



**STATE OF CONNECTICUT
JUDICIAL BRANCH
COURT OPERATIONS DIVISION**

LEGAL SERVICES

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MEMO TO: The Rules Committee of the Superior Court

SUBJECT: Subcommittee recommendation in response to Open File Criminal
Discovery Request No. 2

In their August 29, 2019 letter to the Rules Committee, Senators Martin M. Looney and Gary Winfield and Representative Steve Stafstrom requested the Rules Committee to amend the Practice Book to adopt the following policy:

1. Before a plea deal is approved by the court, the court must confirm that all discovery requested up to that time has been completed.

The Rules Committee tasked a Subcommittee, consisting of Judges Alexander, Cradle, and Truglia, Jr., with reviewing this request, and recommending appropriate Practice Book amendments. The Subcommittee fielded input from the Division of Public Defender Services, the Office of the Chief State's Attorney, the Connecticut Criminal Defense Lawyers Association, the Connecticut Bar Association's Criminal Justice Section, the Office of Victim Services, and myself, as a representative of Judicial Legal Services.

The Subcommittee and the Criminal practitioners met on January 9, 2020, and agreed to recommend that the Rules Committee address this Request at this time. The Prosecutors requested, however, and the group agreed, that this new canvass should cover only requested discovery that is then within the possession of the prosecuting authority. The group also suggested that the recommended Practice Book amendments include a provision allowing for the knowing and voluntary waiver of the defendant's right to receive any outstanding requested discovery in order to move forward with a plea when it is advantageous to the defendant not to wait for discovery to be complete. Finally, the group suggested excepting exculpatory evidence that the prosecutors are required under the Constitution, statutes, or rules to disclose regardless of whether the defendant has requested such evidence from any such waiver by the defendant in the recommended Practice Book revisions.

The group ultimately agreed on a “basic concept” to address this Request, and a draft was circulated to the Subcommittee and the Criminal practitioners, including recommendations for:

- A minor amendment to Practice Book § 39-7, clarifying that the court may only accept a plea agreement in accordance with Practice Book § 39-18; and
- Amendments to Practice Book § 39-18, requiring that the court confirm that the defendant has received all requested discovery, or that the defendant waives the right to further discovery disclosure, except for exculpatory evidence, before allowing a defendant to enter a plea of guilty or nolo contendere.

The Defense practitioners submitted several suggested revisions to this draft. Given the limited timeframe between the January 9th meeting and the Rules Committee meeting scheduled for February 10, 2020, however, there was not sufficient time for the Subcommittee and the Criminal practitioners to meet again to consolidate and incorporate these suggested revisions into a single recommendation acceptable to the entire group.

Therefore, Judge Alexander suggested presenting both the recommended amendments to Practice Book §§ 39-7 and 39-18 and the Defense practitioners’ suggested revisions for your consideration. I have included the Defense practitioners’ suggested revisions to the recommended Practice Book amendments that follow in Comment bubbles. At Judge Alexander’s request, I have also included comments or concerns about these revisions in the corresponding Comment bubbles for your consideration, should the Rules Committee decide to incorporate these revisions into any Practice Book amendments it adopts to address Request No. 2.

Thank you for your consideration in this matter.



Katharine E. Casaubon
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Subcommittee recommendation in response to Open File Criminal Discovery Request No. 2

Sec. 39-7. –Notice of Plea Agreement

If a plea agreement has been reached by the parties, which contemplates the entry of a plea of guilty or nolo contendere, the judicial authority shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera at the time the plea is offered. Thereupon the judicial authority may accept the agreement in accordance with Section 39-18. or reject the agreement, or may defer his or her decision on acceptance or rejection until there has been an opportunity to consider the presentence report, or may defer it for other reasons.

COMMENTARY: The change to this section clarifies that the judicial authority may only accept a plea agreement in accordance with Section 39-18.

Sec. 39-18. Plea of Guilty or Nolo Contendere; Entering

(a) In the discretion of the judicial authority, the defendant may enter a plea of guilty or nolo contendere to the information or complaint at arraignment[. At] or any later time [the defendant also may enter any such plea.], provided that the judicial authority confirms in open court that the prosecuting authority has made available, and the defendant has received, all discovery materials that he or she requested in writing from the prosecuting authority pursuant to Chapter 40 that are then within the possession of the prosecuting authority. If the defendant has not received all such discovery, the

Commented [CK1]: The Defense practitioners suggest that this addition, and the corresponding Commentary is unnecessary and already contemplated by the recommended amendments to Practice Book § 39-18.

Commented [CK2]: The Defense practitioners suggest putting a period after "Chapter 40" and deleting the remainder of this sentence.

**The Prosecutors specifically asked, however, that this new canvass cover only discovery items that are within their possession as of the date of the plea.

judicial authority shall, prior to allowing the defendant to enter a plea of guilty or nolo contendere, confirm that the defendant and, if applicable, his or her counsel agree to waive any right to receive further discovery disclosure, with the exception of any exculpatory information or materials that the prosecuting authority is required by law to disclose, before entering the plea.

Commented [CK3]: The Defense practitioners suggest ending the sentence after "information" and deleting the remaining language.

(b) A plea of nolo contendere shall be in writing, shall be signed by the defendant, and, when accepted by the judicial authority, shall be followed by a finding of guilty.

COMMENTARY: The changes to this section require the judicial authority to confirm that a criminal defendant has either received all discovery requested pursuant to Chapter 40 or waives the right to receive further disclosure of the discovery materials they have already requested in writing, except for exculpatory evidence, before accepting a plea agreement, consistent with Open File Criminal Discovery.

Commented [CK4]: The Defense practitioners suggest removing the word "further."