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Comment:

If the advice required by proposed MCR 6.302(G) is to be given at all, it should be given prospectively at the time the plea is tendered, irrespective of the time when the court may accept the plea. This way defendants who are considering pleading in reliance on a sentencing agreement will know ahead of time about contingencies under which the court may not be required to honor that agreement. In fairness, defendants should know before tendering a plea if their failure to uphold their end of the plea bargain or their conditions of bond could result in harsher consequences than mere loss of presentence liberty and/or rescission of the plea agreement.

Additionally, if a plea is taken under advisement, many weeks may pass between when the plea is tendered and when it is accepted by the court. A defendant has a right to withdraw any plea before it is accepted on the record and withholding advice concerning withdrawal of pleas until this right has been truncated by the court's acceptance of the plea will leave some defendants saying, "Oh, so now you tell me." In cases where there will be immediate sentencing, the proposed advice is largely irrelevant after the plea is accepted. Particularly in cases involving some sort of sentencing agreement, a court may take the plea under advisement pending the presentence investigation and accept the plea on the day of sentencing.