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*Happy Valentine's Day*



## *"Tip of the Month"*

### **Depositions Under Rule 30(b)(6)**

It's not uncommon for a company to get a subpoena requesting documents, often accompanied by a Notice of Taking Deposition. This is usually no big deal. We just make copies of the documents and send them with a certification that this is all the documents. Nobody actually has to go to a deposition.

But a Notice of Taking Deposition with a subpoena requesting documents under Federal Rule of Civil Procedure 30(b)(6) is more substantial. This requires preparation, starting with a careful review of the subpoena to see what documents are requested. Those documents should indicate the direction a litigation opponent is headed.

That suspected direction indicates that the deponent (the witness whose deposition is being taken) should be well versed in more than just the documents requested. The deponent also wants to understand the related business context and history including the company personnel involved and the sequence of events.

"Rule 30(b)(6) requires an inquiry to find 'reasonably available' information known to the corporate entity for whom the witness is testifying." The deponent is not just testifying as an individual witness, but as a representative of the company. The deponent and the company are supposed to work together to find the known and reasonably available information requested.

The rule was created to overcome the strategy of clever corporate litigants who would produce one witness at a time, each with limited knowledge, pointing to a next witness who might know a bit more. This was thought to be a wasteful delay tactic inconsistent with the goal of open discovery that might end litigation sooner.

If the company fails to assist the deponent in preparation for the Rule 30(b)(6) deposition, the company could be liable for sanctions. In one case, the court ordered the company to pay half the plaintiff's costs and attorney fees for the first deposition, half the costs and fees of the motion to compel discovery, and the entire costs and fees of the second deposition.

When facing a Rule 30(b)(6) deposition subpoena, the company should pick the person with the most knowledge to be the deponent. If that deponent does not know enough about the subject, the deponent should talk to other company personnel for better insight and more complete perspective.

If you or your company have questions about litigation or discovery procedure, the attorneys at Mesmer & Deleault are ready to help. Please call (603) 668-1971 or send an email to [mailbox@biz-patlaw.com](mailto:mailbox@biz-patlaw.com) today.

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