

AMENDMENT TO THE FEDERAL RULES OF CIVIL
PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT
OF THE UNITED STATES

TRANSMITTING

AN AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE
THAT HAS BEEN ADOPTED BY THE SUPREME COURT, PURSU-
ANT TO 28 U.S.C. 2072



AUGUST 7, 2020.—Referred to the Committee on the Judiciary and ordered
to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

SUPREME COURT OF THE UNITED STATES,
Washington, DC, April 27, 2020.

Hon. NANCY PELOSI,
Speaker of the House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: I have the honor to submit to the Congress an amendment to the Federal Rules of Civil Procedure that has been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying the amended rule are the following materials that were submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code: a transmittal letter to the Court dated October 23, 2019; a redline version of the rule with committee note; an excerpt from the September 2019 report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States; and an excerpt from the June 2019 report of the Advisory Committee on Civil Rules.

Sincerely,

JOHN G. ROBERTS, Jr.,
Chief Justice.

April 27, 2020

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Civil Procedure are amended to include an amendment to Rule 30.

[*See infra* pp. ____ ____ .]

2. That the foregoing amendment to the Federal Rules of Civil Procedure shall take effect on December 1, 2020, and shall govern in all proceedings in civil cases thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. THE CHIEF JUSTICE is authorized to transmit to the Congress the foregoing amendment to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2074 of Title 28, United States Code.

**PROPOSED AMENDMENT TO THE
FEDERAL RULES OF CIVIL PROCEDURE**

Rule 30. Depositions by Oral Examination

* * * * *

**(b) Notice of the Deposition; Other Formal
Requirements.**

* * * * *

(6) *Notice or Subpoena Directed to an*

Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will

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testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

* * * * *



THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

JAMES C. DUFF
Secretary

October 23, 2019

MEMORANDUM

To: Chief Justice of the United States
Associate Justices of the Supreme Court

From: James C. Duff *James C. Duff*

RE: TRANSMITTAL OF PROPOSED AMENDMENT TO THE FEDERAL RULES OF
CIVIL PROCEDURE

By direction of the Judicial Conference of the United States, pursuant to the authority conferred by 28 U.S.C. § 331, I transmit herewith for consideration of the Court a proposed amendment to Rule 30(b)(6) of the Federal Rules of Civil Procedure, which was approved by the Judicial Conference at its September 2019 session. The Judicial Conference recommends that the amendment be adopted by the Court and transmitted to the Congress pursuant to law.

For your assistance in considering the proposed amendment, I am transmitting: (i) a copy of the affected rule incorporating the proposed amendment and accompanying committee note; (ii) a redline version of the same; (iii) an excerpt from the September 2019 Report of the Committee on Rules of Practice and Procedure to the Judicial Conference; and (iv) an excerpt from the [June] 2019 Report of the Advisory Committee on Civil Rules.

Attachments

**PROPOSED AMENDMENT TO THE
FEDERAL RULES OF CIVIL PROCEDURE¹**

1 **Rule 30. Depositions by Oral Examination**

2 * * * * *

3 **(b) Notice of the Deposition; Other Formal**
4 **Requirements.**

5 * * * * *

6 **(6) *Notice or Subpoena Directed to an***

7 ***Organization.*** In its notice or subpoena, a party
8 may name as the deponent a public or private
9 corporation, a partnership, an association, a
10 governmental agency, or other entity and must
11 describe with reasonable particularity the matters
12 for examination. The named organization must
13 ~~then~~ designate one or more officers, directors, or
14 managing agents, or designate other persons who

¹ New material is underlined; matter to be omitted is lined through.

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15 consent to testify on its behalf; and it may set out
16 the matters on which each person designated will
17 testify. Before or promptly after the notice or
18 subpoena is served, the serving party and the
19 organization must confer in good faith about the
20 matters for examination. A subpoena must advise
21 a nonparty organization of its duty ~~to make this~~
22 ~~designation.~~ to confer with the serving party and
23 to designate each person who will testify. The
24 persons designated must testify about information
25 known or reasonably available to the
26 organization. This paragraph (6) does not
27 preclude a deposition by any other procedure
28 allowed by these rules.

29 * * * * *

Committee Note

Rule 30(b)(6) is amended to respond to problems that have emerged in some cases. Particular concerns raised have

included overlong or ambiguously worded lists of matters for examination and inadequately prepared witnesses. This amendment directs the serving party and the named organization to confer before or promptly after the notice or subpoena is served about the matters for examination. The amendment also requires that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify. It facilitates collaborative efforts to achieve the proportionality goals of the 2015 amendments to Rules 1 and 26(b)(1).

Candid exchanges about the purposes of the deposition and the organization's information structure may clarify and focus the matters for examination, and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements. It may be productive also to discuss "process" issues, such as the timing and location of the deposition, the number of witnesses and the matters on which each witness will testify, and any other issue that might facilitate the efficiency and productivity of the deposition.

The amended rule directs that the parties confer either before or promptly after the notice or subpoena is served. If they begin to confer before service, the discussion may be more productive if the serving party provides a draft of the proposed list of matters for examination, which may then be refined as the parties confer. The process of conferring may be iterative. Consistent with Rule 1, the obligation is to confer in good faith about the matters for examination, but the amendment does not require the parties to reach agreement. In some circumstances, it may be desirable to seek guidance from the court.

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When the need for a Rule 30(b)(6) deposition is known early in the case, the Rule 26(f) conference may provide an occasion for beginning discussion of these topics. In appropriate cases, it may also be helpful to include reference to Rule 30(b)(6) depositions in the discovery plan submitted to the court under Rule 26(f)(3) and in the matters considered at a pretrial conference under Rule 16.

Because a Rule 31 deposition relies on written questions rather than a description with reasonable particularity of the matters for examination, the duty to confer about the matters for examination does not apply when an organization is deposed under Rule 31(a)(4).

REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
TO THE CHIEF JUSTICE OF THE UNITED STATES AND MEMBERS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES:

* * * * *

FEDERAL RULES OF CIVIL PROCEDURE

Rule Recommended for Approval and Transmission

The Advisory Committee on Civil Rules submitted a proposed amendment to Rule 30(b)(6), with a recommendation that it be approved and transmitted to the Judicial Conference. The proposed amendment was published for public comment in August 2018.

Rule 30(b)(6), the rule that addresses deposition notices or subpoenas directed to an organization, appears regularly on the Advisory Committee's agenda. Counsel for both plaintiffs and defendants complain about problematic practices of opposing counsel under the current rule, but judges report that they are rarely asked to intervene in these disputes. In the past, the Advisory Committee studied the issue extensively but identified no rule amendment that would effectively address the identified problems. The Advisory Committee added the issue to its agenda once again in 2016 and has concluded, through the exhaustive efforts of its Rule 30(b)(6) Subcommittee, that discrete rule changes could address certain of the problems identified by practitioners.

In assessing the utility of rule amendments, the subcommittee began its work by drafting more than a dozen possible amendments and then narrowing down that list. In the summer of 2017, the subcommittee invited comment about practitioners' general experience under the rule as well as the following six potential amendment ideas:

1. Including a specific reference to Rule 30(b)(6) among the topics for discussion by the parties at the Rule 26(f) conference and between the parties and the court at the Rule 16 conference;
2. Clarifying that statements of the Rule 30(b)(6) deponent are not judicial admissions;
3. Requiring and permitting supplementation of Rule 30(b)(6) testimony;
4. Forbidding contention questions in Rule 30(b)(6) depositions;
5. Adding a provision to Rule 30(b)(6) for objections; and
6. Addressing the application of limits on the duration and number of depositions as applied to Rule 30(b)(6) depositions.

More than 100 comments were received. The focus eventually narrowed to imposing a duty on the parties to confer. The Advisory Committee agreed that such a requirement was the most promising way to improve practice under the rule.

The proposed amendment that was published for public comment required that the parties confer about the number and description of matters for examination and the identity of each witness the organization will designate to testify. As published, the duty to confer requirement was meant to be iterative and included language that the conferral must "continu[e] as necessary."

During the comment period, the Advisory Committee received approximately 1,780 written comments and heard testimony from 80 witnesses at two public hearings. There was strong opposition to the proposed requirement that the parties confer about the identity of each witness, as well as to the directive that the parties confer about the “number and description of” the matters for examination. However, many commenters supported a requirement that the parties confer about the matters for examination.

After carefully reviewing the comments and testimony, as well as the subcommittee’s report, the Advisory Committee modified the proposed amendment by: (1) deleting the requirement to confer about the identity of the witness; (2) deleting the “continuing as necessary” language; (3) deleting the “number and description of” language; and (4) adding to the committee note a paragraph explaining that the duty to confer does not apply to a deposition under Rule 31(a)(4) (Questions Directed to an Organization). The proposed amendment approved by the Advisory Committee therefore retains a requirement that the parties confer about the matters for examination. The duty adds to the rule what is considered a best practice – conferring about the matters for examination will certainly improve the focus of the examination and preparation of the witness.

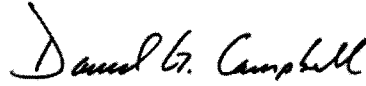
The Standing Committee voted unanimously to adopt the recommendation of the Advisory Committee.

* * * * *

Recommendation: That the Judicial Conference approve the proposed amendment to Civil Rule 30(b)(6) * * * and transmit it to the Supreme Court for consideration with a recommendation that it be adopted by the Court and transmitted to Congress in accordance with the law.

* * * * *

Respectfully submitted,



David G. Campbell, Chair

Jesse M. Furman	Peter D. Keisler
Daniel C. Girard	William K. Kelley
Robert J. Giuffra Jr.	Carolyn B. Kuhl
Susan P. Graber	Jeffrey A. Rosen
Frank M. Hull	Srikanth Srinivasan
William J. Kayatta Jr.	Amy J. St. Eve

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

DAVID G. CAMPBELL
CHAIR
REBECCA A. WOMELDORF
SECRETARY

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CIVIL RULES

DONALD W. MOLLOY
CRIMINAL RULES

DEBRA ANN LIVINGSTON
EVIDENCE RULES

MEMORANDUM

TO: Hon. David G. Campbell, Chair
Committee on Rules of Practice and Procedure
FROM: Hon. John D. Bates, Chair
Advisory Committee on Civil Rules
RE: Report of the Advisory Committee on Civil Rules
DATE: June 4, 2019

Introduction

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The Civil Rules Advisory Committee met in San Antonio, Texas, on April 2-3, 2019.

* * * * *

The Committee has two action items to report. The first is a recommendation for adoption of an amendment of Civil Rule 30(b)(6) that simplifies the proposal published for comment in August 2018.

* * * * *

8 **A. For Final Approval: Rule 30(b)(6)**

9 The Rule 30(b)(6) amendment proposal published for public comment drew much attention.
10 Twenty-five witnesses appeared at the hearing in Phoenix and 55 at the hearing in Washington, DC.
11 Some 1780 written comments were submitted, about 1500 of them during the last week of public
12 comment. Summaries of the testimony and those written comments are included at Appendix A.

13 Having reviewed the public commentary and received the Subcommittee’s report and
14 recommendation, the Advisory Committee is bringing forward a modified version of the preliminary
15 draft amendments with the recommendation that it be forwarded to the Judicial Conference for
16 adoption. The Committee has concluded that an amendment requiring in all cases what many
17 commenters affirmed was best practice – conferring about the matters for examination in order to
18 improve the focus of the examination and preparation of the witness – would improve the rule.

19 The Advisory Committee also considered an alternative of proposing publication for public
20 comment of a revised amendment that would require the organization to identify the designated
21 witness or witnesses a specified time before the deposition, and also add a 30-day notice requirement
22 for 30(b)(6) depositions. It was agreed that any such revised proposal would require re-publication
23 and public comment. The importance of such additional disclosure and the risks that the information
24 might be misused were addressed. It was noted that good lawyers who testified during the hearings
25 said that they often would agree to identify their witness or witnesses in advance when confident that
26 this information would not be misused, but that several emphasized also that there were cases in
27 which they would not provide advance identification. Advisory Committee members expressed
28 uneasiness about overriding those decisions not to identify witnesses in advance. After extensive
29 discussion described in the minutes of its meeting, the Committee decided not to propose that the
30 Standing Committee direct publication of this alternative.

31 At the end of this section of the report are a version of the published preliminary draft
32 showing the changes made after public comment as well as a “clean” version of the amended rule
33 and Committee Note. This report explains the changes made to the proposal after the public
34 comment period.

35 Deleting the requirement to confer about witness identity: Very strong opposition to this
36 directive was expressed by many witnesses and in many comments. Witnesses emphasized that the
37 case law strongly supports the unilateral right of the organization to choose its witness, and asserted
38 that the requirement that the organization confer in “good faith” would undercut that case law.
39 Although the Committee Note said that the choice of the witness remained the sole prerogative of
40 the organization, that raised the question how it could then be the subject of a mandatory requirement
41 to confer in good faith.

42 It bears mention that there was limited public comment in favor of requiring the organization
43 to confer about witness identity from those who regularly use this rule to obtain information from
44 organizations. Some candidly acknowledged that they had no say in the organization’s choice of a

45 witness so long as the person selected was properly prepared to address the matters for examination
46 on the 30(b)(6) list.

47 Deleting “continue as necessary”: The preliminary draft directed that the conference not only
48 be in good faith but also that it “continue as necessary.” To a large extent, that provision was
49 included because the draft directed the parties to confer about the identity of the witness. Very often
50 the organization could not be expected to settle on a specific person to testify without first having
51 obtained a clear understanding of what matters were to be addressed. So there was a need for a rule
52 provision emphasizing that the amendment requires an iterative interaction in most instances. But
53 that need has lessened with deletion of the requirement to confer on witness identity.

54 Removal of this provision is not meant to say that the parties need never engage in a
55 iterative exchange about the matters for examination. Indeed, even though the conference is now
56 limited to the matters for examination it will often be fruitful for the parties to touch base more than
57 once with regard to the kinds of information available and the burdens of obtaining it. The revised
58 Committee Note makes this point.

59 Deleting the directive to confer about the “number and description of” the matters for
60 examination: The Advisory Committee did not propose adding to the rule a numerical limitation on
61 matters for examination, though it was urged to do so. But the preliminary draft did direct the parties
62 to discuss “the number” of matters.

63 The directive to discuss the number of matters in addition to conferring about the matters
64 themselves drew strong objections during the public comment period. The right focus, many said,
65 was on the matters themselves. Discussing an abstract number did not serve a productive purpose.
66 To the extent it might result in some sort of numerical limit, it might also encourage broader
67 descriptions so that the list of matters would be shorter. That seems out of step with both the
68 particularity direction in the rule and with a requirement to confer that is designed in significant part
69 to improve the focus of the listed matters and ensure that the organization understands exactly what
70 the noticing party is trying to find out. The Committee recommends removing “number of” from the
71 conference requirement.

72 The addition of the words “description of” seemed unnecessary; the basic objective ought
73 to be to confer about and refine the matters for examination.

74 Adding a reference to Rule 31(a)(4) depositions to the Committee Note. Rule 31(a)(4)
75 authorizes a deposition by written questions of an organization “in accordance with Rule 30(b)(6).”
76 It also requires that the noticing party’s questions and any questions any other parties wish the officer
77 to pose to the witness be served in advance. Although it has repeatedly been told about problems
78 with Rule 30(b)(6) depositions, the Advisory Committee has not been advised that there have been
79 any problems with this mode of obtaining testimony from organizations. And the advance exchange
80 of all questions to be asked would make a conference about the matters for examination superfluous.

