CARMICHAEL ELLIS & BROCK

January 21, 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

Re: Support for Proposed Amendment to Federal Rule of Criminal Procedure 15

Dear Ms. Dubay:

I write as a criminal defense practitioner and founding partner of a small law firm in Alexandria, Virginia to express my strong support for amending Rule 15 of the Federal Rules of Criminal Procedure to allow limited pretrial depositions. This reform would address a fundamental imbalance currently present in our federal criminal legal system, thus enhancing the effectiveness of the adversarial process.

The current discovery framework places defense counsel in an untenable position. While prosecutors can deploy law enforcement agents, grand jury subpoenas, and immunity orders to interview witnesses repeatedly, defense attorneys must rely entirely on voluntary cooperation—which witnesses often decline to provide. The reasons are varied: inconvenience, fear of becoming "involved," concern about antagonizing prosecutors, or sometimes explicit or implicit discouragement from the government itself. The result is that defense counsel routinely face trial without ever having spoken to the key witnesses against their clients.

In my own practice, I have experienced firsthand how the absence of a deposition mechanism creates inefficiency rather than preventing it. I have had a few instances in which the parties devoted considerable time and resources to litigating subpoenas *duces tecum* and *Touhy* requests, with the opposing side asserting we were speculating, or on a fishing expedition. Had we been permitted to depose the relevant witnesses, we could have quickly determined whether the witnesses possessed helpful information or documents, and if so, the nature of that information. Instead, the litigation dragged on. A brief, supervised deposition would

Jessica N. Carmichael
108 N. Alfred St, 1st Floor, Alexandria, VA 22314
Phone 703 684 7908 / Fax 703 649 6360
Jessica@carmichaellegal.com

have cut through the uncertainty and either narrowed the issues or perhaps eliminated the dispute entirely.

The government's production of FBI 302s, grand jury transcripts, and interview summaries are no substitute a defense interview. These government-generated materials capture only information that is important to the government collect. The government generally has no reason to ask a question that might elicit information helpful to the defense. These written documents also provide no insight into witness performance or demeanor. Worse, they can sometimes be incomplete or misleading, and it is extremely cumbersome to impeach a witness at trial with an FBI 302 report. Defense counsel needs the ability to ask our own questions, test our own theories, and evaluate witnesses in real time. The proposed amendment addresses these problems while incorporating reasonable safeguards. Requiring a defense motion and a judicial finding that depositions serve "the interest of justice" ensures court oversight. The presumptive maximum of five depositions focuses counsel on truly important witnesses. Courts retain discretion to impose conditions addressing witness safety, costs, and scope. These are familiar tools that district judges already use effectively in managing discovery under Rules 15, 16, and 17.

Critically, this reform would not create "trials by deposition." Experience in the multiple states that permit criminal depositions demonstrates that depositions promote efficiency, not delay. When both sides understand what witnesses will actually say at trial, cases resolve more quickly. Defendants can make informed decisions about plea offers. Prosecutors can reassess weak cases. Exculpatory evidence comes to light earlier, reducing the risk of wrongful convictions and ensuring compliance with *Brady* obligations.

Our current system forces defense counsel to make critical strategic decisions—whether to call a witness, whether to accept a plea offer, whether to proceed to trial—without essential information that the government has long possessed. This imbalance does not serve justice. It does not promote accurate or fair outcomes. And it is particularly difficult to justify when civil litigants, facing far less serious consequences, enjoy robust deposition rights as a matter of course.

I urge the Committee to move forward with proposing an amendment to Rule 15 that authorizes limited pretrial depositions under judicial supervision. This reform would level the playing field, promote transparency and efficient case

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Jessica@carmichaellegal.com

resolution, enhance judicial confidence in the discovery process, and align federal practice with successful models already operating in numerous states.

Thank you for your consideration.

Respectfully submitted,

/s/

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