SEYFARTH SHAW

Seyfarth Shaw LLP
400 Capitol Mall
Suite 2350
Sacramento, California 95814-4428
(916) 448-0159
fax (916) 558-4839
www.seyfarth.com

17-CV-YYYY

Writer's direct phone
(916) 498-7025

Writer's e-mail
jyap@seyfarth.com

August 1, 2017

VIA EMAIL: Rules_Comments@ao.uscourts.gov

Committee on Rules of Practice and Procedure
Advisory Committee on Civil Rules
Rule 30(b)(6) Subcommittee
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E., Suite 7-240
Washington, DC 20544

Re: Seyfarth Shaw LLP's Public Comment On Needed Reform To Rule 30(b)(6)

In response to the Rule 30(b)(6) Subcommittee of the Advisory Committee on Civil Rules (the "Committee") May 1, 2017 Invitation for Comment on Possible Issues Regarding Rule 30(b)(6), Seyfarth Shaw LLP[1] ("Seyfarth Shaw") respectfully submits this Comment.

Seyfarth Shaw is a law firm with more than 850 attorneys and 14 full-service offices in the United States and internationally. We have experienced, firsthand, the significant burdens imposed by current practice under Rule 30(b)(6), which often fails to promote the just, speedy, and inexpensive resolution of pending litigation contemplated by the Federal Rules. As such, Seyfarth Shaw supports the Committee's serious consideration of changes to Rule 30(b)(6) that would move this discovery procedure closer in line with the concepts of cooperation and proportionality advanced in the 2015 discovery amendments.

This Comment proposes two areas in need of reform and guidance from the Committee. First, Rule 30(b)(6) should be amended to include presumptive limits on the number of topics covered in a deposition, on the scope of those topics, and on the number of deposition hours. Second, Rule 30(b)(6) should be amended to provide a 30-day notice period and an objection process similar to that provided in Rule 45. We believe these amendments would significantly

[1] This submission—from members of Seyfarth Shaw's Labor & Employment and Litigation departments—is a joint effort of practitioners from our group, including Alex Meier, Gina Merrill, Ryan Swindall, and Esther Slater McDonald.

improve Rule 30(b)(6) practice by providing much needed guidance and transparency to an area that too often creates significant costs and burdens due to procedural ambiguity.

I. Rule 30(b)(6) Should Be Amended To Include Presumptive Limits

Limits regarding the number and scope of topics are particularly important, because case law is divided on whether an organization's representative witness can be forced to answer questions beyond the scope of the deposition notice,[2] and requesting parties often seek to punish responding organizations and their counsel for being insufficiently prepared.[3] Disputes over the

---

[2] *Crawford v. Franklin Credit Mgmt. Corp.*, 261 F.R.D. 34, 38 (S.D.N.Y. 2009) (the stated areas of inquiry are the "minimum" about which the designated representative must speak, not the "maximum"); *Employers Ins. Co. of Wausau v. Nationwide Mut. Fire Ins. Co.*, No. CV 2005-0620(JFB)(MD, 2006 WL 1120632, at *1 (E.D.N.Y. Apr. 26, 2006) (scope of questions to 30(b)(6) witness is not defined by the notice but by Rule 26(b)(1)); *Green v. Wing Enters., Inc.*, No. 1:14-CV-01913- RDB, 2015 WL 506194, at *8 (D. Md. Feb. 5, 2015) (the scope of examination at a 30(b)(6) deposition is not limited to the areas of inquiry in the notice, but only by the scope of discovery under Rule 26, though answers to questions beyond the scope of the enumerated areas are individual testimony, not corporate testimony); *Fed. Trade Comm'n v. Vantage Point Servs., LLC.*, No. 15-CV-6S(SR), 2016 WL 3397717, at *2 (W.D.N.Y. June 20, 2016) (a 30(b)(6) witness may provide individual testimony about additional relevant topics, with the caveat that unless the witness is also an officer or managing agent of the firm, that testimony should not normally be considered to be offered on behalf of the corporation). *But see Soroof Trading Dev. Co. v. GE Fuel Cell Sys., LLC*, No. 10 CIV. 1391 LGS JCF, 2013 WL 1286078, at *4 (S.D.N.Y. Mar. 28, 2013) (party must notice deposition of witness personally and separately from 30(b)(6) notice if it seeks testimony in the witness's personal capacity); *E.E.O.C. v. Freeman*, 288 F.R.D. 92, 99 (D. Md. 2012) (questions beyond scope do not bind the company at all); *New Jersey Mfrs. Ins. Group. v. Electrolux Home Prod., Inc.*, No. CIV. 10-1597, 2013 WL 1750019, at *3 (D.N.J. Apr. 23, 2013) (duty to prepare a witness is "limited to information called for by the deposition notice"); *State Farm Mut. Auto Ins. Co. v. New Horizont, Inc.*, 250 F.R.D. 203, 216 (E.D. Pa. 2008) ("If a Rule 30(b)(6) witness is asked a question concerning a subject that was not noticed for deposition . . . the witness need not answer the question."); *King v. Pratt & Whitney, a Div. of United Techs. Corp.*, 161 F.R.D. 475, 476 (S.D. Fla. 1995) (if the examining party asks questions outside the scope of the matters described in the notice and if the deponent does not know the answer to questions outside the scope of the notice that is the examining party's problem).

[3] *See e.g.*, *QBE Ins. Corp.*, 277 F.R.D. at 700 (barring a company from testifying at trial on any matters on which the company's selected deponent had been unable or unwilling testify); *State Farm Mut. Auto. Ins. Co.*, 250 F.R.D. at 217 (compelling additional testimony and granting monetary sanctions where a company failed to adequately prepare its designated representative for deposition); *Wausau Underwriters Ins. Co.* 310 F.R.D. at 687 (barring a company from testifying at trial on any matters on which the company's selected deponent had been unable or unwilling testify); *Martin Cty. Coal Corp.*, 2010 WL 4629761 at *12 (threatening sanctions where a deponent was "unprepared"); *Clapper v. Am. Realty Investors, Inc.*, No. 3:14-CV-2970-D (N.D. Tex. Nov. 9, 2016) (requiring a second deposition, at the deponent company's expense, where the deponent was unfamiliar with several areas of inquiry) (citing *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 433 (5th Cir. 2006)). Taken together, this has the possible effect of requiring companies and their counsel to waste time and resources over-preparing a deponent to respond to inquiries that lack specificity in order to avoid later claims of and sanctions for inadequate preparation. *See e.g.*, *Crawford*, 261

sufficiency of witnesses preparation will be reduced by limiting the number and scope of topics that a Rule 30(b)(6) designee must prepare for and address. In addition, presumptive limits will facilitate cooperation, early case management and proportionality, and encourage both parties to identify and disclose the information actually required to prosecute or defend the litigation.

A. Rule 30(b)(6) Should Be Amended To Include A Presumptive Limit On The Number Of Topics That Can Be Covered In The Deposition.

Rule 30(b)(6) currently contains no limitation on the number of topics that may be covered during the deposition of a corporate representative. Counsel in their discretion are free to propound as many topics as they see fit, which regularly results in deposition notices throwing in everything (including the kitchen sink) as a potential deposition topic. Notices with more than 50 topics are common.[4]

With no restriction on the number of topics—and since the burden of responding falls entirely on the noticed party—a requesting party has, if anything, a disincentive to leave any topic of potential interest outside the notice.

Such wide-ranging 30(b)(6) depositions impose significant burdens without regard to proportionality. And the burdens imposed by wide-ranging notices are indeed significant: responding parties are required to investigate all factual aspects of each topic, designate one or more witnesses to speak to all aspects of each topic, and educate witnesses about relevant documents and facts that they do not already know.[5] The process of investigation alone can involve reviewing and

---

F.R.D. at 38 ("[A] notice of deposition . . . constitutes the minimum, not the maximum, about which a deponent must be prepared to speak.")

[4] *See, e.g.*, *Mondares v. Kaiser Found. Hosp.*, No. 10-CV-2676-BTM WVG, 2011 WL 5374613, at *1 (S.D. Cal. Nov. 7, 2011) (220 topics); *Nester v. Textron, Inc.*, No. A-13-CV-920 LY, 2014 WL 12631817, at *1 (W.D. Tex. Dec. 5, 2014) (110 topics); *Kingery v. Quicken Loans, Inc.*, No. 2:12-cv-01353, 2014 WL 1017180, at *1 (S.D. W. Va. Mar. 14, 2014) (93 topics); *Furminator, Inc. v. Munchkin, Inc.*, No. 4:08CV00367 ERW, 2009 WL 1176285, at *1 (E.D. Mo. May 1, 2009) (at least 85 topics); *Lenard v. Sherwin-Williams Co.*, No. 2:13-CV-2548 KJM AC, 2015 WL 854752, at *3 (E.D. Cal. Feb. 26, 2015) (more than 80); *Hoffman v. L & M Arts*, No. 3:10-CV-0953-D, 2013 WL 655014, at *1 (N.D. Tex. Feb. 21, 2013) (80 topics).

[5] *Starline Windows Inc. v. Quanex Bldg. Prod. Corp.*, No. 15-CV-1282-L (WVG), 2016 WL 4485564, at *2 (S.D. Cal. July 21, 2016) ("The rule requires the corporation to identify the relevant documents from its records and use those documents to educate a prepared witness who can state the corporation's knowledge on the topic."); *Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539 (D. Nev. 2008) ("[A] corporation has 'a duty to make a conscientious, good-faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unevasively answer questions about the designated subject matter.'") (citation omitted); *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C.1996) (a corporation is required to prepare "its Rule 30(b)(6) designee to the extent the matters are reasonably available, whether from documents, past employees, or other sources"); *United States v. Mass. Indus. Fin. Agency*, 162 F.R.D. 410, 412 (D. Mass. 1995) (rejecting corporations' arguments that it was not

analyzing reams of documents and data, and interviewing numerous company representatives to discern who has relevant information. Because the company's designee must be able to testify comprehensively—or risk sanctions to the company—the task of compiling and learning the full scope of responsive information can take weeks.[6]

The same concerns that led the advisory committee to impose a numerical limit on interrogatories apply equally here. Before Rule 33 imposed a 25-question limitation, including subparts, litigants could and did send breathtakingly expansive requests that often reached into triple digits.[7] To streamline discovery and minimize needless burden, the advisory committee imposed a numerical limitation.

The same logic applies with even greater force here because, unlike interrogatories, document requests and other forms of written discovery, which are prepared by attorneys and may be answered over time, a 30(b)(6) deposition requires educating a layperson so that, over the course of several hours, the designee can provide answers that are potentially binding on the corporation. The "one-time" nature of a deposition, coupled with the inherent decrease in precision that comes with an oral answer to an oral question, rather than a written answer to a written question, further supports that a numerical limitation on 30(b)(6) topics is appropriate.

The presumptive limit should be no higher than 10, unless the parties or the court determine that additional areas of inquiry are necessary.

B. Rule 30(b)(6) Should Clarify That Topics Must Be Reasonable In Scope And Proportional To The Needs Of The Case.

In addition to presumptive limits on the number of topics, Rule 30(b)(6) should make clear that topics must be reasonable in scope and proportional to the needs of the case. "Reasonable particularity" currently serves as the only substantive gatekeeper for Rule 30(b)(6) notices, but courts have interpreted the requirements of "reasonable particularity" quite differently. Some courts have interpreted the standard to require that topics be reasonable in scope, and those courts have quashed notices where the corporation "could not reasonably designate and properly prepare a

---

required under Rule 30(b)(6) to educate its witness about actions taken by former employees of the corporation).

[6] *See FDIC. v. Amos,* No. 3:12CV548/MCR/EMT, 2014 WL 12516260, at *7 (N.D. Fla. May 30, 2014) (acknowledging topics required representative to sort through thousands of documents to prepare to testify on noticed topics); *State Farm Mut. Auto Ins. Co.*, 250 F.R.D. at 207-08 (permitting 30(b)(6) deposition although case involved thousands of documents and "no witness or series of witnesses can know each one of the documents");

[7] *See, e.g., Breeland v. Yale & Towne Mfg. Co.*, 26 F.R.D. 119, 120 (E.D.N.Y. 1960) (more than 200, including subdivisions); *Frost v. Williams*, 46 F.R.D. 484, 485 (D. Md. 1969) (200 interrogatories); *McLaughlin v. Fellows Gear Shaper Co.*, 102 F.R.D. 956, 959 (E.D. Pa. 1984) (112 interrogatories, "with additional hundreds of subparts"); *In re Shopping Carts Antitrust Litig.*, 95 F.R.D. 299, 301 (S.D.N.Y. 19782) (56 interrogatories equaling 191 questions, including subparts).

corporate representative to testify on its behalf with respect to this broad line of inquiry."[8] Other courts, however, have interpreted the "reasonable particularity" requirement to "merely require[] that the requesting party describe topics with enough specificity to enable the responding party to designate and prepare one or more deponents."[9] This interpretation gives license to aggressive counsel to propound topics of unlimited breadth and scope, as long as the topics are articulated with specificity.

C. Rule 30(b)(6) Depositions Should Be Subject To A Presumptive Seven-Hour Limit.

The Rule 30(b)(6) advisory committee notes provide: "For purposes of this durational limit, the deposition of each person designated under Rule 30(b)(6) should be considered a separate deposition."[10] Based on this note, several courts have allowed multiple 30(b)(6) depositions, each for the presumptive limit of seven hours provided by Rule 30(d), on the basis that the clock "resets" each time a different corporate designee is deposed on different topics.[11]

The current rule and advisory committee notes thereby penalize a corporation for designating multiple 30(b)(6) witnesses and incentivizes corporate litigants to cram relevant knowledge into a single witness, even if it might be more efficient to designate different representatives to address different topics based on their experience and expertise with the corporation.

Rule 30(b)(6) depositions should be subject to the presumptive seven-hour limit that applies to other depositions, even if multiple witnesses are designated in response to the notice. If a more extensive 30(b)(6) deposition is required in a particular case, the deposing party may seek leave of court to enlarge the deposition, just as parties may currently seek additional time for fact witness depositions if warranted by the circumstances.

---

[8] *See, e.g., Murphy v. Kmart Corp.*, 255 F.R.D. 497, 506 (D.S.D. 2009) (refusing to enforce 30(b)(6) notice covering "a tremendous amount of information").

[9] *See, e.g., Nippo Corp./Int'l Bridge Corp. v. AMEC Earth & Envtl., Inc.*, No. CIV.A. 09-CV-0956, 2010 WL 571771, at *2 (E.D. Pa. Feb. 12, 2010); *see also Janko Enters., Inc. v. Long John Silver's, Inc.*, No. 3:12-CV-345-S, 2014 WL 11152378, at *3 (W.D. Ky. Apr. 3, 2014).

[10] Fed. R. Civ. P. 30 (2000 advisory committee notes).

[11] *Am. Home Assur. Co. v. Greater Omaha Packing Co.*, No. 8:11CV270, 2013 WL 4875997, at *1 (D. Neb. Sept. 11, 2013); *Patterson v. N. Cent. Tel. Co-op. Corp.*, No. 2:11-0115, 2013 WL 5236645, at *4 (M.D. Tenn. Sept. 17, 2013); *see also In Re Rembrandt Tech.*, No. 09-CV-00691-WDM-KLM, 2009 WL 1258761, at *14 (D. Colo. May 4, 2009) (holding "[a] blanket rule permitting a seven-hour deposition of each designated deponent is unfair" because it rewards overly broad, cumulative deposition notices).

II. Rule 30(b)(6) Should Be Amended To Include A Notice Requirement & Objection Process

Rule 30(b)(6), in its current form and in contrast to rules governing document requests and subpoenas, does not provide a clear framework for when depositions must be noticed or how a party may object to the notice.[12] Rather, district courts have created or endorsed different avenues for a party to protect itself from problematic Rule 30(b)(6) notices. For example, some courts have concluded that the only mechanism to challenge an overbroad or otherwise inappropriate Rule 30(b)(6) notice is through a motion for protective order because there is no objection procedure.[13] Under this avenue, the recipient must raise its disputes regarding the notice with the court before the deposition occurs,[14] and cannot, without facing the prospect of sanctions, refuse to provide the requested testimony at the deposition.[15]

---

[12] *Cf. New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 242 F.R.D. 164, 165-66 (D. Mass. 2007) ("[T]here is no provision in the rules which provides for a party whose deposition is noticed to serve objections so as to be able to avoid providing the requested discovery until an order compelling discovery is issued... Put simply and clearly, absent agreement, a party who for one reason or another does not wish to comply with a notice of deposition must seek a protective order."); *Bregman v. Dist. of Columbia*, 182 F.R.D. 352, 355 (D.D.C. 1998); *see also Beach Mart, Inc. v. L&L Wings, Inc.*, 302 F.R.D. 396, 405 (E.D.N.C. 2014) ("The proper procedure to object to a Rule 30(b)(6) deposition notice is not to serve objections on the opposing party, but to move for a protective order."); *United Consumers Club, Inc. v. Prime Time Marketing Mgmt. Inc.*, 271 F.R.D. 487, 497-98 (N.D. Ind. 2010) (same).

[13] *See, e.g., New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, 242 F.R.D. 164, 165-66 (D. Mass. 2007)("Unlike the procedure with respect to interrogatories, requests for production of documents and requests for admissions, there is no provision in the rules which provides for a party whose deposition is noticed to serve objections so as to be able to avoid providing the requested discovery until an order compelling discovery is issued.").

[14] *Robinson*, 2013 WL 1776100, at *3 ("once a Rule 30(b)(6) deposition notice is served, the corporation bears the burden of demonstrating to the court that the notice is objectionable or insufficient. Otherwise, the corporation must produce an appropriate representative prepared to address the subject matter described in the notice.")(emphasis original); *Int'l Bhd. of Teamsters, Airline Div. v. Frontier Airlines, Inc.*, No. 11-CV-02007-MSK-KLM, 2013 WL 627149, at *6 (D. Colo. Feb. 19, 2013)("filing a pre-deposition motion is the appropriate course of action."); *see also Espy v. Mformation Techs., Inc.*, 2010 WL 1488555, at *3 (D. Kan. Apr. 13, 2010) (same); *Knowledge A-Z, Inc. v. Jim Walter Res., Inc.*, 2008 WL 2600167, at *2 (S.D. Ind. June 25, 2008) (same).

[15] *New England Carpenters*, 242 F.R.D. at 166 ("What is not proper procedure is to refuse to comply with the notice, put the burden on the party noticing the deposition to file a motion to compel, and then seek to justify non-compliance in opposition to the motion to compel."); *William Beaumont Hosp. v. Medtronic, Inc.*, No. 09-CV-11941, 2010 WL 2534207, at *4-5, 9 (E.D. Mich. June 18, 2010) (granting sanctions when defendant objected to topic, did not prepare witness on topic, but moved for a protective order only shortly after depositions on agreed topics).

Other courts have concluded that it must not involve the court prior to the deposition.[16] These courts find motions for protective order to be generally improper for addressing disputes with a Rule 30(b)(6) deposition notice,[17] with some courts going so far as to declare motions for protective orders entirely inapplicable to relevance and overbreadth objections.[18] Instead, under this avenue, courts advise that the responding party should assert objections to the notice, proceed with the deposition, and either provide the requested information despite the objections or refuse to do so and the issue in the context of a motion to compel.[19]

Moreover, courts also disagree about whether "undue burden or expense" is equivalent to "overly broad/unduly burdensome," creating an asymmetry between potential objections and moving for a protective order.[20] Accordingly, the lack of clarity creates confusion not only about

---

[16] *See, e.g., F.D.I.C. v. Brudnicki*, No. 5:12–CV–00398–RS–GRJ, 2013 WL 5814494, at *2 (N.D. Fla. Oct. 29, 2013)("The proper operation of [Rule 30(b)(6)] does not require a process of objection and court intervention prior to the deposition regarding disputed topic designations."); *New World Network Ltd. v. W/V Norwegian Sea*, No. 05-22916-CIV, 2007 WL 1068124, at *4 (S.D. Fla. Apr. 6, 2007)("the proper operation of the Rule does not require, and indeed does not justify, a process of objection and Court intervention prior to the schedule[d] deposition.").

[17] *See McMillan v. Dep't of Corrs.*, No. 5:13-CV-292-WS-GRJ, 2015 WL 5169214, at *3 (N.D. Fla. Sept. 3, 2015)("Defendants' motion for protective order is not well-taken because it reflects a fundamental misunderstanding regarding the purpose of a Rule 30(b)(6) deposition and the Court's role in resolving disputes arising in connection with such depositions."); *Salzbach v. Hartford Ins. Co.*, No. 8:12-CV-01645-T-MAP, 2013 WL 12098763, at *2 (M.D. Fla. Apr. 19, 2013)("a protective order is not the appropriate remedy for deciding relevancy of a topic before a 30(b)(6) deposition.").

[18] *See Lykins v. CertainTeed Corp.*, No. 11-2133-JTM, 2012 WL 3542016, at *4 (D. Kan. Aug. 16, 2012)("because irrelevancy is not one of the enumerated grounds for a protective order under Rule 26(c), this Court has held that the validity of an objection to a Rule 30(b)(6) deposition notice on grounds of overbreadth or irrelevancy should be considered in the context of a motion to compel.")(quotation omitted); *Direct Gen. Ins. Co. v. Indian Harbor Ins. Co.*, No. 14-20050-CIV-COOKE/TORRES, 2015 WL 12745536, at *1 (S.D. Fla. Jan. 29, 2015) ("In situations where a particular noticed topic is alleged to be outside the scope of Rule 26 discovery, . . ., the remedy is also clear and does not involve this Court preemptively reviewing arguments on relevance or overbreadth that may arise in a Rule 30(b)(6) notice[.]")(emphasis original).

[19] *See New World Network*, 2007 WL 1068124, at *4 ("the better procedure to follow for the proper operation of [Rule 30(b)(6)] is for a corporate deponent to object to the designation topics that are believed to be improper and give notice to the requesting party of those objections, so that they can be either resolved in advance or otherwise. The requesting party has the obligation to reconsider its position, narrow the scope of the topic, or otherwise stand on its position and seek to compel additional answers if necessary, following the deposition.")(emphasis original).

[20] *See, e.g., Neponset Landing Corp. v. Nw. Mut. Life Ins. Co.*, 279 F.R.D. 59, 62 (D. Mass. 2011) ("While under some circumstances a protective order may have been the appropriate procedure, this court will not fault [a company] for preserving its objections to certain topics, producing a witness who addressed the large majority of designated topics without objection, and waiting until after the deposition to see if any remaining issues could be resolved without court intervention.").

the proper procedure for challenging a Rule 30(b)(6) deposition notice, but also about the standard to apply in adjudicating such disputes.

Similarly, Rule 30(b)(6) does not set forth how much notice a party must give an organization prior to the deposition. This omission can create unnecessary disputes among the party regarding reasonable notice and sufficient time to adequately prepare an appropriate witness. Such preparation is of paramount importance due to the complexities involved with a 30(b)(6) deposition. However, in the absence of a clear rule, courts have taken varying approaches to what length of time is considered "reasonable."[21]

Rule 30(b)(6) should be amended to provide a uniform procedure for noticing a Rule 30(b)(6) deposition and for raising and resolving objections to such a notice. A 30-day minimum notice requirement would help parties properly prepare their witnesses and avoid potential sanctions that could be imposed if a witness is inadequately prepared.[22] Furthermore, defining the "reasonable notice" timeframe would aid parties and courts in managing and planning for discovery and eliminate the need for motion practice over the issue of whether the deposition notice provided sufficient time for the receiving party to respond and prepare.

The revised rule should adopt an objection and motion to compel procedure like that of Rule 45. Such a rule would provide a structure with which the courts and litigants are already familiar and which would provide the key components needed to challenging a defective Rule 30(b)(6) notice. For example, Rule 45(d)(2) establishes an early deadline for objecting, and it identifies steps available to both sides in the event the parties cannot reach resolution. Applying a similar mechanism to Rule 30(b)(6)—together with a 30-day notice requirement—would improve efficiency by, at very least, eliminating any legitimate disputes and motion practice over when or how challenges to a Rule 30(b)(6) deposition can be made. This process would also allow the parties to move forward with the Rule 30(b)(6) deposition on topics to which no objection is raised while the disputed issues are resolved. Accordingly, the parties could advance litigation where agreement is reached while also ensuring that parties do not need to engage in "contingent preparation" of Rule 30(b)(6) witnesses about topics that may or may not be included in the deposition. Moreover, it is likely that the objection process may lead to negotiation of a mutually acceptable notice and list of topics through the meet and confer process; the objection process would help facilitate communication and cooperation between the parties, consistent with the 2015 discovery amendments.

---

[21] *See, e.g., Paige v. Commissioner*, 248 F.R.D. 272, 275 (C.D. Cal. Jan. 18, 2008) (finding that fourteen days' notice was reasonable); *Jones v. United States*, 720 F. Supp. 355, 366 (S.D.N.Y. 1989) (holding that eight days' notice was reasonable); *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 320, 327 (N.D. Ill. 2005) ("ten business days' notice would seem to be reasonable").

[22] *See Tyler v. City of San Diego*, No. 14-CV-01179-GPC-JLB, 2015 WL 1956434, at *2 (S.D. Cal. Apr. 29, 2015) (reasonable notice is used as a defense against compliance with a 30(b)(6) notice). *See also Gulf Prod. Co. v. Hoover Oilfield Supply, Inc.*, No. CIV.A. 08-5016, 2011 WL 891027, at *2 (E.D. La. Mar. 11, 2011).

III. Conclusion

Seyfarth Shaw appreciates the Subcommittee's recognition of the issues that parties encounter in current practice relating to Rule 30(b)(6) and its invitation to provide comments to help further consideration of amendments to this Rule. As set forth above, we urge the Committee to continue its work in this area and to enact substantive amendments to Rule 30(b)(6) that provide presumptive limitations on the number of topics, the scope of topics, and the number of hours provided in a Rule 30(b)(6) deposition as well as a clear notice and objection process. We believe such amendments would provide greater clarity, transparency, and proportionality in the process and would significantly reduce the costs and burdens associated with current Rule 30(b)(6) practice.

Sincerely,

SEYFARTH SHAW LLP

Julie G. Yap

JGY:ljm