THE TRICK TO RULE 30(B)(6)...

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It's never a good day when a thick subpoena lands on your desk – especially when it notices a deposition under Rule 30(b)(6) of the Federal Rules of Civil Procedure. Under the rule, a party to a lawsuit may depose a corporation, government agency, or other organization and require one or more representatives to speak on behalf of that organization about any and all topics listed in the notice. The problem that counsel and business leaders alike face in preparing for these depositions and their defense is that the topics involved are often as expansive as they are vague, especially if one is being dragged into a complex commercial case. As a result, the amount of knowledge required of a designee on each topic can be daunting, especially because under Rule 30(b)(6) the persons designated must testify about "information known or reasonably available to the organization." This requirement means that "I don't know" may not suffice as an answer by a designee if some part of the organization did, in fact, know the answer (or at least could have found it out.)

It might be tempting when reviewing a list of what could be thirty or more detailed and wide-ranging matters of examination in the deposition notice (there is no set limit) to take advantage of your organization's expertise by designating any number of company employees to testify about the topics they know the most about. Although you will certainly need to use these employee experts to learn the information necessary to prepare the eventual designee, designating more than one person runs into an important question that could be the difference between a day of depositions and a week of time, expense, and uncertainty: in cases where several designees are named, is the deposing attorney limited to seven total hours to depose all named designees, or are they allowed to depose each designee for up to seven hours?

THE SEVEN HOUR RULE

Surprisingly, under modern interpretation it is typically the latter. There is no doubt that having to prepare for several 7-hour depositions under a single 30(b)(6) deposition notice is not ideal – and in certain complex cases, counsel will not hesitate to use every minute of that time. So why would this somewhat unexpected use of the rule be allowed? In part, it stems from the language of 30(d)(1), which explains that "unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours." Because each 30(b)(6) designee is deposed separately, the logic goes that each designee's deposition is considered "a" deposition that is entitled to a full seven hours, even under a single 30(b)(6) notice.

This was not always the case, and the advisory committee's interpretation of Rule 30 has changed and expanded over time. The 1993 Advisory Committee Notes on Rule 30 discussed the limits on the number of depositions: "A deposition under Rule 30(b)(6) should, for purposes of this limit, be treated as a single deposition even though more than one person may be designated to testify." Although this did not directly address the question raised above, it at least suggested that the 30(b)(6) deposition was generally considered to be singular for the purposes of Rule 30's limitations. But, in 2000, the advisory committee provided more specific guidance, instead explaining: "For purposes of this durational limit, the deposition of each person designated under Rule 30(b)(6) should be considered a separate deposition." Although there is some ambiguity in the text of the rule itself, the most recent advisory committee interpretation and most corresponding case law allows for a separate, seven-hour deposition for each named 30(b)(6) designee. Based on the still unchanged portion of the 1993 Advisory Committee Notes however, these depositions still count as a single deposition for the purposes of the ten-deposition limit expressed in Rule 30(a)(2)(A)(i). This means that the number of depositions under 30(b)(6) is potentially limitless – kept in check only by the number of designees you might choose to

AVOIDING A NEVER-ENDING SERIES OF DEPOSITIONS

select. *See Infernal Tech., LLC v. Epic Games, Inc.,* 339 F.R.D. 226, 230 (E.D.N.C. 2021).

But take note, courts are certainly not unanimous on the issue, and the preferences or interpretation of a specific judge might limit a 30(b)(6) deposition to seven total hours, regardless of the numbers of designees. *See,* e.g., *E.E.O.C. v. The Vail Corp.,* No. 07-cv-02035-REB-KLM, 2008 WL 5104811, at *1 (D. Colo. Dec. 3, 2008). Nevertheless, a party with multiple designees could very likely be subject to numerous, lengthy depositions that strain company resources and employee patience if they do not take care to recognize this nuance of these rules.

SO WHAT CAN I DO ABOUT IT?

The first step should be (mostly) clear: choose fewer designees. Even if the notice you've received is in-depth, technical, or speaks to information no one person could possibly know, remember that a 30(b)(6) deposition is not a memory test. You're allowed to prepare and bring binders or documents (though remember these can typically be reviewed by opposing counsel and even entered into evidence) and conduct extensive preparation sessions to ensure that the organization's designee can speak on the topics intelligently. This preparation should be the result of conversations with the members of the organization who have the most expertise on the respective topics in the notice, but these members should not necessarily be chosen as designees. In fact, a common and effective litigation strategy is to teach the 30(b)(6) topics to a designee who starts with limited or even no direct knowledge of the topics, so that they only know the exact information the organization has prepared and collected. Doing so means it is less likely a knowledgeable designee will add personal opinion, misstate the organization's position, or speak on extraneous matters that can push the boundaries of the scope of the deposition.

But there's another option, particularly if you prefer to have individuals speak to their own expertise, so long as you plan ahead: simply set limitations on the 30(b)(6) depositions in the discovery plan required under Rule 26. Rule 26(f) requires that parties meet and confer to create a discovery plan, which includes the parties' agreement as to discovery scope and other related issues. Because Rule 30 allows for the duration or number of depositions to be changed by stipulation, and the 2000 Advisory Committee Notes label the seven-hour-per-designee rule as a presumption that can be extended or otherwise altered by agreement or court order, these issues can be easily be defined in advance by the parties. In many cases, particularly where both parties are organizations covered under the rule, neither party will want to subject themselves to days of lengthy depositions, and the simplest place to stipulate to that objective is in the discovery plan. If you failed to account for the issue in the discovery plan, or were brought in as a third party, you can still try to seek agreement from the opposing party on the issue, or seek an order from the court to limit the number or duration of depositions for being unduly burdensome, or for any other relevant reason.

In sum, so long as you are aware of the nuance of the federal rules surrounding 30(b)(6) depositions and multiple designees (and have checked first with your local court and its particular rules), you can easily make tactical decisions to your advantage and in your interest. This preparation will protect you both from expense and from seeing the inside of a deposition conference room for any longer than you need to.

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