Comments to changes to Rule 30(b)(6) 17-CV-JJJJ
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From: Matt Davis <matt@gallagherdavis.com>
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Dear Rule 30(b)(6) Subcommittee of the Advisory Committee on Civil Rules:

I am writing about proposed changes to the Rule 30(b)(6) deposition procedures. I do not believe the changes as proposed serve the interests of fairness and justice.

I have been licensed to practice law since 2005. Since that time I have practiced civil litigation representing plaintiffs in state and federal courts. I am license to practice in the U.S. District Courts for the Eastern and Western Districts of Missouri and the Northern and Southern Districts of Illinois. I regularly try cases and take depositions, including depositions of corporate representatives. I also from time to time practice in other jurisdictions appearing *pro hac vice*.

Individual plaintiffs already have a huge hill to climb in order to utilize their constitutional rights under the 7th Amendment of the Constitution to redress wrongdoing by corporate defendants. A key component to a fair jury trial is the discovery process. These changes are an attempt to allow corporations and large organizational defendants to hide key information that would otherwise come to light through discovery. This would greatly hinder an individual plaintiff's right to present evidence in civil cases.

The proposal to require discussion of Rule 30(b)(6) depositions at the Rule 26(f) meeting and Rule 16 conference is unnecessary. It does not serve to streamline discovery but will only lead to additional costly and time consuming discovery disputes later in the process. Rule 30(b)(6) depositions are generally only taken after initial disclosures and routine written discovery is conducted. This allows a 30(b)(6) deposition to be streamlined based upon the documents produced or perhaps avoided all together if the corporate defendant responds fully to written discovery. This proposal, while perhaps designed to make corporate defendant depositions more efficient, will have the opposite effect. Instead, plaintiffs will be forced to speculate on the topics for discovery necessary in a 30(b)(6) deposition because they will need to identify every possible topic early on or run the risk of losing the opportunity to take a deposition on a unidentified topic. In addition, this rule will also serve as an unfair advantage to corporate defendants who will be able to force plaintiff's counsel into revealing trial strategy at the earliest stages of litigation.

Two other troubling aspects of the proposed changes deal with admissions by an entity at a Rule 30(b)(6) deposition and the ability of a 30(b)(6) deponent to supplement testimony. This represents an unprecedented alteration of the rules of civil procedure and evidence. Why should corporate witnesses be allowed to give deposition testimony in a way that shields them from being held to their sworn testimony? More so than any other witness, Rule 30(b)(6) deponents should understand the consequences of their testimony at such a deposition and have the ability to be well prepared. The corporate entity and their lawyers get to know the topics of the deposition in advance and get to choose the person on persons most knowledgable to answer the deposition questions. There is no need to shield corporate defendants from the consequences of their testimony under oath other than to give an unfair advantage to corporations interested in shielding courts from the truth.

The same can be said of the proposed rules that forbid contention questions, allow pre-deposition objections and adding numerical limitation on Rule 30(b)(6) depositions. While proponents of these rule changes may argue that they are necessary to rein in costs of litigation, the truth is, the rules currently in place are designed to deal with any of alleged abuses of the discovery process.

Rule 30(b)(6) works extremely will and does not need to be changed. Instead it should be safeguarded as an important and efficient means of conducting meaningful discovery that protects the constitutional protections of a right to a civil trial. The proposed changes are only designed to obscure and obstruct individual civil plaintiffs. The proposed changes should be rejected.

Sincerely,

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