

Rule 11. Guilty Pleas

(a) Alternatives.

(1) In general. A respondent may plead guilty or change a previously entered not guilty plea to guilty.

(2) Conditional pleas. With the approval of the Court and the consent of the government, a respondent may enter a plea of guilty reserving in writing the right to appeal the adverse determination of any specified pretrial motion. If the respondent prevails on appeal, the respondent shall be allowed to withdraw the plea.

(b) Advice to respondent before accepting a plea of guilty. Before accepting a plea of guilty, the judicial officer must address the respondent personally in open court and inform the respondent of, and determine that the respondent understands, the following:

(1) The nature of the charge to which the plea is offered and the maximum period of supervision permissible;

(2) That the respondent has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a judicial officer and at that factfinding hearing the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, and the right against compelled self-incrimination;

(3) That if a plea of guilty is accepted by the Court there will not be a further factfinding hearing, so that by pleading guilty the respondent waives the right to a factfinding hearing;

(4) That if the respondent pleads guilty, the judicial officer may ask the respondent questions about the offense to which the respondent has pleaded, and if the respondent answers these questions under oath, on the record, and in the presence of the counsel, the respondent's answers may later be used against the respondent in a criminal or juvenile proceeding for perjury or false statement; and

(5) That if the respondent pleads guilty, the respondent will waive the right to appeal unless the plea agreement preserves that right in accordance with subparagraph (a)(2) of this Rule or unless the disposition imposed is not in accordance with the law.

(c) Insuring that the plea is voluntary. The judicial officer shall not accept a plea of guilty without first, by addressing the respondent personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement. The judicial officer shall also inquire as to whether the respondent's willingness to plead guilty results from prior discussions between the Office of the Attorney General and the respondent or the respondent's attorney.

(d) Plea agreement procedure.

(1) In general. The Office of the Attorney General and the attorney for the respondent may engage in discussions with a view towards reaching a plea agreement.

Any agreement regarding a recommendation for or opposition to any predispositional or dispositional alternatives shall not be binding upon the judicial officer.

The judicial officer shall not participate in any such discussions.

(2) Notice of plea agreement. If a plea agreement has been reached by the parties, the judicial officer shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered.

(3) Inadmissibility of pleas, offers of pleas, and related statements. Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in

any civil, criminal or juvenile proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, or an offer to plead guilty to the crime charged or any other crime, is admissible in a criminal or juvenile proceeding for perjury or false statement if the statement was made by the respondent under oath, on the record, and in the presence of counsel.

(e) Determining the accuracy of plea. Notwithstanding the acceptance of a plea of guilty, the judicial officer shall not enter a judgment upon such plea without making such inquiry as shall satisfy the judicial officer that there is a factual basis for the plea.

(f) Record of proceedings. A verbatim record of the proceedings at which the respondent enters a plea shall be made and, if there is a plea of guilty, the record shall include, without limitation, the judicial officer's advice to the respondent, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

COMMENT

This Rule is substantially similar to SCR Criminal 11 except that references to pleas of nolo contendere have been eliminated as inappropriate for juvenile court and references to proceeding without the respondent being represented by counsel have been eliminated as inconsistent with SCR-Juv 44(a). Subparagraph (b)(4) encompasses both juvenile and criminal prosecutions for perjury, to allow for cases of perjury by an adult respondent pleading to an offense committed while a juvenile.