

Much Ado about Rule 30(b)(6) Depositions

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1. Some Basics

A. “A deposition under Rule 30(b)(6) differs in significant respects from the normal deposition. To begin with, the notice of deposition must ‘describe with reasonable particularity the matters for examination.’” 8A C. Wright, A. Miller, & R. Marcus, *Federal Practice & Procedure* § 2103 (3d ed. 2010). This requirement seeks “to enable the responding organization to identify the person who is best situated to answer questions about the matter, or to make sure that the person selected to testify is able to respond regarding that matter.” *Id.*

B. Rule 30(b)(6) creates obligations on both sides: the side being deposed has an obligation to prepare one or more witnesses to testify, and the side taking the deposition has an obligation to “designate with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute.” *E.E.O.C. v. Thorman & Wright Corp.*, 243 F.R.D. 421, 426 (D. Kan. 2007).

C. “An overbroad Rule 30(b)(6) notice subjects the noticed party to an impossible task. To avoid liability, the noticed party must designate persons knowledgeable in the areas of inquiry listed in the notice.” *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000). Where the deponent “cannot identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible.” *Id.*

D. Rule 30(b)(6) depositions are not intended to be “memory tests” in which a deponent is asked to recall every single detail related to a topic. *Gebremedhin v. Am. Family Mut. Ins. Co.*, No. 113-cv-02813, 2015 WL 4272716, at *10 n.6 (D. Colo. July 15, 2015); *see also Reed*, 193 F.R.D. at 692 (“Although plaintiff has specifically listed the areas of inquiry for which a 30(b)(6) designation is sought...Plaintiff

broadens the scope of the designated topics by indicating that the areas of inquiry will ‘includ[e], but not [be] limited to’ the areas specifically enumerated.”)

E. A measure of specificity tailored to the facts of the case is required when crafting the topics for a Rule 30(b)(6) deposition. *See Thorman & Wright Corp.*, 243 F.R.D. at 426 (Rule 30(b)(6) topics must “designate with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute.”); *Lapenna v. Upjohn Co.*, 110 F.R.D. 15, 21 (E.D. Pa. 1986) (disallowing questions where it was apparent there had been no attempt to tailor them to the facts involved in the case).

2. Clarifying Misnomers Re: the 30(b)(6)

A. A Rule 30(b)(6) deposition is not limited to the subjects identified in the notice. *See Am. Gen. Life Ins. Co. v. Billard*, No. C10-1012, 2010 WL 4367052, at *9 (N.D. Iowa Oct. 28, 2010). Responses to questions outside the scope of listed subjects will not bind the corporation, and counsel has no obligation to prepare corporate representatives on topics not identified. *See McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737, 752 (N.D. Tex. 2017). The answers are treated as the answers of the individual deponent. *Id.*

B. For purposes of the durational limit of one day of seven hours, the deposition of each person designated under Rule 30(b)(6) should be considered a separate deposition. The presumptive duration may be extended, or otherwise altered, by agreement. Absent agreement, a court order is needed. The party seeking a court order to extend the examination, or otherwise alter the limitations, is expected to show good cause to justify such an order. Fed. R. Civ. P. 30, 2000 Amendment; *but see E.E.O.C. v. The Vail Corp.*, No. 07-cv-02035-REB-KLM, 2008 WL 5104811, at *1 (D. Colo. Dec. 3, 2008) (“The Court declines to adopt Plaintiffs' contention here. First, Plaintiffs provide no legal support for their interpretation of this comment. Second, even were the Court to accept Plaintiffs' contention, the Court's preference for a single, seven-hour deposition was clearly conveyed to Plaintiffs at the prior motions hearing, and I do not find that any more than a single, seven-hour deposition is warranted under these circumstances.”)

C. The fact a party has already deposed individuals who would later serve as Rule 30(b)(6) corporate representatives does not preclude a Rule 30(b)(6) deposition involving those same corporate representatives, and vice versa. *See Fed. R. Civ. P. 30(b)(6)* (“This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.”).

D. There is no requirement a Rule 30(b)(6) deposition occur before individual depositions of corporate representatives, and vice versa. *See* Fed. R. Civ. P. 26(d)(3)(A) (“methods of discovery may be used in any sequence”).

E. Legal topics are not completely off-limits in a Rule 30(b)(6) deposition. “Rule 30(b)(6) depositions can be used to develop the deponent's legal contentions; contention interrogatories under Rule 33(a)(2) are usually more appropriate, but the choice between the two must be made on a case-by-case basis.” *Century Sur. Co. v. Smith*, No. 14-CV-00947-RM-MJW, 2014 WL 7666061, at *5 (D. Colo. Jan. 21, 2015) (emphasis in original) (citations omitted).

3. 2020 Amendment

A. Directs the serving party and the named organization to confer before or promptly after the notice or subpoena is served about the matters for examination.

B. Requires that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify.

4. Examples of Problematic Subjects

A. All facts and documents, as well as the identity of all persons with knowledge of facts which support your affirmative defenses.

B. The contents of your claim notes and what these notes mean and how they were entered or changed and why they were entered or changed between the dates of June 25, 2017 through August 25, 2017.

C. All facts and documents supporting your counterclaim including when such facts were learned and how such facts were learned. This topic also includes persons with knowledge of such facts including their current location including address and telephone number.

D. The contents of your claim notes and why such entries were made in your claim notes generally found in Exhibit 1. This includes standards and guidelines given to those making entries in Exhibit 81 as to what information should be placed in claim notes such as Exhibit 81. Limit this to claim notes during the period of June through September 2017 involving this claim. This includes but is not limited to the obligation to make contemporaneous recording and/or notes of conversations relating to a claim and whether you believe it is in compliance with your standards and guidelines to enter notes of phone conversations in one place, and then later insert summaries of those conversations into claim notes in Exhibit 81 and if so, whether it is permissible to destroy the original records of such phone conversations.

E. The identities of all witnesses likely to have knowledge of each of the other topics in this Section.

F. The location, type, name, and contents of all documents likely to contain evidence of each of the other topics in this Section.

5. Fed. R. Civ. P. 30(b)(6)

(6) Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

6. 2020 Amendment

2020 Amendment

Rule 30(b)(6) is amended to respond to problems that have emerged in some cases. Particular concerns raised have included overlong or ambiguously worded lists of matters for examination and inadequately prepared witnesses. This amendment directs the serving party and the named organization to confer before or promptly after the notice or subpoena is served about the matters for examination. The amendment also requires that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify. It facilitates collaborative efforts to achieve the proportionality goals of the 2015 amendments to Rules 1 and 26(b)(1).

Candid exchanges about the purposes of the deposition and the organization's information structure may clarify and focus the matters for examination, and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements. It may be productive also to discuss "process" issues, such as the timing and location of the deposition, the number of witnesses and the matters on which each witness will testify, and any other issue that might facilitate the efficiency and productivity of the deposition.

The amended rule directs that the parties confer either before or promptly after the notice or subpoena is served. If they begin to confer before service, the discussion may be more productive if the serving party provides a draft of the proposed list of matters for examination, which may then be refined as the parties confer. The process of conferring may be iterative. Consistent with Rule 1, the obligation is to confer in good faith about the matters for examination, but the amendment does not require the parties to reach agreement. In some circumstances, it may be desirable to seek guidance from the court.

When the need for a Rule 30(b)(6) deposition is known early in the case, the Rule 26(f) conference may provide an occasion for beginning discussion of these topics. In appropriate cases, it may also be helpful to include reference to Rule 30(b)(6) depositions in the discovery plan submitted to the court under Rule 26(f)(3) and in the matters considered at a pretrial conference under Rule 16.

Because a Rule 31 deposition relies on written questions rather than a description with reasonable particularity of the matters for examination, the duty to confer about the matters for examination does not apply when an organization is deposed under Rule 31(a)(4).