

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE¹**

1 **Rule 7.1. Disclosure Statement**

2 **(a) Who Must File; Contents.**

3 **(1) *Nongovernmental Corporations.*** A

4 nongovernmental corporate party or any
5 nongovernmental corporation that seeks to
6 intervene must file ~~2 copies of a disclosure~~
7 statement that:

8 ~~(1)~~(A) identifies any parent corporation and any
9 publicly held corporation owning 10% or
10 more of its stock; or

11 ~~(2)~~(B) states that there is no such corporation.

12 **(2) *Parties in a Diversity Case.* Unless the court**
13 orders otherwise, a party in an action in which
14 jurisdiction is based on diversity under 28 U.S.C.

¹ New material is underlined in red; matter to be omitted is lined through.

15 § 1332(a) must file a disclosure statement that
16 names—and identifies the citizenship of—every
17 individual or entity whose citizenship is
18 attributed to that party at the time the action is
19 filed.

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Committee Note

Rule 7.1 is amended to require a disclosure statement by a nongovernmental corporation that seeks to intervene. This amendment conforms Rule 7.1 to similar recent amendments to Appellate Rule 26.1 and Bankruptcy Rule 8012(a).

Rule 7.1 is further amended to require a party in an action in which jurisdiction is based on diversity under 28 U.S.C. § 1332(a) to name and disclose the citizenship of every individual or entity whose citizenship is attributed to that party at the time the action is filed. Two examples of attributed citizenship are provided by § 1332(c)(1) and (2), addressing direct actions against liability insurers and actions that include as parties a legal representative of the estate of a decedent, an infant, or an incompetent. Identifying citizenship in such actions is not likely to be difficult, and ordinarily should be pleaded in the complaint. But many examples of attributed citizenship arise from noncorporate entities that sue or are sued as an entity.

A familiar example is a limited liability company, which takes on the citizenship of each of its owners. A party suing an LLC may not have all the information it needs to plead the LLC's citizenship. The same difficulty may arise with respect to other forms of noncorporate entities, some of them familiar—such as partnerships and limited partnerships—and some of them more exotic, such as “joint ventures.” Pleading on information and belief is acceptable at the pleading stage, but disclosure is necessary both to ensure that diversity jurisdiction exists and to protect against the waste that may occur upon belated discovery of a diversity-destroying citizenship. Disclosure is required by a plaintiff as well as all other parties.

What counts as an “entity” for purposes of Rule 7.1 is shaped by the need to determine whether the court has diversity jurisdiction under § 1332(a). It does not matter whether a collection of individuals is recognized as an entity for any other purpose, such as the capacity to sue or be sued in a common name, or is treated as no more than a collection of individuals for all other purposes. Every citizenship that is attributable to a party must be disclosed.

Discovery should not often be necessary after disclosures are made. But discovery may be appropriate to test jurisdictional facts by inquiring into such matters as the completeness of a disclosure's list of persons or the accuracy of their described citizenships. This rule does not address the questions that may arise when a party's disclosure

statement or discovery responses indicate that the party cannot ascertain the citizenship of every individual or entity whose citizenship may be attributed to it.

The rule recognizes that the court may limit the disclosure in appropriate circumstances. Disclosure might be cut short when a party reveals a citizenship that defeats diversity jurisdiction. Or the names of identified persons might be protected against disclosure to other parties when there are substantial interests in privacy and when there is no apparent need to support discovery by other parties to go behind the disclosure.

Disclosure is limited to individuals and entities whose citizenship is attributed to a party at the time the action is filed. Those are the citizenships that determine whether there is diversity jurisdiction. Later changes of citizenship do not change the information required and do not require supplementation under Rule 7.1(b)(2).

**PROPOSED AMENDMENTS TO THE
FEDERAL RULES OF CIVIL PROCEDURE¹**

1 **Rule 30. Depositions by Oral Examination**

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3 **(b) Notice of the Deposition; Other Formal**
4 **Requirements.**

5 * * * * *

6 **(6) *Notice or Subpoena Directed to an***

7 ***Organization.*** In its notice or subpoena, a party
8 may name as the deponent a public or private
9 corporation, a partnership, an association, a
10 governmental agency, or other entity and must
11 describe with reasonable particularity the matters
12 for examination. The named organization must
13 ~~then~~ designate one or more officers, directors, or
14 managing agents, or designate other persons who

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15 consent to testify on its behalf; and it may set out
16 the matters on which each person designated will
17 testify. Before or promptly after the notice or
18 subpoena is served, the serving party and the
19 organization must confer in good faith about the
20 matters for examination. A subpoena must advise
21 a nonparty organization of its duty ~~to make this~~
22 ~~designation.~~ to confer with the serving party and
23 to designate each person who will testify. The
24 persons designated must testify about information
25 known or reasonably available to the
26 organization. This paragraph (6) does not
27 preclude a deposition by any other procedure
28 allowed by these rules.

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Committee Note

Rule 30(b)(6) is amended to respond to problems that have emerged in some cases. Particular concerns raised have

included overlong or ambiguously worded lists of matters for examination and inadequately prepared witnesses. This 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. The amendment also requires that a subpoena notify a nonparty organization of its duty to confer and to designate each person who will testify. It facilitates collaborative efforts to achieve the proportionality goals of the 2015 amendments to Rules 1 and 26(b)(1).

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. It may be productive also to discuss "process" issues, such as the timing and location of the deposition, the number of witnesses and the matters on which each witness will testify, and any other issue that might facilitate the efficiency and productivity of the deposition.

The amended rule directs that the parties confer either before or promptly after the notice or subpoena is served. If they begin to confer before service, the discussion may be more productive if the serving party provides a draft of the proposed list of matters for examination, which may then be refined as the parties confer. The process of conferring may be iterative. Consistent with Rule 1, the obligation is to confer in good faith about the matters for examination, but the amendment does not require the parties to reach agreement. In some circumstances, it may be desirable to seek guidance from the court.

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When the need for a Rule 30(b)(6) deposition is known early in the case, the Rule 26(f) conference may provide an occasion for beginning discussion of these topics. In appropriate cases, it may also be helpful to include reference to Rule 30(b)(6) depositions in the discovery plan submitted to the court under Rule 26(f)(3) and in the matters considered at a pretrial conference under Rule 16.

Because a Rule 31 deposition relies on written questions rather than a description with reasonable particularity of the matters for examination, the duty to confer about the matters for examination does not apply when an organization is deposed under Rule 31(a)(4).