

Theodore Lothstein, Esq.
Kaylee Doty, Esq.
5 Green Street
Concord, NH 03301
(603) 513-1919



LOTHSTEIN
GUERRIERO
PLLC

Richard Guerriero, Esq.
Oliver Bloom, Esq.
Chamberlain Block Building
39 Central Square, Suite 202
Keene, NH 03431
(603) 352-5000

May 8, 2026

Carolyn A. Dubay, Secretary
Committee on Rule 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: Proposed Amendment to Fed. R. Crim. P. 15

Dear Secretary Dubay and the Committee on Rules of Practice and Procedure,

I am writing in support of the proposed amendment to Rule 15 of the Federal Rules of Criminal Procedure to allow, under limited circumstances, discovery depositions in criminal cases.

Regarding my background and qualifications to comment on the proposed amendment, I am a partner at Lothstein Guerriero, PLLC, in Keene and Concord, New Hampshire. I have been a trial lawyer for forty-two years, practicing primarily criminal defense. I was a public defender for twenty of those years. My current practice consists of both appointed and privately retained cases. The federal court portion of my practice is significant – currently in New Hampshire and occasionally in Boston, and many years ago in Baton Rouge and New Orleans, Louisiana. In our New Hampshire federal district court, I am the Panel Representative for our Criminal Justice Act Panel. I served for many years on the Board of Governors of the New Hampshire Bar Association and as New Hampshire Bar Association President for the 2021-2022 term. I have served on the boards of directors of the New Hampshire Public Defender, the New Hampshire Disability Rights Center, and the New Hampshire Association of Criminal Defense Lawyers. Since 2007, I have been a Fellow in the American College of Trial Lawyers.

I support the proposed amendment because it enhances fairness and efficiency, as well as the truth-seeking function of the trial process. It would help address the present asymmetry between the Government and defense counsel with regard to access to witnesses and their testimony. Discovery depositions will better inform the criminal defendant about the strength and weaknesses of the Government's case. This will facilitate plea negotiations and avoid the expense of trial, but it will also help criminal defendants obtain exculpatory material, avoid extensive litigation, resolve motions *in limine*, and fulfill the judicial system's search for the truth. It will also reduce the burden on the courts themselves to hold lengthy testimonial hearings, conserving scarce judicial resources.

Lothstein Guerriero, PLLC

May 8, 2026

Page 2

In New Hampshire state courts, discovery depositions are permitted in criminal cases by our laws and rules under the supervision of the trial court. Specifically, New Hampshire Rule of Criminal Procedure 13(a) permits either side to depose a witness, by agreement and with the assent of the witness, except as prohibited by statute. Furthermore, pursuant to N.H. R. Crim. P. 13(b), the trial court has discretion to permit either party to depose any witness—except for the defendant—for good cause, to ensure a fair trial, to avoid surprise, or due to unavailability. Finally, in all felony cases, either party may depose the other side's experts. N.H. R. Crim. P. 13(c). In my years of practicing in New Hampshire, I have experienced how the application of these rules in criminal cases have not been abused or resulted in a burden on the courts. Rather, they have promoted fairness and efficiency in the trial process.

I urge the Committee to adopt the proposed amendment to Rule 15.

Thank you for your consideration of my letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Guerriero', written in a cursive style.

Richard Guerriero
NH Bar #10530