

FINAL REPORT¹

Amendment of Pa.R.Crim.P. 590

PLEA AGREEMENT DEADLINES

On January 18, 2018, effective April 1, 2018, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 590 (Pleas and Plea Agreements) to clarify that any time limitation short of the time of verdict for the entry of a guilty plea pursuant to an agreement is contrary to the provisions of Rule 590(B).

The Committee had been presented with a proposed local criminal rule that contained a time limitation prior to trial after which a defendant would not be permitted to enter a plea pursuant to an agreement. If this date is missed, the defendant is then required to enter an open plea or take a trial. Upon further investigation, the Committee discovered that several counties had local rules that contain similar restrictions.²

The Committee concluded that these provisions are in conflict with statewide Rule 590(B) that provides the procedures for the entry of pleas made pursuant to a plea agreement. Rule 590(B) provides:

(1) When counsel for both sides have arrived at a plea agreement, they shall state on the record in open court, in the presence of the defendant, the terms of the agreement, unless the judge orders, for good cause shown and with the consent of the defendant, counsel for the defendant, and the attorney for the Commonwealth, that specific conditions in the agreement be placed on the record *in camera* and the record sealed.

¹ The Committee's *Final Reports* should not be confused with the official Committee *Comments* to the rules. Also, note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the Committee's explanatory *Final Reports*.

² It appears that most of these rules were in place prior to 2009 when Committee approval was required prior to a local rule being adopted.

(2) The judge shall conduct a separate inquiry of the defendant on the record to determine whether the defendant understands and voluntarily accepts the terms of the plea agreement on which the guilty plea or plea of *nolo contendere* is based.

Statewide Rule 590(B) does not contain a temporal limit for the entry of a negotiated plea. The Committee considered the argument that the statewide rule does not prohibit deadlines because it is silent on the matter. However, the interpretation should be just the opposite. Because the statewide rule does not contain a time limitation on the entry of a plea, it is intended to remain open. The Committee concluded that the creation of such a deadline in a local rule constitutes an additional local requirement not contemplated by the statewide rule and creates an inconsistency with practice elsewhere in the Unified Judicial System.

The Committee appreciates that the main rationale of these local deadlines is to administer more effectively a court's trial caseload. The Committee also understands that the proponents of plea agreement deadlines believe they provide incentive for early resolution of cases by "holding the parties' feet to the fire" and eliminate those cases where parties wait to last minute to resolve cases. However, the timing of the plea does not necessarily reflect the diligence of the parties in working to reach an agreement. There are circumstances in which a negotiated plea may be entered late in a case, even during trial. Often, the manner in which evidence is presented at trial will alter the parties' positions with regard to agreeing to a plea. In an adversarial system, the prosecution and defense are in the best position to judge whether the interests of the Commonwealth and the victim, on the one hand, and the defendant, on the other, are best served by a negotiated plea.

An absolute bar on the acceptance of post-deadline agreements is counter-productive. While some "down-time" may result when a scheduled trial is resolved by a plea, it seems far less inefficient than forcing the parties into a trial that they are willing to forego for a negotiated plea. The Committee believes that a trial judge should exercise individualized consideration on the merits of a negotiated plea in determining whether to accept or reject it rather than reliance on a set deadline. Therefore, the Committee concluded that the prerogative of the parties to freely enter into a negotiated

disposition of a case should not be summarily refused solely because of the timing of the presentation of the agreement to the court.

The Committee recognizes that there is no right to a plea bargain and a trial judge has a great amount of discretion in whether to accept a plea bargain. In response to an argument that the prohibition of a deadline impinges on the judge's discretion to accept a plea, the Committee concluded that the clarification that general deadlines are improper does not limit the proper exercise of a judge's discretion to accept a plea. Instead, the Committee believes that the rule change makes clear the decision to accept or reject a plea should be based on the circumstances of the individual case and should not be based solely upon the failure to meet an arbitrary deadline.

Although the Committee believes that such locally mandated deadlines already are in conflict with statewide Rule 590, the Committee concluded that some clarification of this point would be beneficial. Therefore, Rule 590(B)(1) has been amended by the addition of a prefatory statement that a plea pursuant to an agreement may be entered any time prior to the verdict. The prohibition against plea entry deadlines is further elaborated in the *Comment*.