Comment on Possible Issues Regarding Rule 30(b)(6)
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Rules_Comments
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Dear Rule 30(b)(6) Subcommittee of the Advisory Committee on Civil Rules:

I have serious concerns about the proposed changes to the Rule 30(b)(6) deposition procedures.

I have been a practicing civil trial lawyer since 1995. I am admitted to practice in Arizona, the Ninth and Tenth Circuits and the Supreme Court. I serve as a judge *pro tem* for Arizona civil cases. In my years of practice, I have never encountered a problem with Rule 30(b)(6) that the proposed changes would remedy.

Rule 30(b)(6) was adopted to: 1) to make it easier to determine which of a defendant's employees was the "managing agent" prior to deposition; 2) eliminate the practice of each employee disclaiming knowledge of facts and responsibility and pointing to a different employee; and 3) reduce the cost and increase the efficiency of discovery and litigation, a goal consistent with Rule 1.

Rule 30(b)(6) depositions have always been scheduled with reasonable notice in cooperation with opposing counsel. The need for and the scope of potential Rule 30(b)(6) depositions is always addressed at Rule 26 conferences. There is no need to treat these deposition differently than any other deposition.

Limiting the number of topics that may be included in a Rule 30(b)(6) notice invites gamesmanship and inefficiency. To stay within any limit, broader categories will be listed inviting disputes over scope and making it more difficult to prepare a deponent. The proposed objection process would encourage such disputes contrary to the Rule 1's goal.

Requiring disclosure of deposition exhibits prior to the deposition runs counter to the purpose of discovery. Often, the purpose of the Rule 30(b)(6) deposition is to obtain documents. And, this is often necessitated by defendants, who rather than provide a permitted Rule 8 response to a complaint, plead "the document speaks for itself." Caution would dictate that the every document relevant to the case known to exist be disclosed to insure no document is inadvertently overlooked. This too would be contrary to Rule 1.

There is no need to put an explicit limit on the questions that may be posed at a Rule 30(b)(6) deposition. The Rules of Evidence already provide an adequate remedy. A proper objection will permit the court to impose appropriate limits. Pre-deposition objections invites additional motion practice. Again, this would be contrary to Rule 1.

Rule 30(b)(6) testimony should carry the same weight as any other deposition testimony. No need exists to treat it differently. Similarly, post-deposition clarifications should abide the existing rule.

The number of Rule 30(b)(6) depositions should be left to the discretion of the trial judge, who can set appropriate limits at the Rule 26 conference.

Rather than provide for efficient discovery, the proposed changes provide an arsenal to corporate

defendants to obfuscate and delay. The changes will needlessly expand litigation with pre-trial motion practice designed to avoid a determination on the merits.

The proposed changes will create more problems than the concerns the proposed changes purport to address. The existing rules adequately address all of the concerns. Respectively, the proposed changes are a boon to corporate defendants and their lawyers and an anathema to the pursuit of justice.

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