30(b)(6) Proposed Rule Changes
Patrick Yancey
to:
Rules_Comments@ao.uscourts.gov 17-CV-JJ
07/17/2017 07:03 PM
Cc:
"Frederick B. Goldsmith", Kathy, Celeste Callais
Hide Details
From: Patrick Yancey <patyancey@patrickyancey.com>
To: "Rules_Comments@ao.uscourts.gov" <Rules_Comments@ao.uscourts.gov>
Cc: "Frederick B. Goldsmith" <fbg@golawllc.com>, Kathy <kathy@patrickyancey.com>, Celeste Callais <celeste@patrickyancey.com>

1 Attachment

FBG Comment on Proposals to Amend Fed.R.Civ.P. 30(b)(6) (W0182531).msg

I concur what was written and submitted by Mr. Goldsmith (see attached).

I have been representing injured victims since about 1995. Rule 30(b)(6) is not broken and does not need to be changed.

The combination of rules 30(b)(5) and 30(b)(6) allows for a party plaintiff (usually a person and not a corporation, but sometimes used by corporations vs. corporations) to get documents produced on certain subject matters/topic areas and to have the corporation designate the person who is best qualified to discuss both those documents and the topic areas. The corporation knows who that person is and that person will know the subject and meaning of the documents and that particular topic area; that person will speak the truth under oath for the corporation as to what those documents and what is meant by them in that topic area for that corporation and its practices. Why should a corporation party (or any other party) be allowed to Monday morning quarterback its responses to its answers that it gives in a deposition? Simply stated, it should not. This proposed rule change seems to be a scheme to do “Monday Morning” damage control with the truth that is often times revealed in the 30(b)(6) depositions.

As to specifics:

First: Inclusion of specific reference to Rule 30(b)(6) among the topics for discussion at the Rule 26(f) conference, and in the
report to the court under Rule 16: This is not needed. At the initial stages of litigation when the Rule 26(f) report is required a party plaintiff will probably not know whether or not a 30(b)(6) depo will be needed. To require a disclosure of a possible future use of a discovery method, 30(b)(6), is not warranted. That would only provide the possibility for the corporation to object and lead to needless additional litigation in the courts.

Second: The Judicial Admissions Concern. Simply stated, this concern is about the truth being told. When the person chosen as the person of authority on a particular subject for a corporation says the color white is white, then the color is white. There is no need to be concerned about the truth, even if it is detrimental to the case for the deponent corporation.

Third: Requiring and permitting supplementation of Rule 30(b)(6) testimony: When the person most familiar with Safety Rule Y of a corporation comes into the deposition and tells us and the world that the purpose and meaning of safety Rule Y is Z, then we and the court should be able to rely upon what is supposed to be the

truthful testimony of the corporation that Rule Y's meaning and purpose is Z. The corporation should have no need to "amend" the authoritative person's answers of the corporation for the corporation as to the purpose and meaning of Rule Y.

Fourth: Forbidding contention questions in Rule 30(b)(6) depositions: Why should a party plaintiff not be allowed to ask the corporation through the person it designates as the person with the authority and knowledge a contention question such as "if employee John Doe who is required to comply with safety rule Y either did or did not do A, B & C to comply with Safety Rule Y, isn't it true that he violated Safety Rule Y"? The corporation does not need 30 days to sit down and craft some obscuring response to this question; that will not help bring litigation to conclusion, but will only lengthen the time it takes to get to the truth (and likely tie up the courts with needless arguments).

Fifth: Adding a provision for objections to Rule 30(b)(6): This is not needed; as mentioned there is a method for the corporation to deal with it already via a request to the court for Protection against abuse of the discovery. But, I am not sure how it is abusive to tell a corporation that I want it to produce the person with the most knowledge about Rule Y to come tell me all about Rule Y and its application to the facts of the case.

Sixth: Amending the rule to address the application of limits on the duration and number of depositions as applied to Rule 30(b)(6) depositions: There is no need to limit either the "duration" or the number of depositions needed under 30(b)(6). If the plaintiff wants to know about Corporation's Rules A to Z, then the corporation knows and chooses who it wants to come tell the plaintiff about Rules A to Z and the how they might apply to the facts of the particular case; if it chooses 10 different people, then the plaintiff or party noticing the depo (could by corp vs. corp) should be allowed to depose those persons to find out all about Rules A to Z and how they might apply to the facts of the case. There is no need to limit a party's ability to this 30(b)(6) discovery tool.