

## **Rule 11. Pleas**

### **(a) ENTERING A PLEA.**

(1) *In General.* A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) *Conditional Plea.* With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(3) *Nolo Contendere Plea.* Before accepting a plea of nolo contendere, the court must consider the parties' views and the public interest in the effective administration of justice.

(4) *Failure to Enter a Plea.* If a defendant refuses to enter a plea or if a defendant organization fails to appear, the court must enter a plea of not guilty.

### **(b) CONSIDERING AND ACCEPTING A GUILTY OR NOLO CONTENDERE PLEA.**

(1) *Advising and Questioning the Defendant.* Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) the court's authority to order restitution; and

(K) that if the defendant is not a citizen of the United States, conviction of the offense for which the defendant has been charged may have the consequences of removal, deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(2) *Ensuring That a Plea Is Voluntary.* Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) *Determining the Factual Basis for a Plea.* Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(4) *Innocence Protection Act*. If the defendant is entering a plea to a crime of violence, the court must ensure that the defendant has been advised as required by D.C. Code § 22-4132 (2012 Repl.).

(c) PLEA AGREEMENT PROCEDURE.

(1) *In General*. An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case (such a recommendation or request binds the court once the court accepts the plea agreement).

(2) *Disclosing a Plea Agreement*. The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) *Judicial Consideration of a Plea Agreement*.

(A) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report. If, however, the defendant enters a plea of guilty or nolo contendere to an offense involving a victim, and the agreement is of the type specified in Rule 11(c)(1)(C), the court must defer that decision until the conditions of Rule 32(a) are met.

(B) To the extent the plea agreement is of the type specified in Rule 11(c)(1)(B), the court must advise the defendant that the defendant has no right to withdraw the plea if the court does not follow the recommendation or request.

(4) *Accepting a Plea Agreement*. If the court accepts the plea agreement, it must inform the defendant that to the extent the plea agreement is of the type specified in Rule 11(c)(1)(A) or (C), the agreed disposition will be included in the judgment.

(5) *Rejecting a Plea Agreement*. If the court rejects a plea agreement containing provisions of the type specified in Rule 11(c)(1)(A) or (C), the court must do the following on the record and in open court (or, for good cause, in camera):

(A) inform the parties that the court rejects the plea agreement;

(B) advise the defendant personally that the court is not required to follow the plea agreement and give the defendant an opportunity to withdraw the plea; and

(C) advise the defendant personally that if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplated.

(d) WITHDRAWING A GUILTY OR NOLO CONTENDERE PLEA. A defendant may withdraw a plea of guilty or nolo contendere:

(1) before the court accepts the plea, for any reason or no reason;

(2) after the court accepts the plea, but before it imposes sentence if:

(A) the court rejects a plea agreement under Rule 11(c)(5); or

- (B) the defendant can show a fair and just reason for requesting the withdrawal; or  
(3) after the court imposes sentence, in order to correct manifest injustice.
- (e) ADMISSIBILITY OR INADMISSIBILITY OF A PLEA, PLEA DISCUSSIONS, AND RELATED STATEMENTS. Except as otherwise provided in this section, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:
- (1) a plea of guilty which was later withdrawn;
  - (2) a plea of nolo contendere;
  - (3) any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or
  - (4) any statement made in the course of plea discussions with an attorney for the government that do not result in a plea of guilty or that result in a plea of guilty later withdrawn.
- However, such a statement is admissible:
- (1) in any proceeding wherein another statement made in the course of the same plea or plea discussion has been introduced and the statement ought in fairness be considered contemporaneously with it; or
  - (2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.
- (f) RECORDING THE PROCEEDINGS. The proceedings during which the defendant enters a plea must be recorded by a court reporter or by a suitable recording device. If there is a guilty plea or a nolo contendere plea, the record must include the inquiries and advice to the defendant required under Rule 11(b) and (c).
- (g) HARMLESS ERROR. A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

#### COMMENT TO 2017 AMENDMENTS

Subsection (c)(3)(A) has been amended to reflect that the definition of “victim” is now in Rule 1. Additionally, the term “removal” has been added to the warning about immigration consequences in subsection (b)(1)(K). This amendment maintains the language prescribed by D.C. Code § 16-713 (2012 Repl.) but reflects the shift in terminology brought about by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009.

#### COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

In subparagraph (b)(1), the advice required to be given to the defendant differs from the federal rule. Four subparagraphs found in the federal rule are not included, as they are locally inapplicable: (J) on forfeiture, (L) on special assessments, (M) on application of the United States Sentencing Guidelines, and (N) on waiver of appeal and collateral attacks.

Subparagraph (b)(1)(H) includes a new requirement that the court advise the defendant of the applicable term of supervised release. This has long been required by

the federal rule, but was not relevant in Superior Court until the enactment of D.C. Code § 24-403.01 (2012 Repl.) as part of the Sentencing Reform Amendment Act of 2000, which requires the imposition of supervised release following a term of imprisonment.

A new subparagraph (b)(1)(K) has been added to reflect the requirements of D.C. Code § 16-713 (2012 Repl.) (Alien Sentencing).

A new subparagraph (b)(4) has been added to reflect the requirements of the Innocence Protection Act of 2001, D.C. Code § 22-4132 (2012 Repl.).

Subparagraph (c)(1)(C) omits the federal rule's reference to the United States Sentencing Guidelines.

Subparagraph (c)(3)(A) provides that whenever the plea agreement is of the type specified in subparagraph (c)(1)(C) and the plea is to an offense involving a victim as defined in D.C. Code § 23-1905 (2012 Repl.), the court must defer deciding whether to accept the agreement until it has reviewed the presentence report.

Consistent with the reorganization of the federal rules, paragraph (d) of this rule now contains the substance of former Superior Court Rule 32(e) (Withdrawal of Plea of Guilty). It retains the difference between the federal and Superior Court provisions: post-sentence plea withdrawal is not permitted by the federal rule, but is permitted by this rule to correct manifest injustice. No change in practice is intended.

Paragraph (e) retains the language of the former Superior Court rule regarding the admissibility of pleas and related statements. The corresponding language in the federal rule was changed to refer to *Federal Rule of Evidence 410*. Because this jurisdiction has not adopted the Federal Rules of Evidence, the Superior Court rule did not follow this change.

Paragraph (i) of the former Superior Court rule, defining the term "court," has been deleted as unnecessary in light of the definition of the term in Rule 1.