FEDERAL DEFENDER PROGRAM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

55 E. MONROE STREET - SUITE 2800
CHICAGO, ILLINOIS 60603

JOHN F. MURPHY
EXECUTIVE DIRECTOR

312.621.8352
FAX 312.621.8399

September 12, 2025

Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544

Via Email (RulesCommittee_Secretary@ao.uscourts.gov)

Re: Proposed Amendment to Rule 15 of the F.R.Cr.P.

Dear Ms. Dubay:

I write in support of the proposed amendment to Rule 15 of the Federal Rules of Criminal Procedure initially raised on February 24, 2025, by Mr. Sergio Acosta and Mr. Michael Kelly of Akerman LLP. This worthy proposal serves to enhance the interests of criminal justice by manifestly improving the truth-finding process. It ensures that the parties and fact finders are provided with the best, most accurate information. It provides much needed balance in pretrial litigation. It promotes efficiency and strengthens judicial oversight of the discovery process. In short, the proposed amendment ably serves the pursuit of justice in federal criminal cases.

This proposed amendment addresses a core, recurring problem in federal criminal practice: defense counsel is forced to make critical decisions regarding whether to call a witness at trial without having any clear notion of what that witness may say. Putting the witness on the stand in this situation amounts to flying blindly with all its attendant risks. Choosing to forgo a witness because of this evidentiary black hole may result in passing over vital exculpatory information that could turn the outcome of a trial. In these circumstances, not only is a defendant placed at a detriment in the process, but the entire truth-seeking imperative of our justice system suffers immeasurably as well.

Many potential witnesses in a criminal case—for reasons ranging from reasonable self-protection to fear of incrimination to anxiety over involvement in the legal process—decline voluntary interviews with defense counsel or their investigators. Government agents, due to the perceived power of its law enforcement agencies (to say nothing of the threat of a grand jury subpoena) usually overcome these obstacles and speak to the witnesses. However, these interviews, given the focus of the government's investigation or its own limitations regarding the facts, often fail to address the most pressing questions a defense counsel needs answers to. The government's memorandum of the interview, whether detailed in an FD-302, a DEA-6 or some other similar report, almost always presents an incomplete or skewed recitation of information. Bluntly speaking, the agents ask questions and prepare reports with an eye toward confirming their investigatory assumptions which, by the time the interviews occur, usually assumes the guilt of the defendant. In the present practice, defense counsel is left with these reports of limited reliability, or no reports and no witness interviews at all, to make the critical litigation decisions of whether to call a witness at trial.

This problem is compounded by a structural imbalance in federal criminal practice. The government enjoys disparate rights in discovery from defense counsel. Often the threat of issuing a subpoena provides enough leverage to spur a reluctant witness to talk to agents. Certainly, the issuance of a subpoena legally obligates a witness to testify short of the invocation of the witness's 5th Amendment protections. In essence, the grand jury proceeding amounts to an ex-parte deposition. The defense has no parallel tool available. Limited defense depositions do not replicate the grand jury, but they meaningfully narrow the gap in fact investigation.

Limited pretrial depositions—carefully delineated and court-supervised—directly address the aforementioned problems. They replace speculation with sworn, transcript-based information, allowing counsel to make informed decisions in the best interest of their clients and justice.

Several reasons suggest that depositions enhance the judicial process. First, the amendment adopts a presumptive limit of five depositions, with any expansion conditioned on "exceptional circumstances" and judicial approval. This limitation will minimize costs, prevent unwarranted inquiries or requests, and direct defense toward witnesses who truly matter. Five depositions allows counsel to test a defense theory, verify the accuracy of key government summaries, and make informed strategic decisions.

Second, litigation and trials, rather than increasing due to defense depositions, in fact, should result in a quicker, more efficient judicial resolution. This fact, as will be discussed in more detail later in this letter, has been borne out in states that allow defense depositions. Evidently, when both sides see the same clear record of an important witness's actual testimony, cases that should resolve short of trial will likely do so. When exculpatory facts emerge, the parties can reassess charges and consider stipulations thereby reducing significant judicial resources. When inculpatory evidence emerges from the depositions, defense counsel will have more confidence in proposing a guilty plea to a client and the client will have a much fuller and more accurate understanding of the circumstances in the case. Either way, better information will compress disputes.

Third, the amendment strengthens judicial confidence in the reliability of discovery. Courts have, in the past, recognized that 302s amount to summaries that are often inaccurate or misleading.[1] Allowing targeted depositions ensures that defense decisions rest on sworn testimony rather than mischaracterizations. This reliability improves Brady verification, sharpens impeachment, and bolsters the perceived legitimacy of outcomes.

Fourth, the amendment comes with proven safeguards to protect witnesses and promote judicial efficiency. Every deposition would require a defense motion and a judicial finding that it is "in the interest of justice." Courts can limit scope, length, format, and attendance; deny depositions on witness-safety grounds; and enforce the five-deposition cap absent exceptional circumstances. The court will maintain complete control of the deposition process throughout. These are familiar tools that judges already deploy under Rules 15, 16, and 17.

Finally, the proposal is not new in American criminal practice. States that permit defense depositions report enduring, administrable success under judicial supervision. Florida's Supreme Court, after a blue-ribbon study, held that discovery depositions are "a necessary and valuable part of our criminal justice system" that ensure "fairness and equal administration of justice," retaining them across felony practice while curbing possible overuse through judicial control.[2] Indiana's appellate courts describe depositions as a "routine component" of criminal practice, while preserving trial-court

---

[1] *United States v. Bobby Peavler*, Crim. Action No. 1:19-cr-00378-JMS-MJ (S.D. Ind.).
[2] *In re Amend. To Fla. Rule of Crim. Proc. 3.220 (Discovery)*, 550 So. 2d 1097, 1098 (Fla. 1989); *In re Amend. To Fla. Rule of Crim. Proc. 3.220(h)*, 668 So. 2d 951, 952 (Fla. 1995), supplemented sub nom. *In re Amend. To Fla. Rule of Crim. Proc. 3.220(h) & Fla. Rule of Juv. Proc. 8.060(d)*, 681 So. 2d 666 (Fla. 1996).

discretion to limit them.[3] Other states—including Arizona, Iowa, Missouri, Nebraska, and North Dakota—likewise operate deposition frameworks that pair access with safeguards tailored to specific case needs, including court pre-approval, victim protections, and presence rules that manage costs and safety.[4] The ongoing theme is evident: limited defense depositions increase accuracy without producing "trials by deposition," and courts have the tools they need to manage any potential misuse.

Ultimately, the amendment honors an abiding principle of federal criminal procedure: fairness in pursuit of truth. The government retains all of its existing rights and tools, and the defense receives a narrow, court-controlled mechanism to avoid unfair and unanticipated surprises at trial, and to present a defense rooted in facts rather than predictions.

For these reasons, I respectfully urge the Committee to adopt the proposed amendment to Rule 15, authorizing a limited number of defense depositions subject to the district court's supervision and the interests of justice. This reform will result in the levelling of the playing field. It will reduce excessive litigation, encourage earlier and more accurate resolutions, bolster judicial confidence in the discovery record, and align federal practice with successful models used in many states for years.

Thank you for your careful consideration.

Very Truly Yours,

John F. Murphy

/jfm

---

[3] *Hale v. State*, 54 N.E.3d 355, 357 (Ind. 2016).
[4] ARIZ. R. CRIM. P. 15.3.; IOWA R. CRIM. P. 2.13.; MO. SUP. CT. R. 25.12; NEB. VER. STAT. ANN. § 29-1917.; N.D. R. CRIM. P. 15.