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April 3, 2001

c/o Committee on Foreign Relations
United States Senate
Dirksen O.B. Room 450
Washington, D.C. 20510-6225

Peter G. McCabe, Secretary
Committee on Rules and Procedure
of the Judicial Conference of the United States
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle N.E.
Washington, D.C. 20544

01-CR-C

Dear Mr. McCabe:

I would like to suggest -- and I respectfully request -- that the Standing Committee on Rules of Practice and Procedure take up and recommend adoption of a federal rule to mandate, during guilty plea voir dire, an advisement from the bench to the defendant about collateral immigration consequences.

In 1999, Maryland adopted such a rule (copy enclosed) in recognition of concerns voiced by lawfully-admitted immigrants about more stringent immigration statutes. A significant number of other states have taken similar action, some by rule and some by statute.

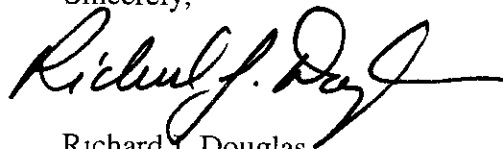
The Maryland advisement is used with all defendants. Thus, it is unnecessary for the judge to inquire about any defendant's citizenship or immigration status.

Under the Maryland rule, if the immigration consequences advisement is omitted inadvertently during voir dire, later vacation of the resulting sentence is optional, not mandatory.

During review of the rule in Maryland, it was recognized that collateral immigration consequences are potentially so severe -- namely, permanent physical expulsion from the United States -- that limiting the scope of the advisement to immigration consequences is justified.

I will be happy to answer any questions you or Committee members may have about this request. Thank you for your kind attention.

Sincerely,



Richard J. Douglas
(202) 224-6845

(MARYLAND)

Rule 4-242. Pleas.

(a) *Permitted pleas.*- A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. In addition to any of these pleas, the defendant may enter a plea of not criminally responsible by reason of insanity.

(b) *Method of pleading.*-

(1) *Manner.*- A defendant may plead not guilty personally or by counsel on the record in open court or in writing. A defendant may plead guilty or nolo contendere personally on the record in open court, except that a corporate defendant may plead guilty or nolo contendere by counsel or a corporate officer. A defendant may enter a plea of not criminally responsible by reason of insanity personally or by counsel and the plea shall be in writing.

(2) *Time in the District Court.*- In District Court the defendant shall initially plead at or before the time the action is called for trial.

(3) *Time in circuit court.*- In circuit court the defendant shall initially plead within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213 (c). If a motion, demand for particulars, or other paper is filed that requires a ruling by the court or compliance by a party before the defendant pleads, the time for pleading shall be extended, without special order, to 15 days after the ruling by the court or the compliance by a party. A plea of not criminally responsible by reason of insanity shall be entered at the time the defendant initially pleads, unless good cause is shown.

(4) *Failure or refusal to plead.*- If the defendant fails or refuses to plead as required by this section, the clerk or the court shall enter a plea of not guilty.

Cross References.

See *Treece v. State*, 313 Md. 665 (1988), concerning the right of a defendant to decide whether to interpose the defense of insanity.

(c) *Plea of guilty.*- The court may accept a plea of guilty only after it determines, upon an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (e) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

(d) *Plea of nolo contendere.*- A defendant may plead nolo contendere only with the consent of court. The court may require the defendant or counsel to provide information it deems necessary to enable it to determine whether or not it will consent. The court may accept the plea only after it determines, upon an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, that the defendant is pleading voluntarily with understanding of the nature of the charge and the consequences of the plea. In addition, before accepting the plea, the court shall comply with section (e) of this Rule. Following the acceptance of a plea of nolo contendere, the court shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty. If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to plead anew.

(e) *Collateral Consequences of a Plea of Guilty or Nolo Contendere* - Before the court accepts a plea of guilty or nolo contendere, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant (1) that by entering the plea, if the defendant is not a United States citizen, the defendant may face additional consequences of deportation, detention, or ineligibility for citizenship and (2) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea. The omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid.

Committee Note.

In determining whether to accept the plea, the court should not question defendants about their citizenship or **immigration** status. Rather, the court should ensure that all defendants are advised in accordance with this section. This Rule does not overrule *Yoswick v. State*, 347 Md. 228 (1997) and *Daley v. State*, 61 Md. App. 486 (1985).

(f) *Plea to a degree.* - A defendant may plead not guilty to one degree and plead guilty to another degree of an offense which, by law, may be divided into degrees.

(g) *Withdrawal of plea* - At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty or nolo contendere when the withdrawal serves the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty or nolo contendere if the defendant establishes that the provisions of section (c) or (d) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty or nolo contendere.

[Amended Apr. 7, 1986, effective July 1, 1986; June 28, 1989, effective July 1, 1989; Jan. 20, 1999, effective July 1, 1999.]



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April 30, 2001

Mr. Richard J. Douglas
Chief Counsel
Committee on Foreign Relations
United States Senate
450 Dirksen Office Building
Washington, D.C. 20510-6225

Dear Mr. Douglas:

Thank you for your suggestion to amend Rule 11 of the Federal Rules of Criminal Procedure to require a judge before accepting a plea of guilty or nolo contendere to advise a defendant who is not a United States citizen of potential collateral consequences, including deportation, detention, or ineligibility for citizenship. A copy of your letter was sent to the chair and reporter of the Advisory Committee on Criminal Rules for their consideration.

We welcome your suggestions and appreciate your interest in the rulemaking process.

Sincerely,



Peter G. McCabe
Secretary

cc: Honorable W. Eugene Davis
Professor David A. Schlueter