

17-CV-TT



Opposition to changing Rule 30(b)(6)

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to:

Rules_Comments

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From: Jeremy Bordelon <jbordelonesq@gmail.com>

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Dear Rule 30(b)(6) Subcommittee of the Advisory Committee on Civil Rules,

I write to express my opposition to the proposed changes to the Rule 30(b)(6) deposition procedures.

I have been licensed to practice law since 2009, and the majority of my practice is representing individuals seeking disability insurance benefits, whether through an ERISA employee welfare benefit plan or through an individual insurance policy. In connection with these cases, attorneys often take 30(b)(6) depositions to adduce evidence regarding these insurance companies practices and behaviors. The information obtained in these depositions is crucial for the Courts' understanding of issues related to potential claims of bias, prejudice, and the influence of financial conflicts of interest, as well as other issues.

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

Unfortunately but realistically, the element of surprise can be important in discovery practice. The proposed rule change to require discussion of Rule 30(b)(6) depositions at the Rule 26(f) meeting and Rule 16 conference, while on its face a fair provision, would in practice give the corporate defendant unnecessary advance notice of its opponent's litigation plans.

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 would shift the current balance further in favor of defense/corporate interests, changing 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 in their written Answers to Complaints. The ability to ask contention-related questions at Rule 30(b)(6) depositions is an important tool in discovering whether the corporate entity actually has any facts or documents to support its defenses, versus a hollow yet obstructive paragraph included by its counsel. 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, and without it, the Courts will be forced to decide many, many more Motions to Strike such affirmative defenses by corporate opponents.

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, instead of one person, it would be too easy for a corporation to argue its opponents' permissible number of depositions has been exhausted.

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 currently 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) should be protected as-is.

I would be happy to answer any questions.

Regards,

Jeremy L. Bordelon

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