

September 26, 2025

PRIVILEGED & CONFIDENTIAL

BY EMAIL

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
RulesCommittee_Secretary@ao.uscourts.gov

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

Dear Ms. Dubay:

We write in support of the proposal to amend Federal Rule of Criminal Procedure 15 to allow for broader use of depositions. Our firm includes lawyers with widely varied backgrounds in the federal criminal justice system, including former high-ranking officials in the Department of Justice, line and supervisory federal prosecutors, federal public defenders, and members of the Criminal Justice Act Panel. We all agree that greater use of depositions would enhance fairness and accuracy in criminal cases.

Last year, we represented a client in a civil securities fraud case brought by the Securities and Exchange Commission in the Southern District of New York. The client had a parallel criminal securities fraud case in the SDNY arising out of the same facts. Unusually, the SEC case proceeded to trial before the criminal case because the client was awaiting extradition. As with all civil cases, the SEC trial occurred after robust pretrial discovery, including depositions. The witnesses who were deposed and testified at trial were the same witnesses who formed the core of the criminal charges. Several months after the civil trial concluded, the client was extradited, and the criminal case began in earnest. But, of course, in that pretrial setting, discovery was limited to the categories of information set forth in Rule 16. The scenario highlighted the seemingly upside-down nature of the rules: when the case was about money and injunctive remedies, discovery was expansive and afforded the parties the ability to engage in detailed fact-finding to minimize surprise at trial; when the case was about liberty, there were few such safeguards.

As it happened, the extensive civil discovery led to a more efficient outcome in the criminal case. We were able to counsel our client with an early and genuine understanding of the facts, rather than making guesses in the dark or waiting until the eve of trial to make difficult decisions. The prosecutors benefited as well: they knew the strengths and weaknesses of the case far better

than usual. The case was resolved with a plea agreement well before the anticipated trial date in large part because the parties were both fully informed about the facts.

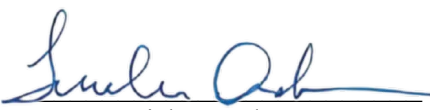
We are aware of the common justifications for not allowing depositions, including efficiency, cost-savings, and witness safety. None should be a barrier to improving Rule 15. As an initial matter, many states allow for depositions in criminal cases, and they have found sensible ways to address those concerns. Although depositions require some additional time and resources at the front end of a case, they can greatly narrow issues that may otherwise require extensive investigation or pretrial litigation and streamline courtroom proceedings in the event of a trial. With respect to witness safety, the many safeguards that exist in other areas of discovery could be available for depositions, including protective orders and the ability for courts to restrict who may be deposed or the conditions of the deposition. Indeed, in our experience, passions often run higher in civil cases, and the concerns about harassment or safety are frequently less present in the criminal context. In short, there is no reason to believe that depositions are less workable in criminal cases than civil.

Our support for depositions is not limited to fraud cases. Indeed, cases involving drugs, guns, immigration violations and other offenses that form the bulk of the federal caseload, typically come with far less discovery than fraud cases and only magnify the need for greater pretrial transparency. And oftentimes the key witnesses in those cases are law enforcement agents and officers for whom concerns that might arise with lay witnesses are almost non-existent. Finally, as with the current system, allowing for additional discovery does not mean the parties will always exercise their rights. There will remain a host of incentives for the parties to reach early dispositions without engaging in depositions. But for the instances where it makes sense to engage in more extensive fact-finding, it ought to be permitted.

We understand the committee is in the early stages of considering the proposal. For that reason, we will not offer views here about the details of what the rule might say or what limitations might be placed on conducting depositions. Suffice it to say, there are many ways to address the concerns that have typically been raised. For now, we offer our robust support for serious consideration of the proposal. Many states have long provided for depositions, and those systems have worked quite well.

Thank you for considering our views. We would be happy to provide additional input as the process moves forward.

Respectfully submitted,

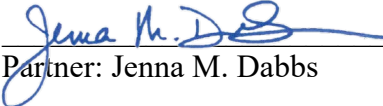
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Partner: Trisha Anderson

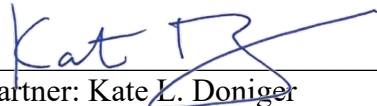
Hecker Fink LLP

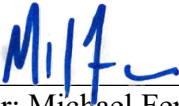
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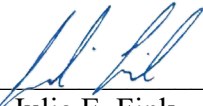
By: 
Partner: Matthew J. Craig

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Partner: Shawn G. Crowley

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Partner: Jenna M. Dabbs

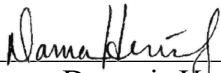
By: 
Partner: Kate L. Doniger

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Partner: Michael Ferrara

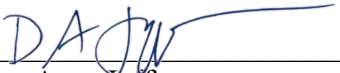
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Partner: Julie E. Fink

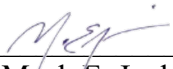
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Partner: David Gopstein

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Partner: Sean Hecker

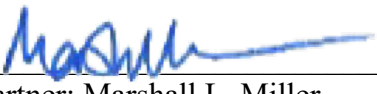
By: 
Partner: Damaris Hernández

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Partner: Amy Jeffress

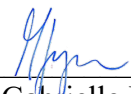
By: 
Partner: Mack E. Jenkins

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Partner: Joshua Matz

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Partner: Marshall L. Miller

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Partner: David Patton

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Partner: John C. Quinn

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