RECOMMENDATION OF THE CII WORKGROUP AS TO CHANGES TO COURT RULES 6.302 AND 6.610

Rule 6.302 Pleas of Guilty and Nolo Contendere

(A) [Unchanged]

(B) An Understanding Plea. Speaking directly to the defendant or defendants, the court must advise the defendant or defendants of the following and determine that each defendant understands:

(1) [Unchanged]

(2) [Unchanged];

(3) a plea of guilty or nolo contendere by someone who is not a citizen may result in deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States;

(~~3)~~(4)-(~~5)~~6) [Renumbered but unchanged.]

The requirements of subrules (B)(3), (B)(4) and (B) ~~(5)~~(6) may be satisfied by a writing on a form approved by the State Court Administrative Office. [Remainder unchanged.]

(C) - (D) [Unchanged.]

(E) Additional Inquiries. On completing the colloquy with the defendant, the court must

(1) ask the prosecutor and the defendant's lawyer whether either is aware of any promises, threats, or inducements other than those already disclosed on the record, and whether the court has complied with subrules (B)-(D). If it appears to the court that it has failed to comply with subrules (B)-(D), the court may not accept the defendant's plea until the deficiency is corrected~~.~~; and

(2) ask whether the defendant's lawyer and the defendant have discussed the possible risk of deportation that may be caused by the conviction if the defendant is not a citizen.

(F) [Unchanged.]

Rule 6.610 Criminal Procedure Generally

(A) - (D) [Unchanged.]

(E) Pleas of Guilty and Nolo Contendere. Before accepting a plea of guilty or nolo contendere, the court shall in all cases comply with this rule.

(~~2)(~~1) The court shall inform the defendant of the right to the assistance of an attorney. If the offense charged requires on conviction a minimum term in jail, the court shall inform the defendant that if the defendant is indigent the defendant has the right to an appointed attorney. The court shall also give such advice if it determines that it might sentence to a term of incarceration, even if suspended.

(~~3~~2) The court shall advise the defendant of the following:

(a) the mandatory minimum jail sentence, if any, and the maximum possible penalty for the offense,

(b) a noncitizen defendant who offers a plea of guilty or nolo contendere risks deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States. Upon request, the court shall allow the defendant a reasonable amount of additional time to consider the appropriateness of the plea in light of the advisement.

(~~b~~c) [Relettered but unchanged.]

(~~1)(~~3) [Renumbered but unchanged.]

(4) A defendant or defendants may be informed of the trial rights listed in subrule ~~(3)(b)~~(2)(b) and (2)(c) …[remaining unchanged.]

(5) - (6) [Unchanged.]

(7) A plea of guilty or nolo contendere in writing is permissible without a personal appearance of the defendant and without support for a finding that defendant is guilty of the offense charged or the offense to which the defendant is pleading if

(a) [Unchanged.]

(b) the defendant acknowledges guilt or nolo contendere, in a writing to be placed in the district court file, and waives in writing the rights enumerated in subrule ~~(3)(b)~~(2)(b); and

(c) the defendant acknowledges in writing that he is aware that a noncitizen defendant who offers a plea of guilty or nolo contendere to the court risks

deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States

~~(c)~~(d) [Relettered but unchanged.]

(8) [Unchanged.]

(9) The State Court Administrator shall develop and approve forms to be used under subrules (E)(4)(b) and (c) and (E)(7)(b) and (c).

(F)-(H) [Unchanged.]