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Sent via Email:

Carolyn A. Dubay, Secretary
Advisory Committee on Criminal Rules
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, D.C. 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: Proposals to Amend Federal Rule of Criminal Procedure 15 To Provide
for Discovery Depositions.

Dear Ms. Dubay:

I write in support of amending Rule 15 of the Federal Rules of Criminal Procedure to permit limited pre-trial discovery depositions in federal criminal cases.

I am a criminal defense attorney and member of Joseph, Hollander, & Craft LLC in Overland Park, Kansas and have practiced law for thirty-five years. For over twenty years, I have represented individuals accused of crimes in federal courts. Prior to entering private practice, I served as a state prosecutor for over a decade. I currently serve as the Criminal Justice Act Panel Representative for the District of Kansas, have extensive experience trying felony cases in both federal and state courts, and serve as an Adjunct Lecturer of Trial Advocacy at the University of Kansas School of Law.

Having reviewed the proposal to Rule 15, I believe the amendment deserves serious consideration. Criminal cases involve significant liberty interests, and the fair administration of justice depends upon both parties having a meaningful opportunity to evaluate the evidence and prepare their cases.

In criminal cases, witness testimony often drives the most important decisions counsel must make. Whether evaluating the strength of the evidence, preparing motions, advising a client regarding a case resolution, or preparing for trial, attorneys

need a reliable understanding of what witnesses will actually say, but also how that testimony may withstand examination. Yet federal criminal practice provides very few opportunities for defense counsel to examine witness testimony before trial.

While the government has the benefit of witness interviews, investigative reports, grand jury testimony, and other information gathered during an investigation, defense counsel generally has no way to compel a non-cooperative witness to answer questions before trial. As a result, attorneys are often forced to prepare cases based on summaries of witness statements contained in discovery, without any opportunity to question the witness directly and under oath. Discovery depositions would help bridge that gap by allowing counsel to evaluate testimony firsthand rather than relying solely on secondhand accounts of what a witness reportedly said.

The availability of discovery depositions would lead to better informed decisions by all parties involved in the cases and could improve judicial efficiency. Attorneys would be better positioned to assess the evidence, identify areas of agreement and dispute, and prepare more effectively for trial. Discovery depositions are not a novel concept. A number of states have incorporated them into their criminal procedures and have done so successfully for many years.

The proposed amendment to Rule 15 is about ensuring that attorneys have a meaningful opportunity to investigate facts, evaluate witness testimony, and prepare their cases. I believe the proposed amendment would further those goals and improve the quality of representation and advocacy in federal criminal cases.

Thank you for your consideration on this important issue. I respectfully support the Committee's continued study of, and amendment to Rule 15.

Sincerely,


Dionne M. Scherff