

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
1301 CLAY STREET  
OAKLAND, CALIFORNIA 94612-5212

14-CR-C



CLAUDIA WILKEN  
CHIEF JUDGE

April 10, 2014

Hon. Reena Raggi  
Chair, Advisory Committee on Criminal Rules  
Emanuel Celler Federal Building  
225 Cadman Plaza East, Room 620N  
Brooklyn, N.Y. 11201

Re: Requested Amendment to Federal Rule of Criminal Procedure 11

Dear Judge Raggi:

I write to ask the Advisory Committee on Criminal Rules to amend Federal Rule of Criminal Procedure 11 to allow a federal trial judge to refer criminal cases, upon consent and with appropriate safeguards, to another judge for a criminal settlement conference. The consensus of our district and magistrate judges--including those with special expertise, such as Senior Judge Lowell Jensen, former chair of your committee, Senior Judge Charles Breyer, serving on the United States Sentencing Commission, and Judge Jeremy Fogel, Director of the Federal Judicial Center--join me in this request.

As you may know, prior to United States v. Davila, 133 S. Ct. 2139 (2013), our Court had, for many years, provided a mechanism for voluntary settlement conferences in criminal cases. A copy of our Criminal Local Rule 11-1 is attached. In Davila, based on a rather egregious set of facts, the Supreme Court found that Rule 11 bars settlement conferences in criminal cases. Notably, no constitutional or ethical bar was found.

Our settlement conferences provided an invaluable opportunity for criminal defendants, defense counsel and prosecutors to meet face-to-face under the guidance of a judge, other than the trial judge, to explore the possibility of voluntary settlement. As set out in our Local Rule, the Court put in place safeguards to protect defendants' due process rights and ensure that any plea agreements that resulted from the conferences were voluntary.

For example, our local rule required a joint request by both the prosecution and defense for referral to a judge for a settlement conference. Moreover, any party could unilaterally withdraw its request for a settlement conference at any time.

Although settlement judges could not do anything to influence a defendant's decision whether to plead guilty, many defendants valued the opportunity to hear about the possible outcomes of their cases from the perspective of the prosecutor and a judge, along with their own counsel, as well as the opportunity to express their concerns and perspectives on their cases to those individuals. These opportunities allowed defendants to conduct a reasonable assessment of the likely outcomes if they plead guilty, pursued motions or proceeded to trial. Indeed, the most common scenario was one in which a defendant did not fully trust his court-appointed counsel and was reassured to hear certain facts confirmed by another participant in the process. Settlement conferences were very much the exception rather than the rule, used in the most difficult or time-consuming cases. Settlement conferences were particularly useful in multi-defendant cases in which the government sought a "package deal," offering a plea agreement only if all the defendants accepted.

When settlement conferences led to voluntary plea agreements, there were clear and significant cost savings to the Court, the United States Attorney's office and, in relevant cases, the Federal Defender's office. Even where settlement conferences did not lead to plea agreements, there were potential cost savings if a defendant elected not to pursue a motion such as a motion to suppress following a settlement conference or the government decided not to pursue certain charges.

Many states, including California, provide for judicially supervised settlement proceedings as a matter of course. In addition, several other federal district courts have offered judicially supervised criminal settlement conferences. These include the District of Arizona, the Central District of California, the District of Idaho, the District of Montana, the District of Oregon and the Western District of Washington. Chief Judges Raner Collins, George King and Ann Aiken can provide information regarding how the program worked in their districts.

An amendment to Rule 11 would allow these districts and ours to return to our practice of offering voluntary settlement conferences. An example of such an amendment is: "Nothing in this Rule is intended to prevent a trial judge from referring

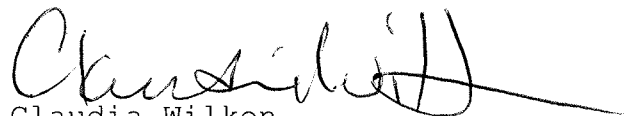
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criminal cases, upon consent and with appropriate safeguards, for a settlement conference with a judge who will not be the trial judge."

Our Court is eager to have this option restored. Our Federal Public Defender Steven Kalar can provide further information. In addition, any of our judges, especially those mentioned above, would be happy to provide more information to the committee.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Claudia Wilken', with a long horizontal flourish extending to the right.

Claudia Wilken

Chief Judge

United States District Court

Northern District of California

cc:

Hon. John D. Bates

Director

Administrative Office of the United States Courts

Jonathan C. Rose

Rules Committee Officer

Administrative Office of the United States Courts

## 11-1. Voluntary Settlement Conference

- (a) Joint Request for Referral.** At any time prior to the final pretrial conference, the attorney for the government and the attorney for a defendant, acting jointly, may request that the assigned Judge refer the case to another Judge or Magistrate Judge to conduct a settlement conference. In a multiple defendant case, all defendants need not join in the request in order for the assigned Judge to refer for settlement conference the case pending against a requesting defendant.
- (b) Order of Referral.** Upon a request made pursuant to Crim. L.R. 11-1(a), the assigned Judge may, in his or her discretion, refer the case to another Judge or Magistrate Judge available to conduct the settlement conference. In conjunction with the referral, the assigned Judge may order the pretrial services officer of the Court to provide a report of any prior criminal proceedings involving the defendant to the parties and the settlement Judge.
- (c) Conduct of Settlement Conference.** The role of the settlement Judge is to assist the parties in exploring a voluntary settlement in a criminal case. The settlement Judge shall schedule a conference taking into consideration the trial schedule in the case. The attorney for the government and the principal attorney for the defendant shall attend the conference. The defendant need not be present at the conference, but shall be present at the courthouse for consultation with defense counsel, unless the defendant's presence is excused by the settlement judge. At least 7 days before the settlement conference, the Deputy Clerk for the settlement Judge shall notify the marshal to bring a defendant who is in custody to the courthouse to be available for consultation with his or her defense counsel. The settlement conference shall not be reported, unless the parties and the settlement judge agree that it should be on the record. Neither the settlement Judge, nor the parties nor their attorneys shall communicate any of the substance of the settlement discussions to the assigned Judge or to any other person. No statement made by any participant in the settlement conference shall be admissible at the trial of any defendant in the case. If a resolution of the case is reached which involves a change in the plea, the settlement Judge shall not take the plea.
- (d) Withdrawal of Request for Referral.** Participation in a settlement conference is voluntary. Any party may unilaterally withdraw its request for a settlement conference at any time.