

NELA/Illinois

Advocates for employee rights
A proud affiliate of the National Employment Lawyers Association

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Advisory Committee on Civil Rules
by e-mail to Rules_Comments@ao.uscourts.gov

Dear Members of the Advisory Committee,

Thank you for this opportunity to respond to the request for comments on Federal Rule of Civil Procedure 30(b)(6). This response is on behalf of NELA/Illinois and our approximately 175 members.

NELA/Illinois is the Illinois affiliate of the National Employment Lawyers Association (“NELA”), our nation’s largest organization of lawyers who primarily represent employees in labor, employment, and civil-rights disputes. NELA and its 69 state and local affiliates have a membership of over 3,000 attorneys dedicated to advocating for employee rights and advancing justice in the workplace. NELA/Illinois, as an affiliate of NELA, is dedicated to advancing employee rights and serving lawyers who advocate for equality and justice in the American workplace.

Further information about NELA/Illinois can be found at www.nela-illinois.org, and further information about NELA can be found at www.nela.org.

NELA/Illinois agrees with many of the points raised in the letter submitted by NELA on this topic, but writes separately on behalf of our members to raise additional points.

Our members report that they frequently use 30(b)(6) depositions in their cases, often as the only deposition. Those praise the speed and efficiency of taking one 30(b)(6) deposition as opposed to taking many depositions of individual corporate managers and employees.

Our members are able to use Rule 30(b)(6) in this fashion because one of the purposes of Rule 30(b)(6) is to put corporations and individuals on as even a footing as possible in giving depositions. That purpose is clear from the structure of Rule 30, in which the only difference in the text of Rule 30 between corporate depositions and individual depositions is the “designate topics/designate deponents” procedure in 30(b)(6) itself. And that listing of topics in a 30(b)(6) Notice is simply so the corporation can make a reasonable decision as to whom to designate to speak for it; that listing of topics was not intended to give the corporation additional deposition defenses above and beyond those an individual deponent would have. As the leading case of *King v. Pratt & Whitney*, 161 F.R.D. 475 (S.D. Fla. 1995), stated:

“The reason for adopting Rule 30(b)(6) was not to provide greater notice or protections to corporate deponents, but rather to have the right person present at the deposition. The Rule is not one of limitation but rather of specification within the broad parameters of the discovery rules.”

Id. at 476. *Accord, Detoy v. City & County of San Francisco*, 196 F.R.D. 362 at 365-67 (N.D. Cal. 2000), *Cabot Corp v. Yamulla Enterprises, Inc.*, 194 F.R.D. 499 at 500 (M.D. Pa. 2000), *Overseas Private Inv. Corp. v. Mandelbaum*, 185 F.R.D. 67 at 68-69 (D.D.C. 1999).

The changes to Rule 30(b)(6) being floated would violate this purpose of putting corporations and individuals on as even a footing as possible in giving depositions. For example, with regard to contention questions, our members report that it is exceedingly common for defense counsel to ask contention questions of employment plaintiffs at the plaintiffs’ depositions. Often defense counsel will go through the Complaint, asking as to each substantive paragraph “What’s your evidence to support that contention?”, etc. In addition, our members report that defense counsel will often inquire of plaintiffs at their depositions such contention questions as “Couldn’t that just have been a personality conflict and not discrimination?”, etc. Our members report that such contention questions are often a very large part of defense counsels’ examinations of the plaintiffs.

It would be contrary to the purpose of Rule 30(b)(6) of putting corporations and individuals on as even a footing as possible in giving depositions – not to mention exceedingly strange and a probable violation of due process and equal protection – if an individual plaintiff could be deposed about certain topics in a law suit but a corporate defendant could not be deposed about those exact same topics in that exact same law suit.

Creating a special procedure for pre-deposition objections would also violate Rule 30(b)(6)’s purpose of putting corporations and individuals on as even a footing as possible in giving depositions. In addition, creating a special procedure pre-deposition objections for 30(b)(6) depositions would increase delay, motion practice, and expense. Our members report that boilerplate objections, such as “unduly burdensome”, “overbroad”, “vague and ambiguous”, etc., are an exceedingly common – indeed, almost inevitable – part of defense counsels’ Answers to Interrogatories and Response to Documents Requests. Creating a special procedure of pre-deposition objections for 30(b)(6) depositions would simply invite defense counsel to object to all or almost all topics in a 30(b)(6) Notice of Deposition with such pure boilerplate, with the concomitant meet-and-confers, motions, hearings, etc.

These likely bad consequences of creating a special pre-deposition objection procedure for Rule 30(b)(6), show the wisdom of Federal Rule of Civil Procedure 30(c)(2) that, with very limited exceptions, evidence at a deposition is taken subject to objection and “the examination still proceeds”. That procedure has worked for decades, including for 30(b)(6) depositions, and it should be continued to be employed.

Other than the proposal to elevate from the Comments to the text of the Rule the effect of a corporation designating more than one 30(b)(6) deponent on the deposition’s time-limits and effect on the number of depositions taken, which NELA/Illinois supports, the other topics on which the Committee has requested feedback would also violate Rule 30(b)(6)’s purpose of putting corporations and individuals on as even a footing as possible in giving depositions.

If anything, NELA/Illinois believes that Rule 30(b)(6)’s purpose of putting corporations and individuals on as even a footing as possible in giving depositions should be strengthened by adding the following sentence immediately before the last sentence of 30(b)(6):

“In all other respects, depositions under this sub-section should be treated exactly the same as depositions of individuals taken under this Rule.”

Thank you again for this opportunity to comment.

Very truly yours,

Matthew D. Lango
Matthew Lango
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