

2 FEDERAL RULES OF CIVIL PROCEDURE

15 consent to testify on its behalf; and it may set out
16 the matters on which each person designated will
17 testify. Before or promptly after the notice or
18 subpoena is served, and continuing as necessary,
19 the serving party and the organization must
20 confer in good faith about the number and
21 description of the matters for examination and
22 the identity of each person the organization will
23 designate to testify. A subpoena must advise a
24 nonparty organization of its duty to make this
25 designation and to confer with the serving party.
26 The persons designated must testify about
27 information known or reasonably available to the
28 organization. This paragraph (6) does not
29 preclude a deposition by any other procedure
30 allowed by these rules.

31 * * * * *

Committee Note

Rule 30(b)(6) is amended to respond to problems that have emerged in some cases. Particular concerns 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, and to continue conferring as necessary, regarding the number and description of matters for examination and the identity of persons who will testify. At the same time, it may be productive to discuss other matters, such as having the serving party identify in advance of the deposition the documents it intends to use during the deposition, thereby facilitating deposition preparation. The amendment also requires that a subpoena notify a nonparty organization of its duty to confer and to designate one or more witnesses to testify. It facilitates collaborative efforts to achieve the proportionality goals of the 2015 amendments to Rules 1 and 26(b)(1).

Candid exchanges about discovery goals and organizational information structure may reduce the difficulty of identifying the right person to testify and the materials needed to prepare that person. Discussion of the number and description of topics may avoid unnecessary burdens. Although the named organization ultimately has the right to select its designees, discussion about the identity of persons to be designated to testify may avoid later disputes. It may be productive also to discuss “process” issues, such as the timing and location 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 rule recognizes that the process of conferring will often be iterative, and that a single conference may not suffice. For example, the organization may be in a position to discuss the identity of the person or persons to testify only after the matters for examination have been delineated. The obligation is to confer in good faith, consistent with Rule 1, and the amendment does not require the parties to reach agreement. The duty to confer continues if needed to fulfill the requirement of good faith. But the conference process must be completed a reasonable time before the deposition is scheduled to occur.

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.