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March 2, 2026

**VIA EMAIL: [RulesCommittee\\_Secretary@ao.uscourts.gov](mailto:RulesCommittee_Secretary@ao.uscourts.gov)**

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

Re: Proposal to Amend Fed. R. Crim. P. 15

Dear Ms. Dubay:

We write in support of the proposal to amend Federal Rule of Criminal Procedure 15 to allow for broader use of depositions. Our law firm includes lawyers with many decades of experience in the criminal justice system in state and federal courts, including prior experience in the Federal Public Defender's office and as Criminal Justice Act panel attorneys. Members of the firm are listed in Best Lawyers in America in the areas of criminal defense, white-collar defense, and appellate practice, are fellows in the American College of Trial Lawyers, and include a past President of the State Bar of Arizona, Chair of the Arizona State Bar Criminal Rules Section, and two past Presidents of the Arizona Attorneys for Criminal Justice, Arizona's affiliate to the National Organization of Criminal Defense Lawyers. We write to add to the numerous other practitioners who are urging the amendment of Rule 15 to permit broader use of depositions because such an amendment would clearly enhance fairness and accuracy in criminal cases.

We are aware that the Committee on Rules of Practice and Procedure is considering various proposals to amend Rule 15. Instead of weighing in on any of those particular proposals, we would like to describe current practice in criminal proceedings in Arizona where informal pretrial interviews of both defense and prosecution witnesses is the rule rather than the exception, and witness depositions are available when witnesses will not cooperate in granting a personal interview. Rule 15.3 of the Arizona Rules of Criminal Procedure states, in pertinent part:

**Rule 15.3. Depositions.**

- (a) **Availability.** A party or witness may file a motion requesting the court to order the examination of any person, except the defendant, by oral deposition under the following circumstances:

- (1) a party shows that the person's testimony is material to the case and that there is substantial likelihood that the person will not be available at trial; or
  - (2) a party shows that the person's testimony is material to the case or necessary to adequately prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the probable cause phase of the juvenile transfer hearing, and that the person will not cooperate in granting a personal interview; or
  - (3) a witness is incarcerated for failing to give satisfactory security that the witness will appear and testify at a trial or hearing.
- (b) **Follow-Up Examination.** If a witness testifies at a preliminary hearing or probable cause phase of a juvenile transfer hearing, the court may order the person to attend and give testimony at a follow-up deposition if:
- (1) the magistrate limited the person's previous testimony under Rule 5.3; and
  - (2) the person will not cooperate in granting a personal interview.

The Arizona rule then sets forth the procedures for requesting and taking the deposition, provides that a victim has the right to refuse a deposition, and provides that the defendant has the right to be present. [See Rule 15.3, Arizona Rules of Criminal Procedure, attached hereto].

The experience of practitioners and courts in Arizona has revealed that the practice of pretrial interviews followed up with depositions, if necessary, has greatly enhanced the factfinding process. By preparing for, and conducting, pretrial interviews, both the prosecution and defense are afforded an opportunity to assess the accuracy and credibility of key witnesses, evaluate possible pretrial motions, and evaluate whether to proceed to trial or bring the matter to resolution. Pretrial interviews or depositions also minimize the risk of perjured or erroneous trial testimony being used as the basis for the jury's verdict because both parties have an opportunity to investigate the accuracy of the witnesses' statements prior to trial. This practice rewards investigation, competence, and pretrial diligence over the possibility of unexpected or surprise testimony at trial. Indeed, the Arizona Supreme Court has long recognized "that a trial court should exercise its discretion in favor of seeing that the accused is furnished with every fact necessary to prepare the best possible defense. The modern trend in discovery proceedings is to have the winner determined by the facts, rather than by which side is the most ingenious in 'playing the game.'" *State v. Ford*, 108 Ariz. 404, 409 (1972). The practice of pretrial interviews or depositions also reinforces the fundamental proposition that a witness, whether called by the prosecution or the defense, "is not the exclusive property of either the prosecution or the defendant." *Mota v. Buchanan*, 26 Ariz. App. 246, 249 (1976).

In sum, the Arizona practice has been very helpful in facilitating non-trial disposition of cases, the discovery of *Brady* material,<sup>1</sup> and has greatly enhanced judicial efficiency and truthfinding in the cases that do

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<sup>1</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

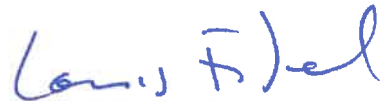
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go to trial. We believe that any amendments to Rule 15 of the Federal Rules of Criminal Procedure that permit the broader use of depositions to advance these goals would constitute a much needed, and greatly appreciated, improvement in the federal criminal justice system.

Respectfully submitted,

By:   
Michael L. Piccarreta, Esq.

By:   
Louis S. Fidel, Esq.

Enclosure



### [Ariz. R. Crim. P. 15.3](#)

Current through changes ordered and effective as of December 12, 2025

**AZ - Arizona Local, State & Federal Court Rules > Rules of Criminal Procedure > IV. Pretrial Procedures > Rule 15. Disclosure**

## **Rule 15.3. Depositions.**

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**(a) Availability.** A party or a witness may file a motion requesting the court to order the examination of any person, except the defendant, by oral deposition under the following circumstances:

- (1) a party shows that the person's testimony is material to the case and that there is substantial likelihood that the person will not be available at trial; or
- (2) a party shows that the person's testimony is material to the case or necessary to adequately prepare a defense or investigate the offense, that the person was not a witness at the preliminary hearing or at the probable cause phase of the juvenile transfer hearing, and that the person will not cooperate in granting a personal interview; or
- (3) a witness is incarcerated for failing to give satisfactory security that the witness will appear and testify as a trial or hearing.

**(b) Follow-up examination.** If a witness testifies at a preliminary hearing or probable cause phase of a juvenile transfer hearing, the court may order the person to attend and give testimony at a follow-up deposition if:

- (1) the magistrate limited the person's previous testimony under Rule 5.3; and
- (2) the person will not cooperate in granting a personal interview.

**(c) Motion for taking deposition; notice; service.**

**(1) Requirements.** A motion to take a deposition must:

- (A) state the name and address of the person to be deposed;
- (B) show that a deposition may be ordered under (a) or (b);
- (C) specify the time and place for taking the deposition; and
- (D) designate any nonprivileged documents, photographs, other tangible objects, or electronically stored information that the person must produce at the deposition.

**(2) Order.** If the court grants the motion, it may modify any of the moving party's proposed terms and specify additional conditions governing how the deposition will be conducted.

**(3) Notice and subpoena.** If the court grants the motion, the moving party must notice the deposition in the manner provided in [Arizona Rule of Civil Procedure 30\(b\)](#). The notice must specify the terms and conditions in the court's order granting the deposition. The moving party also must serve a subpoena on the deponent in the manner provided in [A.R.S. § 13-4072\(A\)](#)-(E) or as otherwise ordered by the court.

**(d) Manner of taking.**

**(1) Generally.** Unless this rule provides or the court orders otherwise, the parties must conduct depositions in the manner provided in [Rules 28\(a\)](#) and [30 of the Arizona Rules of Civil Procedure](#).

**(2) Deposition by written questions.** If the parties consent, the court may order that a deposition be taken on written questions in the manner provided in [Rule 31 of the Arizona Rules of Civil Procedure](#).

**(3) Deponent statement.** Before the deposition, a party who possesses a statement of a deponent must make it available to any other party who would be entitled to the statement at trial.

**(4) Recording.** A deposition may be recorded by someone other than a certified reporter. If someone other than a certified reporter records the deposition, the party taking the deposition must provide every other party with a copy of the recording no later than 14 days after the deposition, or no later than 10 days before trial, whichever is earlier.

**(5) Remote means.** The parties may agree or the court may order that the parties conduct the deposition by telephone or other remote means.

**(e) The defendant's right to be present.** A defendant has the right to be present at any deposition ordered under (a)(1) or (a)(3). If a defendant is in custody, the moving party must notify the custodial officer of the deposition's time and place. Unless the defendant waives the right to be present, the officer must produce the defendant for the deposition and remain with the defendant until it is completed.

**(f) Use.** A party may use a deposition in the same manner as former testimony.

**(v) Victims' rights.** A victim has the right to refuse a deposition by the defendant, defendant's attorney, or other person acting on behalf of the defendant.

## History

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Adopted by R-17-0002, effective January 1, 2018; amended by R-18-0008, effective January 1, 2019; amended on an emergency basis by R-18-0035, October 18, 2018, effective October 24, 2019, adopted on a permanent basis Aug. 27, 2019; amended by R-20-0013 on an emergency basis September 30, 2021 and made permanent January 1, 2022; amended by R-22-0035, effective July 1, 2023.