Comments on possible changes to Rule 30(b)(6) 17-CV-EEE
Nitin Sud
to:
Rules_Comments@ao.uscourts.gov
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From: Nitin Sud <nsud@sudemploymentlaw.com>
To: "Rules_Comments@ao.uscourts.gov" <Rules_Comments@ao.uscourts.gov>

Dear Advisory Committee,

I am a solo employment attorney based in Houston, Texas, primarily representing individuals in wrongful termination claims. The proposed possible changes to Rule 30(b)(6) are a significant concern as they will drastically impede the ability of attorneys representing individuals against mid-large sized companies. Specifics to each of the six proposals are as follows:

1) Inclusion in the 26(f) conference. It is unclear how requiring the discussion of a possible 30(b)(6) at the 26(f) conference will help. It is usually difficult to determine the potential scope of a 30(b)(6) deposition until after initial disclosures and initial written discovery request. Regardless, I often reference the possibility of a 30(b)(6) deposition in the Joint Discovery/Case Management Plan anyway.
2) Judicial admissions. There shouldn't be a bright-line rule, and it should be decided on a case-by-case basis. And, yes, it is appropriate to bind a company to an admission based on 30(b)(6) testimony, as otherwise the purpose of the deposition is defeated. It doesn't need to be used as "gotcha" on certain issues but, again, that must be determined by the judge on a case-by-case basis.
3) Supplementation of 30(b)(6) testimony. The point of the deposition is to streamline the discovery process and make sure the company prepares and take the case seriously. Allowing the deponent to supplement will result in a complete waste of time and a gaming of the process. Furthermore, the company can pick any witness it wants as the representative for the 30(b)(6) deposition… so why allow later supplementation?
4) Forbidding contention questions. You have to be kidding me. Such questions are permissible for individuals being deposed, and are often the basis of the high-percentage of pro-employer decisions. Companies often assert a plethora of affirmative defenses. They should be able to back them up at a deposition.
5) Objecting to the deposition. This would delay the discovery process and probably require additional depositions/discovery. Usually the parties discuss the topics in advance and any concerns are addressed at that time. If necessary, a protective order can be filed and a court can determine the solution… prior to the deposition. Similar to #3 above, this could result in a gaming of the process.
6) Limits on the 30(b)(6) deposition. This has never been an issue. There is no problem that needs to be fixed. I am indifferent to this proposal, but believe it is unnecessary.

Ultimately, the proposed revisions will make it even more difficult for individuals, including low-income individuals with limited resources/support, to litigate cases. Rule 30(b)(6) is fine as-is, and no changes are necessary.

Thank you.

Nitin Sud
Sud Law P.C.
6750 West Loop South
Suite 920

Bellaire, TX 77401
Phone: 832-623-6420
Fax: 832-304-2552
www.sudemploymentlaw.com