



The Lawyer's Toolkit: Making Use of Rule 30(b)(6)

Chuck Hehmeyer, Esq.

Ask yourself: when is the last time you leveraged Rule 30(b)(6) to bolster your case? If your answer isn't "recently," you may want to pay close attention.

A cousin of its federal counterpart, Maine Rule of Civil Procedure 30(b)(6) is often overlooked and perhaps misunderstood. When properly wielded, M.R. Civ.P. 30(b)(6) is a powerful tool that cuts through the noise of chaotic and complex discovery.

Streamlining the Deposition Process

At its most basic level, Rule 30(b)(6) streamlines the process for taking depositions by eliminating any "guesswork" when it comes to determining what parties in a suit might have organizational knowledge. Instead, under Rule 30(b)(6), a litigant may "designate with reasonable particularity the matters on which examination has been requested," which triggers an obligation on the part of the

RULE *continued on Page 4*



Sex Abuse Survivors Practice Group Leading Maine Efforts for Trauma-Informed Lawyering

Michael Bigos, Esq.

On October 18, 2021, new legislation went into effect that removed Maine's statute of limitations for childhood sex abuse claims. It is a timely change that empowers survivors of sexual trauma to come forward and share their experiences when they are ready, rather than being constrained by an impersonal, sometimes impractical, one-size-fits-all deadline.

The change signals an evolution in lawmakers' understanding of a reality long known to survivors and their loved ones: Everyone heals at their own pace. What for one survivor may be an experience able to be shared after years of therapy is, for another, something that may take decades—or a lifetime—to be able to share. Some survivors never come forward. The average age of survivors who do come forward is 52, so the rationale for Maine's law change is clear.

Although Berman & Simmons has long had the honor of helping survivors of sex abuse protect their legal interests and tell their truths, these legislative changes have paved the way for survivors to know they are not alone. We have seen increases in the number of sex abuse inquiries. In addition to empowering survivors, the new statute underscores

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**MAINE STATUTES
OF LIMITATIONS**

Download a copy of our *2022 Maine Statutes of Limitations* document at:
bermansimmons.com/attorney-referrals

Firm News

Attorneys Travis Brennan and Dov Sacks Represent “Miracle Man” in Negligence Case Against Cianbro Corporation

In July 2020, Eric Jabbusch nearly died when he was crushed by over 10,000 pounds of steel pilings while working a construction job on I-95 in Hampden. Dubbed “Miracle Man” by the first responders to the scene, Eric has permanent disabilities due to the catastrophic injuries he suffered that day. Attorneys Travis Brennan and Dov Sacks are representing Jabbusch in this negligence case against Cianbro for its failure to follow safety procedures that would have prevented the incident.

Attorney Alicia Curtis Elected as ILAP Board President

The Immigrant Legal Advocacy Project (ILAP) welcomed Alicia Curtis as its new Board President. In this leadership role, Alicia will help ILAP serve Maine’s growing immigrant communities by advocating for fairer and more compassionate immigration laws and policies.

Attorneys Presented at 2022 MSBA Winter Conference

Susan Faunce, Chuck Hehmeyer and Daniel Kagan presented at the MSBA Winter Conference. Faunce and Hehmeyer co-presented “Internet and Social Media Searches of Jurors – Ethical and Advocacy Considerations.” Kagan, along with special guests Jeffrey Barkin, M.D, and Kim Block, formerly of WGME and herself a brain injury survivor, presented “If You’ve Seen One, You’ve Seen One—Variability in Brain Injury Recovery.”

U.S. News & World Report Best Law Firm

Recognized for professional excellence, Berman & Simmons has once again been ranked by U.S. News & World Report as the best law firm in Maine for representing plaintiffs in personal injury cases and product liability litigation.

LEGAL LANDSCAPES

Our Practice, In Motion

Advocating for Newborns with Undiagnosed or Untreated Metabolic Disease

While symptoms of a newborn metabolic disorder may not manifest until several days after the child’s birth, healthcare professionals can identify the condition shortly after delivery by administering a simple blood test or by providing the correct diagnostic testing. When not caught in time, however, this disorder can often result in permanent disabilities. We work with families experiencing the trauma of birth injuries arising from undiagnosed or untreated newborn metabolic disorders.



Representing Mainers Who Have Suffered Brain Injuries Through No Fault of Their Own

Millions of people sustain traumatic brain injuries (TBIs) each year, many of which result from accidents and negligence. Given their insidious nature, TBIs and concussions often lead to physical and cognitive impairments that can last for years or even an entire lifetime. When a TBI occurs because of a fall, crash, product failure or medical mistake, we commit our unmatched legal expertise and resources to hold those responsible accountable.



Protecting Consumers Against CPAP and BiPAP Devices

Some CPAP and BiPAP (Continuous/Bilevel Positive Airway Pressure) devices that were designed to help protect people with sleep apnea are now found to cause illness and injury. In fact, Philips recalled three to four million of their devices in 2021 because they contained materials that could cause “serious injury which can be life-threatening or cause permanent impairment.” We work with individuals and families who have suffered harm caused by these devices and hold the manufacturers accountable.



how pervasive sex abuse trauma is in our communities—transcending socioeconomics, race, gender, religion and geography. We’ve heard from a diverse cross section of Mainers from all backgrounds and find that there is a significant need for attorneys who are equipped and qualified to handle these specialized cases.

And that’s where trauma-informed lawyering comes in.

Working with Trauma-Informed Advocates at HAVEN

We take very seriously our reputation and commitment to achieving excellent outcomes for our clients, and for doing so in a respectful, professional and productive manner that maximizes results. As part of this tradition, our ethical obligations to our clients remain at the forefront of what we

do. And, in the world of sex abuse cases, trauma-informed lawyering is an ethical necessity.

As the firm’s *Sex Abuse Survivors Practice Group* has grown, so too have our efforts to educate, audit and tailor the way we approach the practice of law in these cases. As part of this effort, we partnered with HAVEN—a nonprofit organization based in neighboring New Hampshire whose mission is to prevent sexual assault, domestic violence, human trafficking and stalking and to support survivors of such abuse.

Our firm was fortunate enough to work closely with trauma-informed

advocates and leaders such as Sarah Shanahan, Education and Training Director at HAVEN, and Debra Altschiller, HAVEN’s community liaison and a Representative to the New Hampshire Legislature. Together with Shanahan and Altschiller, our *Sex Abuse Survivors Practice Group* engaged in an audit process and daylong training as part of a series designed to teach and hone trauma-informed approaches.

So, what exactly is trauma-informed lawyering?

Trauma-Informed Lawyering, a Client-Oriented Approach

Trauma-informed lawyering is a conscious approach to the way we think about, talk about and go about practicing law.

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A client-oriented approach, trauma-informed lawyering teaches practitioners to be mindful of the ways in which those who have experienced trauma interact with the world around them and offers suggestions for approaching interactions in ways that reduce the risk of re-traumatization. Trauma-informed lawyering helps to strengthen client relations, improve communication and build trust.

As an added benefit, the trauma-informed approach helps to minimize the risk that we, as attorneys, assume for experiencing vicarious trauma through working on these difficult cases.

Be Mindful About Privacy, Confidentiality and Language

The following are some common examples for how practitioners can approach representing survivors of sex abuse in a trauma-informed way:

- Be thoughtful about your client’s time and privacy. This may mean giving extra assurances of confidentiality, explaining routine procedures more than once and being cognizant of the fact that “small annoyances”—such as a client’s being 10 minutes late to a meeting—may, in fact, be the result of a hard-fought victory over tremendous emotional difficulties. It takes a lot of courage to talk about trauma.
- If your client brings documents, files or photos to your meeting, acknowledge this at the outset. Many individuals who have survived trauma will find it easier to focus on the discussion once they know they will have a chance to show you what they have brought. Intake is not the time for bravado.
- When asking your client to talk about his or her trauma, avoid questions like “What is your side of the story?” or “What do you say he did to you?” as these word choices undermine the validity of a client’s personal experience. Instead, use language such as “I know this may be difficult to talk about, but can you tell me what happened?” Be sure to avoid phrasing questions that suggest your client should have done something differently in a traumatic situation (e.g., “Why didn’t you leave?” or “Why didn’t you tell him to stop?”).
- Mirror the client’s language, as the words she chooses are usually the ones she’s most comfortable with using. Avoid using loaded terms such as “victim” that define your client in terms of her trauma (instead, use “survivor”).
- At the conclusion of your conversation, thank your client for entrusting you with the information he has shared and let him know he can contact you if he remembers anything else.

Setting Boundaries During Attorney-Client Communication

While trial attorneys advocate, we are not credentialed mental health professionals, nor should we try to be.

A JD simply is not an LCSW, APRN or PsyD. While it is easy for some survivor clients to see their attorneys as *de facto* mental health counselors, a trauma-informed approach demands a clear boundary in this regard. Though a helpful tool for improving attorney-client communication, a trauma-informed approach is not an outlet for the significant emotional difficulties our clients may be inclined to share.

Concurrent with a trauma-informed approach, attorneys can best assist survivor clients by referring them to a trauma-informed mental health professional and/or other providers who are properly equipped and trained to handle the complexities of unpacking emotional trauma caused by sexual abuse.

Trauma-Informed Lawyering: An Ethical Obligation

On the heels of the Maine's recent changes to the statute of limitations governing claims for childhood sex abuse, there is truly no better time than now to implement a trauma-informed skillset.

Berman & Simmons' *Sex Abuse Survivors Practice Group* views trauma-informed lawyering as more than just a "best practice"—rather, as an ethical obligation to our survivor clients. Following this model, our investments in trauma-informed training are an integral step in the progression toward more empathetic, ethical management of these highly specialized claims. By approaching the practice of law in a trauma-informed way, we offer survivors a compassionate approach, support and the space to authentically tell their truth. And, in so doing, we can facilitate attorney-client communications that help us to represent them in the most effective way possible.



Berman & Simmons' *Sex Abuse Survivors Practice Group* views trauma-informed lawyering as more than just a "best practice"—rather, as an ethical obligation to our survivor clients. L to R: Attorneys Elizabeth Kayatta, Joe Gousse, and Michael Bigos. Absent: Attorney Tim Kenlan.

responding entity to select or "create" a deponent who shall answer questions about those "matters" and speak on its behalf.

The following are some key considerations to guide your use of Rule 30(b)(6).

Form

- Rule 30(b)(6) depositions may be used with both parties and non-parties.
- Do not designate a specific deponent. In fact, doing so invalidates the notice. *Sanders v. Circle K Corp.*, 137 F.R.D. 292, 293 (D. Ariz. 1991).
- The 30(b)(6) witness need not have any personal knowledge if the designee is *sufficiently* educated. *QBE Ins. Corp. v. Jorda Enterprises, Inc.*, 277 F.R.D. 676, 688 (S.D. Fla. 2012).
- Rule 30(b)(6) topics must be described with "reasonable particularity." Some courts require "painstaking particularity." *Adidas America, Inc. v. TRB Acquisitions LLC*, 324 F.R.D. 389, 395 (D. Or. 2017).

Application

- Courts routinely permit questioning about organizational positions on legal issues. *United States v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996). Most courts still allow contention questions.
- Most courts hold that a corporate designee must provide responses even if the organization's lawyer provided the information. *Great American Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534, 542 (D. Nev. 2008).
- Regardless of their number, the total number of 30(b)(6) witnesses count as a single witness for the purpose of deposition limitations.
- If an entity pleads lack of memory, it still must explain why it believes the facts should be construed a certain way *if* it wishes to assert that position later at trial. *Taylor*, 166 F.R.D. at 362. When a designee lacks ability to answer and the organization cannot better prepare that witness, the "we don't know" response likely will be binding on the entity. *Fraser Yachts Florida, Inc. v. Milne*, 2007 WL 1113251, at *3 (S.D. Fla.). But an entity is "bound" by Rule 30(b)(6) testimony only like any *individual* would be bound, *i.e.*, a so-called "evidentiary admission;" it is not a *judicial admission* that finally decides an issue. *A.I. Credit Corp. v. Legion Insurance Co.*, 265 F.3d 630, 637 (7th Cir. 2001).

COMING
SOON!

Introducing *Practice Builder* — Helpful Wisdom and Insights for Maine’s New Attorneys

Torts. Property. Con Law. Legal Writing. Internships. And the “hits keep coming.”

Let’s face it, future attorneys learn a lot during law school. From understanding how to “read” and “speak” the language of the law to moot court and experiential learning. Many young future attorneys graduate with confidence in their abilities.

But soon, as reality sets in and the supportive structure of the classroom fades away, every young attorney experiences moments of self-doubt. Because, while law school does a good job preparing the next generation of lawyers, some things can only be taught in the “real world.”

Often, young legal professionals “cut their teeth” and “take their lumps” en route to long and successful careers. But wouldn’t it be better if there were a reliable resource for young attorneys to get answers to the questions they feel like they should know, but have been afraid, ashamed or too embarrassed to ask? We think so!

Addressing the Real Issues Young Attorneys Face

Berman & Simmons is excited to announce *Practice Builder*—an upcoming digital media publication focused on bringing to light the real issues and common challenges young attorneys face in their first decade of practice. This series aims to provide guidance, advice and empirical insights from veteran practitioners.

Supporting Maine’s Next Generation of Lawyers

From explaining how referrals work to networking tips to managing the complexities of your first “big case,” the *Practice Builder* series will aim to bridge the gap between the potential young lawyers possess and the repeatable best outcomes they hope to achieve. Tapping into one of the Maine bar’s most diverse and experienced professional attorney networks, Berman & Simmons is proud to offer this content as means of educating and supporting the next generation of Maine lawyers.

Managing Director Celebrates 25 Years, Building Legacy of Shared Success

There’s an elegant irony to Craig Bramley’s leadership—though fiercely competitive and driven to keep Berman & Simmons in the spotlight, it’s never something he actively seeks for himself.

That’s because Craig—who assumed the role of Managing Director in 2014 and recently celebrated 25 years with the firm—is instead focused on architecture for sustained success. For Craig, successful leadership is about attracting talent and cultivating an engaging and supportive work environment in which attorneys and staff have agency in how their careers develop.

“I love bringing someone in that I think can really contribute, and then mentoring and helping them to integrate and grow into the role they want,” he reflected recently. “Really, my job is to bring out the best in a talented group of people.”

A self-described enthusiast of board games and outdoor adventure, Craig channels his “hyper competitive” nature into a winning recipe for success by elevating those around him and keeping them engaged in meaningful advocacy across the firm’s myriad practice areas. “We prioritize an environment where all lawyers and their teams have access to really interesting work,” said Craig. “We don’t have anyone whose job it is to handle 200 small cases of just one variety.”

At the end of the day, Craig hopes this approach will leave a quiet but important legacy.

“I want to be remembered as someone who brought talented people together in a place that maximized their expertise and potential,” he said. “To give people the opportunity to do good work and develop in a way that advances their own goals and aspirations and grows our firm’s reputation of excellent service to our clients.”

And, according to Craig, it’s an attitude that’s catching. “The lawyers and staff here work together, put aside their egos, collaborate and enjoy each other’s successes.”



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—CRAIG BRAMLEY

Berman & Simmons
congratulates our friend and partner

Susan Faunce

as she begins her term as President
of the Maine Trial Lawyers Association.



As President, Susan will help guide the MTLA
in its ongoing pursuit of civil justice.

In addition to being an accomplished medical
malpractice lawyer, Susan also leads the
mass tort practice at Berman & Simmons.

Resources

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Results

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Experience matters.


In a serious personal injury case, experience can make the difference between
winning and losing. No one can match our depth of talent, expertise, and financial
strength to deliver the results your client deserves. Together, we'll win.

Experience. Resources. Results.

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Sarah K. Hall, Esq.
Chuck P. Hehmeyer, Esq.

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 800.244.3576
bermansimmons.com