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September 30, 2026

VIA EMAIL

Ms. 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, DC 20544
RulesCommittee_Secretary@ao.uscourts.gov

Re: Comment in Support of Amendment of Federal Rule of Criminal Procedure 15

Dear Ms. Dubay:

I am the CJA Panel Representative for the District of Vermont, and I am writing in support of the proposed Amendment to Federal Rule of Criminal Procedure 15 to permit defense depositions in criminal cases.

I have practiced law in Vermont since 1995, and I write with the perspective of an attorney who practices in both state and federal court, and whose practice includes both civil and criminal cases. Vermont state practice permits depositions in criminal cases, as described more fully below.

In civil cases, of course, it is routine to depose witnesses; indeed, it would be a rare case in which counsel decided not to depose key witnesses. The civil rules have long enshrined a preference for broad discovery, based on the recognition that the truth-seeking function is best served when both parties are able to conduct discovery in advance of trial. It is a commonplace that "trial by ambush" should be avoided in civil cases, and that the parties should be afforded every reasonable opportunity to educate themselves about the facts of the dispute. Depositions are a key tool in the discovery arsenal. Attorneys can inform themselves about their adversary's case, which in turn allows them to offer more complete and appropriate advice to their clients, better assess settlement options, and streamline a presentation for trial. A deposition can also reveal to the witness's sponsoring attorney the likely strength or weakness of the anticipated testimony, which serves similar functions.

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Each of these benefits of deposition practice applies at least equally in the context of criminal cases, if not more so. A defendant facing loss of liberty obviously has a substantial interest in understanding the cases against him. Moreover, criminal cases involve a unique structural imbalance in the resources available to the defense and prosecution for investigating cases, as a result of the government's access to law enforcement, grand jury process, and witnesses who may be more likely to cooperate with the government than the defense. One way for the defense to mitigate this imbalance is to be able to depose witnesses.

My experience with depositions in Vermont criminal cases confirms that they profoundly improve the quality of justice and the defense's ability to meaningfully prepare for trial. The Vermont Rules of Criminal Procedure permit depositions as a matter of right in all felonies, and by permission of the court or agreement of the parties in misdemeanors. Restrictions are minimal, and there is no limit to the number of depositions that can be conducted. Law enforcement witnesses who performed only "ministerial" tasks in the case are not subject to deposition, and child victims of certain sexual assault and child cruelty charges may not be opposed other than by agreement or permission of the court. The scope of depositions is generally the same as in civil cases, other than for certain identified "sensitive witnesses" (children under the age of 16 and complainants in certain sexual assault crimes) as to whom agreement on the scope and manner of deposition must be pre-agreed by the parties.

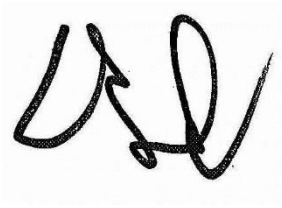
In practice, nearly all felony cases in Vermont involve depositions of law enforcement and civilian witnesses. Attorneys are respectful and efficient, and nearly all depositions last less than a half day. Depositions do not generally result in delays or disputes between the parties. It is common, although not universal, for them to recorded informally (rather than preserved stenographically) and transcribed later only if needed, which conserves resources for both sides.

Our experience in Vermont state courts is that deposing prosecution witnesses provides invaluable information to the defense, which may otherwise have little idea of critical evidence that will emerge at trial. The constitutional guarantee of effective assistance of counsel and due process of law is made possible by a system where defense counsel has a clear understanding of the case against their client. Moreover, subjecting prosecution witnesses to deposition allows *both* sides to assess the strength of the anticipated testimony. Either way, it facilitates resolution of the case, since parties who have a similar understanding of the likely evidence at trial are much more apt to agree on an appropriate resolution.

In rare cases, a prosecution case entirely falls apart when a key witness testifies in deposition to facts that fatally undermine the prosecution. In that event, every single player in the system is better off for the case failing early, before a defendant has endured months or years of pretrial proceedings, rather than at trial, where court time and juror time are wasted by a case that should have been disposed of earlier.

I urge the Committee to adopt the amendment and would be pleased to provide any additional information that might be helpful to its consideration of this matter.

Very truly yours,



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