

**AUGUST 26, 2021**

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Florida Adopts Apex Doctrine

State High Court Provides New Avenue for Opposing Depositions of High-Level Corporate Officials

The Florida Supreme Court adopted new Rule of Civil Procedure 1.280(h) adopting the “apex” doctrine in the corporate context. *See In re: Amendments to Fla. R. of Civ. P. 1.280*, ___ So. 3d ___, No. SC21-929 (Fla. Aug. 26, 2021).

The apex doctrine prevents the deposition of a high-level officer unless the party seeking the deposition shows (1) that it has exhausted avenues for taking discovery of lower-level employees and (2) the high-level officer has unique, personal knowledge. Previously, Florida courts had only applied the apex doctrine to governmental officials.

The new rule is effective immediately and applies in pending cases. Slip op. at 14. It applies to both current and former officials. *Id.* at 8.

The Florida Supreme Court explained that under the new rule, “the person or party resisting a deposition has two burdens: [1] a burden to persuade the court that the would-be deponent meets the high-level officer requirement, and [2] a burden to produce an affidavit or declaration explaining the official’s lack of unique, personal knowledge of the issues being litigated.” *Id.* at 12. Thus, the corporate officer seeking to invoke the apex doctrine must submit a sworn statement attesting to a lack of personal knowledge. *See Id.*

If the party seeking the deposition wants to overcome this showing, it “bears the burden to persuade the court that it has exhausted other discovery, that such discovery is inadequate, and that the officer has unique, personal knowledge of discoverable information.” *Id.*

“A threshold issue in every case involving this rule” is whether the would-be deponent qualifies as a “high-level . . . officer.” *Id.* at 9. But the Court declined to further define what is meant by “high-level,” noting instead that “there is a rich body of case law applying the term” already. *Id.*



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