

1 **Rule 11. Pleas.**

2 (a) **Right to Counsel.** Upon arraignment, except for an infraction, a defendant shall be
3 represented by counsel, unless the defendant waives counsel in open court. The defendant shall
4 not be required to plead until the defendant has had a reasonable time to confer with counsel.

5 (b) **Types of pleas.** A defendant may plead not guilty, guilty, no contest, not guilty by reason of
6 insanity, or guilty and mentally ill. A defendant may plead in the alternative not guilty or not
7 guilty by reason of insanity. If a defendant refuses to plead or if a defendant corporation fails to
8 appear, the court shall enter a plea of not guilty.

9 (c) **No contest plea.** A defendant may plead no contest only with the consent of the court.

10 (d) **Not guilty plea.** When a defendant enters a plea of not guilty, the case shall forthwith be set
11 for trial. A defendant unable to make bail shall be given a preference for an early trial. In cases
12 other than felonies the court shall advise the defendant, or counsel, of the requirements for
13 making a written demand for a jury trial.

14 (e) **Guilty plea.** The court may refuse to accept a plea of guilty, no contest or guilty and mentally
15 ill, and may not accept the plea until the court has found:

16 (e)(1) if the defendant is not represented by counsel, he or she has knowingly waived the right to
17 counsel and does not desire counsel;

18 (e)(2) the plea is voluntarily made;

19 (e)(3) the defendant knows of the right to the presumption of innocence, the right against
20 compulsory self-incrimination, the right to a speedy public trial before an impartial jury, the right
21 to confront and cross-examine in open court the prosecution witnesses, the right to compel the
22 attendance of defense witnesses, and that by entering the plea, these rights are waived;

23 (e)(4)(A) the defendant understands the nature and elements of the offense to which the plea is
24 entered, that upon trial the prosecution would have the burden of proving each of those elements
25 beyond a reasonable doubt, and that the plea is an admission of all those elements;

26 (e)(4)(B) there is a factual basis for the plea. A factual basis is sufficient if it establishes that the
27 charged crime was actually committed by the defendant or, if the defendant refuses or is
28 otherwise unable to admit culpability, that the prosecution has sufficient evidence to establish a
29 substantial risk of conviction;

30 (e)(5) the defendant knows the minimum and maximum sentence, and if applicable, the
31 minimum mandatory nature of the minimum sentence, that may be imposed for each offense to
32 which a plea is entered, including the possibility of the imposition of consecutive sentences;

33 (e)(6) if the tendered plea is a result of a prior plea discussion and plea agreement, and if so,
34 what agreement has been reached;

35 (e)(7) the defendant has been advised of the time limits for filing any motion to withdraw the
36 plea; and

37 (e)(8) the defendant has been advised that the right of appeal is limited.

38 These findings may be based on questioning of the defendant on the record or, if used, a written
39 statement reciting these factors after the court has established that the defendant has read,
40 understood, and acknowledged the contents of the statement. If the defendant cannot understand
41 the English language, it will be sufficient that the statement has been read or translated to the
42 defendant.

43 Unless specifically required by statute or rule, a court is not required to inquire into or advise
44 concerning any collateral consequences of a plea.

45 (f) **Motion to withdraw plea.** Failure to advise the defendant of the time limits for filing any
46 motion to withdraw a plea of guilty, no contest or guilty and mentally ill is not a ground for
47 setting the plea aside, but may be the ground for extending the time to make a motion under
48 Section 77-13-6.

49 (g) **Plea in domestic violence offense.** If the defendant pleads guilty, no contest, or guilty and
50 mentally ill to a misdemeanor crime of domestic violence, as defined in Utah Code ~~Section~~ § 77-
51 36-1, the court shall advise the defendant orally or in writing that, if the case meets the criteria of
52 18 U.S.C. § 921(a)(33) or Utah Code § 76-10-503 then pursuant to federal law or state law, it is
53 unlawful for the defendant to possess, receive or transport any firearm or ammunition. The
54 failure to advise does not render the plea invalid or form the basis for withdrawal of the plea.

55 (h)(1) **Plea recommendations.** If it appears that the prosecuting attorney or any other party has
56 agreed to request or recommend the acceptance of a plea to a lesser included offense, or the
57 dismissal of other charges, the agreement shall be approved or rejected by the court.

58 (h)(2) If sentencing recommendations are allowed by the court, the court shall advise the
59 defendant personally that any recommendation as to sentence is not binding on the court.

60 (i)(1) **Plea agreements.** The judge shall not participate in plea discussions prior to any plea
61 agreement being made by the prosecuting attorney.

62 (i)(2) When a tentative plea agreement has been reached, the judge, upon request of the parties,
63 may permit the disclosure of the tentative agreement and the reasons for it, in advance of the
64 time for tender of the plea. The judge may then indicate to the prosecuting attorney and defense
65 counsel whether the proposed disposition will be approved.

66 (i)(3) If the judge then decides that final disposition should not be in conformity with the plea
67 agreement, the judge shall advise the defendant and then call upon the defendant to either affirm
68 or withdraw the plea.

69 (j) **Conditional plea.** With approval of the court and the consent of the prosecution, a defendant
70 may enter a conditional plea of guilty, guilty and mentally ill, or no contest, reserving in the
71 record the right, on appeal from the judgment, to a review of the adverse determination of any
72 specified pre-trial motion. A defendant who prevails on appeal shall be allowed to withdraw the
73 plea.

74 (k) **Guilty and mentally ill.** When a defendant tenders a plea of guilty and mentally ill, in
75 addition to the other requirements of this rule, the court shall hold a hearing within a reasonable
76 time to determine if the defendant is mentally ill in accordance with Utah Code § 77-16a-103.

77 (l) **Strict compliance not necessary.** Compliance with this rule shall be determined by
78 examining the record as a whole. Any variance from the procedures required by this rule which
79 does not affect substantial rights shall be disregarded. Failure to comply with this rule is not, by
80 itself, sufficient grounds for a collateral attack on a guilty plea.

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82 Effective May 1, 2018