Comment on Proposals to Amend Fed.R.Civ.P. 30(b)(6)
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Dear Rule 30(b)(6) Subcommittee of the Advisory Committee on Civil Rules:

I write to express serious concerns about proposed changes to the Rule 30(b)(6) deposition procedures.

I have been licensed to practice law since 1990, and have actively tried cases, taken depositions, and practiced civil litigation with both defense and plaintiff law firms, and served a two-year term as vice president and general counsel of a major U.S. tugboat company, since that time. I am also a former law clerk to a U.S. District Judge (Judge Howell Cobb of the U.S. District Court for the Eastern District of Texas), the former chair of the Allegheny County Bar Association's Federal Practice Section, and serve as an appointed member of the Local Rules Advisory Committee for the U.S. District Court for the Western District of Pennsylvania.

Each of the proposed changes to Rule 30(b)(6) can only be seen as efforts to improperly insulate corporate defendants and other large organizations from the consequences of their conduct, to weaken the rights of litigants to discover information and documentation from corporations and other entities, and to tilt the playing field to favor large corporate interests and harm those who would try to justly discover documentation and information from corporations and other entities.

As to the proposal to require discussion of Rule 30(b)(6) depositions at the Rule 26(f) meeting and Rule 16 conference, while perhaps at first blush a good proposal, on further reflection this seems more an effort to give the corporate defendant a head's up of its opponent's litigation plans than to genuinely avoid later discovery disputes.

Regarding admissions by an entity at a Rule 30(b)(6) deposition, lawyers representing corporations and other organizations have long known the significance of a Rule 30(b)(6) deposition, the consequences which attend witness testimony at such a deposition, and thus the need to well prepare the witness for such a deposition. Any effort to water-down the rule so that such deponent's testimony carries less force or consequence can again only be seen as an effort by defense/corporate interests to tilt the playing field in their favor.

The proposal to allow supplementation of Rule 30(b)(6) testimony smells like the opportunity for corporations and other organizations who did not like how things turned out at a Rule 30(b)(6) deposition to get a do-over. Again, this wreaks of another attempt by defense/corporate interests to change the rule to strengthen their hand in litigation and weaken their adversary's.

As for the proposal to forbid contention questions at a Rule 30(b)(6) deposition, as an example, organizational defendants often hide behind boilerplate affirmative defenses. The ability to ask contention-related questions at Rule 30(b)(6) depositions is an important tool in flushing-out whether the entity actually has any facts or documents to support its defenses, versus a hollow yet obstructive paragraph its counsel cranked-out on the word processor. Litigants are entitled to know before trial what the other side's case is. Caselaw is clear that trial of civil cases should not be by ambush. The ability to ask contention questions at a Rule 30(b)(6) deposition should remain. It is an important tool in the discovery process.

The proposal to allow pre-deposition objections, versus the requirement to move for a protective order, will

only invite the kind of mischief litigants and lawyers have long faced in the form of obstructive and typically baseless objections to interrogatories and requests for production.

Finally, the proposal to tie-in Rule 30(b)(6) to the current numerical limits on depositions in civil cases will only invite mischief by the organization facing a Rule 30(b)(6) deposition. By needlessly designating a gaggle of witnesses to testify at a Rule 30(b)(6) deposition, one can see how an organization may try to argue its opponents' permissible number of depositions has been exhausted.

At the end of the day, those bringing claims against an organization, including against a large corporation, need all the help they can get to legitimately discover facts and documents that large organizations are well-capable of obfuscating in their effort to undermine and defeat worthy cases. Rule 30(b)(6) is a wonderful tool to force the organizational litigant to facilitate discovery of pertinent facts and documents, and the identity of appropriate witnesses. Rule 30(b)(6), as now written, streamlines, facilitates, and makes more productive the discovery process. Nearly all of the proposals now pending appear as efforts to assist large organizations to obstruct the discovery process. These proposals should not be adopted. Rule 30(b)(6) is not broken. It does not need to be fixed. Rather, it needs to be protected.

I would be happy to answer any questions.

Sincerely,
Fred Goldsmith

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