

VIRGINIA LAWYERS WEEKLY

Defendants get new deportation warnings

By: Peter Vieth November 6, 2015



At the urging of a civil rights lawyer, the Supreme Court of Virginia has added deportation warnings to suggested questions for judges to ask criminal defendants when they plead guilty.

The changes came in an Oct. 30 order, effective immediately.

The new wording addresses concerns raised by attorneys in communities with large immigrant populations. Defense lawyers say they observed cases in which unrepresented non-citizens took plea deals that left them

unwittingly exposed to deportation.

Now, judges are encouraged to pose the following question as part of the guilty plea colloquy with defendants:

"Do you understand that if you are not a citizen of the United States and if you plead guilty or are found to be guilty, there may be consequences of deportation, exclusion from admission into the United States, or denial of naturalization pursuant to the laws of the United States?"

Prince William County became the focal point for concern about non-citizens who unwittingly expose themselves to banishment for seemingly innocuous plea deals.

More than one fifth of the county population is classified as Hispanic or Latino.

Alexandria civil rights lawyer Victor M. Glasberg wrote to Prince William County judges in 2012 urging awareness of the deportation risk that accompanied some otherwise harmless plea deals.

Glasberg's advocacy led to warning language on court forms, new ethical guidance for prosecutors and a dialogue with Supreme Court Chief Justice Donald W. Lemons.

"What a long haul it has been," Glasberg said of the new language in the court rules.

"That said, I am delighted; this is the most effective advocacy I have ever engaged in without a client and without a lawsuit. It is terrific that Chief Justice Lemons took this matter under his wing and saw it to a conclusion," Glasberg said.

"Good for him and good for the Virginia courts," he added.

The Legal Ethics Committee of the Virginia State Bar determined in March that prosecutors would violate an ethics rule if they allowed an unrepresented noncitizen defendant to plead to deportable offenses without warning.

The guidance came in Legal Ethics Opinion 1876, issued March 19.

Prosecutors concerned about exposure under that LEO welcomed the new colloquy language from the Supreme Court.

"Even though they are 'suggested questions,' the additional language certainly makes it easier for the courts to cover the issue of 'the defendant's opportunity to understand ... immigration law consequences of the plea,'" said Nancy Parr, immediate past president of the Virginia Association of Commonwealth's Attorneys.

She noted, however, that LEO 1876 puts the burden on the prosecutor to prompt a judge to ask that question if the judge does not do it on her own.

"I think it's a good thing they have these forms," said Fairfax County Commonwealth's Attorney Raymond F. Morrogh.

He agreed prosecutors were concerned about LEO 1876, especially in jurisdictions with large dockets.

"It's certainly awkward to determine who is a citizen and who might not be," Morrogh said.

He said Fairfax County altered plea agreement forms early on to provide deportation warnings and county judges were alert to the issue.