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ATTN: 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
Via email: "RulesCommittee_Secretary@ao.uscourts.gov"

RE: Proposed Amendment to Fed. R. Crim. P. 15

Dear Ms. Dubay,

I write in support of amending Rule 15 of the Federal Rules of Criminal Procedure to permit limited pretrial discovery depositions in federal criminal cases. I am a criminal defense attorney in northwest Arkansas. I am the CJA Panel Representative for the Western District of Arkansas. I served as a state prosecutor in Benton County Arkansas for two years in 1987 and 1988. I've tried criminal cases in both state and federal court in a wide range of charges.

I've reviewed the proposal to Rule 15, and I believe the amendment deserves serious consideration. As a defense attorney all we ever ask for is an even playing field. It is my belief that the ability to do pretrial depositions helps to create that level playing field. Having been on both sides of the law with respect to having been a former prosecutor and now being a defense attorney, I do believe that the ability of prosecutors to obtain information that a defense attorney does not have the opportunity to obtain seems to be advantageous from the prosecution standpoint. Once a witness makes a statement it's hard for that witness to back away from anything they said and, since a defense attorney doesn't have an opportunity to compel a witness to testify pretrial via a deposition, said witness is probably going to testify consistently with whatever statement they made to the prosecution. Depositions would be far more valuable to defense attorneys in evaluating their case, evaluating the evidence against their clients, and probably lead to a more efficient use of the court system. If a prosecution witness gives testimony via deposition that is extremely persuasive it is likely that a defense attorney would be more inclined to resolve the case outside of trial. However, reviewing reports against your client's account of the events doesn't give a defense attorney the opportunity to truly gauge the veracity of witnesses that may be used against their client simply based on a written report.

The proposed amendment to Rule 15 would be beneficial for all parties and likely lead to a more efficient use of the court system. It would clearly give defense attorneys a much better opportunity to evaluate the strengths and weaknesses of their case. I believe this proposed amendment would be useful in improving the quality of representation for all involved in any individual case. Further, this amendment would do nothing more than helping even the playing field in our adversarial system.

Thank you for your consideration. I respectfully request that the committee study the proposed amendment to Rule 15.

Sincerely,



Kenneth Osborne
Attorney at Law