17-CV-L

Rule 30(b)(6)
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Rules Committee,

I have defended numerous 30(b)(6) depositions and comment as follows on the issues being addressed:

First, a corporate representative deposition is a deposition of either a party or a nonparty business entity, nothing more. It should carry the status that any individual deposition carries with the exception that inquiry areas are designated in advance and the deponent(s) must prepare for and answer questions in the designated areas.

With that premise, is the testimony a binding admission? Would testimony of a layperson be a binding admission? No. Courts holding otherwise do not appreciate the nature of the deposition. People can change their testimony if there are valid reasons to do so – new information, mistake, etc. Cross-examination and impeachment with deposition testimony are the standard mechanisms to address changed testimony for laypersons and corporations.

Supplementation should be permitted for corporate representative depositions as it is for depositions of laypeople. For both populations, if the supplementation is significant, a second deposition can be requested at the expense of the layperson or corporation. It is not the case that all of the designated information is known when the deposition is being taken, especially when the deposition occurs early in the discovery process. In fact, it is a common tact for plaintiffs to depose corporate representatives before the information is known to obtain lack of knowledge responses and display to a jury that the corporation did not care or doesn't know what it is doing or the like. I have moved to quash early corporate representative depositions because of the unfairness of such an approach. The purpose should be to obtain information from the corporation, not to wield the deposition like a sword.

My experience is that most corporate representative deposition notices tend to be overbroad and onerous. I have successfully moved for protective orders to limit the scope, which can be necessary. Some notices are intended as fishing expeditions to locate new theories for amended complaints. Other notices are intended to elicit lack of knowledge or information responses when opposing counsel knows the information is not typically known or retained in an industry. Opposing counsel refuses to accept the response that the information is not typically maintained in the industry and spends the next 15 pages of transcript attempting to elicit a lack of knowledge response to read to a jury. Then, opposing counsel seeks sanctions for the witness not being prepared and requests that the area of inquiry be deemed admitted. This is a common occurrence.

In my experience, when a corporation is deposed, the deposition is usually considered one deposition. If the corporation wants to designate 20 deponents in response to the notice, the corporation may do so, but it remains the deposition of the one corporation. I have designated up to 12 employees to respond because I wanted the most knowledgeable people answering questions. Those were considered one deposition. The duration for each deposition was 7 hours because it was the corporation that opted for numerous deponents.

I have also run into the issue of when the designated person is not as knowledgeable as expected and another person would be better. The corporation should be allowed to designate an additional person for a later deposition on the designated topic. It is not always the case that the best person is easily identified until after the first round.

Exceeding the scope of the noticed testimony areas has been an issue. When that occurs, We make it very clear on the record that the area of questioning is outside the scope and the deponent is not speaking on behalf of the corporation. Motions in limine address any attempts to use the undesignated areas at trial.

Thank you for the opportunity to contribute.

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