FEDERAL PUBLIC DEFENDER

EASTERN DISTRICT OF MISSOURI

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

Via email: RulesCommittee_Secretary@ao.uscourts.gov

Re: Support for Proposed Amendment to Federal Rule of Criminal Procedure 15

Dear Ms. Dubay and Members of the Committee:

I write as the Chief Federal Public Defender for the Eastern District of Missouri in strong support of the proposed amendment to Federal Rule of Criminal Procedure 15, which would authorize courts to permit limited pretrial depositions when doing so serves the interests of justice.

This amendment addresses a fundamental imbalance in federal criminal practice: under the current rules, defense counsel are often forced to call witnesses at trial without knowing what their testimony will be. Witnesses frequently decline to meet with defense counsel, and the defense has no mechanism to compel a pretrial interview. As a result, potentially exculpatory information may never be discovered, and counsel may be forced to proceed without a fair opportunity to evaluate or test the government's evidence.

The prosecution faces no such restriction. Federal prosecutors may compel testimony through grand jury subpoenas, obtain sworn statements, and develop their case with full knowledge of the expected testimony. They may grant immunity, compel cooperation, and rely on investigative agencies to conduct interviews on their behalf. Defense counsel, however, are prohibited from taking depositions except under narrow and extraordinary circumstances. This imbalance limits the defense's ability to prepare and undermines the truth-seeking function of criminal proceedings.

Our experience in Missouri shows that a fairer approach is both workable and effective. Missouri Supreme Court Rule 25.12 provides:

"A defendant in any criminal case pending in any court may obtain the deposition of any person on oral examination or written questions. The manner of taking such depositions shall be governed by the Rules relating to the taking of depositions in civil actions. The deposition of any person confined in prison shall be taken where such person is confined, unless otherwise ordered by the court."

This procedure has long been part of Missouri's criminal practice. Discovery depositions are routine in state prosecutions, where they promote transparency, sharpen factual issues, and often facilitate early, fair case resolutions. Judges maintain full authority to deny or limit depositions where necessary, and abuses are exceedingly rare.

The disparity between state and federal practice is particularly evident in this district, where the same conduct may give rise to parallel prosecutions in state and federal courts. A defendant facing state charges is afforded discovery depositions, while one prosecuted federally for the same alleged conduct is not. This inconsistency diminishes public confidence and places federal defense counsel at a significant disadvantage.

The proposed amendment to Rule 15 strikes the right balance. It does not create a new entitlement to depositions; it merely provides courts with discretion to authorize them where fairness and justice require. Judges would continue to control the process and ensure that depositions are used appropriately and proportionately.

From the perspective of a defender office serving one of the nation's busiest districts, the amendment would enhance the accuracy and efficiency of federal adjudication, reduce unnecessary disputes, and ensure that defendants are not deprived of access to potentially exculpatory information.

For these reasons, I respectfully urge the Committee to adopt the proposed amendment to Rule 15. It is a modest but essential reform that promotes fairness, transparency, and confidence in the federal criminal justice system.

Thank you for your time and consideration.

Respectfully,

Nanci H. McCarthy
Federal Public Defender
Eastern District of Missouri