

# What to Know About Rule 30(b)(6) Depositions

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United States District Court, District of Colorado

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A good rule 30(b)(6) deposition—from both parties' standpoints—requires cooperation. There is little room for hiding the ball at this stage. The rules of engagement are relatively demanding. The corporation must produce fully prepared and knowledgeable witnesses on the topics designated, but the questioning party must be specific in what it wants to know—before the deposition day. If the questioning party wants a prepared witness, the questioning party must help the witness prepare. This assistance may come close to scripting out questions; there is no need or privilege that protects such work product when one is about to take a 30(b)(6) deposition. If the corporation wants more specificity, it is entitled to it. In the end, however, the questioner is entitled to answers to his or her questions. The corporation is not free to reframe or limit the scope of questioning. Accordingly, the parties must try, in good faith, to agree on what topics fit into which category, keeping in mind that the Plaintiffs must accommodate Applebee's International's insistence that they “describe with reasonable particularity the matters on which examination is requested,” Fed. R. Civ. P. 30(b)(6), and that Applebee's International must provide a fully prepared witness to address each proper topic, in accordance with the guidance the Court has provided. If the parties find themselves in an intractable dispute, they can present it to the Court; the Court is available by telephone.

*Peshlakai v. Ruiz*, 2014 WL 459650, at \*25 (D.N.M. Jan. 9, 2014).

## 1. Some Basics

A. “A deposition under Rule 30(b)(6) differs in significant respects from the normal deposition. To begin with, the notice of deposition must ‘describe with reasonable particularity the matters for examination.’” 8A C. Wright, A. Miller, & R. Marcus, *Federal Practice & Procedure* § 2103 (3d ed. 2010). This requirement seeks “to enable the responding organization to identify the person who is best situated to

answer questions about the matter, or to make sure that the person selected to testify is able to respond regarding that matter.” *Id.*

B. Rule 30(b)(6) creates obligations on both sides: the side being deposed has an obligation to prepare one or more witnesses to testify, and the side taking the deposition has an obligation to “designate with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute.” *E.E.O.C. v. Thorman & Wright Corp.*, 243 F.R.D. 421, 426 (D. Kan. 2007).

C. “An overbroad Rule 30(b)(6) notice subjects the noticed party to an impossible task. To avoid liability, the noticed party must designate persons knowledgeable in the areas of inquiry listed in the notice.” *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000). Where the deponent “cannot identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible.” *Id.*

D. Rule 30(b)(6) depositions are not intended to be “memory tests” in which a deponent is asked to recall every single detail related to a topic. *Gebremedhin v. Am. Family Mut. Ins. Co.*, No. 113-cv-02813, 2015 WL 4272716, at \*10 n.6 (D. Colo. July 15, 2015); *see also Reed*, 193 F.R.D. at 692 (“Although plaintiff has specifically listed the areas of inquiry for which a 30(b)(6) designation is sought...Plaintiff broadens the scope of the designated topics by indicating that the areas of inquiry will ‘includ[e], but not [be] limited to’ the areas specifically enumerated.”)

E. A measure of specificity tailored to the facts of the case is required when crafting the topics for a Rule 30(b)(6) deposition. *See Thorman & Wright Corp.*, 243 F.R.D. at 426 (Rule 30(b)(6) topics must “designate with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute.”); *Lapenna v. Upjohn Co.*, 110 F.R.D. 15, 21 (E.D. Pa. 1986) (disallowing questions where it was apparent there had been no attempt to tailor them to the facts involved in the case).

## **2. Clarifying Misnomers Re: the 30(b)(6)**

A. A Rule 30(b)(6) deposition is not limited to the subjects identified in the notice. *See Am. Gen. Life Ins. Co. v. Billard*, No. C10-1012, 2010 WL 4367052, at \*9 (N.D. Iowa Oct. 28, 2010). Responses to questions outside the scope of listed subjects will not bind the corporation, and counsel has no obligation to prepare corporate representatives on topics not identified. *See McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737, 752 (N.D. Tex. 2017). The answers are treated as the answers of the individual deponent. *Id.*; *see also Peshlakai*, 2014 WL 459650, at \*26 (“Nevertheless, if a party has fears about the scope of the questioning, instructing the witness not to answer is not a proper resolution of the problem. Rather, one court has suggested that counsel may note on the record which questions

it believes are beyond the scope of the deposition notice, and that answers to questions beyond the scope of the notice are not intended as the answers of the designating party.”) (quoting *Moore’s Federal Practice*).

B. While the 2000 Committee Notes suggest that for every designated 30(b)(6) witness a party is entitled to another full seven-hour deposition, most judges will only grant *limited* additional time, if any at all. Absent agreement, the parties should seek clarification from the court regarding any additional time beyond seven hours that may be allowed. See *E.E.O.C. v. The Vail Corp.*, No. 07-cv-02035-REB-KLM, 2008 WL 5104811, at \*1 (D. Colo. Dec. 3, 2008) (“The Court declines to adopt Plaintiffs’ contention here. First, Plaintiffs provide no legal support for their interpretation of this comment. Second, even were the Court to accept Plaintiffs’ contention, the Court’s preference for a single, seven-hour deposition was clearly conveyed to Plaintiffs at the prior motions hearing, and I do not find that any more than a single, seven-hour deposition is warranted under these circumstances.”)

C. The fact a party has already deposed individuals who would later serve as Rule 30(b)(6) corporate representatives does not preclude a Rule 30(b)(6) deposition involving those same corporate representatives, and vice versa. See *Fed. R. Civ. P. 30(b)(6)* (“This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.”).

D. There is no requirement a Rule 30(b)(6) deposition occur before individual depositions of corporate representatives, and vice versa. See *Fed. R. Civ. P. 26(d)(3)(A)* (“methods of discovery may be used in any sequence”).

E. Legal topics are not completely off-limits in a Rule 30(b)(6) deposition. “Rule 30(b)(6) depositions can be used to develop the deponent’s legal contentions; contention interrogatories under Rule 33(a)(2) are usually more appropriate, but the choice between the two must be made on a case-by-case basis.” *Century Sur. Co. v. Smith*, No. 14-CV-00947-RM-MJW, 2014 WL 7666061, at \*5 (D. Colo. Jan. 21, 2015) (emphasis in original) (citations omitted).

### **3. 2020 Amendment**

A. Directs the serving party and the named organization to confer before or promptly after the notice or subpoena is served about the matters for examination.

B. Requires that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify.

#### **4. Examples of Problematic Subjects**

A. All facts and documents, as well as the identity of all persons with knowledge of facts which support your affirmative defenses.

B. The contents of your claim notes and what these notes mean and how they were entered or changed and why they were entered or changed between the dates of June 25, 2017 through August 25, 2017.

C. All facts and documents supporting your counterclaim including when such facts were learned and how such facts were learned. This topic also includes persons with knowledge of such facts including their current location including address and telephone number.

D. The contents of your claim notes and why such entries were made in your claim notes generally found in Exhibit 1. This includes standards and guidelines given to those making entries in Exhibit 81 as to what information should be placed in claim notes such as Exhibit 81. Limit this to claim notes during the period of June through September 2017 involving this claim. This includes but is not limited to the obligation to make contemporaneous recording and/or notes of conversations relating to a claim and whether you believe it is in compliance with your standards and guidelines to enter notes of phone conversations in one place, and then later insert summaries of those conversations into claim notes in Exhibit 81 and if so, whether it is permissible to destroy the original records of such phone conversations.

E. The identities of all witnesses likely to have knowledge of each of the other topics in this Section.

F. The location, type, name, and contents of all documents likely to contain evidence of each of the other topics in this Section.

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