

1 **Rule 11. Pleas.**

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

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

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

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

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

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

20 (2) the plea is voluntarily made;

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

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

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

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

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

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

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

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

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

50 (f) **Motion to withdraw plea.** Failure to advise the defendant of the time limits for filing
51 any motion to withdraw a plea of guilty, no contest or guilty and mentally ill is not a
52 ground for setting the plea aside, but may be the ground for extending the time to make
53 a motion under Utah Code § 77-13-6.

54 (g) **Plea in domestic violence offense.** If the defendant pleads guilty, no contest, or
55 guilty and mentally ill to a misdemeanor crime of domestic violence, as defined in Utah
56 Code § 77-36-1, the court ~~shall~~will advise the defendant orally or in writing that, if the
57 case meets the criteria of 18 U.S.C. § 921(a)(33) or Utah Code § 76-10-503 then pursuant
58 to federal law or state law, it is unlawful for the defendant to possess, receive or

59 transport any firearm or ammunition. The failure to advise does not render the plea
60 invalid or form the basis for withdrawal of the plea.

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

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

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

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

75 (i)(3) If the judge then decides that final disposition should not be in conformity with
76 the plea agreement, the judge ~~shall~~must advise the ~~defendant~~parties as to the nature of
77 the divergence from the plea agreement and then call upon the ~~defendant~~parties to
78 either affirm or withdraw from the plea agreement.

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

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

88 (1) **Strict compliance not necessary.** Compliance with this rule ~~shall~~will be determined
89 by examining the record as a whole. Any variance from ~~the~~ procedures required by this
90 rule which does not affect a substantial rights ~~shall~~will be disregarded. Failure to
91 comply with this rule is not, by itself, sufficient grounds for a collateral attack on a
92 guilty plea.