LLP

WRITTEN BY

[Thomas J. Cunningham](#) | [Steven J. Brotman](#)

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On August 26, 2021, the Florida Supreme Court amended the Florida Rules of Civil Procedure to apply the “Apex Doctrine” to high-level corporate officers. The “Apex Doctrine” prevents harassment of such officers in litigation by preventing their depositions from being taken except when truly necessary. While government officials have long enjoyed protection from unnecessary depositions, the Apex Doctrine did not previously extend to the private sphere in Florida.

Florida now joins several states in codifying the Apex Doctrine to protect current or former high-level government or corporate officers from being subject to a deposition unless that person’s testimony is truly necessary. Fla. R. Civ. P. 1.280(h) will now shift the burden to the party requesting the deposition to show that an officer has “unique, personal knowledge of the issues being litigated.”

The Florida Supreme Court decided to take up the issue after the First District Court of Appeal unanimously certified the question: “Does a departure from the essential requirement of law occur when the so-called apex doctrine, which applies to governmental entities . . . , is not applied to a corporation.” *Suzuki Motor Corp. v. Winckler*, 284 So. 3d 1107 (Fla. 1st DCA 2019).

In *Suzuki*, the applicability of the Apex Doctrine to the corporate officials came before the First District on certiorari after the trial court declined to prevent the examination of Osamu Suzuki, then his company’s chairman and former chief executive officer. The First District correctly observed that Florida law only clearly established protections to government officials and that “no Florida court had adopted the apex doctrine in the corporate context.” *Suzuki Motor Corp. v. Winckler*, 284 So. 3d 1107, 1109 (Fla. 1st DCA 2019), *review granted*, SC19-1998, 2019 WL 6971545 (Fla. Dec. 19, 2019), and *review dismissed*, SC19-1998, 2021 WL 3778726 (Fla. Aug. 26, 2021).

Finding no reason that corporate officers should not have the same protections as government officers, the Florida Supreme Court decided to codify such protections. *In Re: Amendment to Florida Rule of Civil Procedure 1.280*, SC21-929, 2021 WL 3779161, at *3 (Fla. Aug. 26, 2021) (“We see no good reason to withhold from private officers the same protection that Florida courts have long afforded government officers.”).

In order to take advantage of the new rule, the person resisting the deposition will be required to produce an affidavit or declaration disclaiming any unique, personal knowledge of relevant facts. After a sufficient showing that an officer has no such knowledge, the burden shifts to the party requesting the deposition to show that it has

exhausted all other discovery options and that the officer has unique, personal knowledge of discoverable information.

The rule is intended to be consistent with the established body of law that Florida courts have applied in the government context. Further, the rule does not preclude parties from continuing to take advantage of Florida's rules that allow for the deposition of a corporate representative with knowledge of identified topics. See Fla. R. Civ. 1.310(b)(6).

Corporations and their counsel seeking to protect officers from unwieldy and harassing depositions should now seek protective orders under new rule 1.280(h) where they previously would have relied upon rule 1.280(c).

Following Florida's adoption of the federal summary judgment rule, this decision continues Florida's attempt to create a more efficient court system while also upholding Florida's longstanding prohibition against unduly burdensome discovery.

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