The Organization Speaks

The Scope of Rule 30(b)(6), Recent Amendments to the Rule, and Considerations for Practitioners

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This article discusses the parameters of and recent changes to the federal and Colorado rules governing depositions of legal entities and includes practical tips for attorneys conducting 30(b)(6) depositions.

Recognizing that a legal entity cannot speak for itself, the Colorado Supreme Court adopted Colorado Rule of Civil Procedure 30(b)(6) in the 1970s. Over the last five decades, depositions of legal entities have become routine. Attorneys regularly rely on these depositions to give a voice to an organization. Despite the prevalence of 30(b)(6) depositions, there remains limited case law in Colorado about their parameters. This has resulted in some uncertainty, particularly as the use of these depositions has increased since the rule's inception. It has also been nearly 10 years since *Colorado Lawyer* published a substantive article regarding Rule 30(b)(6) depositions.[1] Recent updates to the Colorado Rules of Civil Procedure and the Federal Rules of Civil Procedure were intended to address the lack of clarity regarding such depositions.

This article provides a brief history of both federal and Colorado Rule 30(b)(6), which are substantially similar, and their early recognized applications. It discusses some of the issues faced in these depositions, explains the recent amendments to the rules and how they attempt to address ongoing issues practitioners confront, and provides some practical considerations for attorneys in addressing organizational depositions.

History and Purpose of Federal Rule 30(b)(6)

Rule 30(b)(6) was first added to the Federal Rules of Civil Procedure in 1970.[2] Following and modeled upon the federal rule, Colorado added a similar rule shortly thereafter in 1973. FRCP 30(b)(6) was added, in part, because "[i]n some instances corporations were able to exploit their size and complexity to advantage by 'bandying' their opponents with deposition witnesses who all disclaimed knowledge on topics the adversary wanted to investigate."[3] The adoption "aimed to provide a solution to this problem by adding Rule 30(b)(6) as a discovery device for a party facing a corporation or other organizational party."[4] The rule became an "added facility for discovery, one which may be advantageous to both sides as well as an improvement in the deposition process."[5]

Application of Rule 30(b)(6) in Colorado

CRCP 30(b)(6) allows a party to

> name as the deponent a public or private corporation, partnership, association, governmental agency, or other entity and designate with reasonable particularity the matters on which examination is requested. The named organization shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify.[6]

In practice, the noticing attorney serves a notice of deposition or a subpoena listing the topics related to the litigation upon which an examination is requested. If the corporate entity is a party, the notice may be "accompanied by a request made in compliance with Rule 34 for the production of documents . . . at the taking of the deposition."[7] A subpoena to a nonparty can also include a request for documents.[8]

After service of the notice or subpoena, the corporate entity must designate one or more persons who can testify on its behalf. "[T]he burden faced by the responding party [is] considerably more challenging than with an ordinary deposition."[9] Specifically, the entity must prepare a designee as to "matter[s] known

or reasonably available to the organization."[10] "Obviously it is not literally possible to take the deposition of a corporation; instead, when a corporation is involved, the information sought must be obtained from natural persons who can speak for the corporation."[11] Therefore, at the deposition, "[a] corporation appears vicariously through its designee."[12]

Despite its increasing use since adopting the rule 50 years ago, "[t]here is a paucity of Colorado law interpreting C.R.C.P. 30(b)(6) and its use."[13] There remain two seminal cases from the court of appeals, both more than a decade old, that have examined and applied the rule. Notably, the Colorado Supreme Court has not substantively addressed the rule.

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D.R. Horton, Inc.-Denver v. D & S Landscaping, LLC

In *D.R. Horton, Inc.-Denver v. D & S Landscaping, LLC*, a homeowners association filed a construction defect lawsuit against a developer.[14] In turn, the developer brought a third-party claim against certain subcontractors who were involved in the construction.[15] During discovery, the developer was served with a CRCP 30(b)(6) notice of deposition that included various topics, such as "any other errors [the developer] claims were made by subcontractors."[16]

The developer did not seek a protective order and, instead, designated its vice president of sales, who was "the only employee remaining with the company who was employed" at the time of the project.[17] At the deposition, the designee testified that "she was not aware of any problems the subcontractors had 'with performing their work' at the project."[18] She testified that she had no information as to whether the subcontractors performed their work negligently, whether there were any errors made by them, and whether they breached their contract with the developer.[19] Following the deposition, the subcontractors filed a motion for summary judgment, arguing in part that the third-party claims failed given this testimony.[20] The trial court granted summary judgment.[21]

The developer appealed and argued that "the trial court erred in focusing on the Rule 30(b)(6) designee's lack of knowledge in concluding that no triable issues remained for trial."[22] The court of appeals disagreed and determined that "[the developer] produced a witness who did not have knowledge about the matters relating to the claims, but who identified former employees with the knowledge."[23] The court noted that former employees "were available to [the developer] and could have been designated under C.R.C.P. 30(b)(6)."[24] However, instead of seeking a protective order or interviewing the former employees, the developer "proceeded with the deposition of an unprepared designate who lacked knowledge of the matters at issue."[25] Accordingly, the court concluded that the trial court properly relied upon the designee's testimony despite her lack of knowledge.[26]

The developer also argued that the subcontractors could not use the "30(b)(6) designee's testimony to show that no facts support[ed] any of the claims against them."[27] The court of appeals rejected this argument, which, essentially, would give the testimony "no operative effect."[28] It reasoned that while Rule 30(b)(6) testimony "does not rise to the level of judicial admission, [] that does not mean that such testimony must be excluded or that it is not competent to use in a C.R.C.P. 56 motion."[29] Accordingly, the court decided that "the testimony of the designee is nevertheless admissible against the party that designates the representative."[30] Of note, the court recognized that "[n]othing apparent from the record prevented [the developer] from offering evidence by way of affidavit or document to contradict the testimony given by its designee or to provide factual detail to support its claims against the subcontractors."[31] Since the developer did not do so, the testimony satisfied the subcontractors' initial burden on summary judgment.[32]

Camp Bird Colorado, Inc. v. Board of County Commissioners of Ouray

In *Camp Bird Colorado, Inc. v. Board of County Commissioners of Ouray*,[33] the Ouray board of county commissioners filed an action to quiet title of a public right of way claimed as private by a mining company.[34] The board was successful at trial.[35] The mining company appealed and argued that the trial court erred in admitting certain evidence.[36] Specifically, the mining company argued that the board failed to designate a certain witness in response to its Rule 30(b)(6) notice of deposition and, therefore, the trial court erred in allowing this previously undesignated witness to testify as to certain issues at trial.[37] The court explained the contours of the rule:

> The burden under C.R.C.P. 30(b)(6) is to produce witnesses who are knowledgeable, not to produce an exhaustive list of witnesses to testify as to each and every factual assertion made by the organization . . . . Under C.R.C.P. 30(b)(6), persons designated must be knowledgeable as to the matters at issue and as to facts pertinent to the organization regarding the issue, and they must testify as to the specifically requested information. By contrast, persons not designated can testify and are not required to include in their testimony matters known or reasonably available to the organization. In other words, not being listed under C.R.C.P. 30(b)(6) does not *disqualify* a person from testifying, but rather being listed under C.R.C.P. 30(b)(6) mandates that the witness's testimony include certain subject matter and knowledge.[38]

The court summarized, "[i]n short, simply because a witness is not a designated C.R.C.P. 30(b)(6) witness on behalf of an organization does not preclude that witness from testifying as to matters regarding or on behalf of that organization."[39] It continued, "[q]uite the opposite, the organization is allowed to call non-designated persons as fact witnesses."[40] The court reasoned that "nothing in C.R.C.P. 30(b)(6) precludes an organization from offering either contrary or clarifying evidence where a designated deponent has no knowledge of a particular matter."[41] Based upon this, the court concluded that the board "produced witnesses under C.R.C.P. 30(b)(6) who were knowledgeable both as to the facts regarding the county and as to those at issue at trial."[42] Therefore, the trial court did not abuse its discretion in allowing additional witness testimony at trial.[43]

The Use of 30(b)(6) Testimony

These two cases explain the parameters of the testimony of an entity's designee under CRCP 30(b)(6). While such testimony can be used against the entity, it is not conclusive. This testimony does not amount to a judicial admission. Rather, it can be contradicted, supplemented, or otherwise addressed by other testimony. This is practical and recognizes that the entity's witness is like any other witness, whose testimony is subject to corroboration or contradiction. Yet, if such testimony stands alone, it can be used in litigation, including to confirm a lack of knowledge. "[T]he testimony of the representative designated to speak for the corporation [is] admissible against it."[44] "But as with any other party statement, they are not 'binding' in the sense that the corporate party is forbidden to call the same or another witness to offer different testimony at trial."[45] As another court articulated in a case involving Rule 30(b)(6) testimony by a designee of corporate entity Amana:

> Although Amana is certainly bound by Mr. Schnack's testimony, it is no more bound than any witness is by his or her prior deposition testimony. A witness is free to testify differently from the way he or she testified in deposition, albeit at the risk of having his or her credibility impeached by the introduction of a deposition.[46]

"The testimony of a Rule 30(b)(6) witness is merely an evidentiary admission, rather than a judicial admission."[47] "[T]he 'majority of courts to reach the issue . . . treat the testimony of a Rule 30(b)(6) representative as merely an evidentiary admission, and do not give the testimony conclusive effect.'"[48]

Recent Changes to Rule 30(b)(6)

Both the federal and Colorado versions of Rule 30(b)(6) have been recently amended as discussed below.

Federal Amendments

The US Supreme Court amended FRCP 30(b)(6) in 2020 due to complaints from counsel for both plaintiffs and defendants about "the problematic practice of opposing counsel under the current rule" despite courts reporting that "they are rarely asked to intervene in these disputes."[49] The federal amendment adds a new duty to confer. Specifically, the amendment "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."[50] It also "requires that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify."[51] The amendment sought "to promote exchanges between the parties in advance of the deposition to clarify the subject matter to be covered in the deposition."[52] The committee note to the amendment explains:

> Candid exchanges about the purposes of the deposition and the organization's information structure may clarify and focus the matters for examination, and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements.[53]

FRCP 30(b)(6) was amended as follows (additions appear in bold italics):

> (6) *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 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.~~ ***to confer with the serving party and to designate each person who will testify.*** 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. [54]

The duty to confer is "considered a best practice—conferring about the matters for examination will certainly improve the focus of the examination and the preparation of the witness."[55] Conferral was added "to respond to problems that have emerged," including "[p]articular concerns" involving "overlong or ambiguously worded lists of matters for examination and inadequately prepared witnesses."[56] The duty to confer "may be more productive if the serving party provides a draft

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of the proposed list of matters for examination" and notes that the conferral may be "iterative."[57] However, "it may be desirable to seek guidance from the court."[58]

Colorado Amendments

Following the federal amendments, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure considered whether similar or other amendments to the state equivalent should be adopted.[59] A subcommittee was appointed, which similarly recognized that attorneys "experience significant problems in conducting efficient and manageable 30(b)(6) depositions."[60] The subcommittee referred to the federal changes as "excessively modest given the scope of the issues" and embarked on exploring "reforms to improve Colorado's rule."[61] According to the subcommittee, CRCP 30(b)(6) did "not provide sufficient guidance to practitioners" and, therefore, allowed an opening "to gamesmanship and abuse."[62]

Some of the frustrations from practitioners in Colorado included "investing considerable time and resources in the deposition only to question witnesses who are not knowledgeable on matters for examination"; an organization's "later attempts to augment or contradict elicited testimony during summary judgment briefing or at trial"; and "receiving 30(b)(6) notices with topics that are so numerous or broad as to be unmanageable . . . [and] being asked to prepare witnesses on more topics than could be realistically covered in a single deposition."[63] Courts also expressed concern arising out of the "number of topics, the scope of the topics, the length of the deposition or after-the-fact, whether the defending party adequately prepared its witness(es)."[64] The subcommittee considered a total of 15 identified issues under the current rule.[65] The subcommittee recommended revisions that included updating to gender-neutral language, adding "other entities" to the list of organizations, clarifying that 30(b)(6) depositions may be imposed on nonparties by subpoena, and updating Rule 45 to conform with clarifications in 30(b)(6).[66] These changes were adopted by the Colorado Supreme Court in 2022 and are reflected in amended CRCP 30(b)(6) as follows (additions appear in bold italics):

(6) A party may in ~~his~~ ***its*** notice ***or subpoena*** name as the deponent a public or private corporation, ~~or a~~ partnership, ~~or~~ association, ~~or~~ governmental agency***, or other entity*** and designate with reasonable particularity the matters on which examination is requested. The *named* organization ~~so named~~ shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which ~~he~~ *the person* will testify. ***Before a notice is served, or promptly after a subpoena is served, the serving party and the organization shall confer in good faith about the matters for examination. A subpoena shall advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify.*** The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules. ***The duration of a deposition under this subsection (b)(6), regardless of the number of persons designated, is governed by Rule 30(d)(2)(A).***[67]

Rule 45 was also amended as follows:

(e) Subpoena for Deposition; ~~Place of Examination.~~

(3) Subpoena for deposition of an organization: A subpoena commanding a public or private corporation, partnership, association, governmental agency or other entity to attend and testify at a deposition is subject to the requirements of Rule 30(b)(6). Responses to such subpoenas are also subject to Rule 30(b)(6).[68]

The Colorado amendments are different from the federal amendments. Specifically, the timing of the conferral is "based on whether the conferral is with a party by way of a deposition notice or with a nonparty by way of a subpoena."[69] "For parties, conferral is most appropriate before the deposition notice is served" but for a subpoena, there is no mechanism for a nonparty to engage in discussion until after a subpoena is served.[70]

Also, Colorado's amendment addresses the length of a Rule 30(b)(6) deposition.[71] Some confusion had previously arisen regarding the length of such a deposition because CRCP 30(d)(2)(A) refers to a deposition "of a person" and is limited to one day of six hours.[72] Additional confusion arose because the federal committee stated, "For purposes of this durational limit . . . the deposition of each person designated under Rule 30(b)(6) should be considered a separate deposition."[73] The rule now cross-references CRCP 30(d)(2)(A) to clarify this issue. Practically, this limitation affects the number of topics a noticing party can potentially list while balancing the specificity requirement.

Practical Application of the Rule for Colorado Lawyers

"The topics of a Rule 30(b)(6) examination . . . must be relevant."[74] "The rule implies an equivalent obligation on the deposing party to 'designate with painstaking specificity, the particular subject areas that are intended to be questioned.'"[75] "An overbroad Rule 30(b)(6) notice subjects the noticed party to an impossible task."[76] The rule requires the noticing attorney to "[d]escribe with reasonable particularity the matters for examination."[77] "For example, when identified topics-of-inquiry for a Rule 30(b)(6) deposition use the term 'all,' courts have noted that 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."[78] Matters of inquiry can be problematic if it is impossible to prepare a witness. Yet "[r]esponses to questions outside the scope of listed subjects will not bind the corporation and counsel has no obligation to prepare corporate representative on topics not identified."[79] Those "answers are treated as the answer of the individual deponent."[80] The touchstone of the scope and length of topics should be subject to the express factors in Rule 26(b)(1), as well as consideration as to whether the deponent is a party or nonparty.

Upon receipt of a Rule 30(b)(6) notice, counsel for the noticed entity should carefully review it and expressly object to any topic that does not meet the above parameters. As best practice, such objections should be submitted in writing, but not to the exclusion of other discussion. If the conferral process does not resolve the objections, any outstanding issues may need to be raised to the court for resolution before the deposition, although the rule does not express who should raise the issue before a court. If a motion for protective order is filed, it should delay the noticed deposition, at least as to those objectionable topics.[81] Given that this process may take significant time, the noticing party should express early in the discovery process that it seeks a Rule 30(b)(6) deposition and identify the proposed topics. The responding party should be given adequate time to communicate within the organization, to respond to the noticing party, and, if necessary, to seek court relief. Also, if the CRCP 30(b)(6) notice includes requests for production, a party may respond within 35 days pursuant to CRCP 34.[82]

The attorney for the entity should work with their client to determine who to designate as a witness. The entity has the right to select its designees. It can designate any person and more than one person. "Although the necessity of producing a prepared and knowledgeable witness may be burdensome to a corporation, the burden is not unreasonable because it is the natural result of the privilege of using the corporate form to conduct business."[83] The entity does not have to select a person with the most knowledge on a topic or one who is familiar with the topic through background and experience. Instead, it may select any individual within or beyond the organization who "consent[s] to appear and testify on its behalf with respect to matters known or reasonably available to the organization."[84]

Yet entities "have a duty to make a conscientious, good-faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unevasively answer questions about the designated subject matter."[85] The entity must "review all matters known or reasonably available to it in preparation for the Rule 30(b)(6) deposition."[86] "If designated persons do not possess personal knowledge of the matters to which they might expect inquiry, the entity is obligated to prepare the designees so that they may give knowledgeable and binding answers for the organization."[87] "Inadequate preparation of a Rule 30(b)(6) designee can be sanctioned based on the lack of good faith, prejudice to the opposing side, and disruption of the proceedings."[88]

The organization should, if necessary, "prepare deponents by having them review prior fact witness deposition testimony as well as documents and deposition exhibits."[89] The witness should be prepared to testify about how they prepared (subject to any potential privileges), including information reviewed and others in the organization consulted with. This may help establish the level of preparedness in satisfaction of Rule 30(b)(6) although the witness may not be omniscient about the entire history or dealings of the organization as to a particular topic. Such knowledge cannot be expected in the modern corporate environment, where individuals frequently change jobs and organizations frequently modify operations, and considering the sheer history and volume of potential information.

Conclusion

The deposition of an entity is a useful tool in litigation especially with the advent of more corporate forms. While Rule 30(b)(6) was instituted long ago, practitioners and courts seem to still struggle with the practical realities of the rule. Recognizing these ongoing issues, both the federal and Colorado rules have undergone recent amendments. Practically, these amendments focus on the conferral process in order to provide both the noticing party and the noticed party with the opportunity to address the listed topics in advance of the deposition. By narrowing these issues, the parties are in a better position to raise any remaining issues with the court.


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NOTES

1. Beier, "Organizational Avatars: Preparing CRCP 30(b)(6) Deposition Witnesses," 43 *Colo. Law.* 39, 39 (Dec. 2014).
2. FRCP 30(b)(6) (1970) (current version at FRCP 30(b)(6) (2020)).
3. Wright and Miller, 8A *Fed. Prac. & Proc. Civ.* § 2103 (Thomson Reuters 2023).
4. *Id.*
5. FRCP 30(b)(6) (1970 Comments) (current version at FRCP 30(b)(6) (2020)).
6. CRCP 30(b)(6).
7. CRCP 30(b)(5).
8. CRCP 45(b)(1)(C).
9. Wright and Miller, *supra* note 3, § 2103.
10. CRCP 30(b)(6).
11. Wright and Miller, *supra* note 3, § 2110.
12. *Brunet v. Quizno's Franchise Co.*, No. 07CV01717, 2008 WL 5378140, at *2 (D.Colo. Dec. 23, 2008).
13. *D.R. Horton, Inc.-Denver v. D & S Landscaping, LLC*, 215 P.3d 1163 (Colo.App. 2008).
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.* at 1167.
23. *Id.* at 1168–69.
24. *Id.*
25. *Id.* at 1169.
26. *Id.*
27. *Id.*
28. *Id.*
29. *Id.* at 1170.
30. *Id.*
31. *Id.*
32. *Id.*
33. *Camp Bird Colo., Inc. v. Bd. of Cnty. Comm'rs of Ouray*, 215 P.3d 1277 (Colo.App. 2009).
34. *Id.* at 1280.
35. *Id.* at 1281.
36. *Id.*
37. *Id.* at 1289–90.
38. *Id.* at 1291.
39. *Id.* at 1290–91.
40. *Id.*
41. *Id.*
42. *Id.* at 1291.
43. *Id.*
44. Wright and Miller, *supra* note 3, § 2103.
45. *Id.*
46. *Id.*
47. *Vehicle Mkt. Rsch., Inc. v. Mitchell Int'l, Inc.*, 839 F.3d 1251, 1261 (10th Cir. 2016).
48. *Id.* (quoting *Templeton v. Catlin Specialty Ins. Co.*, 612 F.App'x 940, 959 n. 19 (10th Cir. 2015) (unpublished)).
49. Duff, *Transmittal of Proposed Amendment to the Federal Rules of Civil Procedure, Report of the Committee on Rules of Practice and Procedure* 146 (Oct. 23, 2019).
50. FRCP 30(b)(6).
51. *Id.*
52. Wright and Miller, *supra* note 3, § 2103.
53. FRCP 30(b)(6).
54. *Id.*
55. Duff, *supra* note 49 at 144.
56. *Id.*
57. *Id.*
58. *Id.*
59. Scoville et al., *Current Issue With Rule 30(b)(6) and Proposed Amendments* 1 (Sept. 15, 2021) (Colorado Supreme Court Committee on the Rules of Civil Procedure, Sept. 24, 2021, meeting agenda packet).
60. *Id.* at 1.
61. *Id.*
62. *Id.* at 2.
63. *Id.*
64. *Id.*
65. *Id.* at 3.
66. *Id.*
67. CRCP 30(b)(6).
68. *Id.*
69. Scoville et al., *supra* note 59 at 6.
70. *Id.* at 3.
71. *Id.*
72. *Id.* at 7.
73. *Id.*
74. *Erickson v. City of Lakewood*, No. 119CV02613, 2021 WL 4947231, at *3 (D.Colo. Sept. 23, 2021).
75. *Int'l Bhd. of Teamsters, Airline Div. v. Frontier Airlines, Inc.*, No. 11-CV-02007, 2013 WL 627149, at *5 (D.Colo. Feb. 19, 2013), *order amended on reconsideration for other reasons*, No. 11-CV-02007, 2013 WL 12246941 (D.Colo. Sept. 12, 2013) (citing *EEOC v. Thorman & Wright Corp.*, 243 F.R.D. 421, 426 (D.Kan. 2007)).
76. *Preitauer v. Am. Fam. Mut. Ins. Co., S.I.*, No. 1:20-CV-00845, 2020 WL 7711325, at *1 (D.Colo. Dec. 29, 2020) (quoting *Reed v. Bennett*, 193 F.R.D. 689, 692 (D.Kan. 2000)).
77. *Id.* (quoting 8A Wright and Miller, *Fed. Prac. & Proc. Civ.* § 2103 (3d ed. Thomson/West 2010)).
78. *Id. 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.").
79. Jones and Crews, *Much Ado About Rule 30(b)(6) Depositions* 2 (Faculty of Federal Advocates webinar, Aug. 12, 2021).
80. *Id.*
81. CRCP 26(c).
82. CRCP 34.
83. *D.R. Horton*, 215 P.3d at 1168.
84. FRCP 30(b)(6) (1970) (current version at FRCP 30(b)(6) (2020)).
85. *Live Face On Web, LLC v. Integrity Sols. Grp.*, 421 F. Supp. 3d 1051, 1080 (D.Colo. 2019).
86. *Id.* at 1080 (quoting *In re Application of Michael Wilson & Partners*, No. 06-cv-02575, 2009 WL 1193874, at *3–4 (D.Colo. Apr. 30, 2009), *aff'd sub nom. In re Michael Wilson & Partners*, No. 06-CV-02575, 2011 WL 3608037 (D.Colo. Aug. 16, 2011)).
87. *Wilson & Partners*, 2009 WL 1193874, at *4.
88. *Id.* at *3–4.
89. *D.R. Horton*, 215 P.3d at 1168 (citing *United States v. Taylor*, 166 F.R.D. 356, 362 (M.D.N.C. 1996)).