

Proposal 10-06
Amend Supreme Court Rule 402(d)(1)
Offered by the IJC Committee on Criminal Law and Probation Administration

Rule 402 Pleas of Guilty or Stipulations Sufficient to Convict

(a) – (c) [no changes]

(d) **Plea Discussions and Agreements.** When there is a plea discussion or plea agreement, the following provisions, in addition to the preceding paragraph of this rule, shall apply:

(1) The trial judge shall not initiate plea discussions. Upon request by the defendant, the trial judge may participate in plea discussions. Prior to participating in the plea discussions, the trial judge shall admonish the defendant and inquire as to the defendant's understanding of the following:

That the defendant's attorney has requested that the trial judge participate in the conference to determine whether or not the charge(s) which is/are pending against the defendant can be resolved by a plea of guilty;

That during the course of the conference the State's Attorney will be present and advise the judge of the facts of the case as contained in the police reports or conversations with witnesses, that the defendant's attorney will also be present and will advise the judge of any information the defendant may have concerning the circumstances which led to the defendant's arrest in the case.

That without the conference, the judge would not learn about this information unless the case proceeded to trial.

That the judge will also learn whether the defendant has a prior criminal history, his/her driving record, whether the defendant has any alcohol or drug problem, the defendant's work history, family situation, and other things which would bear on what, if any punishment should be imposed upon the defendant as result of his/her plea of guilty to one or more of these charges.

That these are things that the judge would not learn about unless the case went to trial and the defendant was found guilty.

That at the end of the conference, the judge will make a recommendation as to what an appropriate sentence would be.

That the defendant is free to accept or reject the judge's recommendation. However, if the defendant rejects the judge's recommendation and he/she wishes to have a trial on the charges, the defendant may not obtain another judge solely on the basis that the judge participated in the conference and is aware of the facts and circumstances surrounding the incident as well as the defendant's background. This means that the defendant will be waiving his/her right to request a substitution of judge based upon the judge's knowledge of the case.

That knowing all of these things the defendant still wishes that the judge participate in this conference.

(2) If a tentative plea agreement has been reached by the parties which contemplates entry of a plea of guilty in the expectation that a specified sentence will be imposed or that other charges before the court will be dismissed, the trial judge may permit, upon request of the parties, the disclosure to him of the tentative agreement and the reasons therefor in advance of the tender of the plea. At the same time he may also receive, with the consent of the defendant, evidence in aggravation or mitigation. The judge may then indicate to the parties whether he will concur in the proposed disposition; and if he has not yet received evidence in aggravation or mitigation, he may indicate that his concurrence is conditional on that evidence being consistent with the representations made to him. If he has indicated his concurrence or conditional concurrence, he shall so state in open court at the time the agreement is stated as required by paragraph (b) of this rule. If the defendant thereupon pleads guilty, but the trial judge later withdraws his concurrence or conditional concurrence, he shall so advise the parties and then call upon the defendant either to affirm or to withdraw his plea of guilty. If the defendant thereupon withdraws his plea, the trial judge shall recuse himself.

(3) If the parties have not sought or the trial judge has declined to give his concurrence or conditional concurrence to a plea agreement, he shall inform the defendant in open court at the time the agreement is stated as required by paragraph (b) of this rule that the court is not bound by the plea agreement, and that if the defendant persists in his plea the disposition may be different from that contemplated by the plea agreement.

(e) – (f) [no changes]