

RULE 3.171 | PLEA DISCUSSIONS AND AGREEMENTS

(a) In General. Ultimate responsibility for sentence determination rests with the trial judge. However, the prosecuting attorney and the defense attorney, or the defendant when representing himself or herself, are encouraged to discuss and to agree on pleas that may be entered by a defendant. The discussion and agreement must be conducted with the defendant's counsel. If the defendant represents himself or herself, all discussions between the defendant and the prosecuting attorney shall be of record.

(b) Responsibilities of the Prosecuting Attorney.

(1) A prosecuting attorney may:

(A) engage in discussions with defense counsel or a defendant who is without counsel with a view toward reaching an agreement that, upon the defendant's entering a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the prosecuting attorney will do any of the following:

(i) abandon other charges; or

(ii) 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 trial judge; or

(iii) agree to a specific sentence; and

(B) consult with the victim, investigating officer, or other interested persons and advise the trial judge of their views during the course of plea discussions.

(2) The prosecuting attorney shall:

(A) apprise the trial judge of all material facts known to the attorney regarding the offense and the defendant's background prior to acceptance of a plea by the trial judge; and

(B) maintain the record of direct discussions with a defendant who represents himself or herself and



make the record available to the trial judge upon the entry of a plea arising from these discussions.

(c) Responsibilities of Defense Counsel.

(1) Defense counsel shall not conclude any plea agreement on behalf of a defendant-client without the client's full and complete consent thereto, being certain that any decision to plead guilty or nolo contendere is made by the defendant.

(2) Defense counsel shall advise defendant of:

(A) all plea offers; and

(B) all pertinent matters bearing on the choice of which plea to enter and the particulars attendant upon each plea and the likely results thereof, as well as any possible alternatives that may be open to the defendant.

(d) Responsibilities of the Trial Judge. After an agreement on a plea has been reached, the trial judge may have made known to him or her the agreement and reasons therefor prior to the acceptance of the plea. Thereafter, the judge shall advise the parties whether other factors (unknown at the time) may make his or her concurrence impossible.

Committee Notes

1972 Amendment. New in Florida. Most criminal cases are disposed of by pleas of guilty arrived at by negotiations between prosecutor and defense counsel, but there was no record of the "plea negotiations," "plea bargaining," or "compromise." The result has been a flood of postconviction claims which require evidentiary hearings and frequently conflicting testimony concerning the plea negotiations. There has also been criticism of the practice of requiring a defendant, upon a negotiated guilty plea, to give a negative reply to the court's inquiry concerning any "promise" made to the defendant. This is designed to avoid the foregoing pitfalls and criticisms by having the negotiations made of record and permitting some control of them. See Commentary to Standard 3.1 ABA Standards relating to pleas of guilty.

(a) From Standard 3.1a.

(b) From Standard 3.2.

(c) From Standard 3.3 except for omission of that part of standard which prohibits trial judge from participating in plea discussions.



(d) From Standard 3.4.

1977 Amendment. This is a rewording of the prior rule in order to set out the responsibilities of the participants. The rule recognizes the ultimate responsibility of the trial judge, but it encourages prosecution and defense counsel to assist the trial judge in this regard. When the circumstances of the case so merit, it is the responsibility of each respective party to discuss a fair disposition in lieu of trial. For protection of the prosecutor and the defendant, plea discussions between the state and a pro se defendant should be recorded, in writing or electronically.

(b) New in Florida.

(1)(i) Restatement of policy followed by extensive revision in the form of Federal Rule of Criminal Procedure 11(e)(1).

(1)(ii) The rule sets out discretionary minimum professional prosecutorial procedure where either victim or law enforcement officers are involved to better guide the trial judge.

(2)(i) Mandatory responsibility of prosecutor contemplates disposition with no presentence investigation.

(2)(ii) Mandatory record protects both the prosecutor and the pro se defendant.

(c)(1) Renumbering subdivision (b) of prior rule.

(2)(i) New in Florida. This proposed language makes it mandatory for defense counsel to advise fully defendant of all plea offers by the state. Defense counsel should also discuss and explain to the defendant those matters which trial judge will inquire about before accepting a plea.

(2)(ii) Same as prior rule 3.171(b), paragraph 2.

(d) Now embraces and rennumbers former rule 3.171(c). The content of former rule 3.171(d) now appears as part of new rule 3.172.