

January 20, 2026

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
Via Email: RulesCommittee_Secretary@ao.uscourts.gov

Re: Consideration of a Rule Change to Permit
Depositions in Federal Criminal cases

Dear Ms. Dubay:

I write in response to the Committee's consideration of a rule change that would permit pretrial depositions in federal criminal cases. As a practicing criminal defense attorney and former state prosecutor in Florida, I have extensive experience litigating in a jurisdiction that has long permitted depositions in criminal matters. In that capacity, I have participated in numerous pretrial depositions both as a prosecutor defending witnesses and as a defense practitioner examining them, across a wide range of felony and misdemeanor cases.

In my experience, pretrial depositions are one of the most effective tools for promoting fair, accurate, and efficient resolutions of criminal cases. They allow counsel to test the strength of the evidence under oath, to identify genuine factual disputes, and to expose weaknesses that may not be apparent from police reports or informal discovery alone. When the parties have a realistic understanding of the strengths and weaknesses of the case, they are far more likely to engage in meaningful negotiations and to reach appropriate resolutions without the necessity of trial. This benefits not only the accused, but also victims, witnesses, and the courts, which avoid unnecessary trials and the attendant consumption of limited judicial resources.

Florida's experience demonstrates that pretrial depositions can be integrated into criminal practice without disrupting trial schedules or overwhelming courts. In my practice, depositions have frequently led to: (1) dismissal or reduction of charges where sworn testimony revealed that the evidence did not support the initial allegations; (2) more focused and informed pretrial motions, because counsel could identify specific evidentiary and constitutional issues based on actual testimony rather than speculation; and (3) streamlined trials, where the issues and anticipated testimony were clearly defined in

advance. The result, in many cases, has been earlier and more just resolutions, rather than last-minute trial cancellations or surprise developments in the middle of trial.

Pretrial depositions also enhance the reliability of fact-finding in those cases that do proceed to trial. When key witnesses have been deposed, counsel can more accurately anticipate testimony, prepare effective examinations, and impeach inconsistent statements if they arise. This promotes truth-seeking and reduces the risk that verdicts are based on surprise, confusion, or untested allegations. In my experience, judges and juries benefit when counsel have had the opportunity to thoroughly investigate and clarify testimony in advance; the presentations at trial are more focused on the genuinely disputed issues, and less time is spent on collateral matters that could have been resolved in a deposition.

The availability of modern remote-video technology has further reduced the burdens historically associated with depositions. Platforms such as Zoom and Microsoft Teams now allow depositions to be conducted efficiently without requiring witnesses, including law-enforcement officers and civilian witnesses, to travel to a courthouse or law office. This has been particularly valuable in cases involving out-of-county or out-of-state witnesses, as well as witnesses with work, childcare, health, or mobility constraints. In my practice, remote depositions have significantly decreased scheduling conflicts, travel costs, and logistical delays, while preserving the solemnity and formality of sworn testimony. Courts routinely accept and manage such remote proceedings in civil litigation, and there is no reason criminal practice should not benefit from the same efficiencies.

I recognize that some may have concerns that permitting pretrial depositions in federal criminal cases could increase costs or delay proceedings. My experience in Florida has been precisely the opposite when depositions are used under reasonable rules and judicial supervision. Because the parties better understand the evidence early in the case, they are able to litigate only those issues that truly warrant the court's attention and to avoid unnecessary or ill-founded motions. Moreover, any rule change could incorporate safeguards—such as judicial authorization in specified categories of cases, limitations on cumulative or repetitive depositions, and the use of remote technology—to ensure that depositions serve the interests of justice rather than creating abuse or delay.

From the perspective of both a former prosecutor and a defense attorney, allowing pretrial depositions in federal criminal cases would advance core values of accuracy, transparency, and fairness. It would help level the playing field between the government, which often has broad investigative tools and early access to witnesses, and the defense, which currently operates under more constrained discovery in federal practice. At the same time, it would give judges more reliable information earlier in the life of a case, improving case management and facilitating just outcomes.

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For these reasons, I respectfully urge the Committee to adopt a rule that permits pretrial depositions in federal criminal cases, subject to appropriate safeguards and judicial oversight. My experience in Florida has shown that when properly managed, depositions promote earlier, fairer, and more efficient resolutions for all parties involved.

Thank you for your consideration of my comments and for your work on this important issue.

Respectfully submitted,

A handwritten signature in blue ink, consisting of a large, stylized 'S' followed by a horizontal line and a small flourish.

SAMUEL J. RABIN, JR.