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17-CV-QQQQQ

August 8, 2017

Via E-Mail
Advisory Committee on Civil Rules
Rules_Comments@ao.uscourts.gov

Re: Comment on Civil Rule 30(b)(6)

Dear Members of the Advisory Committee on Civil Rules:

On behalf of the law firm of Baron & Budd, P.C. (Baron & Budd), I respectfully submit this Comment to the Advisory Committee on Civil Rules ("Committee") and its Rule 30(b)(6) Subcommittee. Baron & Budd, with offices in Dallas, Baton Rouge, New Orleans, Austin, Los Angeles, and San Diego, is a nationally recognized law firm with a nearly 40-year history of "Protecting What's Right" for individuals, communities, state and local governments, and businesses. The firm represents its clients in subject areas as diverse as dangerous pharmaceuticals and medical devices, environmental contamination, the Gulf oil spill, financial fraud, overtime violations, deceptive advertising, automotive defects, trucking accidents, nursing home abuse, and asbestos-related illnesses such as mesothelioma.

Because Baron & Budd represents individuals and organizations, including governmental entities, we have a multi-faceted perspective. Fundamentally, disputes concerning Rule 30(b)(6) are rare, and it is our view that in its current form, Rule 30(b)(6), is effective and does not need a major overhaul. In fact, Rule 30(b)(6) is one of the most useful tools in civil litigation. Unlike written discovery, which can be of limited use due to objections and qualified responses, Rule 30(b)(6) uniquely provides an opportunity to obtain oral testimony from an organization.

Moreover, at the outset of litigation, organizations frequently object to providing documents or other information that would make it easy to ascertain the identities of individual witnesses from whom relevant information can be obtained. Accordingly, by requiring that an organization "designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf," Rule 30(b)(6) puts the obligation on the entity with the information to identify individuals who can address the identified areas of examination. As a result, Rule 30(b)(6) depositions provide an early and efficient opportunity to obtain discovery on core issues.

There is, however, one issue that occasionally arises, and if the Committee is interested in improvements, we suggest that minor changes be made to address the following. Specifically, there is a split of authority among district courts concerning whether more than one 30(b)(6) deposition is permitted without leave of court. Some courts hold that parties "should [] ask[] for leave to take a second 30(b)(6) deposition, [if they] hav[e] already noticed and taken one 30(b)(6) deposition." *Blackwell v. City & County of San Francisco*, 2010 WL 2608330 at *1

(N.D. Cal. June 25, 2010) (citing Fed. R. Civ. P. 30(a)(2)(A)(ii) for the proposition that "leave must be granted to take the deposition of a deponent who 'has already been deposed in the case'"). In contrast, other courts hold that "Rule 30(b)(6) depositions are different from depositions of individuals" and "no aspect of the Rules . . . restricts a party to a single 30(b)(6) deposition." *Quality Aero Tech., Inc. v. Telemetrie Elektronik GmbH*, 212 F.R.D. 313, 319 (E.D.N.C. 2002); *see also*, *Cornell Research Found. Inc. v. Hewlett-Packard Co*., 2006 U.S. Dist. LEXIS 97054, at *20 n.6 (N.D.N.Y. Nov. 13, 2006) (Rule 30 "does not preclude the taking of a second deposition from a corporation or other entity, as opposed to a single person").

Similarly, the Wright & Miller treatise states as follows:

> The limitation on a second deposition of a given witness seems designed to avoid impositions on individual persons. The fact that a Rule 30(b)(6) notice must specify limited topics for examination implies that additional inquiry into other relevant topics should not be precluded by the fact that inquiry has first been made on the topics designated for the first Rule 30(b)(6) deposition. Moreover, it might be inappropriate to insist that all topics be explored in a single deposition because various topics are suitable for inquiry at different times in the case.

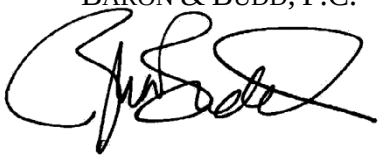
Wright & Miller, 8A *Federal Practice & Procedure* § 2103 (3d ed.) (emphasis added).

If changes to Rule 30(b)(6) are made, we suggest that the changes clarify that Rule 30(a)(2)(A)(ii) does not apply to Rule 30(b)(6), and multiple 30(b)(6) depositions may be taken, so long as the depositions concern different topics. Among other things, expressly permitting multiple 30(b)(6) depositions will reduce disputes regarding whether topics have been identified with sufficient particularity. When multiple 30(b)(6) depositions are permitted without leave of court, litigants can identify narrowly defined areas of examination without concern that they will later be foreclosed from identifying other topics, as the issues in the litigation are refined. Indeed, it is not always feasible at the outset of a case to identify all subjects, with particularity, for which 30(b)(6) deposition testimony will be needed. Moreover, for the same reason, it is not appropriate to require that Rule 30(b)(6) topics be discussed during the Rule 26(f) meeting.

We appreciate the opportunity to present these comments for the Committee's consideration.

Best regards,

BARON & BUDD, P.C.



Russell W. Budd