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Comments on Possible Issues Regarding Rule 30(b)(6)
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I am a litigation partner with Kelley Drye & Warren LLP in New York City, with thirty five years of experience litigating cases in federal and state courts. I have also published multiple articles on various legal topics, including two articles in The National Law Journal on the Rule 30(b)(6) deposition. *See* Caley, *Litigation: Looking at Rule 30,* The National Law Journal, September 11, 2000; Caley, *How Limitations on Number and Duration Apply to Corporate Depositions,* The National Law Journal, November 22, 2011. I have the following comments on the possibilities identified by the Rule 30(b)(6) Subcommittee as potential rule amendment ideas:

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 am opposed to this. The Rule 26(f) conference may be too early in the process for attorneys to have adequately and intelligently considered their Rule 30(b)(6) needs. Moreover, requiring the parties to discuss this topic will prompt lawyers to make a "knee jerk" demand for a 30(b)(6) for fear of waiving the right if not asserted at the conference. This will not promote speed or efficiency in the litigation process because a 30(b)(6) deposition is often not needed, as the information sought can often be obtained through the other discovery devices.

Judicial Admissions: The holdings of some courts that testimony at a 30(b)(6) deposition is a binding judicial admission which may not be contradicted or revised are, in my view, profoundly mistaken. Given that the witness is often not testifying on personal knowledge and has had to do a tremendous amount of preparation and memorization of information, occasional (or not so occasional) errors in testimony and lack of recollection is to be expected. Indeed, in a large, complex case, it is virtually inevitable. In order that there no longer be any confusion about this issue, I am in favor of amending the rule to make it clear that testimony at a 30(b)(6) testimony is "binding" only in the sense that the testimony is admissible against the corporation; it is not an unalterable judicial admission.

Requiring and permitting supplementation of Rule 30(b)(6) Testimony: I don't have a strong feeling about this, one way or the other.

Forbidding contention questions in Rule 30(b)(6) depositions: Given that the 30(b)(6) witness is testifying on behalf of the corporation, I think that contention questions are appropriate, provided that the 30 (b)(6) notice explicitly gives notice that the witness will be asked contention questions and identifies, at least generally, the subjects of those questions.

Adding a provision for objections to Rule 30(b)(6): I am strongly in favor of this. Noticed 30(b)(6) deposition topics are frequently objectionable as burdensome, harassing or irrelevant. Permitting a party to serve written objections, rather than have to make a motion for a protective order, will force the noticing party to take a realistic look at the topics noticed and will provide a mechanism for parties to resolve such disputes informally, without the necessity of court intervention.

Amending the rule to address the application of limits on the duration and number of depositions as applied to Rule 30(b)(6) depositions: I think this is a good idea, as it will provide certainty with respect to these issues which, in turn, should reduce motion practice. I agree with the Committee Notes that a 30(b)(6) deposition should count as only one deposition, irrespective of how many individuals are produced for examination. However, I strongly disagree with the view that the examining party should be entitled to up to seven hours of questioning with respect to each witness produced. Especially in large litigations, 30(b)(6) notices may include dozens of topics on disparate subjects, requiring the corporation to designate many individuals to testify. Allowing the examining party to question each of multiple witnesses for seven hours is inconsistent with,

indeed, would effectively nullify, the Federal Rules' limits on the number of depositions. I believe that the total examination time should be limited to seven hours. Not only is this consistent with the limitations on the number and duration of depositions, but it will force the examiner to work efficiently and focus on that which is truly material. Nor would such a limit unfairly prejudice a party's opportunity to pursue thorough discovery on a topic, as the examining party would, of course, still be free to pursue discovery on the topic through individual depositions, interrogatories, document requests and other discovery devices.

Thank you for the opportunity to comment on this subject. I hope that the foregoing is useful, and I would be happy to discuss this with a Committee member if that would be helpful.

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