

Midlands Rules of Criminal Procedure

(Selected Provisions)

MRCP 1. Scope; Definitions

(a) Scope.

These rules govern the procedure in all criminal proceedings in the State of Midlands.

(b) Definitions. The following definitions apply to these rules:

- (1) "Attorney for the government" means any prosecutor for the State of Midlands.
- (2) "Court" means any judge in the State of Midlands performing functions authorized by law.
- (3) "Judge" means any judge in the State of Midlands.
- (4) "Oath" includes an affirmation.

MRCP 2. Interpretation

These rules are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.

MRCP 11. Pleas

(a) Entering a Plea.

(1) *In General.*

A defendant may plead not guilty, guilty, or (with the court's consent) nolo contendere.

(2) *Conditional Plea.*

With the consent of the court and the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving the right to have an appellate court review any alleged errors that have been preserved by the appropriate means and/or the right to a jury recommendation of penalty to the court. If a defendant enters a conditional plea of guilty or nolo contendere but reserves the right to a jury penalty phase, the defendant retains all appellate rights for any alleged errors occurring during the penalty phase. A defendant who prevails on appeal may then withdraw the plea.

(b) Considering and Accepting a Guilty or Nolo Contendere Plea.

(1) *Advising and Questioning the Defendant.*

Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;

(B) the right to plead not guilty, or having already so pleaded, to persist in that plea;

(C) the right to a jury during the guilt phase of the trial to determine guilt and/or during the penalty phase of the trial to recommend a sentence to the Court;

(D) the right to be represented by counsel -- and if necessary have the court appoint counsel -- at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of one or more of these trial rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading;

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) the court's obligation to treat any jury penalty recommendation as compelling, and the court's discretion to downwardly depart from any jury penalty recommendation under some circumstances; and

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

(2) *Ensuring That a Plea Is Voluntary.*

Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

(3) *Determining the Factual Basis for a Plea.*

Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

(c) *Plea Agreement Procedure.*

(1) *In General.*

An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate;

(C) agree to a jury trial on the issue of penalty alone.

(2) *Disclosing a Plea Agreement.*

The parties must disclose the plea agreement in open court when the plea is offered, unless the court for good cause allows the parties to disclose the plea agreement in camera.

(3) *Judicial Consideration of a Plea Agreement.*

The court may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.

(d) Finality of a Guilty or Nolo Contendere Plea.

After the court imposes sentence, the defendant may not withdraw a plea of guilty or nolo contendere, and the plea may be set aside only on direct appeal or collateral attack.

(e) Admissibility or Inadmissibility of a Plea, Plea Discussions, and Related Statements.

The admissibility or inadmissibility of a plea, a plea discussion, and any related statement is governed by Midlands Rule of Evidence 410.

(f) Harmless Error.

A variance from the requirements of this rule is harmless error if it does not affect substantial rights.

MRCP 23. Jury

(a) Jury Trial.

If the defendant is entitled to a jury trial, the trial must be by jury.

(b) Jury Size.

A jury consists of 1 or more persons.

(c) Jury Role in Guilt Phase.

In a case tried with a jury, the jury must determine the guilt or lack of guilt of a defendant. Such a finding shall be announced in open court by the foreperson.

(d) Jury Role in Penalty Phase.

In a case tried with a jury, after determining guilt or lack of guilt, or in a case where the defendant has pled guilty but has retained the right to a jury penalty recommendation, the jury shall make a recommendation of the appropriate penalty.

MRCP 32. Sentencing and Judgment

After the court has received a penalty recommendation from the jury or after a guilty plea and waiver of right to a jury penalty

recommendation, the court will sentence the defendant. The sentence shall be announced in open court.

MRCP 43. Defendant's Presence

(a) When Required.

Unless this rule provides otherwise, the defendant must be present at:

- (1) the initial appearance, the initial arraignment, and the plea;
- (2) every trial stage, including jury empanelment, the guilt phase, the penalty phase; and
- (3) sentencing.

(b) When Not Required. A defendant need not be present under any of the following circumstances:

(1) *Organizational Defendant.*

The defendant is an organization represented by counsel who is present.

(2) *Waiving Continued Presence.*

(a) *In General.*

A defendant who was initially present at trial, or who had pleaded guilty or nolo contendere, waives the right to be present under the following circumstances:

- (1) when the defendant is voluntarily absent after the trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial;
- (2) in a noncapital case, when the defendant is voluntarily absent during sentencing; or
- (3) when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom.

(b) *Waiver's Effect.*

If the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return, the penalty recommendation, and sentencing, during the defendant's absence.

MRCP 60. Title

These rules may be known and cited as the Midlands Rules of Criminal Procedure.