

From: William D. Sanders
To: RulesCommittee Secretary
Subject: RE: Rule 30(b)(6)
Date: Thursday, March 16, 2023 10:57:08 AM

23-CV-I

Further to my email below and telephone conversation this morning with Staff Attorney Alison Bruff, Esq., I would like the Advisory Committee to formally consider an amendment to Rule 30(b)(6) that would provide as follows with my proposed language highlighted:

“In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. **As part of the deponent’s duty to confer in “good faith”, it shall identify the witness or witnesses who will testify as to each of the matters for which testimony is sought in the Notice of Deposition at least seven days prior to the deposition. Such identification shall include the name and business address of the witness, and position held within the deponent organization.** This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.”

For “belt and suspenders” purposes, and because interrogatories are often used to inquire as to the identification of “persons with knowledge,” etc., I also propose a cognate amendment to Rule 33(a) to add the following as subsection (3):

“(3). An interrogatory may inquire as to the identification of any witness for whom a deponent is required to make a designation for testimony pursuant to a Notice of Deposition issued pursuant to Rule 30(b)(6) and

the time for response to such interrogatory shall be governed by the time for such identification pursuant to Rule 30(b)(6).”

Thank you very much for your consideration. Please let me know if you need any further information.

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From: William D. Sanders
Sent: Wednesday, March 15, 2023 5:59 PM
To: RulesCommittee_Secretary
Subject: Rule 30(b)(6)

I recently noted the following apparent *hiatus* in Rule 30(b)(6) as to the designation of organizational representatives for deposition testimony. I note the Committee’s work in achieving the 2020 Amendments that require a “meet and confer” prior to the deposition. The gap in the Rule that persists, at least in my view, is that there is *no* requirement for the party from whom testimony is sought, or non-party if a subpoena is used, as to *when* the designation of witness/disclosure of her/his identify must actually be made, and such designation should be disclosed, in relation to either the timing of the “meet and confer” session or the actual deposition itself. Simply stated, I do not see a requirement that the identity of the designated witness must be disclosed at *any* time prior to the deposition itself. Was this issue discussed at all during the last ‘cycle’ that produced the 2020 Amendments? In looking at the Advisory Committee Notes and excerpts of its Reports online, I did not see a reference to this specific issue.

If it is worthy of further consideration, please let me know the most appropriate way to place it before the Committee for such. Please feel free to contact me if you have any questions or suggestions. Thank you.

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