Proposed changes to F.R.Civ.P. 30(b)(6) deposition procedures
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to:
Rules_Comments
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17-CV-VVV

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

I'm writing to express my serious concern about the proposed changes to the F.R.Civ.P. 30(b)(6) deposition procedures.

I have been licensed to practice law in California since 1984. I practiced civil litigation on the defense side for many years, and have worked on the plaintiff's side for the past 10 years. So I think I have a relatively balanced, nuanced perspective here.

Each of the proposed changes to Rule 30(b)(6) can only be seen as an effort 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, to tilt the playing field in favor of large corporate interests, and to harm those who would try to justly discover documentation and information from corporations and other entities.

Regarding the proposal to require a discussion of Rule 30(b)(6) depositions at the Rule 26(f) meeting and the Rule 16 conference, this appears to be more of an effort to give the corporate defendant a heads-up of its opponent's litigation plans than a genuine proposal to 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 and the consequences which attach to witness testimony at such a deposition, and therefore are perfectly aware of the need to thoroughly prepare the witness for such a deposition. Any effort to water down the rule so that such a deponent's testimony carries less force or consequence can only be seen, again, 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 is a terrible idea. Plainly, all this represents is a "do-over" opportunity for corporations and other organizations who do not like how things turned out at a Rule 30(b)(6) deposition. Here again, this simply represents another attempt by defense/corporate interests to change the rule to strengthen their hand in litigation and correspondingly weaken their adversary's position.

As for the proposal to forbid contention questions at a Rule 30(b)(6) deposition: The ability to ask contention-related questions at Rule 30(b)(6) depositions is an extremely important tool in flushing out whether the entity actually has any facts or documents to support its defenses, as opposed to simply hiding behind a multitude of boilerplate affirmative defenses. Litigants are entitled to know before trial what the other side's case actually is all about. Longstanding case authority is clear that the trial of a civil case should not be by ambush. The ability to ask contention questions at a Rule 30(b)(6) deposition should be left intact.

The proposal to allow pre-deposition objections, versus the requirement of moving 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. The last thing our profession needs is another avenue for defense lawyers to assert ridiculous objections to discovery.

Finally, the proposal to tie in Rule 30(b)(6) with the current numerical limits on depositions in civil cases will only invite mischief by the organization facing a Rule 30(b)(6) deposition. One can readily see how an organization may try to argue that its opponent's permissible number of depositions has been exhausted by needlessly designating a gaggle of witnesses to testify at a Rule 30(b)(6) deposition. The abuse of this rule, if adopted, is utterly predictable.

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 easily and predictably 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 are nothing more than efforts to assist large organizations in obstructing the discovery process. These proposals should not be adopted. Rule 30(b)(6) is not broken, and therefore does not need to be fixed. Indeed, it needs to be protected.

I would be happy to answer any questions.

Sincerely,

Bob Keehn

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