

Proposed Amendment to FRCP 30(b)(6)

Important Information on Proposed Rule, Instructions for Filing Comments and Testifying

The Judicial Conference Committee on Rules of Practice and Procedure has published a proposed amendment to Federal Rule of Civil Procedure 30(b)(6) for public comment. This rule is now in the formal rulemaking process. AAJ encourages members to review the proposed amendment and submit a short comment about the effect of the proposed rule on their practice. Interested members may also request to testify at one of the two public hearings on the proposed amendment. AAJ recommends submitting a request to testify as early as possible, as spots may fill up quickly. For more details, please see below.

Comment Period

The public comment period **began on August 15, 2018 and will continue through February 15, 2019**. All comments should be addressed to:

Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, DC 20544

Comments **must be submitted electronically** through the following site: <https://www.regulations.gov/docket?D=USC-RULES-CV-2018-0003>. Technical instructions for submitting comments can be found in the regulations.gov FAQs. All comments submitted will be posted on the website and available to the public.

Please also send a courtesy copy of your comment(s) to AAJ Staff Attorney Amy Brogioli at amy.brogioli@justice.org. Please contact us if you have any questions.

Public Hearings

In addition to the public comment period, the Committee will hold two (2) public hearings on this proposed rule change. Those hearings will take place as follows:

Friday, January 4, 2019 in Phoenix, Arizona
Friday, February 8, 2019 in Washington, DC

All requests to testify must be sent to the Secretary on Rules of Practice and Procedure of the Judicial Conference of the United States **by email** at:

RulesCommittee_Secretary@ao.uscourts.gov

Requests to testify must be sent **at least 30 days before the hearing**. If you are interested in testifying, we recommend submitting a request as early as possible, as there are only a certain number of time slots available.

If you are interested in testifying at a hearing or need any additional information on the changes to the Federal Rules of Civil Procedure, please contact AAJ Staff Attorney Amy Brogioli at amy.brogioli@justice.org.

AAJ-Identified Issues for Comments

You can support or oppose the rule. Comments are encouraged on the particular issues below, which were identified by AAJ. You can pick one or more to comment on, and AAJ suggests focusing your comment on how the proposed amendment would affect your practice. Comments can be submitted on the Draft Rule *as well as* the Draft Committee Note.

- Timing: When should the parties “confer”? Is “before or promptly after the notice or subpoena is served” the right time?
- Ongoing Duty to Confer: Members may wish to comment on the ongoing duty.
- Good Faith: Is this good faith standard the correct standard?
- Number and Description of the Matters for Examination: AAJ anticipates that defense interests will try to insert numerical limits on the deposition.
- Identity of Each Person the Organization Will Designate to Testify: The disclosure of the identity seems like it would be helpful in preparing for the deposition and to ascertain that the deponent will be able to answer questions. Defense interests have already indicated that they oppose this language in the rule.

Draft FRCP 30(b)(6)

Draft Rule¹

(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 ~~then~~ 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, and continuing as necessary, the serving party and the organization must confer in good faith about the number and description of the matters for examination and the identity of each person the organization will designate to testify. A subpoena must advise a nonparty organization of its duty to make this designation and to confer with the serving party. 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.

Draft 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

¹ New material is underlined; matter to be omitted is lined through.

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.