November 20, 2018

Rule 30(b)(6) Subcommittee of the Advisory Committee on Civil Rules
Administrative Office of the United States Courts
One Columbus Circle, NE, Suite 7-240
Washington, D.C. 20544

Dear Members of the Civil Rules Advisory Committee:

I am President of DRI – *The Voice of the Defense Bar,* (DRI), and am writing to you on behalf of our organization to respectfully comment on the changes recently proposed to Rule 30(b)(6).

With a membership of 20,000 individual and corporate members, DRI is the world's largest international membership organization of lawyers involved in the defense of civil litigation. The history of DRI encompasses many years of effort by dedicated lawyers who see the need for a coordinated approach by defense lawyers to the challenges of a civil defense practice. We see Rule 30(b)(6) as one of those challenges. DRI is committed to anticipating and addressing issues germane to defense lawyers and the interests they represent, improving the civil justice system, and preserving the civil jury trial.

The suggested rule change, in the main, should be helpful to all litigants by imposing the duty to meet and confer concerning the number and description of the matters for examination which should help all parties clarify the scope of the deposition to hopefully allow better preparation by each side. What is missing is a framework for that discussion. It would be helpful to have Rule 30(b)(6) clarify that such depositions are subject to Rule 30(a) and (d), so that such depositions are included within the limited number of depositions and the time limits on them, unless otherwise provided by a stipulation of the parties or court order. In addition, it would promote further efficiency by providing a presumptive limit on the number of "matters for examination" at such deposition.

In addition to those elements which, if added, would improve the rule, the proposed rule would impose a new unwarranted duty on organizations requiring them to confer about the identity of each person to be designated to testify. Organizations might be encouraged by way of the Committee Note to do so, but imposing that as a duty in each case is unwise, and that language should be removed from the proposed amendment.

In most cases, once the subjects and the likely scope of inquiry are understood by both sides, the burden on the organization to designate who will testify on its behalf concerning "information known or reasonably available to the organization" is easily met and seldom is the designation of concern. After all, the designee is testifying to the organization's information about the matters under examination, not the designee's personal knowledge concerning those topics. Compelling the organization to confer in good faith about "the identity of each person the organization will designate to testify" implies that the party

issuing the notice has some right to participate in that choice, which contradicts the rule's clear and unambiguous mandate that it is the *organization* that must designate who the witness will be.

When a party wants a specific witness to testify, the party is free to depose that individual about their personal knowledge, which knowledge may include matters inquired of the organizational witness, but those depositions are subject to the limitations on the number and time length for such depositions contained elsewhere in Rule 30.

In its 2017 comments, DRI identified other useful improvements to the rule which remain areas where we believe useful rulemaking should occur:

- Amendments to Rules 16 and 26(f) that would include Rule 30(b)(6) in party conferences, pretrial conferences and scheduling orders;
- An amendment to Rule 26(e) allowing for supplementation of Rule 30(b)(6) depositions;
- An amendment to Rule 30(b)(6) that provides a mechanism for making and resolving objections to the notice;
- An amendment to Rule 30(b)(6) that provides a presumptive limit of ten topics;
- An amendment to Rule 30(b)(6) that establishes a means for organizations to certify that they have no knowledge beyond information contained in documents and, where such certification is made, no deposition is required;
- An amendment to Rule 30(b)(6) clarifying that a deposition is not required on topics that have been subject to deposition before and where the transcript is available; and
- An amendment to Rule 30(b)(6) prohibiting contention questions.

Some of these are included in the Committee Note, which is helpful; however, DRI continues to believe provisions allowing supplementation of responses to organizational depositions, setting a presumptive limit on the number of topics, allowing an organization to certify there is no information beyond documents available within the organization or submitting prior transcripts sufficiently responsive to a topic in the notice to remove that topic from the notice, remain worthy of further consideration because they are in the spirit of the Committee's 2015 discovery amendments which encourage cooperation, proportionality and early case management.

Also, DRI supports the positions and reasoning provided by Lawyers for Civil Justice in their September 12, 2018 submission to the Advisory Committee.

DRI respectfully urges the Advisory Committee to improve the proposed amendment by making further revisions as suggested here. Thank you for your consideration.

Sincerely,

Toyja E. Kelley
DRI President