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April 16, 2026

**VIA EMAIL**

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](mailto:RulesCommittee_Secretary@ao.uscourts.gov)

Re: Proposal to Allow Discovery Depositions Under Federal Rules of Criminal Procedure

Dear Ms. Dubay and Committee on Rules of Practice and Procedure:

I am writing to urge the Committee to recommend allowing depositions in federal criminal cases. I am available to assist the Committee in any way as it considers the proposal to allow depositions in criminal cases. I am the Chief Public Defender for the 11<sup>th</sup> Judicial Circuit of Florida (Miami-Dade County), managing an office of more than 200 attorneys, handling around 75,000 cases each year. I have been a criminal defense attorney in Florida since 1990 (as Assistant Public Defender, then as Chief Public Defender). I also practiced in Washington State as a Deputy Public Defender for one year.

I have reviewed some of the submissions to the Committee. Others have adequately described the importance of testing the accuracy, memory, and consistency of government and defense witnesses before trial, reducing the risk of wrongful convictions, leveling the playing field, protecting constitutional rights and ensuring reliable testimony. I will attempt to focus on efficiency, cost and concerns about witness intimidation.

**Miami-Dade Public Defender Deposition Practice in Context.** We have more than 30 law enforcement agencies in Miami-Dade County. On average, each of my trial

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attorneys take about 200 depositions each year (between 20,000 and 22,000 total depositions), 99% of which have been in felony cases. Thankfully, we do not have to file motions to depose in felony cases. In the other 1% of depositions (in misdemeanor cases), the judge granted our motions to depose for cause. In FY 2024-2025, we handled ~22,000 depositions; and in FY 2025-2026, as of March 31, 2026, we have taken ~16,000 depositions. Since I have been the Chief Public Defender, we have taken more than 300,000 depositions. Currently, more than 95% of our depositions are remote (on Zoom or on the Prevail platform).

**Efficiency.** Depositions facilitate case resolutions.

Defendants get to learn about witness testimony, not by being present when the witness testifies in court or at a pre-trial hearing. They learn about the substance of sworn testimony from transcript, audio or summary from their attorney. This is not just efficient; the remote deposition without the defendant eliminates the number one concern of non-law enforcement witnesses who do not want to be in the same room with the accused. Depositions help prosecutors identify problematic witnesses, prepare them more effectively, and avoid surprises at trial. Prosecutors get to learn about the strength or weakness of their case through depositions, without having to waste judicial time in a hearing or inconvenience a witness.

What we have learned through conducting hundreds of thousands of depositions is that they often reduce the need for evidentiary hearings or narrow the number of contested issues. Many suppression issues turn on witness credibility. Depositions allow the prosecutor and defense to narrow disputes and sometimes resolve issues without a full hearing.

**Costs.** Because Florida rules limit depositions to those designated by the prosecutor as witnesses whose testimony is central, we have a built-in early mechanism for controlling unnecessary costs. Depositions in felony cases can be taken without leave of court of Category A witnesses only; that includes allowing the defendant to take the deposition of any unlisted witness who may have information relevant to the offense charged; the prosecutor may take the deposition of any witness listed by the defendant to be called at a trial or hearing. See Fla. R.C.P. 3.220 (b)(1)(H).

Witness categories are designated by the prosecutor in accordance with Rule 3.220 (b)(1)(A).

- (i) *Category A. These witnesses must include (1) eye witnesses, (2) alibi witnesses and rebuttal to alibi witnesses, (3) witnesses who were present when a recorded or unrecorded statement was taken from or made by a defendant or January 1, 2026 181 Florida Rules of Criminal Procedure codefendant, which must be separately identified within this category, (4) investigating officers, (5) witnesses known by the prosecutor to have any material information that tends to negate the guilt of the defendant as to any offense charged, (6) child hearsay witnesses, (7) expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify, and (8) informant witnesses, whether in custody, who offer*

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*testimony concerning the statements of a defendant about the issues for which the defendant is being tried.*

- (ii) *Category B. All witnesses not listed in either Category A or Category C.*
- (iii) *Category C. All witnesses who performed only ministerial functions or whom the prosecutor does not intend to call at trial and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense;*

Most depositions are short and can be conducted remotely. In FY 2024-2025, we expended approximately \$1.3 million, about \$60 per witness on deposition court reporting, including transcripts. Those expenditures are about the same as they were in FY 2018-2019, the full fiscal year before Covid interrupted all operations. Since Covid, we have moved to more than 95% of depositions being done remotely through Zoom or the Prevail platform. Those technologies allow for seeing simultaneous transcription, summary, and note taking. Just as significant, through remote depositions witnesses are not inconvenienced by having to drive to our office.

**Concerns about witness intimidation.** In Florida, there have been several statutory and rule changes over time to control how depositions of vulnerable witnesses are conducted. Florida state courts have decades of experience managing these concerns effectively. Protective orders, limits on scope, and judicial oversight already exist in civil and criminal contexts and can be built into the rules. Federal criminal cases involve the highest stakes in our justice system. Depositions are not a luxury, they are a proven, efficient, and fair method of ensuring accurate outcomes. Florida's state courts have used them for decades with great success. Federal courts should not operate with fewer safeguards than state courts when the consequences for defendants are so much greater.

Let me know if I can be of service to the Committee.

Thank you for the opportunity to provide input on such an important issue that will make our federal courts fairer and more efficient.

Sincerely,



Carlos J. Martinez  
Public Defender  
11<sup>th</sup> Judicial Circuit of Florida