

January X, 2019

Advisory Committee on Civil Rules  
Committee on Rules of Practice and Procedure  
of the Judicial Conference of the United States  
One Columbus Circle, NE  
Washington, D.C. 20544

**Re: Letter from Companies Opposing the Proposed Amendment to Rule 30(b)(6)**

Dear Judge Bates and Members of the Federal Civil Rules Advisory Committee:

We write in opposition to the proposed amendment to Federal Rule of Civil Procedure 30(b)(6) involving both party and non-party organizational representative depositions, which would mandate conferral over topics including “the identity of each person the organization will designate to testify.” Imposing such a requirement would provoke time-consuming and costly new discovery disputes as counsel and courts struggle to square the change with the well-settled and well-grounded law that the responding organization has complete discretion to select the 30(b)(6) witnesses that will speak for the organization. Unfortunately, the Committee’s statement in its proposed advisory note that, under the proposed amendment, the organization would “ultimately” have the right to select its designee will not ameliorate the disruption and imbalance that will result from the imposition of this rule, particularly with respect to non-parties. The clear implication of the proposed amendment is that the party noticing the deposition has the right to influence the choice of the witness(es). Moreover, the addition of a conferral requirement regarding “the number and description of the matters for examination” does not provide meaningful guidance or direction as to what precisely is to be discussed. Additionally, the “continuing as necessary” requirement is vague and undefined and will spawn further controversy—in particular, the length of time the parties shall continue to confer, who will decide how long the conferral shall last and what constitutes “as necessary.”

Equally important, the proposed amendment offers no solutions to the pressing major failings of the current Rule 30(b)(6) deposition process. The Committee could do a great service to the bench and bar by drafting a different amendment that addresses the well-known and long-standing issues with the rule. A positive amendment would resolve major gaps in the current rule: (i) an objection procedure; (ii) presumptive limits on the number of topics; (iii) clear instructions on how to count the number of hours allowed for a deposition with multiple topics or individuals designated; (iv) a uniform prohibition on contention questions; and (v) a safe harbor for circumstances in which an organization no longer has relevant knowledge due to the passage of time or for other reasons.

In summary, although we strongly urge the Committee to reject the proposed amendment as written, we would enthusiastically support a decision to draft a new amendment addressing the important issues that plague practitioners and parties under Rule 30(b)(6).

Thank you for your consideration.