

**VIA EMAIL:**

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

Dear Ms. Dubay:

This letter supports the proposal to amend Federal Rule of Criminal Procedure 15, which would allow for limited pretrial depositions. I agree with the positions of others who also have written in support of this proposal. I will not revisit those observations; however, I wish to address two matters briefly.

Several years ago, I had the privilege of serving as an assistant United States attorney in the District of South Carolina. My practice now consists of the representation of defendants in criminal cases and investigations, as well as representation of both defendants and plaintiffs in civil litigation. Thus, I, have experience with both investigative reports, such as FBI Form 302s, and with depositions of the many varying witnesses in civil cases.

Even the best-intended and well-written interview memorandum pales in comparison with a deposition. Investigative memos and reports, by their very nature, are conclusory. Yet, such reports do not describe the activities of the reporting agent conducting the interview. An FD-302 does not provide the agent's specific questions. An investigative report does not disclose why the reporting agent failed to follow up with further relevant questions. The report does not generally advise the circumstances of the interview. The report generally does not comment on the tone, attitude, attentiveness, or other characteristics of the interviewee.

On the contrary, a deposition reveals all the above, and much more. The questioning lawyer can observe the witness, rephrase questions, and press for details, etc. The questions can explore areas which could lead to further discovery or even exoneration. Importantly, a deposition provides a transcript of the exact questions asked and the exact responses. A transcript eliminates any question as to the accuracy of any statement. This in turn will eliminate a potential credibility issue between an interviewee and a reporting agent. The use of limited depositions will allow for better understanding of a case, which could lead to a more efficient outcome and earlier resolution by plea or by a shorter trial. Either is helpful.

I anticipate any proposal will require the district court to approve additional discovery. Counsel will need to provide concrete reasons to the district court for the allowance and number of depositions. While a proposal might allow for a limited number of depositions, not each case requires additional discovery. As a result, this limited discovery will be beneficial and not subject to abuse.

Thank you for your consideration.

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