

Criminal Procedure Monograph 4: Felony Arraignments in District Court—Third Edition

May-August 2009 Updates

Updates have been issued for Criminal Procedure Monograph 4. A summary of each update appears below. The updates have been integrated into the website version of the monograph; consequently, some of the page numbers may have changed. Clicking on the links below will take you to the page(s) in the monograph where the updates appear. The text added or changed in each update is underlined.

[4.25 Guilty and Nolo Contendere Pleas](#)

Failure to strictly comply with the requirements of MCR 6.302(A) does not warrant an automatic reversal. As long as a defendant's guilty or nolo contendere plea is accurate, voluntary, and knowingly made, substantial compliance with the court rule may be sufficient. *People v Plumaj*, ___ Mich App ___, ___ (2009).

- ◆ The district court judge may not accept a plea to an offense other than the one charged unless the prosecutor consents. MCR 6.301(D).

4.25 Guilty and Nolo Contendere Pleas

Pleas taken during an arraignment conducted pursuant to MCR 6.111 must “be taken in conformity with MCR 6.301, 6.302, 6.303, and 6.304, as applicable, and, once taken, shall be governed by MCR 6.310.” MCR 6.111(C). Therefore, MCR 6.302 applies to guilty and nolo contendere (no contest) pleas* taken by the district court judge in criminal cases over which the circuit court has trial jurisdiction. MCR 6.111(C).

MCR 6.302(A)* prohibits a court from accepting a defendant’s guilty or no contest plea unless the court is convinced that the plea is understanding, voluntary, and accurate. Before accepting a defendant’s guilty or no contest plea in an arraignment conducted pursuant to MCR 6.111, the district court judge must place the defendant under oath and “personally carry out subrules (B)–(E).” MCR 6.302(A). Plea proceedings must be recorded verbatim. MCR 6.302(F).

Failure to strictly comply with the requirements of MCR 6.302(A) does not warrant an automatic reversal.* As long as a defendant’s guilty or nolo contendere plea is accurate, voluntary, and knowingly made, substantial compliance with the court rule may be sufficient. *People v Plumaj*, Mich App _____, _____ (2009). In *Plumaj*, the trial court never administered an oath to the defendant before taking his guilty and nolo contendere pleas; the defendant’s pleas were subsequently set aside at a hearing in front of a different judge because the previous judge failed to comply with the oath requirement in MCR 6.302(A). *Plumaj, supra* at _____. The Michigan Court of Appeals concluded that automatic reversal was inappropriate. *Id.* at _____. The Court stated,

“While MCR 6.302(A) requires that the court place the defendant under oath before accepting a plea of guilty or nolo contendere, the failure in and of itself is not self-determinative. Because the oath obligation is not one of the protected rights requiring reversal, the trial court must make the initial determination as to whether or not the pleas were accurate, understanding or knowingly made, and voluntary. While an oath may assist the trial court in making its determination, an oath in and of itself does not establish any of the necessary requisites to a valid plea. The trial court must employ the decisional process to either grant or deny a motion to withdraw a plea and make findings in a hearing to support the application of discretion. Guided by the facts of a particular case, it is for the trial

*See Criminal Procedure Monograph 3: *Misdemeanor Arraignments & Pleas—Third Edition* (MJL, 2006-April 2009), Sections 3.24, 3.25, 3.30, and 3.31, for more information.

*As amended, effective July 13, 2005.

*Reversal is required if a defendant is not informed of, and does not waive on the record, the right not to incriminate him or herself, the right to a jury trial, and the right to confront witnesses against him or her. *Plumaj, supra* at _____, citing *Boykin v Alabama*, 395 US 238, 281 (1969).

court to determine the ultimate issue as to whether or not the defendant's pleas were accurate, voluntary, and understanding or knowingly made.” Plumaj, supra at _____.

A. Plea Must Be Understanding

To determine that a defendant understands the implications of pleading guilty or no contest, the district court judge must speak directly to the defendant or defendants, advise them of the following, and determine that each defendant understands:

“(1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;

“(2) the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law;

“(3) if the plea is accepted, the defendant will not have a trial of any kind, and so gives up the rights the defendant would have at a trial, including the right:

“(a) to be tried by a jury;

“(b) to be presumed innocent until proved guilty;

“(c) to have the prosecutor prove beyond a reasonable doubt that the defendant is guilty;

“(d) to have the witnesses against the defendant appear at the trial;

“(e) to question the witnesses against the defendant;

“(f) to have the court order any witnesses the defendant has for the defense to appear at the trial;

“(g) to remain silent during the trial;

“(h) to not have that silence used against the defendant; and

“(i) to testify at the trial if the defendant wants to testify.”
MCR 6.302(B)(1)–(3).*

*As amended,
effective July
13, 2005.

Still speaking directly to the defendant, the district court judge, before accepting a defendant's guilty or no contest plea, must further advise the defendant that