Flowers Keller LLP

October 30, 2025

By Email Only

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

RulesCommittee_Secretary@ao.uscourts.gov

RE: Amending Federal Rule of Criminal Procedure 15 to provide for discovery depositions

Dear Carolyn A. Dubay,

We write in support of amending Rule 15 of the Federal Rules of Criminal Procedure to allow depositions in criminal cases. As former public defenders with decades of experience each, we have represented countless individuals in state and federal courts around the country in criminal proceedings. Based on our experience, we believe that more readily permitting depositions in criminal cases would improve efficiency and fairness in the criminal legal system for the reasons many others have already given.

We write to elaborate on a point referenced in other submissions to the Committee but not fully developed—that permitting depositions in criminal cases would help fight the "epidemic of *Brady* violations" that many have observed. *United States v. Olsen*, 737 F.3d 625, 626, 631 (9th Cir. 2013) (Kozinski, J., joined by Pregerson, J., Reinhardt, J., Thomas, J., & Watford, J., dissenting from denial of rehearing en banc) (collecting cases).

We have a unique perspective on *Brady* violations now that we are in private practice. Not only do we represent the accused in criminal cases, but we also represent the wrongly convicted in civil litigation in federal court. These wrongful conviction cases blend criminal and civil law. While the underlying causes of action involve claims common to criminal cases—including *Brady* claims—the Federal Rules of Civil Procedure apply. This gives us access to civil discovery, including the ability to take depositions, in litigating these claims. Thus, we litigate criminal cases long after the conviction has happened using helpful discovery tools that the original criminal defense attorney did not have.

Deposing law enforcement has proven key in ferreting out *Brady* violations in our wrongful conviction cases. At a deposition, we can ask law enforcement questions aimed at uncovering *Brady* material and *Brady* violations that you could not (or would not) ask before a jury. For example, we typically ask the law enforcement agents about their understanding of their obligations under *Brady*. We also ask them about their protocol for preserving evidence, including their views on taking notes. In our experience, law enforcement officials are often misinformed about their obligations, and we can glean information that they should have turned over (but did not) based on their misunderstanding. The failure to turn over this critical information during the original case is often a cause of wrongful conviction.

These revelations happen only because we can depose witnesses. Many of the questions we ask at a deposition are not the sort that a competent defense attorney would ask before a jury because they would not be confident about the officer's answer. This is not an issue, however, at a deposition. In this way, the deposition helps to uncover truth, increasing the fairness and integrity of the process. In many of our wrongful conviction cases, if the criminal defense attorney in the original case had been empowered to depose the officers involved, they could have uncovered the critical evidence before the accused wrongly served prison time—in some cases, *decades* of prison time.

For these reasons, the current Rule 15 deprives the accused of a tool that is often the only practical means of uncovering misconduct and critical evidence—a tool that becomes available only after the accused has been wrongly convicted. That is not a fair and just system. Giving judges broader discretion to allow depositions more readily in criminal cases would smooth out this incongruity between civil and criminal cases. By doing so, the proposed amendment to Rule 15 will promote fairness and justice.

Thank you for considering our views.

Sincerely,

/s/
Kobie Flowers
Partner

/s/
Doug Keller
Partner

/s/
Paul Barr
Partner