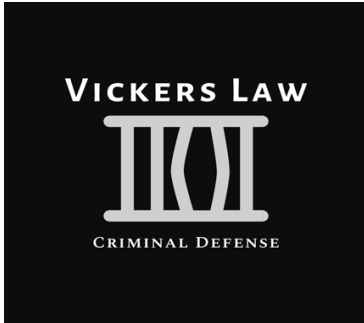




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September 2, 2026

Sent via Email: *RulesCommittee_Secretary@ao.uscourts.gov*

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

Re: Proposal to Amend Federal Rule of Criminal Procedure 15 (Rules Suggestion 25-CR-B)

Dear Ms. Dubay and Members of the Committee:

I write in support of amending Rule 15 of the Federal Rules of Criminal Procedure to permit a limited number of pretrial discovery depositions in federal criminal cases. I endorse the proposal submitted by Michael Kelly and Sergio Acosta of Akerman LLP, Rules Suggestion 25-CR-B.

I have practiced criminal defense for nineteen years, in federal court and in the state courts of North Dakota and Minnesota. I own Vickers Law, PLLC in Fargo. I serve as the Criminal Justice Act Panel Representative for the District of North Dakota.

The Committee's file already establishes that North Dakota is one of the states permitting discovery depositions as of right. What the file does not yet contain is a letter from a lawyer who practices under the North Dakota rule.

The rule is N.D.R.Crim.P. 15(a). Since March 1, 2006 — essentially my entire career — any party may depose any person once the defendant has appeared. No motion. No showing of exceptional circumstances. The safeguards are built into the rule: the court may set a deadline after which leave is required, Rule 15(a)(2); the court may bar or limit any deposition that would unreasonably annoy, embarrass, oppress, or burden the deponent or a party, Rule 15(a)(4); a defendant in custody attends only

with leave of court, Rule 15(f)(1); and since 2017, a victim may refuse any deposition requested by the defense, Rule 15(a)(5), implementing N.D. Const. art. I, § 25(1)(f), adopted by ballot measure in 2016.

Two things about that history that I think matter to the Committee's work. First, from 2006 to 2017 victims were not exempt from depositions, and I am aware of no reported North Dakota decision and no documented complaint of deposition abuse from that period; the victim provision arrived with Marsy's Law, a nationally funded ballot measure, not as a response to any problem with the deposition rule. The disciplinary record is consistent: no reported North Dakota decision has ever disciplined a lawyer for misusing a criminal discovery deposition. Second, the carve-out shows that a system can answer the witness-protection objection directly and keep the tool.

The contrast with federal practice is concrete. In a Cass County aggravated assault, the victim may decline to be deposed — but I can depose the eyewitnesses, the responding officers, the cooperating co-defendant, and the informant. If the same assault occurred on the Fort Berthold or Turtle Mountain reservation and my client were an enrolled tribal member, the case would be federal: a substantially longer sentence, and no right to depose anyone for trial preparation — the only way to hear a witness under oath before trial is a motion hearing that happens to put one on the stand. As the stakes rise, the process available to the accused shrinks.

Depositions in North Dakota are available for the asking. In spite of that, counsel deploy them judiciously — a deposition can educate the other side as easily as it educates you. In the cases where they are used, I have seen none of the harms critics predict: no witness intimidation, no trial by deposition, no gamesmanship. What I have seen is benefit running to both sides: defense counsel hears the witness under oath before advising a client whether to plead, prosecutors get a preview of how their case might stack up under adversity, disputes narrow, and cases resolve without a trial neither side needed.

Three more practical points from state practice. First, depositions are often easier on the witnesses themselves. Answering questions in a private office — the government's, mine, or the stenographer's — is less intimidating than testifying from the stand in open court. And when the case resolves, that testimony stays private. Second, without a deposition rule, defense lawyers file motions — or, in state court, contest probable cause at the preliminary hearing — partly to get witnesses under oath and develop a record. That spends judges' and court staff's time on what is really discovery. A deposition rule lets the parties develop the record themselves, without involving the court. Third — a point I have not seen elsewhere in the Committee's file — North Dakota runs these depositions inside a demanding speedy-trial framework: a defendant charged with a drug or sex-offense

felony may elect trial within ninety days. N.D.C.C. § 29-19-02. Depositions have not broken that clock.

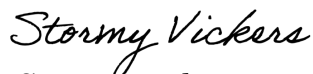
The federal docket in this District is where the missing tool costs the most. A substantial share of the felony caseload arises in Indian Country — homicides, assaults, and sexual-abuse prosecutions — alongside cooperator-driven drug conspiracies. These cases are built on witness accounts, and the defense's window into those accounts is an agent's interview summary: written by someone else, after the fact, not under oath, not verbatim. Witnesses are often unwilling to speak with defense investigators; the reservations are hours from Fargo; by the time of trial the events are years old. Too often, defense counsel first hears the government's key witnesses on direct examination. Professor Samuel Winder's letter to the Committee, Rules Suggestion 26-CR-38, describes the same dynamic in federal prosecutions arising in Indian Country in New Mexico. It is equally true in North Dakota.

As Panel Representative, I am mindful of cost. Limited depositions are inexpensive compared to what they replace: investigator hours spent pursuing witnesses who will not talk, trials that would not occur if counsel could test the case earlier, and post-conviction litigation over what a witness would have said. The proposed amendment — a motion, a judicial finding that depositions are in the interest of justice, a presumptive numerical limit — asks more of the defense than North Dakota's rule has asked since 2006.

Other states' experience points the same way. Florida studied its rule in 1989, trimmed depositions from most misdemeanor cases, and kept them for felonies, concluding that discovery depositions are “a necessary and valuable part of our criminal justice system.” *In re Amendment to Fla. Rule of Crim. Proc. 3.220*, 550 So. 2d 1097, 1098 (Fla. 1989). The Indiana Supreme Court called pretrial depositions a “practical necessity” in some cases. *Amaro v. State*, 239 N.E.2d 394, 398 (Ind. 1968). The Committee has heard from practitioners writing about Nebraska's, New Hampshire's, Florida's, and New Mexico's rules. North Dakota belongs in that record too.

I support the proposed amendment and the subcommittee's continued work. I would welcome the opportunity to discuss North Dakota's experience with the Committee.

Sincerely,



Stormy Vickers

Vickers Law

CJA Panel Representative, District of North Dakota