

PRAISE FOR 30(b)(6)

“It’s malpractice to not study this and Mark’s book is the gold standard.”

—John Romano, past president of the Florida Justice Association and editor of
Anatomy of a Personal Injury Lawsuit

“Lawyers often—and wrongly—think of the federal rules as restraints. They are wrong to do so. When understood and prudently applied, the rules provide flexible, economical, and effective ways to marshal the facts and bring the law to bear on a contested case. A hard-litigated case is a real fight, but it’s a structured fight. The rules provide the structure. Mark Kosieradzki shows you how Rule 30(b)(6) cuts through corporate or governmental fog. He teaches the steps you need to get to the facts and the people who know them. His book provides lawyers with powerful tools to build and win their cases.”

—Judge James Rosenbaum, United States District Judge (Ret.), former Chief Judge of
the District of Minnesota

“Mark Kosieradzki has taken the rather mundane 30(b)(6) corporate representative deposition and created one of the most important books for plaintiffs’ lawyers in the last twenty years. Using Mark’s techniques will bring you a treasure trove of information that the generic 30(b)(6) deposition and requests for production would never get.”

—Paul Scopur, author of *Advanced Depositions Strategy and Practice*, member of the
American Society of Trial Consultants

“Mark Kosieradzki’s book covers the law and strategy for dealing with every possible question about 30(b)(6) depositions. No matter how obstructive the opposition, this book gives you the path and the strategy to prevail.”

—Phillip Miller, author of *Advanced Depositions Strategy and Practice*

“Mark Kosieradzki, an outstanding trial lawyer, wrote this book with his almost four decades of experience. This comprehensive and easily readable book combines illustrations, examples, and summaries; legal analysis of the nuances involved in the rule; and is supported by detailed authority.”

—Mike Steenson, director of law review; Larry and Christine Bell Distinguished Professorship, Mitchell Hamline School of Law

“Mark Kosieradzki’s new book not only reveals how to spell his last name, but also walks you through the entirety of 30(b)(6) depositions. He focuses on the technical basics and purposes of these essential depositions, and guides you to using them skillfully. If you’re new at it, Mark’s thorough book takes you from zero to sixty with extraordinary clarity. If you think you know all about 30(b)(6)s, Mark’s book will still fill in gaps you don’t even know you have. This is not just another strategy book; it is an essential primer of the technical skills that will help you maximize the benefits of a well-executed 30(b)(6).”

—David Ball, author of *David Ball on Damages*

“Tired of corporate defendants giving you the runaround and producing nothing useful in discovery? Mark Kosieradzki’s book is the key to unlocking the vault where defendants hide the secret documents you need to win your case. This book is an invaluable resource you will use every time you do a 30(b)(6) deposition.”

—Randi McGinn, author of *Changing Laws, Saving Lives* and president of the Inner Circle of Advocates

“This book allows every plaintiffs’ lawyer in any state or jurisdiction to become an expert on taking corporate representatives’ depositions. Stop the wild hunt for the right witness.”

—Sach Oliver, member of the Arkansas Trial Lawyers Association

“Long before a presidential candidate told us, ‘Corporations are people too,’ the Federal Rules of Civil Procedure required corporations to testify through a single human voice. This rule blocks corporations from putting up a thicket of know-nothing witnesses who hide the corporation’s knowledge behind ‘not me.’ The great weapon that is 30(b)(6) finally has a great explainer and brilliant teacher in Mark Kosieradzki. All advocates for people up against big entities owe heartfelt thanks to Mark for opening his toolbox to the rest of us.”

—Patrick Malone, member of Inner Circle of Advocates, coauthor of *Rules of the Road*, and author of *The Fearless Cross-Examiner*

“When a party is an institution, discovering facts is often laced with obstruction, evasion, and frustration. Rule 30(b)(6) offers real assistance but only if well understood. Mark Kosieradzki’s book provides an engaging, accessible, and thorough exploration of the rule and explains essential steps for using it. Mark’s book will likely be seen as intended for plaintiffs’ lawyers, but it offers insight for defense attorneys and would be a good read for law students too.”

—David Walker, emeritus professor of law, former dean of Drake Law School

“For years, I have followed Mark Kosieradzki around the country to attend his presentations on 30(b)(6), eagerly awaiting the release of this book. His writing and teaching style are content-rich but accessible to even a novice attorney. A well-planned and well-executed 30(b)(6) can win a case, and the techniques I learned from Mark allowed me to take 30(b)(6) depositions at a skill level far beyond my years of practice and win my first civil jury trial. You could spend decades trying to harness the power of 30(b)(6) on your own, or you could read this book.”

—Amanda Francis, board member of the Colorado Trial Lawyers Association, member of the Colorado Bar Association’s Litigation Committee

“If your case involves a party with a name ending in ‘Inc.,’ ‘Corp.,’ ‘PA,’ ‘LLC,’ ‘Partnership,’ ‘Trust,’ ‘Dept. of,’ ‘Gov’t. of,’ or if knowledge from any of these bears on your case, (virtually any case being litigated today), this book is pure gold. Kosieradzki’s *30(b)(6)* is not only plainly written with straightforward advice, examples, and supporting case law, but a delight to read. I wish he had written it twenty-five years ago.”

—Carl Bettinger, author of *Twelve Heroes, One Voice*

“Deposing a corporate representative is one of the most powerful tools available to a trial lawyer. Mark Kosieradzki’s book is the owner’s manual that shows you the correct way to use it. WARNING: Failure to Follow the Manual May Result in Serious Damage to Your Case!”

—Bob Pottroff, former president of the Kansas Association for Justice and former chair of the American Association for Justice Railroad Litigation Group

“Mark’s book is an absolute must-read for every lawyer, whether a beginning trial lawyer or a seasoned practitioner who is undertaking a 30(b)(6) deposition. A brilliant work with something of value on virtually every page. A road map to success.”

—Jim Bartimus, fellow of the International Academy of Trial Lawyers

“Far too many lawyers practice law using folklore. This book helps those of us who want to read and understand the rules. There aren’t many silver bullets, but this book is one.”

—John Taussig, co-chair of the Colorado Trial Lawyers Association Bad Faith seminar, graduate of the Spence Trial Lawyer’s College

“Mark has spent twenty years developing a 30(b)(6) roadmap to make it easier and more efficient to use these depositions as part of our discovery. Anyone who deposes corporations, organizations, or the government should read this book.”

—Steve Langer, past president of the Indiana Trial Lawyers Association

“Mark has taught me how to get documents that the defense would never produce. By speaking directly to the source, I have found boxes of unproduced documents and neutralized objections before the defense can utter them. They are helpless. I use these tools with every commercial defendant and have generated incredible results for my clients. I am forever indebted to Mark for teaching me how to be a ‘Rebel with a Kos.’”

—Render Freeman, faculty member for the American Association for Justice and graduate of the Spence Trial Lawyer’s College

“In over forty years of law practice, I’ve never read a better practice manual. Mark Kosieradzki has distilled decades of hard work and experience in this single volume. Build off Mark’s experience and improve your results when litigating with corporate or governmental entities that want to play ‘hide the ball.’”

—Ken Connor, trial lawyer with verdicts totaling over \$200 million and has tried cases from Florida to California

“In *30(b)(6)*, Mark Kosieradzki provides a unique approach and a roadmap for truly fact-finding corporate and government depositions. Over more than thirty years, Mark has refined the art of the 30(b)(6) corporate representative deposition. His well-honed techniques will make you a better advocate for your clients. I have been eagerly waiting for this book.”

—Julie Braman Kane, president of the American Association for Justice, past chair of the National College of Advocates

“Thorough, detailed, and comprehensively researched, this book reminds every lawyer that 30(b)(6) depositions are the overlooked and misunderstood gem of discovery. Kosieradzki opens his briefcase, hands you his notes, and then explains in detail exactly how to use them to defeat the enemy. Don’t reinvent the wheel: Kosieradzki’s wheel is better and already battle tested.”

—Zoe Littlepage, member of the Inner Circle of Advocates and recipient of the American Association for Justice’s Pursuit of Justice Award, 2015

“Canadians, don’t be fooled by the title. American and Canadian discovery rules are the same. The computer systems that store documents in America are the same as those in Canada. I have been using Mark’s techniques in Canada for years to get information I would never otherwise have uncovered.”

—Robyn Wishart, practices across Canada specializing in spine and brain injury

“Practitioners have long recognized the power of a 30(b)(6) deposition. Even if the opposing party comes empty-handed, a well-taken 30(b)(6) deposition can lead to the discovery of dispositive facts. Mark Kosieradzki’s work offers practical advice for ensuring that your 30(b)(6) deposition lives up to its potential.”

—Andrew M. Pardieck, associate professor of law, Southern Illinois University
School of Law

“In truck crash litigation, the 30(b)(6) deposition is one of the most potentially powerful weapons in the plaintiff lawyer’s arsenal—but only if you issue notices, prepare for them, and take them properly. Mark has been the go-to authority on 30(b)(6) depositions for years and with this book he shares his innovative work with us all. Look out world.”

—Joe Fried, founder of the Academy of Truck Accident Attorneys and faculty
member of the Spence Trial Lawyer’s College

“I’ve worked with Mark and seen first-hand the power of his techniques to force corporate defendants to answer questions they don’t want to answer. This book is an excellent step-by-step guide so that you, too, can cut through the evasiveness of corporate wrongdoers. You need this book. Your clients need you to have this book.”

—Deborah Nelson, past president of the Washington State Association for Justice

30(b)(6)
*Deposing Corporations,
Organizations, and the
Government*

MARK KOSIERADZKI



TRIAL GUIDES, LLC

30(b)(6): Depositing Corporations, Organizations, and the Government
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*To my father, Henry, who taught us that,
with initiative, all problems can be solved.*

*To my mother, Danuta, who taught us to
be passionate about every moment of our lives.*

Sto Lat!

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1. John Donne, “Meditation XVII,” in *Devotions upon Emergent Occasions* (1624).

PUBLISHER'S NOTE

This book is intended for practicing attorneys. It does not offer legal advice or take the place of consultation with an attorney who has appropriate expertise and experience.

Attorneys are strongly cautioned to evaluate information, ideas, and opinions set forth in this book in light of their own research, experience, and judgment. Readers should also consult applicable rules, regulations, procedures, cases, and statutes (including those issued after the publication date of this book), and make independent decisions about whether and how to apply such information, ideas, and opinions for particular cases.

Quotations from cases, pleadings, discovery, and other sources are for illustrative purposes only and may not be suitable for use in litigation in any particular case.

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CITATIONS AND SECONDARY MATERIALS

Annotations throughout this book quote or reference judicial opinions that may cite and rely on secondary materials to support the decision or point being made. For consistency, this book attempts to mirror the citation formatting of the secondary material used by the court at the time of the decision.

One should be aware that the current citation of the secondary sources, including the name of the text, the authors, the section numbers, and names of the sections may have changed since the time the court quoted or relied on the material.

If you plan on citing the sources used in this text, make sure that the case law is still current and that the citation formatting required by your jurisdiction is used.

As with any book relating to legal concepts, please be aware that the law may have changed.

INTRODUCTION

If strength were all, tiger would not fear scorpion.

—Charlie Chan¹

For thirty-seven years, in state and federal courts, I have litigated and tried countless cases involving trucking collisions, motorcycle and car wrecks, medical malpractice, nursing home abuse, product liability, construction injuries, child abuse, contracts, and civil rights violations. When those cases involved corporate or institutional defendants, I was inevitably thrown into a world of litigation obstruction and evasion. The effort to identify the factual basis for positions that corporate adversaries asserted more often than not became a game of cat and mouse.

These defendants' answers to discovery were largely nonresponsive, evasive, and misleading. They littered their responses to written discovery with boilerplate objections and followed these

1. *Charlie Chan's Secret*, directed by Gordon Wiles (1936; 20th Century Fox).

objections with partial answers, subject to those objections. They delayed document production or provided incomplete documents. Witnesses purported to know nothing. With every effort to unearth the facts, the cost of litigation became more prohibitive. Corporate litigation seemed insurmountable. I dreaded every time I had to face a corporate defendant.

Like other lawyers, I had a vague understanding that under Federal Rule of Civil Procedure 30(b)(6), and the comparable rules in state courts, a corporation was supposed to designate someone to provide the information I requested. In theory, the rule was supposed to cut through the evasion. Like everyone else, I was frustrated because those depositions never worked! I talked to other lawyers to learn if I was doing something wrong. My experience was not solitary. The recurrent complaint was that the 30(b)(6) corporate witnesses were seldom prepared and the depositions were therefore ineffective.

I scoured the 30(b)(6) case law in search of a solution to my frustration when litigating with major corporate and governmental entities. What I discovered was that the Federal Rule of Civil Procedure 30(b)(6), Deposition by Issue Designation, was the most misunderstood and underused discovery weapon available to lawyers who face corporate and governmental adversaries. I learned that the rule can be devastating to those adversaries when we use it properly. The key was to figure out how to use the rule effectively.

Once I came to understand the legal framework, I discovered that harnessing the power of 30(b)(6) required much more than asking for substantive information. Because evasion has become an art form, not only did I need well-crafted 30(b)(6) notices to access the information, but I also needed to know how to ask the correct foundational questions to build a record that exposed the adversary's obstruction. I discovered that Rule 30(b)(6) is like jujitsu. The power comes from deflecting our adversary's obstructive conduct back on them.

By understanding the theoretical framework of Rule 30(b)(6) and then using the tools you will find in the book, you will be able

to build a record to expose the evasion, to compel disclosure of critical information, and oftentimes to secure sanctions. Focused 30(b)(6) representative deposition notices and discovery strategies force these institutions to produce information at a fraction of the litigation cost. This book is a tool that will enable you to face Goliath without fear. It is a tool that will enable you to get the evidence you need to achieve fair settlements and to win at trial. The strategies and techniques discussed in this book can take your practice to a higher level. Good luck.

—MRK

1

DEPOSING ORGANIZATIONS

We're in a battle for our lives for things that really matter to us. There's a shell game going on like I've never seen before.

—Senator John Kerry¹

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1. John Kerry (presentation, Massachusetts College of Liberal Arts, North Adams, MA, June 3, 2005).

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INTRODUCTION

A great case needs great evidence. But you can't get great evidence if your opponent has it locked up. A well-crafted 30(b)(6) deposition unlocks the door.

Developing an effective 30(b)(6) deposition technique first requires that you understand the case law. Without a thorough understanding of the legal framework, it is impossible to execute an effective 30(b)(6) strategy. Although courts throughout the country have been deflecting obstructive 30(b)(6) witness tactics for decades, a significant percentage of the practicing bar continues to be unaware or misinformed about the law of 30(b)(6) depositions. To be an effective advocate, it is critical to understand the rules of engagement before the battles begin.

We need to understand the duties of both the requesting and responding parties; the rules controlling logistics, such as location, length, and number of depositions; the permissible scope of inquiry and what objections are appropriate; as well as the consequences of failing to produce the information requested. Therefore, at the outset, this book strives to arm you with a comprehensive legal framework of the law of 30(b)(6), Deposition by Issue Designation.

With an understanding of the established legal parameters, with the help of friends and colleagues throughout the country, I set out to develop, test, and then refine, through countless depositions, a disciplined methodology for harnessing the power of 30(b)(6). My colleagues and I learned that the power of the rule starts with knowing what you want and then crafting airtight 30(b)(6) deposition notices to ensure that the courts will enforce the rules. Then we developed the bulletproof foundational outlines to expose the evasive response to our deposition notices.

I have written this book to share what I have learned. The book is organized using a generally linear process of evaluating information sources from organizations, such as corporations, partnerships, or the government. Then the book shows how to develop a discovery plan to efficiently get the information you want using Rule 30(b)(6).

LEARNING ABOUT 30(b)(6)

This book has a two-fold design: you will both learn the law and find cases throughout the book that will arm you with the necessary legal principles for virtually any problem you face with 30(b)(6). However, you will need more than legal principles and oratory eloquence to prevail. You will also need a factual record. Courts apply established legal principles to a factual record. Therefore, throughout the book I share suggestions to develop the questioning technique necessary to build a factual record that supports your legal position.

Although the majority of the case law in this book involves corporate deponents, the principles I discuss in this book are not limited to corporations. Rather, this book explores techniques that you can apply to crafting depositions for all varieties of organizations and entities.

Getting information from an institutional adversary is challenging at best. It is literally not possible to take the deposition of a corporation or an organization; when an organization is involved, you must obtain the information you seek from actual people who are authorized to speak for the organization.² The challenge is to identify who in the organization has the case-critical information and whose testimony can bind the organization.

Large organizations seldom have a single repository of information. Individual witnesses typically do not have access to all information known to the organization. Often people within the organization provide conflicting testimony, and the witness may not have the authority to bind the party organization to a position.

Those challenges are compounded when, more often than not, the organization's defense strategy is to engage in a calculated course of litigation obstruction to prevent access to the information that the institution controls. Written discovery seldom yields fruitful

2. *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996) (citing 8A Wright, Miller & Marcus, § 2103, at 30).

information. Attorneys make blanket objections to relevance and undue burden; documents that they produce and responses to questions are evasive and covered with objections, even though courts repeatedly hold that they are improper.³ To uncover the truth, you must cut through the self-serving filters of what information a responding party chooses to disclose. As a result, depositions are the battleground where the vast majority of litigation actually takes place.⁴

Finding the appropriate people to depose becomes even more important when you are faced with rules or scheduling orders that limit the number of depositions allowed, such as the federal presumptive limit of ten depositions.⁵ The first line of defense in any case involving institutional defendants is to limit the plaintiff's access to information. A common litigation strategy is to identify or proffer witnesses who are unable to provide the necessary information, and then to object to any depositions beyond the presumptive limit. Identifying the correct witnesses early in the litigation can avoid unnecessary and costly litigation.

The Federal Rules of Civil Procedure provide for two separate methods you may use to depose an organization. Rule (30)(b)(1) allows you to depose an organization through a *particular* officer, director, or managing agent of the organization.⁶ Rule 30(b)(1) binds parties whose depositions you take through officers or

3. *Athridge v. Aetna Cas. & Sur. Co.*, 184 F.R.D. 181, 190 (D.D.C. 1998); *Walker v. American Radiographics, Inc.*, 2010 WL 5437254, at *1 (S.D. Fla. 2010); *Network Tallahassee, Inc. v. Embarq Corp.*, No. 4:10CV38-RH WCS, 2010 WL 4569897, *1 (N.D. Fla. Sept. 20, 2010).

4. *Hall v. Clifton Precision Tool*, 150 F.R.D. 525, 531 (E.D. Pa. 1993).

5. Fed. R. Civ. P. 30(2)(A)(i). The Rules Committee considered reducing the presumptive limit from ten depositions to five. However, in April 2014 the proposal was dropped in favor of education and more efficient use of discovery mechanisms, like those this book discusses and advocates for.

6. *Cadent Ltd. v. 3M Unitek Corp.*, 232 F.R.D. 625, 627 (C.D. Cal. 2005).

managing agents.⁷ However, when gathering testimony using a Rule 30(b)(1) deposition, if the employee or member of the organization is not an officer or managing agent, that deposition represents the personal knowledge of the deponent and does not bind the organization.⁸ Alternatively, Rule 30(b)(6) requires that the *organization designate and prepare people* to speak on its behalf regarding “matters” specified in the deposition notice.

Although both deposition methods bind the organization, there is an important conceptual distinction. A deposition you take under Rule 30(b)(1) is a deposition of a person and, therefore, represents the knowledge of that particular person; whereas, a deposition you take under Rule 30(b)(6) is conceptually the testimony of the organization itself and thereby represents the cumulative knowledge of the organization. This book explores both methods at length.

DEPOSING ORGANIZATIONS IN STATE COURTS

Depositions of institutional witnesses are not limited to litigation in the federal court system. Throughout the country, states have adopted rules for taking depositions of organizations. Many of those states have mirrored Federal Rule 30(b)(6) or have established procedures that accomplish the same goals sought by the federal courts. When the state rule is based on its federal counterpart, those states often interpret their state rule using the federal authority for guidance.

A detailed discussion of each state’s interpretations of Rule 30(b)(6) is available in Appendix A.

7. *Rubin v. Gen. Tire & Rubber Co.*, 18 F.R.D. 51, 55 (S.D.N.Y. 1955) (“the Courts have inferred from Rule 37(d) that the deposition of a corporation that is a party may be taken through its officers or managing agents.”).

8. *Progress Bulk Carriers v. Am. S.S. Owners Mut. Prot. & Indem. Ass’n, Inc.*, 939 F. Supp. 2d 422, 430 (S.D.N.Y. 2013) *aff’d*, No. 12 CIV. 264 ALC FM, 2014 WL 896739 (S.D.N.Y. Feb. 21, 2014).

THE STEPS OF RULE 30(b)(6)

Following are the steps you are likely to encounter as you prepare for and conduct a Rule 30(b)(6) deposition. Keep in mind that you might not do all of these, and some may repeat. The steps might not all come in this order. Much of this depends on your opponent's decisions, and on the court's rulings. You could begin at Step 1 and then skip some of the intervening steps. But in general, here are the steps of a Rule 30(b)(6) deposition.

Step 1: Figure Out Your Case

The first step, which you can't skip under any circumstances, is figuring out your case. What exactly is it that you need to prove? What are the defenses likely to be, and how will you preempt them? I cover this to a certain extent in chapter 2, "Building a Record," but many other writers have covered this to a greater extent. I am a fan of these books:

- David Ball, *David Ball on Damages*, 3rd ed. (Portland, OR: Trial Guides, 2013)
- Rick Friedman and Patrick Malone, *Rules of the Road*, 2nd ed. (Portland, OR: Trial Guides, 2010)
- Neil Feigenson, *Legal Blame*, Revised ed. (American Psychological Association, 2001)
- Carl Bettinger, *Twelve Heroes, One Voice*, (Portland OR: Trial Guides, 2011)

What these books teach is that you need to know where you're going and how you're going to get there. Who is the villain in your case? What did they do? What are you trying to prove?

Step 2: Craft the 30(b)(6) Notice

Once you know what you're trying to accomplish, you craft the 30(b)(6) notice. How you craft the notice will have a direct impact on whether or not you will be able to compel the organization

to provide the information you need to prevail at trial. Equally important is the ability to craft a deposition notice that will enable you to bind that organization to the positions they have taken. The book teaches you all the rules and the strategies you need to use those rules. Chapter 7, “Crafting the 30(b)(6) Notice” teaches you how to properly craft the notice. Chapter 8, “Rule 30(b)(6), Rule 30(b)(2), and Rule 34 Document Depositions,” and chapter 9, “Electronic Discovery,” teach you how to craft a notice for documents or electronically stored information.

Step 3: Serve the 30(b)(6) Notice and Start Maneuvering

Portions of this step may or may not happen. After you serve the 30(b)(6) notice, lawyers representing the organization may try to prevent you from taking your deposition or may try to limit your deposition in whatever way they can. There may be negotiations and motions for protective orders. Before you even begin a deposition, you may find yourself needing to write a brief in response to their motions for a protective order. This book provides the legal arguments and supporting cases for virtually every problem that you will encounter—with ready access to the cases to help you write that inevitable brief to compel the necessary testimony from the organization. The cases you will need for brief writing are all throughout the book.

Step 4: Take the Deposition

Once you have established the right to question the 30(b)(6) witness, you will often find yourself in the middle of a 30(b)(6) deposition where your witness is unprepared. They might not know the answers to questions that they should have known in order to respond to your deposition notice, or they will simply be outright evasive. You may also encounter lawyers representing those organizations who will attempt to obstruct you from asking the necessary questions to get the information you need. If you are faced with these problems, your job is to establish a record of how the organization and their witness didn’t comply with the 30(b)(6)

rules. In this book, you will learn about the responsibilities of the responding organization, the cases necessary for your brief, and how to craft questions to build a record to support your motion to compel additional testimony. Chapter 10, “Duty to Attend,” and chapter 11, “Duty to Prepare,” deal with the organization’s responsibilities. Chapter 12, “Scope of Inquiry,” and chapter 13, “Deposition Obstruction,” deal with various types of obstruction, and chapter 14, “Motions to Compel and Sanctions,” teaches you about the types of motions you may need to write.

In this book we talk about building a record. To fully build a record, you need to understand how to craft your questions. *Advanced Depositions Strategy and Practice* by Paul Scoptur and Phillip Miller (Portland, OR: Trial Guides, 2013) is the book I look to for structuring my questions to help me build the record I need to support my 30(b)(6) motion practice.

Step 5: Write a Brief

If the organization didn’t designate a witness, or the witness was unprepared, or you face obstruction, you will need to bring a motion to compel. Once again you will need to write a brief, using the record you created in either your pre-deposition correspondence or in the deposition to show that the organization didn’t follow Rule 30(b)(6). If you want the judge to rule in your favor, you have to not only spell out the organization’s responsibilities, but also provide the court with a clear record of how they didn’t follow the rules. As with other steps, this book includes the case law and the strategies you need to show how the organization’s conduct is inappropriate. Throughout the book, you will find the law for virtually any issue that may come up.

Step 6: Depose Again and Lock Down

If the court orders the organization to provide a fully prepared witness, this additional testimony is your time to lock down your opponent’s position for trial. Your job is to get a record that this is what there is—there is no other information your opponent

can produce. You're building a record to bind the organization. Chapter 15, "Binding Effect," will show you how to build a solid record so the organization can't change their testimony.

Step 7: Block Attempts to Alter Testimony

There may be times when the organization attempts to change their testimony. This step may or may not happen. If you understand the law and you build an appropriate record, it will become difficult if not impossible for them to change their testimony or produce new information that they should have disclosed earlier. If you build a record as discussed in chapter 15, "Binding Effect," and if you understand the law of changing testimony in chapter 16, "Changing the Testimony," you can prevent organizations from changing their testimony according to the rules.

Step 8: Use 30(b)(6) Testimony in Summary Judgments or Trial

Once you have a killer 30(b)(6) transcript, you have to get that information in front of a jury. Chapter 17, "Using 30(b)(6) Testimony at Trial," will explain the evidentiary issues you need to understand to use your testimony at trial.

SUMMARY

- Effective 30(b)(6) depositions require that you first understand your case.
- Rule 30(b)(6) depositions represent the institutional knowledge of the organization.
- Rule 30(b)(1) depositions of officers, directors, or managing agents represent the individual's knowledge (not the organization's knowledge).

- Rule 30(b)(6) requires that the organization designates and prepares a witness to speak on their behalf regarding the issues you've designated.
- Both Rule 30(b)(6) and Rule 30(b)(1) bind the organization.
- Almost every state has a rule which mirrors federal Rule 30(b)(6) and use federal law to interpret their state rules. Rule 30(b)(6) is not just about federal court.