



**COMMENT TO THE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

**THE PROPOSED RULE 30(B)(6) AMENDMENT SHOULD NOT REQUIRE
AN ORGANIZATION TO MEET AND CONFER ABOUT THE “IDENTITY
OF EACH PERSON WHO WILL TESTIFY” ON ITS BEHALF**

June 6, 2018

The International Association of Defense Counsel (“IADC”)¹ respectfully submits this Comment to the Committee on Rules of Practice and Procedure. We strongly urge the Committee not to publish the proposed Rule 30(b)(6) amendment with a requirement that an organization must confer about the “identity of each person who will testify” on its behalf.

The IADC believes that requiring an organization to reveal the name of the deponent speaking for the organization in advance of a Rule 30(b)(6) deposition is highly problematic.

First, such a requirement would invite unprecedented and unfair participation by the noticing party in the selection of the witness. It is well established that a noticing party has no right to dictate a corporate litigant’s Rule 30(b)(6) witness. If the identity of the witness must be disclosed at a required meet and confer, opposing counsel will be incentivized to use this information to gain a litigation advantage. For example, if the witness identified as the corporate deponent has a reputation for connecting well with juries, opposing counsel may seek to replace that person with a less effective deponent. Also, witness identification at the conference may restrict the organization’s flexibility to change the proposed designee.

Second, and relatedly, such an amendment would lead to collateral litigation and augment the already contentious nature of Rule 30(b)(6) depositions. Instead of promoting cooperation the proposed rule would open a new avenue for disagreements and increase litigation costs.

¹ The International Association of Defense Counsel (“IADC”) is an invitation-only, peer-reviewed membership organization of approximately 2,500 of the world’s leading lawyers who primarily represent the interest of defendants in civil litigation. The IADC has been serving its members since the 1920s. Its activities are designed to benefit not only IADC members and their clients, but also the civil justice system and the legal profession.

Third, the proposed amendment would place an unfair burden on a corporate litigant to determine at a meet-and-confer who will testify for the organization. The organization would lack the opportunity to fully vet that selection. This concern is not resolved by the addition of language by the Advisory Committee stating that the requirement may be satisfied on a “continuing as necessary” basis. A perceived delay in a corporate litigant’s witness identification could still be subject to challenge by opposing counsel as violating the amendment’s “good faith” requirement.

Fourth, the highly controversial nature of requiring corporate litigants to confer about the identify of each witness who will testify on their behalf will taint and overshadow potential positive aspects of Rule 30(b)(6) reforms that may merit further consideration.