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A Voice for the Voiceless: Tips for Taking & Defending Corporate Depositions

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Rule & Purpose


- Both Indiana Trial Rule 30(B)(6) and F.R.C.P. 30(b)(6) permit the deposition of an organization by requiring an organization noticed for a deposition to “designate one or more officers, directors, or managing agents, executive officers, or other persons duly authorized and consenting to testify on its behalf.”
- The purpose of the rule is to create testimony binding upon a corporate entity and to prevent the practice of “bandying” in which individual corporate officers disclaim personal knowledge of information known to organization.
 - *Sanyo Laser Products Inc. v. Arista Records, Inc.*, 214 F.R.D. 496 (S.D. Ind. 2003).

Procedure

- A Rule 30(b)(6) deposition notice requires notice in the same manner as a personal deposition
- Instead of designating an individual witness, however, the notice designates topics to be covered during the deposition
- The notice places “a duty upon the business entity to designate an individual to testify on behalf of the corporation who has knowledge responsive to subjects requested in the Rule 30(b)(6) requests of its opponents.” *Sanyo*, 214 F.R.D. at 503.


Designating Proper Topics

- Rule 30(B)(6) places a heavy burden on an organization to select and prepare deponents to testify to the designated topics
- As a result, the rule requires the party seeking the deposition to identify “with reasonable particularity the matters on which [the] examination is requested.”

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- An overbroad notice that lacks sufficient particularity creates an “impossible task” for the responding organization to identify the correct corporate designees
 - *Lee v. Nucor-Yamato Steel Co. LLP*, 2008 WL 4014141 (E.D. Ark. Aug. 25, 2008)
 - Some courts have gone beyond “reasonable particularity” and have instead required “painstaking specificity” in designating the topics to be covered in the deposition.
 - *See Kalis v. Colgate-Palmolive Co.*, 231 F.3d 1049, 1057 n.5 (7th Cir. 2000).

Examples of Overbreadth

- Topics must be limited to specific actions, time periods, geographic areas, and be related to the claims
- Topics that simply state the “allegations of the complaint, answers, and affirmative defenses” are insufficient.
 - *Catt v. Affirmative Ins. Co.*, 2009 WL 1228605, *6-7 (N.D. Ind. April 30, 2009)


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20. X's participation in the 8D/root cause investigation of the issues related to the Spool in 2016 and 2017.
 21. All drafts of 8D reports prepared by X and the individuals involved preparing and editing those drafts.
 22. X's position as to the accepted engine applications for the Spool and the basis for that position.
 23. X's knowledge of the Spool's use in Y's engine applications in 2016, including but not limited to use in L96 and L20 engines.
 24. To the extent that X contends that "material drift" contributed in any way to issues with the Spool in 2016, the complete basis for that contention.
 25. To the extent X contends there were any material differences between Print Revision 37 and Print Revision 39, the complete basis for that contention.
 26. The process, procedure, and/or criteria X used to determine that X could use Machine A-7, Machine B-4, Machine B-10, and Machine B-5 in the manufacture of the Spool.
 27. All communications between X and Z in 2015, 2016, or 2017 concerning the use of Machines A-7, B-4, B-10, and B-5 in the manufacture of the Spool.
 28. The process, procedure, and/or criteria X used to determine the proper temperature to be used in the Spool manufacturing process in 2016.

Identifying the Proper Witness(es)

- The deposing party cannot select the witness or witnesses who will testify for the organization.
 - *Lyons v. State*, 431 N.E.2d 78 (Ind. 1982)
- The organization has free reign to select whomever it wants to testify, so long as the witness is properly prepared to testify as to the topics
 - *CMI Roadbuilding v. Iowa Parts, Inc.*, 322 F.R.D. 350, 361 (N.D. Iowa 2017)

Witness Preparation

- An organization must “make a conscientious, good-faith effort to designate knowledgeable persons...and to prepare them to fully and unequivocally answer questions about the designated subject matter.”
 - *CMI*, 322 F.R.D. at 361
- A failure to properly prepare a witness to testify may result in sanctions to the organization.
 - *Allstate Ins. Co. v. Scrogan*, 851 N.E.2d 317, 325 (Ind. Ct. App. 2006)

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- Perfection is not the standard.
 - A corporate designee need “be prepared to speak with an encyclopedic knowledge” nor must the witness be prepared to the extent that he or she can answer every question that is asked.
 - *Bell v. Pension Committee of ATH Holding Co., LLC*, 2018 WL 7350951 at *2 (S.D. Ind. 2018).
 - Corporate witness need not have personal knowledge of deposition testimony. Rather, he or she can testify to information learned from others during the course of preparation.

Result of 30(b)(6) Testimony

- Testimony provided by a 30(b)(6) witness is binding on the organization and can be used in all subsequent court proceedings
 - *Town of Montezuma v. Downs*, 685 N.E.2d 108 (Ind. Ct. App. 1997)
- The testimony, however, is NOT a binding judicial admission for the organization
 - *Everage v. Northern Ind. Pub. Serv. Co.*, 825 N.E.2d 941 (Ind. Ct. App. 2005)

Result of 30(b)(6) Testimony

- A witness who has been previously deposed in his/her personal capacity can testify a second time as a 30(b)(6) witness
- Similarly, a witness who has testified as a 30(b)(6) witness can be required to testify a second time in his/her personal capacity
 - *Ball Corp. v. Air Tech of Michigan, Inc.*, 329 F.R.D. 599 (N.D. Ind. 2019)

Topic Objections

- Due to the burden placed on an organization by a 30(b)(6) notice, it is imperative that the defending attorney ensure the topics set forth in the notice are proper
 - Rare is the notice without any defects
- Under the 2020 amendments to FRCP 30(b)(6), counsel are expected to promptly meet-and-confer following the issuance of a 30(b)(6) notice to address any issues

Topic Objections

- Proper objections include a lack of topic specificity and that the topic exceeds the scope of the organization's knowledge
 - *Kartagener v. Carnival Corp*, 380 F.Supp.3d 1290 (S.D. Fla. 2019)
- Merely objecting is not enough. Objections must either: (1) be resolved through the meet and confer process; or (2) be the subject of a motion for protective order BEFORE the deposition, otherwise they are waived
 - *Guinnane v. Dobbins*, 479 F.Supp.3d 989 (D. Mont. 2020)

Topic Objections

- The best process for resolving 30(b)(6) disputes
 - Step 1 – Meet and confer letter setting forth specific objections to specific topics contained in the notice on a topic-by-topic basis
 - Step 2 – Telephonic or in-person meet and confer to discuss objections and resolve as many as possible
 - Step 3 – Motion for Protective Order seeking ruling on objections that could not otherwise be resolved. Should be made well in advance of deposition or proceed with deposition aside from topics that are the subject of the Motion

Exceeding Scope of Topics

- The topics contained in a 30(b)(6) notice set the boundary of subjects on which the organization is expected to provide a witness adequately prepared to testify
- It does NOT provide the limits of the subjects on which the witness can be questioned
 - Witness can be questioned beyond the scope of the identified topics, but the witness is testifying at that point in his/her personal capacity only