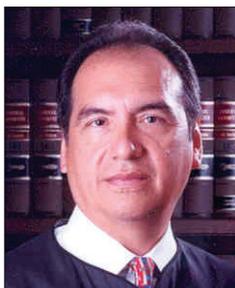


## Using Settlement Conferences in Criminal Cases

The Western District of Washington initiated the use of settlement conferences in prisoner cases about 15 years ago. This came about largely due to a single case where defense counsel was having difficulty communicating with his client. He asked the assigned district judge whether it would be possible to refer the matter to a magistrate judge so his client could ask questions about the plea negotiation process and obtain the perspective of a neutral and detached judicial officer. The district judge agreed and the case was eventually resolved by a plea.



*District Judge Ricardo S. Martinez of the Western District of Washington*

the rule and the Advisory Committee Notes, that this prohibition applies only to the trial judge. It does not prohibit having another judicial officer involved in plea negotiations. Today, we use both magistrate and district judges as settlement judges in criminal cases.

Like any civil case, the presence of an impartial judicial officer can make all of the difference in reaching an agreement in a criminal case. And there are creative approaches available in an off-the-record ADR setting that are simply not possible in a criminal trial.

What began as an informal system without written guidelines or standards has since been codified by local rule in our district. CrR 17.2 states:

**(a) Policy.**

It is the policy of the court to facilitate efforts to settle criminal cases, when requested to do so by the parties. Participation in a settlement conference is

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## Reentry Courts Offer 'Extra Opportunity' for Offenders Rejoining Society

Reentry courts aim to reduce recidivism and improve public safety by targeting high-risk offenders reentering the community from federal prison using an intensive but unorthodox approach to community supervision. As Magistrate Judge Mike Parker of the Southern District of Mississippi put it, reentry court and post-conviction drug court programs “provide an extra opportunity for offenders returning from prison to lead productive and law-abiding lives.”

In 2002, there were no federal reentry courts and just one federal post-conviction drug court. By 2011, 52 districts were operating or planning for such courts. Some court programs focus on high-risk offenders with substance abuse disorders. Others focus on high-risk offenders with criminogenic needs which may or may not include a substance abuse disorder.

*About the authors: Magistrate Judge Valerie P. Cooke of Nevada chairs the ADR Committee; Mark A. Sherman is chief of Probation and Pretrial Programs at the Federal Judicial Center*

Federal reentry and post-conviction drug courts are grounded in state drug courts, which began to emerge in 1989. Judges, prosecutors and other stakeholders in state courts saw the system as a revolving door of offenders with substance use disorders. A new model needed to be developed that emphasized treatment for repeat offenders. Multiple studies have shown

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### Also in This Issue

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# ADR Committee Members



Hon. Valerie P. Cooke, *Chair, Magistrate Judge, NV*  
Hon. Jan M. Adler, *Magistrate Judge, CAS*  
Hon. Ann L. Aiken, *Chief District Judge, OR*  
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Ms. Elizabeth "Libby" A. Smith,  
*District and Bankruptcy Court Clerk, ID*  
Hon. N. Randy Smith, *Circuit Judge*  
Hon. Christina A. Snyder, *District Judge, CAC*  
Jonathan L. Wolff, *Esq.,*  
*Senior Assistant Attorney General, CA*

## ADR Calendar

**May 2-3**  
New Judge Training

**June 10-14**  
Eastern District of California  
Settlement Week

**June 17-20**  
District of Nevada  
Settlement Week

## Ninth Circuit ADR Awards

### Robert F. Peckham Award for Excellence in ADR

This award was created by the Judicial Council of the Ninth Circuit in 2001 to recognize non-judge court employees for innovation and achievement in court-based ADR programs. The award is named for the late Robert F. Peckham, who as chief judge of the Northern District of California was a leader in establishing a court-based ADR program. It is presented at the Ninth Circuit Judicial Conference. In 2010, Senior Circuit Judge Dorothy W. Nelson, who led the ADR committee since its inception in 1997 until 2009, received a special ADR Lifetime Award for her many efforts to promote the use of alternative dispute resolution methods to resolve conflicts prior to courtroom litigation.

Recipients to date are:

**2012** - Susan M. Leeson, Esq., ADR Program Director, District of Oregon (former Justice, Oregon Supreme Court)

**2011** - Sujean Park, Esq., ADR and Pro Bono Program Director, Eastern District of California

**2009** - Dawn Osborne-Adams, Esq., Manager of ADR Programs, Central District of California

**2008** - Magistrate Judges' Staff Members in the Southern District of California

**2007** - Susan M. Doherty, ADR Program Coordinator, U.S. Bankruptcy Court for the Central District of California

**2006** - David Lombardi, Chief Circuit Mediator, U.S. Court of Appeals for the Ninth Circuit

**2004** - Leandra P. Kelleher, ADR Administrator, District of Idaho

**2003** - Sarah Kwak, Mediation Program Coordinator, U.S. Bankruptcy Court for the Central District of California

**2002** - Mimi Arfin, ADR Program Director, and Howard Herman, ADR Program Counsel, Northern District of California ●

## SETTLEMENT *continued from page 1*

entirely voluntary, however. A party's declination to participate in the settlement conference process shall in no way be used against that party at any stage of the proceeding.

### **(b) Role of Settlement Judge.**

The role of the settlement judge shall be limited to facilitating a voluntary settlement between parties in criminal cases. The settlement judge shall not preside over any aspect of the case, other than facilitation of a voluntary settlement according to this rule. The settlement judge shall not take a guilty plea from, nor sentence any defendant in the case. He or she shall not communicate anything regarding the status or substance of the settlement discussions to the trial judge, except to notify the trial judge of a settlement.

### **(c) Request for Settlement Conference.**

A request for a settlement conference may be initiated by the parties. The trial judge shall determine whether such conference shall be held. Not all defendants in a multi-defendant case need join in the request or the conference.

### **(d) Assignment of Settlement Judge.**

The trial judge shall select a district or magistrate judge to act as settlement judge after considering recommendations of the parties. Any party may withdraw from a settlement conference unilaterally or at any time.

### **(e) Conduct of the Conference.**

(1) Availability of Defendant. The settlement judge shall determine a course of procedure for settlement discussions as he or she may determine to be best. The participation by the defendant shall be determined by the settlement judge.

(2) Authority of Government Attorney to Reach Disposition. The government attorney participating in settlement discussions shall either have authority to agree to a disposition of the case or have the ability to obtain such authority from a supervisory or other government attorney upon telephone notice.

### **(f) Proceedings Privileged.**

Proceedings of settlement conferences shall in all

respects be privileged and not reported or recorded. No statement made by any participant at the settlement conference shall be admissible at the trial of any defendant in the case or be considered for any purpose in the sentencing of the defendant in a case. No statement made by a defendant in the course of a settlement conference shall be reported to the counsel for the government.

Attorneys most often initiate a settlement conference after agreeing the case may benefit from involving a settlement judge. The request is put forward to the trial judge by written motion or by email. The trial judge checks on the availability of other judges, usually specifying a time frame. The first judge to respond generally gets the case. The settlement judge then schedules the conference.

A trial judge also may initiate the process during a proceeding by directly asking the parties whether the case will benefit from referral to a settlement judge. If so, the trial judge will start the referral process. Per our local rule, the parties may ask that matter be referred to a specific settlement judge. The final decision is left up to the trial judge.

I have engaged in criminal settlement conferences for more than 12 years. It is important to be flexible in order to deal with any specific issues that may arise. I use a prepared outline which can be customized for individual cases. I print out the final copy and carefully review it in the conference with the defendant and his counsel so that everyone understands the rules and what we are trying to accomplish. I use a large font so that everyone can comfortably review the document.

We have not tracked the exact success rate of criminal settlement conferences, but we know that our plea rate on criminal cases has remained steady over the years at slightly less than 97 percent. I schedule approximately 25 - 30 criminal settlement conferences in a year, which I believe is more than the average judge in my district. My own success rate for settling cases is at or around 85 to 90 percent. And, perhaps more importantly, I believe that the flexibility allowed in a settlement conference ultimately yields what we are seeking – greater justice for all. ●

the success of state drug courts, which use science and evidence-based practices to reduce crime, recidivism, and substance abuse. A number of federal courts are now involved in the movement.

The District of Oregon's Reentry Court, which began in 2005, uses a team approach involving a district judge, assistant U.S. attorney, assistant federal defender, probation officer and contracted treatment professionals. There are 14 to 20 participants in the court at any one time. Usually offenders having a history of serious drug abuse or a record of serious crimes. Participants earn promotion within the program based upon sobriety, compliance with probation, appearance in court sessions, participation in treatment, and pursuit of employment or education. Sanctions are imposed for misconduct and non-compliance, ranging from a reprimand in court to immediate incarceration.

The Southern District of Mississippi initiated the AAA-1 Reentry, Intervention and Pretrial Program in 2006. The AAA stands for "Attitude, Accountability & Accomplishment One Day at a Time." The program handles 30 to 40 high-risk offenders at a time, offering rewards for those who follow the rules, such as recognition in open court, fewer court appearances or less intensive supervision. Sanctions include weekend incarceration. Successful graduation will result in a 20 percent reduction of supervised release.

The District of Utah's RISE Reentry Court (Reentry Independence through Sustainable Efforts) focuses on high-risk offenders with substance abuse disorders. The

Read more about these programs at:  
<http://tinyurl.com/reentry-courts>

program admits a maximum of 25 participants, offering rewards to those achieving court-set personalized goals. Utah also offers the RISE Mental Health Court, the first federal mental health court, which was established in 2008. There are 12 participants, all of whom suffer from major mental disorders, learning disorders and substance use disorders. The district's newest venture, the Veterans Reentry Court, was started in 2010.

The Eastern District of Pennsylvania began the STAR (Supervision To Aid Recovery) program in 2007. STAR serves 15 to 20 participants at a time using a traditional team approach and rewards and sanctions to foster positive behavior and to punish criminal or antisocial behavior.

The District of Hawaii's reentry court has been operating for more than two years. Each class begins with 12 to 16 high-risk offenders. Also employing a team approach, the program offers various incentives, including use of a point system to earn gift cards in various denominations.

The Northern District of Ohio's STAR (Successful Transitions-Accelerated Reentry) program includes a district judge and magistrate judge, AUSAs, AFPDs, probation officers, and a treatment provider. The program has an advisory board of community leaders representing employers, health care providers, public housing administrators, and educators. STAR averages 9 to 11 high-risk offenders.

Federal reentry courts focus on high-risk offenders; incorporate treatment programs; employ a team approach; and use a system of immediate rewards and sanctions. These programs require a significant time commitment and no special funding is available. Close consultation with probation leadership is particularly important in these tough budgetary times, but reducing recidivism creates the benefit of lower imprisonment rates. ●



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