

LITIGATION

By: Keith A. Langley



Better, Faster, Cheaper in 2021

There is a new change to corporate representative depositions which are designed to prevent bandying which is saying “someone else at the company knows”. The tool of a corporate rep dep allows us to obtain the official position of the corporation. When knowledge is amorphous, the corporation must investigate and learn.

The truth must come out and this corporate rep dep is a very important tool to learn the truth on issues that may be hidden or difficult. A new December 1, 2020 amendment (the first after all these years) requires a lawyer meet and confer regarding the matters for examination. With a focus on proportionality and equity for all parties, there is a renewed focus on getting information (at a legitimate cost to all involved).

A lawsuit can be difficult, time-consuming, and costly. Results may produce a mixed bag or a loss. The tool of a corporate rep dep improves the odds of finding the truth as early as possible. The key themes can and should be explored at the corporate rep dep.

The Rule 30(b)(6) was created in 1974 and for 20 years lawyers did not focus on 30(b)(6) and failed to use its ability to reduce the burden of litigation. Thereafter 30(b)(6) has (rightfully) become a hot focus. A fairly large number of topics (50 or more) have been allowed by the courts.

The recent amendment requires “that the parties confer about the matters for examination”. The subpoena must advise a nonparty organization of its duty to confer with a serving party and designate each person who will testify.



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To "Go Green", our firm uses recyclable paper or ceramic cups and no longer uses Styrofoam cups. In addition, we have adopted a less-paper office environment.

We hope that these changes make big differences in the future.

Well done is better than well said.

- Benjamin Franklin



Proposed changes included deleting a requirement to confer about witness identity and to confer about the number and description of the matters for examination.

The Supreme Court approved the change with a committee note stating that the change was made to "facilitate collaborative efforts to achieve the proportionality goals of the 2015 amendments to rule 1 and 26(b)(1)." In the meet and confer, counsel should be ready to comply with the 2015 amendments providing that the parties must seek to secure the "just, speedy, and inexpensive determination of every action and proceeding" and obtain only as much discovery as is proportional to the needs of the case.

The corporate rep dep is a powerful tool to learn the truth. It should be used early in the case with a careful, thoughtful meet and confer between the attorneys.

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