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VIA E-MAIL TO RULESCOMMITTEE_SECRETARY@AO.USCOURTS.GOV

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

Re: Proposals to Amend Federal Rule of Criminal Procedure 15 to Provide for Discovery Depositions

Dear Ms. Dubay:

I write in support of the proposed amendment to Rule 15 of the Federal Rules of Criminal Procedure to permit discovery depositions of potential witnesses. Adoption of this amendment will promote the prompt and fair administration of justice without compromising the integrity of the trial process.

By way of background, I have been practicing law in Ohio since 1999, with a focus on defending complex criminal cases in state and federal courts. I am a Fellow in the American College of Trial Lawyers and was President of the Columbus Bar Association in 2022. I have been a litigation partner at Taft Stettinius & Hollister since 2015 and serve as the Columbus litigation chair. I have also been appointed to the Franklin County (Ohio) Public Defender Commission since 2020.

The greatest challenge in the defense of federal criminal cases is the lack of information regarding potential Government witness testimony. Many federal prosecutions are built on the testimony of informants, coconspirators, and eyewitnesses. Their identities are usually kept anonymous and summaries of their prior statements are withheld until weeks or days before trial. This lack of information hampers defense counsel's ability to advise defendants on plea negotiations and limits the ability to prepare cross-examination (a fundamental right guaranteed by the Sixth Amendment). Many experienced defense counsel, including me, have fought for more access this information

so that we can fulfill our constitutional obligation to provide the effective assistance of counsel and safeguard our clients' constitutional rights.

The proposed amendments to Rule 15 would go a long way in addressing these problems. Defense counsel and their clients would have access to the information necessary to make the life-altering decision about whether to exercise the right to a jury trial or negotiate a guilty plea. And this will come with very little risk to prosecutorial integrity, witness safety, or the administration of justice. Courts will still have oversight authority that includes limits on depositions, protective orders, and contempt power.

Ohio courts have allowed broader discovery than the federal courts since 2010, when the Ohio Rules of Criminal Procedure were amended to allow "open file" discovery that includes witness statements. The Ohio rules also permit pretrial depositions under certain circumstances. I have practiced under both systems, and I can say unequivocally that broader discovery has promoted the administration of justice without endangering witness safety or the overall administration of justice.

Ultimately, allowing pretrial depositions will allow for a freer exchange of information between parties and more informed decisions in an extremely grave situation: a federal criminal prosecution. I hope that the Commission strongly considers adoption of the proposed amendments. Thank you for your consideration.

Sincerely,

Taft Stettinius & Hollister LLP

/s/ David H. Thomas

David H. Thomas

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