



Civil Rule 30(b)(6)

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I write to support the following amendments to Civil Rule 30(b)(6):

- **Allow for pre-deposition objections to topics.** The practice of allowing pre-deposition objections to Rule 30(b)(6) topics is common in modern practice because it is more efficient for the parties and avoids the wasted expense of unnecessary motions for protective orders or reopening depositions based on previously-undisclosed disputes about what is within the scope of a topic. The Committee should propose amendments to require pre-deposition objections, including providing that any objection as to the scope of the topic or the meaning of words in the topic must be raised prior to the deposition.
- **Provide for expedited pre-deposition rulings on motions to compel.** To avoid disruption of case schedules because of objections to Rule 30(b)(6) deposition notices, the Rules should set a presumptive timeframe that a Rule 30(b)(6) notice should be issued at least 28 days in advance of the deposition date absent consent or a motion to shorten time; that objections are due 14 days prior to the deposition date; and that any motion to compel or for a protective order should be filed 7 days prior to the deposition date absent an order modifying these times.
- **Clarify how number and time default rules apply to Rule 30(b)(6) depositions.** Rule 30(b)(6) depositions are generally much more efficient ways of getting discovery from an organization than noticing multiple individual depositions. There is also the risk that parties will game the system by trying to cram the most important topics into one day. The Rules should explicitly state that: (1) A Rule 30(b)(6) deposition by default should last for one day of seven hours per corporate representative, but leave should freely be granted for additional time if it would result in more efficient discovery; and (2) A Rule 30(b)(6) deposition should count as one deposition for the purposes of the presumptive limit on numbers of depositions, regardless of the number of corporate representatives.
- **Clarify how Rule 30(b)(6) applies to non-party subsidiaries and parent companies.** A frequent and salutary use of Rule 30(b)(6) is to obtain deposition testimony from organizations about their operations overseas (or otherwise beyond the subpoena power of the court). Rule 30(b)(6) or the Advisory Committee Notes should be amended to state that "information known or reasonably available to the organization" includes information which the party could reasonably obtain from persons or entities under its control.
- **Clarify that statements by a corporate representative are statements of a party-opponent, but not binding (absent a Rule 37 sanction for nondisclosure).** This point is frequently litigated, and in the heat of a trial often leads to erroneous rulings and unnecessary appeals. Codifying this as a rule would avoid that by making it clearer.
- **Clarify responding through written answers.** Because of the limit on interrogatories, parties frequently sue Rule 30(b)(6) depositions to ask about matters that could just as easily be dealt with in writing, and for which oral testimony is unnecessary. Rule 30(b)(6) should be amended to state that a Rule 30(b)(6) notice may include questions for which written answers are sought, while reserving the right to ask follow-up questions at deposition if necessary.
- **Clarify Rule 30(b)(6) depositions of non-parties via a Rule 45 subpoena.** Rule 45 should be amended to explicitly permit Rule 30(b)(6) depositions of non-parties via subpoena, and should clarify that a single subpoena can list separate dates for production of documents and for the deposition.
- **Clarify that Rule 30(b)(6) applies to unincorporated businesses.** Where a business - even a one-person business - is incorporated or otherwise organized as a distinct entity, Rule 30(b)(6) applies. However, a

complication may occur with unincorporated sole proprietorships (which remain common in states such as New York where it is expensive to form a domestic LLC or register a foreign LLC to do intrastate business). The rule should be amended to state that an “entity” includes unincorporated businesses for the purpose of Rule 30(b)(6).

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