THE STATE BAR OF CALIFORNIA

– LITIGATION SECTION, FEDERAL COURTS COMMITTEE

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The Hon. Joan Ericksen, Chair
Rules 30(b)(6) Subcommittee
United States District Court
12W U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
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Dear Judge Ericksen:

The Federal Courts Committee of the State Bar of California's Litigation Section respectfully submits this letter to identify some of the issues encountered by its members under the current operation of Federal Rules of Civil Procedure 30(b)(6). In our view, the described problems are "real," recurring frequently. We believe the problems are not unique to defendants or plaintiffs. We recommend the Rule 30(b)(6) Subcommittee of the Advisory Committee on Civil Rules consider possible amendments to the rule to address these issues.

1. Durational and Numerical Limitations of Rule 30(b)(6) Depositions

Disputes regarding the duration and numerical limitations of Rule 30 arise in a variety of practice areas[1] because (a) multiple individuals may be designated by an organization, and (b) those individuals may also be subject to individual depositions in which they are not speaking for the organization.

While not all of our members agree on whether a Rule 30(b)(6) deposition with multiple witnesses should be considered a single deposition for purposes of the presumptive limit on the number of depositions or whether a full seven hours should be allowed for each of these witnesses, we agree further guidance in the rules would eliminate potential disagreements and accompanying cost and delay.

Parties often dispute whether the limitation on number of depositions of a witness should preclude a second deposition of an organization on different topics. Multiple depositions are a

[1] Our members have experienced such disputes in employment law, tort disputes, commercial litigation, intellectual property law, and antitrust law.

disruption to an organization and whether there should be a limit on the number of topics should be considered.

A party noticing an early Rule 30(b)(6) deposition is often trying to figure out what sources of information exist. Due to obstacles of using written discovery as the main tool to reveal what is behind unknown terminologies and record keeping practices of an adversary or third party, early Rule 30(b)(6) depositions provide a needed device to arrive at common ground foundational to developing a record. Later discovery is based on the testimony provided at such deposition. On the other hand, Rule 30(b)(6) depositions are a critical tool in later stages of discovery, after a more developed factual record of individual testimony and document collection. Because Rule 30(b)(6) depositions are critical discovery tools in early and late stages of a case, clarity regarding how many Rule 30(b)(6) depositions may take place, and the timing of such depositions, is desirable.

2. Procedure for Objections

We support consideration of an addition to the rule of an explicit provision for written objections that may be served in advance of the deposition. Many Rule 30(b)(6) notices are broad and can require extensive research and preparation. A simple and efficient mechanism to raise these concerns, short of a motion for protective order, would be helpful. One thing that might be included would be a requirement like the one now in Rule 34(b) that the objecting party specify what it will provide despite the objection. However, concerns about objections halting or delaying depositions from proceeding are real, as well as disputes over requirements to move to compel or move for a protective order before or after the deposition begins, and should be addressed.

3. Expectations for Witness Preparation and Permitting Supplementation

We believe a rule inviting the noticing party to provide the witness with the exhibits to be used in advance of the deposition is a technique that could focus the responding party in a way that is better than the current provision that requires merely a description of the matters upon which the organization may be examined. Putting it in the rule tells parties they get the advantage of greater particularity by taking this step. An invitation emphasizes something that a party can do now, and may wish to do to achieve the advantages of clarity and better preparation.

Adding a provision similar to Rule 26(e)(2) for 30(b)(6) deponents, perhaps specifying that the supplementation must be done in writing and providing a ground for re-opening the deposition to explore the supplemental information, may also be helpful. However, in considering such a provision, we are mindful of the need to balance any requirement to supplement against the possibility that such a supplementation may have the effect of postponing or impeding the completion of discovery.

A rule addressing the problem of questions on matters not described in the notice is desirable. *See* American Bar Association, *Going Rogue in a 30(b)(6) Deposition*, at p. 6 (available at https://www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac_2012/43-1_going_beyond_the_30b6_deposition.authcheckdam.pdf).

Rule 30(b)(6) should facilitate the transfer of information held by organizations and witnesses in a cost effective and timely way. The Subcommittee's consideration of ways in which the current rule could be clarified in order to reduce the burden of extensive discovery on organizations and to increase the ability of those seeking discovery from such organizations to obtain necessary information would benefit all.

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Respectfully submitted,

Federal Courts Committee
State Bar of California's Litigation Section