Proposed Changes to FRCP Rule 30(b)(6)
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17-CV-GGG

Dear Rule Committee Members:

I am writing in response the Advisory Committee on Civil Rules Rule 30(b)(6) Subcommittee's Invitation for Comment on Possible Issues Regarding Rule 30(b)(6). I am an attorney admitted to practice in all three federal district courts in Alabama, and in my nineteen years of practice, I have represented both employers and employees in claims brought under the federal anti-discrimination laws. In almost every case I have handled, there has been a deposition taken pursuant to Rule 30(b)(6). It is not unusual for the rule to be the only vehicle to obtain testimony about a company's defenses and/or reasons for its actions challenged in the case (termination, demotion, etc.). I am writing because I am concerned that the changes suggested by the Subcommittee would hinder and burden litigation rather than improve current practice under Rule 30(b)(6).

Several of the proposed changes would catalyze expensive and time-consuming motion practice (further burdening our courts which are trying to rebound from the backlog created by numerous judicial vacancies). Further, the changes would encourage gamesmanship from the larger firms that have the time and resources to apply litigation strategies to delay, bog-down and spread thin counsel representing individuals. The attorneys representing individuals typically come from solo or small firm practices. The proposed changes appear to create numerous opportunities for unproductive litigation behavior.

In my practice, I have not run into a problem where clarification of Rule 30(b)(6) testimony should be treated as a judicial admission was necessary. To open the door to clarify an issue that does not appear to need clarifying would, as noted above, lead to unnecessary gamesmanship. Rather, the Rule in its current state allows courts to address this issue, when necessary, on a case-by-case basis, allowing for results tailored to the case. Because this issue concerns the interplay between Rule 30(b)(6) and certain provisions of the Federal Rules of Evidence, if there is any discussion necessary, it would be appropriate to refer it to the Advisory Committee on Rules of Evidence for its review and analysis before proceeding further.

Already there is a problem with companies not fully preparing a 30(b)(6) deponent for key topic areas. Allowing for supplementation of 30(b)(6) testimony would not only perpetuate that problem, but magnify it because it would allow party companies an opportunity to hear all the evidence before formulating its own testimony. The proposed change would encourage wasteful forms of gamesmanship, such as intentionally failing to prepare witnesses or introducing sham testimony. The change would give an unfair advantage to corporate parties over individual parties who could not supplement their

testimony.

The suggested change precluding contention questions would create a double standard for parties. It is common for contention questions to be posed in the depositions of individual parties. To allow corporate deponents immunity from those same forms of questions would unfairly impose a discovery restriction on individual litigants, but not organizational parties.

With respect to the provision for objections to a 30(b)(6) notice, this would create a situation where companies felt obligated to object to almost every topic out of an abundance of caution to avoid waiver of an objection. This would lead to more motion practice to resolve the objections, further burdening the court and increasing litigation costs. This proposal runs contrary to the spirit and letter of Rule 1.

Do not hesitate to contact me if you would like me to elaborate or provide examples on any of the points raised above.

Sincerely,

Heather Leonard

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