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March 12, 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, DC 20544
Email: RulesCommittee_Secretary@ao.uscourts.gov

Re: Proposed amendment to F.R.Crim.P. 15 (discovery depositions)

Dear Ms. Dubay:

I am a trial lawyer based in Omaha, Nebraska. A substantial portion of my practice is devoted to federal criminal defense. I write in strong support of a proposal to amend Federal Rule of Criminal Procedure Rule 15 to allow criminal defendants to take pretrial discovery depositions.

I wholeheartedly endorse sentiments already eloquently expressed to the Committee by numerous federal court practitioners and some retired judges supporting the wisdom, fundamental fairness and efficiency of the proposed amendment to F.R.Crim. 15. Discovery depositions are entirely consistent with the core values of the federal judicial system (<https://www.uscourts.gov/data-news/strategic-plan-federal-judiciary>) and the federal criminal justice system, balancing public safety, the protection of constitutional rights, advancing the rule of law and confidence in it, ensuring fair, equitable treatment for all.

I write to offer additional perspective the Committee may find useful in considering permitting discovery depositions in felony criminal cases. In addition to vigorous federal practice, I also practice criminal law in Nebraska state courts. Since 1969, Nebraska state law has allowed discovery depositions in felony criminal cases, see Neb. Rev. Stat. § 29-1917 (Reissue 2008). It is an invaluable tool used daily in Nebraska state courts that the federal courts would be wise to emulate. Here's why:

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Discovery depositions are judicially efficient. Currently, federal pretrial motion hearings often must act as *de facto* discovery depositions, as it's the only means by which defense counsel can compel discovery from essential, albeit reluctant witnesses who otherwise avoid voluntarily “getting involved”. A subpoena (a/k/a court order) and discovery depositions takes judges out of that time-consuming process, allowing more efficient use of court time.

Discovery depositions are cost-effective. The Committee is aware that more than 90% of federal criminal defendants are represented by court-appointed counsel. Discovery depositions enable defense attorneys to show their clients what a witness will *actually* say rather than expecting defendants to rely on vague law enforcement summaries that can't be tested without the considerable expense and risk of trial. A defendant presented with depositions procured by their own attorney can more confidently consider appropriate plea agreements. That cuts down on expensive trials.

Discovery depositions benefit both the prosecution and defense. Depositions allow counsel to meaningfully gauge the substance, reliability and impact of trial witness testimony before the case is presented to a jury. Both counsel are invested in successful outcomes for their respective clients. Depositions are invaluable to test “real time” witness presentation that can support or sink the case for either side.

Proven successful models for discovery depositions in felony cases already exist. Proposed amendments to F.R.Civ.P. 15 can be readily based on long-existing models like Neb. Rev. Stat. § 29-1917. For the Committee's convenience I've attached a copy of this statute. It preserves court authority to permit and limit depositions, which works fast and well in Nebraska courts. Excessive depositions are not allowed. *State v. Collins*, 283 Neb. 854, 812 N.W.2d 285 (2012). Prosecutors and defense counsel usually agree on depositions to be taken and hearings occur only in the infrequent instances where counsel disagree. If a witness refuses to comply with deposition,

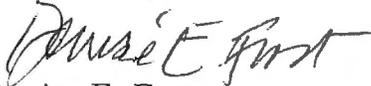
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courts have wide latitude to order appropriate remedies. *State v. Devers*, 306 Neb. 429, 945 N.W.2d 470 (2020).

The Nebraska statute provides that particularly vulnerable deposition witnesses like sexual assault victims may be accompanied by an advocate. This type of protection is consistent with existing federal protections akin to section 503(c) of the Victims' Rights and Restitution Act of 1990 (34 U.S.C. § 20141(c)) and other federal laws. It can easily be accommodated in federal criminal discovery depositions.

New criminal case filings in federal courts continue to climb. <https://www.uscourts.gov/data-news/reports/statistical-reports/judicial-business-united-states-courts/judicial-business-2025> But the number of federal trial courts and funding for their operations has not correspondingly increased. Amending F.R.Crim.P. 15 to permit discovery depositions is a step in the right direction to give courts and trial counsel an effective tool to meaningfully advance imperative needs and goals of the federal criminal justice system.

Respectfully,



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Enclosure

29-1917. Deposition of witness or sexual assault victim; when; procedure; use at trial.

(1) Except as provided in section 29-1926, at any time after the filing of an indictment or information in a felony prosecution, the prosecuting attorney or the defendant may request the court to allow the taking of a deposition of any person other than the defendant who may be a witness in the trial of the offense. The court may order the taking of the deposition when it finds the testimony of the witness:

(a) May be material or relevant to the issue to be determined at the trial of the offense; or

(b) May be of assistance to the parties in the preparation of their respective cases.

(2) An order granting the taking of a deposition shall include the time and place for taking such deposition and such other conditions as the court determines to be just.

(3) Except as provided in subsection (4) of this section, the proceedings in taking the deposition of a witness pursuant to this section and returning it to the court shall be governed in all respects as the taking of depositions in civil cases, including section 25-1223.

(4)(a) A sexual assault victim may request to have an advocate of the victim's choosing present during a deposition under this section. The prosecuting attorney shall inform the victim that the victim may make such request as soon as reasonably practicable prior to the deposition. If the victim wishes to have an advocate present, the victim shall, if reasonably practicable, inform the prosecuting attorney if an advocate will be present, and, if known, the advocate's identity and contact information. If so informed by the victim, the prosecuting attorney shall notify the defendant as soon as reasonably practicable.

(b) An advocate present at a deposition under this section shall not interfere with the deposition or provide legal advice.

(c) For purposes of this subsection, the terms sexual assault victim, victim, and advocate have the same meanings as in section 29-4309.

(5) A deposition taken pursuant to this section may be used at the trial by any party solely for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

Source: Laws 1969, c. 235, § 6, p. 870; Laws 1988, LB 90, § 2; Laws 1993, LB 178, § 1; Laws 2011, LB667, § 6; Laws 2019, LB496, § 7; Laws 2020, LB43, § 10.

Cross References

Child victim or child witness, use of videotape deposition, see section 29-1926.

Annotations

A district court's order authorizing a second deposition of a State witness who refused to answer questions during the first deposition was a sufficient remedy for noncompliance with discovery, where the authorization occurred approximately 4 months before trial was to begin. *State v. Devers*, 306 Neb. 429, 945 N.W.2d 470 (2020).

There is no obligation for the State to produce the victim or assist in locating the victim for purposes of a pretrial deposition by defense counsel. *State v. Anderson*, 305 Neb. 978, 943 N.W.2d 690 (2020).

Subsection (4) of this section restricts the use of a criminal deposition only at *the* trial rather than at *any* trial. In other words, it restricts the deposition's use at the criminal trial for which the deposition was taken, and not in a separate civil action. *Werner v. County of Platte*, 284 Neb. 899, 824 N.W.2d 38 (2012).

The plain language of this section, by using the term "may," indicates that the granting of a deposition is within the trial court's discretion. A defendant is not entitled, as a matter of right, to a deposition under this section. *State v. Collins*, 283 Neb. 854, 812 N.W.2d 285 (2012).

This statute governs the appropriate use of discovery depositions in a criminal case when the deponent is available as a testifying witness. *State v. Castor*, 257 Neb. 572, 599 N.W.2d 201 (1999).

A motion for depositions must be filed by a defendant after the information is filed. *State v. Murphy*, 255 Neb. 797, 587 N.W.2d 384 (1998).

Subsection (4) of this section governs only the appropriate use of a discovery deposition when the deponent is an available, testifying witness. *State v. Allen*, 252 Neb. 187, 560 N.W.2d 829 (1997).

Defendant is not entitled, as a matter of right, to a deposition pursuant to subsection (1) of this section. *State v. Tuttle*, 238 Neb. 827, 472 N.W.2d 712 (1991).