

17-CV-ZZZ



Proposed Rule 30(b)(6) amendments.

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I am writing to voice my concern and opposition about the proposed amendments to Rule 30 (b)(6).

As a member of the Federal Bar Association who appears in district court frequently (and nearly exclusively), I am concerned because the changes proposed will put corporate depositions on an unequal footing to individual fact witness depositions.

The point of the Rule has always been twofold: Efficiency and fairness.

On efficiency, the Rule was designed in part to eliminate the need -- and probable significant expense to the court and litigants - of identifying the individual witnesses within a corporation (who may be spread around the globe) and deposing each to determine what the corporation "knows" about the case. Designating topics and allowing the corporation to choose its designee turns what could be dozens of depositions into a few, and often just one.

On fairness, the Rule is simply a recognition that being granted the status of a "person" a corporation must testify as one too. When a party is an individual, his or her testimony - all of it -- is already "binding" in the sense they cannot vary it later, without consequence or explanation. No less should be expected of corporations who, besides having the luxury of being told in advance what it will be asked about, get to decide on their best spokesperson.

Under the Rule as it stands now, nothing outside the scope of these designations "binds" the corporation. Unlike an individual witness's testimony, the corporation is bound to positions and statements it has had weeks to prepare. And these it can vary at trial (just like a fact witness) if it chooses, subject to the same consequences or need for an explanation as any witness.

The proposed changes to the Rule simply give the corporation's counsel the ability to edit, change, or supplement testimony through a "right to supplement" that no individual witness has or has ever had. Since such a right would have to be accompanied by the opportunity to re-open the deposition, the practical effect of this change would be to turn a single deposition into a series of depositions, greatly increasing expense and time for all parties.

Respectfully,

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