17-CV-MMMM

Rule 30(b)(6) Deposiitions
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Dear Rules Committee Members:

Thank you for taking the time to discuss Rule 30(b)(6). I have conducted many 30(b)(6) depositions and have the following comments regarding "Possible Issues Regarding Rule 30(b)(6):

**Inclusion of specific reference to Rule 30(b)(6) among the topics for discussion at the Rule 26(f) conference, and in the report to the court under Rule 16.**

I don't think this would be helpful. While all parties may know early that an entity is involved in the case, the issues that will likely arise regarding a potential 30(b)(6) deposition are almost never known at the outset of the case. At least in my practice, 30(b)(6) depositions are taken near the end of fact discovery, when you know what is needed from the entity. This information usually comes from other earlier depositions or written discovery. The best that can be done early in the case is to state that a 30 (b)(6) deposition will be likely.

**Judicial admissions**:

I don't think amendment here would be helpful. In my experience, most of the problems relating to whether 30(b)(6) testimony is "binding" arise out of the lack of proper preparation of 30(b)(6) witnesses, where the entity being deposed figures out that it doesn't like the answers that are being given by its witness, or the entity's lack of prepared testimony is being used against it at trial. The primary problem encountered in 30(b)(6) depositions is the failure to adequately prepare 30(b)(6) witnesses, a topic frequently raised in reported opinions, but not addressed directly by your proposals as far as I can tell. We should not encourage the lack of preparation by explicitly sending the message that the entity's deposition answers are not "binding".

**Requiring and permitting supplementation of Rule 30(b)(6) testimony.**

I believe that suggesting that 30(b)(6) testimony can be casually supplemented is to invite a failure to prepare 30(b)(6) witnesses, and to treat the 30(b)(6) deposition as written discovery where counsel can listen to the question and the witness can simply say he/she doesn't know the answer and then rely on counsel to prepare a supplementation at its leisure. The failure to properly prepare 30(b)(6) witnesses is already the primary problem encountered in 30(b)(6) depositions.

**Forbidding contention questions in Rule 30(b)(6) depositions:**

The ability to obtain spontaneous answers in cross-examination is on of the keys to obtaining unvarnished truth. We must remember that topics have already been provided to the entity. We must also remember that entities can only act through individuals, who invariably have opinions about facts and circumstances. Indeed, it is the opinions of individuals about a matter that typically leads to actions. Take, for example (although maybe extreme), the opinion of an officer of an entity that women should be treated differently in the workplace and should not be given protection under the Constitution. This might help explain the motive and the conduct of the individual and the entity in a discrimination lawsuit. These kinds of questions are frequently asked in depositions of individuals and entities alike, and should be. The motive and opinions of people acting for themselves and for entities is crucial to the story of a case, and frequently to the elements of various causes of action or defenses. At a minimum, these opinions often lead to the discovery of relevant evidence. If there is no opinion, the witness can simply say so.

**Pre-Deposition Objections:**

The current practice is for entities to make objections and, if necessary, file for a protective order. Usually, what happens is the entity files objections (this happens in nearly every case), and the parties then convene to work through issues if possible. In a few cases where the parties are not able to work through issues, protective orders are sought. This happens only in a small minority of cases. The current practice is generally working well. However, if the Rule allowed for entities to delay a 30(b)(6) deposition simply by filing objections, it would be done in (virtually) every case with the result that parties (primarily plaintiffs) would be subject to additional and often lengthy delays.

**Limits on the Number and Duration of 30(b)(6) Depositions:**

This is not currently an issue. The Committee Notes have it right. It is usually up to the entity as to how many witnesses will be supplied, as the entity can prepare a single witness if it desires. If the number of witnesses designated was counted toward the number of depositions allowed, the Rule would encourage the entity to designate multiple witnesses for discreet topics where one would have done the job. We have had no disputes concerning this issue in the past.

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In general, I believe Rule 30(b)(6) is working fine as is. I think tinkering with the Rule carries risk, especially if it means departing from the existing Federal Rules. We must currently look to federal court opinions for guidance in areas where there is a paucity of such guidance from state courts - e.g. Rule 30 (b)(6). When we depart from the Federal Rules, we also weaken the guidance of existing case law. For example, the primary problem we currently experience with 30(b)(6) depositions is one that is not discreetly included in your discussion – the lack of witness preparation (sometimes intentional it appears). Of all 30(b)(6) issues, lack of witness preparation is by far the most important and frequently encountered issue. Federal courts are also frequently dealing with this issue and have issued helpful opinions clarifying duties under Rule 30(b)(6). *See e.g. MP Nexlevel, LLC v. Codale Electric Supply, Inc*., 2012 WL 2368138 (D.Utah 2012); *Starlight Int'l, Inc. v. Herlihy*, 186 F.R.D. 626, 639 (D.Kan.1999); *Thomas v. Ovech, Inc*., 2010 WL 1064436 (D. Utah); *Ecclasiastes 9:10-11-12, Mc. v. LMC Holding Co.*, 497 F.3d 1135, 1146-1147 (10th Cir. 2007). However, as far as I am aware (at last look) there is not similar state law on point.

Thank you for considering my thoughts. If you have any questions, I would be happy to discuss the matter further.

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