

PUBLICATION

Civil Rules Committee Decides Companies Must Have Right to Choose 30(b)(6) Designees

Authors: Dean Sterling Kidd, J. Carter Thompson, Jr.

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Last year, the Rule 30(b)(6) Subcommittee of the Civil Rules Advisory Committee began considering a proposed change to Federal Rules of Civil Procedure 30(b)(6). The rule, in its amended form, would have placed onerous obligations on corporations in responding to 30(b)(6) notices. In particular, the proposed change would have required the organization to either (a) confer with its opponent about who the company's designee would be (with no parameters set as to what constituted sufficient conferral), or (b) tell its opponent a certain number of days in advance who the designee would be (option (b) was not part of the change that was originally proposed, but was an alternative the Committee considered after outcry regarding the originally proposed rule).

Baker Donelson attorneys were among those leading the charge in opposing either change. Shareholder [Sterling Kidd](#) testified against the rule change before the Committee at the Phoenix and Washington, D.C., hearings, respectively, and [Carter Thompson](#), shareholder and former chair of the Firm's Product Liability and Mass Tort Group, led the effort in submitting a written comment to the Committee on behalf of Baker Donelson.

In early April, the Committee rejected both of the changes. The Committee had a robust debate about the issue, and it was evident that the efforts undertaken by our attorneys and by the civil defense bar made a difference in the Committee's decision.

Ultimately, the Committee did make a change to the Rule, but the change actually improves the Rule and does not harm it. For reference, please see below for the Rule, as amended, with the altered text highlighted.

Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. **Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination.** A subpoena must advise a nonparty organization of its duty to make this designation **and to confer with the serving party.** The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

For more information about this decision or other matters, please contact [Sterling Kidd](#), [Carter Thompson](#), or any of the attorneys in Baker Donelson's [Product Liability and Mass Tort Group](#).