MARKUS / MOSS

September 13, 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, DC 20544

Via email: RulesCommittee_Secretary@ao.uscourts.gov

Re: Proposal to Amend Fed. R. Crim. P. 15

Dear Ms. Dubay:

I write in strong support of amending Federal Rule of Criminal Procedure 15 to allow discovery depositions in federal criminal cases. This is a matter of basic fairness. Right now, the system is tilted dramatically in favor of the government: prosecutors have multiple tools to secure pretrial statements—including interviews, grand jury subpoenas, and immunity orders—while defendants have virtually none. Defense counsel cannot compel a witness to speak, cannot offer immunity, and often must prepare for trial in the dark, relying on government-authored interview summaries that are neither verbatim nor sworn.

This imbalance produces a predictable result: defendants make life-altering decisions about whether to plead guilty without knowing what witnesses will actually say. And at trial, defense lawyers must often avoid asking the hard questions because they cannot be sure what the answers will be. In a system where liberty—sometimes decades of liberty—is at stake, this is unacceptable.

Florida shows that there is a better way. In Florida state courts, criminal defendants and prosecutors have the right to depose witnesses before trial. This practice has been in place for decades. It does not grind the system to a halt, and the courts have not collapsed under the supposed burden. On the contrary, depositions make the process fairer and more efficient. Trials are shorter and more focused because both sides know what the witnesses will say. Discovery disputes are minimized. Surprise testimony is rare. And when a case should resolve short of trial, both sides are able to make that decision with eyes wide open.

MARKUS/MOSS PLLC

40 NW 3rd Street, PH 1
Miami, FL 33128
T 305 379-6667
F 305 379-6668
markuslaw.com

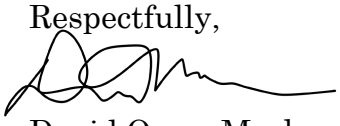
Importantly, prosecutors benefit from this practice too. They are able to test their witnesses in advance, understand the strengths and weaknesses of their cases, and avoid being blindsided at trial. Florida prosecutors routinely use depositions to dismiss cases that should not go forward—saving judicial resources—and to refine their trial strategy in those cases that do proceed. Far from undermining the truth-seeking function, depositions advance it.

Concerns about witness safety or intimidation are overstated. Florida courts have ample tools—including protective orders—to address legitimate concerns on a case-by-case basis. And the overwhelming majority of witnesses testify without incident. The federal courts could adopt similar safeguards to protect vulnerable witnesses where necessary, without denying defendants across the board the ability to learn what the evidence will be.

The current federal practice creates the perverse situation where parties in a routine civil case—with only money at stake—can depose key witnesses, but a criminal defendant facing years in prison cannot. That result is not just illogical, it is unjust. The states have been laboratories for reform, and they have shown that this system works.

For all of these reasons, I respectfully urge the Committee to amend Rule 15 to permit discovery depositions in federal criminal cases. This change would promote fairness, encourage efficiency, and enhance confidence in the integrity of our criminal justice system.

Respectfully,



David Oscar Markus