



Rule 30(b)(6) Comment in Opposition to the Suggested Changes

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to:

Rules_Comments

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I oppose most, if not all, of the changes to Fed. R. Civ. P. 30(b)(6) proposed by the Rule 30(b)(6) Subcommittee Advisory Committee on Civil Rules. Corporations and other entities are legally treated as “people,” distinct from their owners or members, with liability generally limited to the assets of the entity. In litigation, a legal entity has the privilege of acting as a distinct person: it can retain its own counsel, maintain its own defenses, present its own evidence, and select the witnesses it wants to testify based on an accumulation of institutional knowledge and documents.

As an attorney who uses Rule 30(b)(6) and multiple states’ versions of the rule as efficient tools to gather information from organizations on behalf of injured people, I ask the Subcommittee to keep in mind the purpose of Rule 30 (b)(6), which is to prevent an organizational party from gaining an unfair advantage in litigation by virtue of the fact that it consists of multiple individuals. If a corporation or similar organization is to be afforded the privileges of personhood, it should also, to the extent possible, be subject to the same responsibilities and rules that apply to individuals.

Rule 30(b)(6) is the only tool that empowers a plaintiff to treat a legal entity just as it is treated in every other aspect of the law: as a person. Many of the proposed changes to Rule 30(b)(6) would undermine the purposes of the rule, which include preventing a corporation from offering multiple witnesses who disclaim knowledge of facts that are available to the organization as an institution and that the organization may later present through the witnesses it selects. The changes would also severely prejudice individual and corporate plaintiffs alike, increase the cost of litigation, and make discovery drastically less effective in accomplishing its purpose of making trial “less a game of blindman’s buff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” *United States v. Proctor & Gamble Co.*, 356 U.S. 677, 682 (1958).

Sincerely,

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