



October 23, 2025

Via Email

Carolyn A Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
RulesCommittee_Secretary@ao.uscourts.gov

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

Dear Ms. Dubay:

On behalf of Kaplan Marino, P.C., a California-based firm devoted to white-collar defense and complex criminal litigation, we write in strong support of the proposed amendment to Rule 15 of the Federal Rules of Criminal Procedure, which would permit a limited number of pretrial discovery depositions in federal criminal cases. This amendment represents a long-overdue modernization of the federal system, advancing fairness, transparency, and efficiency, values central to the American Bar Association's commitment to balanced criminal justice reform.

Under the rule in its current form, defense counsel is, more often than not, at a substantial and inherent disadvantage. While the government is empowered to conduct extensive investigations—interviewing witnesses, gathering statements, and obtaining testimony through grand jury proceedings—much of this material (including statements of government witnesses) is not required to be disclosed to the defense until after those witnesses testify, pursuant to the Jencks Act (18 U.S.C. § 3500). By contrast, defendants have no reciprocal mechanism to compel pretrial testimony, verify the government's account, or evaluate witness credibility in advance. This asymmetry leaves defense counsel making critical strategic decisions without knowing what witnesses will actually say under oath.

Indeed, the current regime under the Jencks Act (18 U.S.C. § 3500) and Federal Rule of Criminal Procedure 26.2 means that many witness statements, law-enforcement interview summaries, and grand-jury transcripts remain exclusively in the government's possession until trial begins—providing the prosecution with a significant informational advantage. This imbalance runs counter to the principles of fairness and transparency that should define federal criminal practice.

Permitting a limited number of pretrial discovery depositions, under court supervision and subject to appropriate protective orders, would help restore balance without undermining efficiency or witness safety. Such depositions would allow both sides to test the strength and

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reliability of the evidence, identify inconsistencies, and clarify factual disputes before trial—thereby enhancing accuracy and protecting against wrongful convictions. With respect to witness safety, mechanisms such as protective orders, sealed transcripts, or remote testimony could be applied as courts deem necessary.

Far from establishing a “trial by deposition,” this amendment would strengthen, rather than replace, the adversarial process. Depositions would be used primarily for impeachment, clarification of factual disputes, or pretrial credibility assessment. In civil litigation, where only monetary damages are at stake, such discovery tools are routine. It is difficult to justify why a corporate defendant in a civil fraud case enjoys broader discovery rights than a criminal defendant whose liberty is at stake.

When both prosecution and defense have a clear understanding of witness testimony and the factual landscape, cases are more likely to resolve through informed plea discussions or dismissals, thereby reducing unnecessary trials and post-conviction litigation. Depositions can be conducted efficiently and securely via remote platforms, as has become standard in the post-pandemic era. This process would foster cooperation, streamline pretrial litigation, and lead to better-informed decision-making on both sides.

Importantly, the proposed amendment would not create an open-ended right to depose. Rather, it envisions a limited and court-controlled procedure, expandable only upon a showing of exceptional circumstances. Courts would retain full discretion to limit scope, duration, and conditions as justice requires.

We believe that the proposed amendment would encourage earlier case evaluation, reduce the risk of tactical surprise, and promote more equitable plea and case-resolution discussions—benefits that align with modern case-management priorities in the federal courts.

We strongly support the adoption of this amendment. Permitting limited pretrial discovery depositions under amended Rule 15 would enhance the integrity, fairness, and legitimacy of federal criminal proceedings. It would bring the system closer to parity—ensuring that both sides enter trial with a fair opportunity to test and prepare the evidence. In doing so, it would strengthen—not weaken—the efficiency, safety, and credibility of our criminal justice system.

Thank you for your consideration. We remain available to provide further input or commentary as this important process moves forward.

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Sincerely,

KAPLAN MARINO, P.C.

Nina Marino

NINA MARINO

Richard Kaplan

RICHARD KAPLAN

Jennifer Lieser

JENNIFER LIESER