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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges Advisory Committee on Civil Rules to Scrap Rule 30(b)(6) Amendment and Try Again

(In re Proposed Amendment to Rule 30(b)(6))

“The proposed Rule not only injects a new source of uncertainty into the Rule 30(b)(6) deposition process, but it fails to address the many shortcomings that have long plagued corporate litigants in federal courts.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) earlier today submitted comments to the Advisory Committee on Civil Rules in response to the Committee’s preliminary draft of its proposed amendment to Rule 30(b)(6) of the Federal Rules of Civil Procedure.

Rule 30(b)(6) requires organizations (including corporations, associations, and government agencies) to designate one or more persons to testify on the organization’s behalf about specific matters raised in litigation. The Advisory Committee has received frequent complaints about the Rule since its inception, and Rule 30(b)(6) depositions have increasingly become a source of protracted discovery disputes.

The Advisory Committee’s proposed amendment not only requires the requesting and responding parties to confer on such depositions, but it obligates the responding company to confer with opposing counsel on the *identity* of the witness who will speak for the company. That sweeping change, WLF warns, threatens to sweep aside settled law that a noticing party has no right to dictate the witness who will testify for the company. It would also invite an avalanche of costly and time-consuming satellite litigation.

As the Advisory Committee’s proposed advisory note acknowledges, the focus of the parties’ Rule 30(b)(6) exchanges would be on “identifying the right person to testify.” Under the pretext of securing the “right person to testify,” zealous attorneys will rely on the new Rule to challenge or block the company’s designated witness in favor of one of their own choosing. The meaning of the rule’s new mandate, WLF contends, will impose extra burden and expense on the parties and tax the already limited judicial resources of the federal courts.

Celebrating its 42nd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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