Rule 30(b)(6)
Jennifer Danish
to:
Rules_Comments@ao.uscourts.gov
08/01/2017 10:43 AM
Hide Details
From: Jennifer Danish <jdanish@bryantlg.com>
To: "Rules_Comments@ao.uscourts.gov" <Rules_Comments@ao.uscourts.gov>

17-CV-PPPP

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 2009, and have actively litigated civil cases for plaintiff law firms, Bryant Legal Group PC and, before that Daley, DeBofsky & Bryant. I primarily represent individual insureds against insurance companies in ERISA and non-ERISA disability claims. I currently serve as the appointed Chair-Elect for the American Bar Association's Tort Trial & Insurance Practice Section Health & Disability Committee and elected Chair for The American Association for Justice's Social Security Law Section. I am also an active member of the Federal Bar Association, Chicago Chapter.

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 individuals to discover information and documentation from corporations and other entities, and to further 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, seems to be an effort to give the corporate defendant a head's up of its opponent's litigation plans than to genuinely avoid later discovery disputes. In my experience, some discovery and extensive preparation has to occur before a plaintiff can prepare a detailed and appropriate Rule 30(b)(6) deposition notice outlining the areas of inquiry. Early discussions are unlikely to be fruitful.

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 corporate interests to tilt the playing field in their favor. This would certainly be crippling in bad faith cases, for instance, where defendant corporation's conduct is at issue.

The proposal to allow supplementation of Rule 30(b)(6) testimony gives corporations and other organizations who did not like how things turned out at a Rule 30(b)(6) deposition an unfair opportunity to change sworn testimony. 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 number 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.

Individuals bringing claims against an organization, including against a large insurance company, 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.

--
Jennifer Danish
Managing Partner
Bryant Legal Group PC
205 N Michigan Ave, Ste 3910
Chicago, IL 60601
jdanish@bryantlg.com
(312) 561-3010 main line
(312) 235-4886 direct line
(312) 254-3140 fax
www.bryantlg.com