

**STATE OF VERMONT
VERMONT SUPREME COURT
JUNE TERM, 2016**

**Order Making Permanent Emergency Amendments to Rules 5 and 11
of the Vermont Rules of Criminal Procedure**

Pursuant to the Vermont Constitution, Chapter II, Section 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That the emergency amendment to Rule 5(d) of the Vermont Rules of Criminal Procedure, promulgated on December 21, 2015, effective January 1, 2016, be made permanent so that the rule reads as follows:

RULE 5. APPEARANCE BEFORE A JUDICIAL OFFICER

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(d) Statement by the Judicial Officer. The judicial officer shall inform the defendant before taking any further action under this rule.

(1) Of the charge against the defendant and the minimum and maximum punishments for it and provide the defendant with a copy of the indictment or information and affidavit or sworn statement;

(2) Of the defendant's right to retain and consult counsel before making any statement or answering any questions at the present hearing or subsequently; in an appropriate case, of the defendant's right to request the assignment of counsel at state expense if the defendant is financially unable to retain counsel; and of the defendant's right to communicate with counsel, family, or friends;

(3) That the defendant is not required to make any statement or answer any questions at the present hearing or subsequently and that anything the defendant says may be used against the defendant;

(4) Of the general circumstances under which the defendant may secure pretrial release;

(5) If the defendant is not represented by counsel, of the nature and approximate schedule of further pretrial proceedings to be taken in the case and of the defendant's rights to discovery; and

(6) Pursuant to 13 V.S.A. § 8005(a), of the information required to be provided regarding collateral consequences of conviction.

Reporter's Note—2016 Amendment

On December 21, 2015, Rule 5(d) was amended in an emergency order to conform the rule to provisions of the Uniform Collateral Consequences of Conviction Act (UCCCA), 2013, No. 181 (Adj. Sess.), § 1, which is in pertinent part codified at 13 V.S.A. §§ 8002-8005. The emergency amendments became effective January 1, 2016. Those amendments are now made permanent.

2. That the emergency amendment to Rule 11 of the Vermont Rules of Criminal Procedure, promulgated on December 21, 2015, effective January 1, 2016, be made permanent so the rule reads as follows:

RULE 11. PLEAS

* * * * *

(c) **Advice to Defendant.** Except as authorized by Rule 43, the court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, informing the defendant of and determining that the defendant understands the following:

* * * * *

(6) if the court intends to question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant has pleaded, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement;

(7) that if the defendant is not a citizen of the United States, admitting to facts sufficient to warrant a finding of guilt or pleading guilty or nolo contendere to a crime may have the consequences of deportation, denial of United States citizenship, or denial of admission to the United States in the future; and

(8) that there may be collateral consequences to a conviction.

(d) **Insuring That the Plea Is Voluntary.** Except as authorized by Rule 43, the court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the prosecuting attorney and the defendant or his attorney.

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(h) **Receipt of Notice.** Before the court accepts a plea of guilty or nolo contendere, the Court shall confirm that the defendant has received the required notice under 13 V.S.A.

§ 8005(a) and (b)(2) and has had an opportunity to discuss the notice with counsel, if represented.

Reporter’s Note—2016 Amendment

On December 21, 2015, Rule 11 was amended in an emergency order to add Rule 11(c)(8) and Rule 11(h) to conform the rules to provisions of the Uniform Collateral Consequences of Conviction Act (UCCCA), 2013, No. 181 (Adj. Sess.), § 1, which is in pertinent part codified at 13 V.S.A. §§ 8002-8005. The emergency amendments became effective January 1, 2016. Those amendments are now made permanent.

3. That these rules, as now made permanent, are effective August 15, 2016. The Reporter’s Notes are Advisory.

4. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Done in Chambers at Montpelier, Vermont this 15th day of June, 2016.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold A. Eaton, Jr., Associate Justice