

Tuesday

1st

March, 2005.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective June 1, 2005.

Amend Rule 3A:8 to read as follows:

**Rule 3A:8. Pleas.**

(a) *Pleas by a Corporation.* --A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

(b) *Determining Voluntariness of Pleas of Guilty or Nolo Contendere.* – (1) A circuit court shall not accept a plea of guilty or nolo contendere to a felony charge without first determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea. (2) A circuit court shall not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

(c) *Plea Agreement Procedure.* -- (1) The attorney for the Commonwealth and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon entry by the defendant of a plea of guilty, or a plea of nolo contendere, to a charged offense, or to a lesser or related offense, the attorney for the Commonwealth will do any of the following:

(A) Move for nolle prosequi or dismissal of other charges;

(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 on the court;

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

In any such discussions under this Rule, the court shall not participate.

(2) If a plea agreement has been reached by the parties, it shall, in every felony case, be reduced to writing, signed by the attorney for the Commonwealth, the defendant, and, in every case, his attorney, if any, and presented to the court. The court shall require the disclosure of the agreement in open

court or, upon a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (c)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider a presentence report. If the agreement is of the type specified in subdivision (c)(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 his plea, unless the Commonwealth fails to perform its part of the agreement. In that event, the defendant shall have the right to withdraw his plea.

(3) If the court accepts the plea agreement, the court shall inform the defendant that it will embody in its judgment and sentence the disposition provided for in the agreement.

(4) If the agreement is of the type specified in subdivision (c)(1)(A) or (C) and if the court rejects the plea agreement, the court shall inform the parties of this fact, and advise the defendant personally in open court or, on a showing of good cause, in camera, that the court will not accept the plea agreement. Thereupon, neither party shall be bound by the plea agreement. The defendant shall have the right to withdraw his plea of guilty or plea of nolo contendere and the court shall advise the defendant that, if he does not withdraw his plea, the disposition of the case may be less favorable to him than that contemplated by the plea agreement; and the court shall further advise the defendant that, if he chooses to withdraw his plea of guilty or of nolo contendere, his case will be heard by another judge, unless the parties agree otherwise.

(5) Except as otherwise provided by law, evidence of a plea of guilty later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere 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 the case-in-chief in any civil or criminal proceeding against the person who made the plea or offer. But evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, a plea of nolo contendere, or any offer to plead guilty or nolo contendere to the crime charged or to any other crime, is admissible in any criminal proceeding for perjury or false statement, if the statement was made by the defendant under oath and on the record. In the event that a plea of guilty or a plea of nolo contendere is withdrawn in accordance with this Rule, the judge having received the plea shall take no further part in the trial of the case, unless the parties agree

otherwise.

Amend Rule 7C:6 to read as follows:

**Rule 7C:6. Pleas.**

(a) A court shall not accept a plea of guilty or nolo contendere to any misdemeanor charge punishable by confinement in jail without first determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea. Before accepting a plea to such a charge, the court shall inform the accused that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination.

(b) A corporation, acting by counsel or through an agent, may enter the same pleas as an individual.

Amend Rule 8:18 to read as follows:

**Rule 8:18. Pleas.**

(a) *Permissible Pleas by Child.* -- A child may admit the allegations of the petition or summons by pleading guilty, or the child may plead not guilty, nolo contendere, or enter no plea. If the child enters no plea, the court will proceed as if a denial were entered to the allegations of the petition or summons.

(b) *Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by a Juvenile.* -- The court shall not accept a plea of guilty or nolo contendere to a charge of delinquency by a child without first determining that the plea is made voluntarily with an understanding of the nature of the allegations in the petition or summons and the consequences of the plea, including that such a plea constitutes a waiver of the right to confront one's accusers and the right against compulsory self-incrimination.

(c) *Determining Voluntariness, Understanding, and Intelligence of a Plea of Guilty by an Adult.* -- In any case involving an adult charged with a crime, the court shall not accept a plea of guilty or nolo contendere to a misdemeanor charge except in compliance with Rule 7C:6.

Add Form 11, Appendix of Forms, Part Three A to read as follows:

**Form 11. Misdemeanor Proceedings in District and Circuit Courts (Rule 3A:8(b)(2); Rule 7C:6; and Rule 8:18)**

Suggested Questions to Be Asked When Taking Pleas of Guilty or Nolo Contendere

- A. Pleas of Guilty or Nolo Contendere with Plea Agreements Requiring Imposition of an Active or Suspended Sentence of Confinement in Jail
1. Do you understand the charge(s) against you?
  2. When Defendant appears without counsel:
    - a) Do you understand you have the right to be represented by a lawyer?
    - b) Do you understand that if you do not have the financial ability to hire your own lawyer, and you want me to, I will have you interviewed to see if you qualify for court-appointed counsel and I will appoint an attorney to represent you if you qualify?
    - c) Do you want to hire an attorney to represent you, or be interviewed for court-appointed counsel or do you want to proceed today without a lawyer?
  3. In Circuit Court:
    - a) Do you understand that you have the right to have your case heard by a jury?
    - b) Do you want your case to be heard by a judge without a jury or do you want a jury trial?
  4. a) I understand that you have agreed to plead guilty (no contest) with the understanding that you will be sentenced to \_\_\_\_\_. Is that correct? or  
b) I understand that you have agreed to plead guilty (no contest) with the understanding that the prosecutor will recommend a sentence of \_\_\_\_\_. Do you understand that I do not have to accept the recommendation and that I can sentence you from \_\_\_\_\_ to \_\_\_\_\_?  
(provide full sentence range allowed by law)
  5. Have you been promised anything else to get you to plead guilty (no contest)?
  6. Are you being forced or threatened into pleading guilty (no contest)?
  7. Do you understand that by pleading guilty (no contest) you are giving up your right to a trial including the right to hear from and question the witnesses against you and the right to avoid being required to give evidence against yourself?
  8. Do you have any questions before I accept your plea(s) of guilty (no contest)?
- B. Pleas of Guilty or Nolo Contendere Without a Plea Agreement
1. Do you understand the charge(s) against you?
  2. When Defendant appears without counsel:
    - a) Do you understand you have the right to be represented by a lawyer?
    - b) Do you understand that if you do not have the financial ability to hire your own lawyer, and you want me to, I will have you interviewed to see if you qualify for

court-appointed counsel and I will appoint an attorney to represent you if you qualify?

- c) Do you want to hire an attorney to represent you, or be interviewed for court-appointed counsel or do you want to proceed today without a lawyer?
3. In Circuit Court:
- a) Do you understand that you have the right to have your case heard by a jury?
  - b) Do you want your case to be heard by a judge without a jury or do you want a jury trial?
4. Do you understand that based upon your plea of guilty (no contest) the possible range of punishment is \_\_\_\_\_ to \_\_\_\_\_?
5. Have you been promised anything else to get you to plead guilty (no contest)?
6. Are you being forced or threatened into pleading guilty (no contest)?
7. Do you understand that by pleading guilty (no contest) you are giving up your right to a trial including the right to hear from and question the witnesses against you and the right to avoid being required to give evidence against yourself?
8. Do you have any questions before I accept your plea(s) of guilty (no contest)?

Suggested Plea of Guilty to Misdemeanor Plea Form with Plea Agreement  
Requiring Imposition of an Active or Suspended Sentence of Confinement in Jail

1. I understand the charge(s) against me.
2. a) I understand that I have the right to be represented by an attorney.  
b) I understand that if I do not have the financial ability to hire my own attorney, I could be interviewed to see if I qualify for court appointed counsel and if I did qualify the court would appoint an attorney to represent me.  
c) I do not want to be represented by an attorney and I do not want to be interviewed to see if I qualify for court appointed counsel. It is my desire to give up my right to counsel and to proceed today without an attorney.
3. In Circuit Court:
  - a) I understand that I have the right to have my case heard by a jury.
  - b) I do not want my case to be heard by a jury and wish to proceed to have my case heard today by a judge without a jury.
4. a) I am pleading guilty (no contest) today based upon my understanding that I will be sentenced to \_\_\_\_\_.
- b) I am pleading guilty (no contest) today based upon my understanding that the prosecutor will recommend a sentence of \_\_\_\_\_. I understand that the judge does not have to accept the recommendation and can sentence me from \_\_\_\_\_ to \_\_\_\_\_.
5. I have not been promised anything to get me to plead guilty (no contest).
6. I am not being forced or threatened to get me to plead guilty (no contest).
7. I understand that by pleading guilty (no contest) I am giving up my right to a trial including the right to hear from and question the witnesses against me and the right to avoid being required to give evidence against myself.
8. I do not have any questions to ask the court before the court decides whether to accept my plea of guilty (no contest).

\_\_\_\_\_  
Counsel for Defendant

\_\_\_\_\_  
Defendant

Suggested Plea of Guilty to Misdemeanor Plea Form without Plea Agreement

1. I understand the charge(s) against me.
2. a) I understand that I have the right to be represented by an attorney.  
b) I understand that if I do not have the financial ability to hire my own attorney, I could be interviewed to see if I qualify for court appointed counsel and if I did qualify the court would appoint an attorney to represent me.  
c) I do not want to be represented by an attorney and I do not want to be interviewed to see if I qualify for court appointed counsel. It is my desire to give up my right to counsel and to proceed today without an attorney.
3. In Circuit Court:  
a) I understand that I have the right to have my case heard by a jury.  
b) I do not want my case to be heard by a jury and wish to proceed to have my case heard today by a judge without a jury.
4. I am pleading guilty (no contest) today based upon my understanding that I could be sentenced from \_\_\_\_\_ to \_\_\_\_\_.
5. I have not been promised anything to get me to plead guilty (no contest).
6. I am not being forced or threatened to get me to plead guilty (no contest).
7. I understand that by pleading guilty (no contest) I am giving up my right to a trial including the right to hear from and question the witnesses against me and the right to avoid being required to give evidence against myself.
8. I do not have any questions to ask the court before the court decides to accept my plea of guilty (no contest).

\_\_\_\_\_  
Counsel for Defendant

\_\_\_\_\_  
Defendant

A Copy,

Teste:

Clerk