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Submitted via e-mail:
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I write as a small firm practitioner who uses 30(b)(6) in most cases and have done so with little incident for well over twenty years. I have also written articles on the rule, including a 2015 article co-authored with defense counsel and published by the ABA.

I wish to particularly focus on two areas of proposed amendment of the rule: contention questions and objections to 30(b)(6) designations. While none of the proposed alterations to the rule are justified by any data I have seen, nor by my experience with use of the rule, these two proposals strike at the utility of the rule.

Forbidding contention questions in Rule 30(b)(6) depositions would unfairly impose a discovery restriction on individual litigants, but not organizational parties. While the Subcommittee is correct that parties have much more time to respond to contention interrogatories, corporate defendants often ask plaintiffs numerous contention questions during their deposition (e.g., "What support do you have for your claim that you suffered discrimination?"). Allowing these types of questions to be asked of plaintiffs, but not defendants, would tilt the scales in favor of one party to the litigation, without any principled justification. Whether a Rule 30(b)(6) witness may be asked to express an opinion or contention depends on the circumstances and should not be the subject of rulemaking. *See U.S. v. Taylor*, 166 F.R.D. 356, 363 (M.D.N.C. 1996) ("Whether a Rule 30(b)(6) deposition or a Rule 33(c) contention interrogatory is more appropriate will be a case by case factual determination.") .

Furthermore, in my practice the issue is most commonly raised as an objection by an employer/defendant when asked to produce a designee to testify as to the basis for an affirmative defense, such as plaintiff's failure to mitigate. However, affirmative defenses are raised in a pleading (the defendant's answer) filed with the Court. Defendants – like Plaintiffs – are required to have a good faith, factual basis for every claim or defense asserted. Why should the Plaintiff be precluded from using the most efficient and effective means to discover the factual basis for the affirmative defenses the employer/defendant has pled?

Injecting a formal objection process into Rule 30(b)(6) is problematic for a number of reasons. The 30(b)(6) deposition is often the first deposition taken in the case. Encouraging formal objections will create more motion practice at the start of the discovery process, causing delays that will prevent any productive discovery from being conducted. Further, the additional suggestion of requiring the objecting party to specify what information they will provide despite their objection would do little to resolve this issue. Indeed, this would require that a party sit for multiple

depositions—one on the topics they have agreed to, and a second after the court rules on an inevitable motion to compel regarding the topics to which they object. These types of inefficiencies can be avoided by leaving the rule as it stands, and allowing the organization to move for a protective order if the proposed notice truly is objectionable. There has been no showing that the few motions for protective orders that may have been filed have been incorrectly decided, and there is no reason to assume that motions for protective orders are not an adequate remedy for a truly abusive notice.

More broadly, this proposal runs contrary to the mandate of Rule 1, as well as the overall direction the Advisory Committee on Civil Rules has taken in recent years, seeking to reduce expense and to improve efficiency. If this provision were enacted, it is probable that a majority of noticed Rule 30(b)(6) depositions would face objection and require court involvement, whereas now almost none of them do. It would increase the workload of already overburdened district court judges, clerks, and staff, and because rulings on such objections would be linked so closely to the particular circumstances of a given case, they would not provide useful guidance in other cases. This would be particularly true if the 30(b)(6) deposition at issue was the first one in the case. Neither the court, nor the litigants, would have a clear conception of how the case may develop, yet the court would be required to make substantive decisions that could be highly consequential to the proceedings. I urge the Advisory Committee to leave rule 30(b)(6) alone, but to be particularly wary of these two proposed changes.

Very Truly Yours,

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