

**IN THE COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

**ORDER AMENDING RULE 11
OF THE COURT OF COMMON PLEAS
RULES OF CRIMINAL PROCEDURE**

This 19th day of May 2016, IT IS ORDERED that:

- 1) Court of Common Pleas Criminal Rule 11 is amended by deleting the material in brackets and including the material underlined, as follows:

Rule 11. Pleas

(a) Alternatives.

(1) *In General.* A defendant may plead not guilty, guilty, nolo contendere, or guilty but mentally ill. If a defendant refuses to plead or if a defendant corporation fails to plead, the Court shall enter a plea of not guilty.

(2) *Conditional Pleas.* [Omitted].

(b) Nolo Contendere; Guilty Without Admission. A defendant may plead nolo contendere or guilty without admitting the essential facts constituting the offense charged only with the consent of the **Court**. Such a plea shall be accepted by the Court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(c) Advice to Defendant. No plea of guilty or nolo contendere shall be accepted to any charge for which [a] no sentence of imprisonment will be imposed unless the Court is satisfied that the defendant understands the nature of the charge and the maximum possible penalty provided by law. Before accepting a plea of guilty or nolo contendere to any offense for which a sentence of “imprisonment” will be imposed, the Court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, the fact that the Court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances, and, when applicable, that the Court may also order the defendant to make restitution to any victim of the offense; and

(2) If the defendant is not represented by an attorney, where appropriate, that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant; and

(3) That the defendant 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 jury, when applicable, and at trial the right to assistance of counsel, where applicable, the right to confront and cross-examine adverse witnesses, and the right against compelled self-incrimination; and

(4) That if a plea of guilty or nolo contendere is accepted by the Court there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and

(5) If the Court intends to question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant has pleaded, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

(d) Insuring That the Plea Is Voluntary. The Court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The Court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the Attorney General and the defendant or the defendant's attorney.

(e) Plea Agreement Procedure.

(1) *In General.* The Attorney General and the attorney for the defendant or the defendant acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the Attorney General will do any of the following:

(A) File a dismissal of other charges; or

(B) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the Court.

(C) Agree that a specific sentence is the appropriate disposition of the case.

The Court shall not participate in any such discussions. The prosecuting attorney shall comply with 11 Del.C. § 5106.

(2) *Notice of Such Agreement.* If a plea agreement has been reached by the parties, the Court 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. If the agreement is of the type specified in

subdivision (e)(1)(B), the Court shall advise the defendant that if the Court does not accept the recommendation or request the defendant nevertheless has no right to withdraw the plea.

(3) *Time of Plea Agreement Procedure.* Except for good cause shown, notification to the Court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the Court.

(4) *Inadmissibility of Pleas, Plea Discussions, and Related Statements.* Except as otherwise provided in this paragraph, 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:

(A) A plea of guilty which was later withdrawn;

(B) A plea of nolo contendere;

(C) Any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(D) Any statement made in the course of plea discussions with the Attorney General which do not result in a plea of guilty or which result in a plea later withdrawn.

However, a judgment of conviction upon a plea of guilty or nolo contendere may be admissible in any proceeding, and a statement under (C) or (D) of this paragraph is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) 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) Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty or nolo contendere, the **Court** should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the judgment.

(g) Record of Proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the Court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea. The record shall also include a completed and executed plea agreement and a completed and executed waiver of rights on forms approved by the Court.

(h) Harmless Error. Any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded.

(i) Guilty but Mentally Ill. A plea of guilty but mentally ill shall be accepted when the requirements of this rule applicable to a plea of guilty are met and the Court finds that the defendant was mentally ill at the time of the offense, in accordance with 11 Del.C. § 408.

- 1) This rule amendment is effective June 3, 2016.