

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.