

BOISE | HUSEBY ^{LLP}
ATTORNEYS AT LAW

121 S.W. Morrison, Suite 700
Portland, OR 97204
(503) 228-0487 (Phone)
(877) 357-8282 (Toll Free)
(503) 227-5984 (Fax)

WHITNEY P. BOISE
whitney@boisehuseby.com

CONOR T. HUSEBY
conor@boisehuseby.com

September 9, 2026

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 and Members of the Committee:

I write in strong support of the proposed amendment to Rule 15 to permit limited, court-supervised discovery depositions in federal criminal cases.

Limited discovery depositions are necessary in criminal cases to promote fairness, accuracy, and efficient resolution. They would narrow information asymmetries, allow counsel to reliably assess witness accounts under oath, and foster better-informed case evaluations, earlier and more appropriate resolutions, and more focused trials. Experienced criminal defense practitioners who I have spoken with note that while the government has access to witnesses, and grand jury testimony, defense counsel often cannot compel non-cooperative witnesses to provide sworn, or otherwise, pretrial testimony, leaving critical decisions to be made on secondhand summaries rather than on tested statements. Allowing discovery depositions would help align pretrial practice with the truth-seeking goals served by adversarial testing, improving accuracy in both plea negotiations and trial preparation.

Discovery depositions would be appropriate in practical, circumscribed circumstances. In my view, they are most justified in complex matters with voluminous discovery where clarifying disputed factual issues pretrial would streamline motions and trial. Allowing depositions, under judicial supervision, would provide a more detailed and accurate picture of the allegations, reduce disputes about what was said, improve the reliability of the evidentiary record, result in earlier resolution of many cases, and conserve judicial resources by focusing issues for motions in limine and trial.

Common concerns can be addressed by a narrowly tailored rule with robust court oversight. Fears of witness intimidation are mitigated by protective orders, scope limitations, presence of counsel, and the court's authority to terminate or condition a deposition. Risks of

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delay and cost are controlled by requiring a particularized showing of need, limiting the number and duration of depositions, and sequencing them to avoid trial disruption. As to “fishing expeditions,” the court can confine topics to identified issues, require notice of subject areas, and deny requests lacking specificity. Judges would retain full control to authorize depositions only where warranted, to protect witnesses, and to prevent abuse.

I have served individuals and corporations in state and federal criminal matters since 1987, beginning as a lawyer at the Metropolitan Public Defender’s Office and, for more than three decades, in private practice. I have been on the CJA panel since 1991, and am a Fellow of the American College of Trial Lawyers and the International Society of Barristers. I served as a Special Attorney with the U.S. Department of Justice, in the beginning of my career, and have long been active in bar leadership and ethics oversight, including chairing Oregon’s State Professional Responsibility Board. My contact information is whitney@boisehuseby.com and direct: (503) 416-2068. These experiences inform my view that measured access to sworn pretrial testimony, subject to judicial control, will enhance fairness without burdening the courts.

For the foregoing reasons, I respectfully urge the Committee to adopt the proposed amendment to Rule 15 permitting discovery depositions under court supervision. I would welcome the opportunity to provide further input or to participate in any hearings or working groups as the Committee deems helpful.

Respectfully submitted,

/s/ Whitney P. Boise

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