

GUILTY PLEA LITANY-INFORMATION

Magistrate Judge Pamela Meade Sargent

1. *Call the case.*
2. *To defense counsel:* Do I understand that the defendant wishes to enter a guilty plea pursuant to a written plea agreement?
3. *Ask defense counsel and defendant to stand before the bench.*
4. Since the offense to which you are pleading guilty is a felony you have the right to have this plea hearing conducted before a district court judge or you can waive that right and I, a federal magistrate judge, may conduct this hearing. Do you wish to waive your right to have this hearing conducted before a district court judge?
5. *Have defendant execute waiver.*
6. Before accepting your guilty plea, there are a number of questions I will ask you to assure that it is a valid plea. If you do not understand any of the questions or at any time you wish to consult with your attorney, please say so since it is important that you fully understand my questions.
7. *Ask the Clerk to administer oath to defendant.*
8. Do you understand that you are now under oath, and if you do not answer my questions truthfully, your answers may later be used against you in another prosecution for perjury or making false statements?
9. What is your full legal name? How old are you? How far did you go in school? Can you read and write English?
10. Have you ever been diagnosed with, treated for or suffered from any mental illness, substance abuse or addiction disorder of any type?
11. Have you taken any drugs, medicine or pills or consumed any alcoholic beverages within the last 24 hours?
12. What is the present state of your health today?

13. To defense counsel: Do you have any doubt as to the defendant's competence to plead at this time?

14. Inform the defendant: You have a constitutional right to be charged by an indictment of a grand jury, but you can waive that right and consent to being charged by information of the U.S. attorney.

15. Instead of an indictment, these felony charges against you have been brought by the U.S. attorney by the filing of an information.

16. Unless you waive indictment, you may not be charged with a felony unless a grand jury finds by return of an indictment that there is probable cause to believe that a crime has been committed and that you committed it.

17. If you do not waive indictment, the government may present the case to the grand jury and ask it to indict you.

18. A grand jury is composed of at least sixteen and not more than twenty-three persons, and at least twelve grand jurors must find that there is probable cause to believe you committed the crime with which you are charged before you may be indicted.

19. The grand jury might or might not indict you.

20. If you waive indictment by the grand jury, the case will proceed against you on the U.S. attorney's information just as though you had been indicted.

21. Have you discussed waiving your right to indictment by the grand jury with your attorney?

22. Do you understand your right to indictment by a grand jury?

23. Have any threats or promises been made to induce you to waive indictment?

24. Do you wish to waive your right to indictment by a grand jury?

25. To defense counsel: Do you know of any reason the defendant should

not waive indictment?

26. *Have the defendant sign the waiver of indictment form in open court, state that the court finds that the waiver is knowingly and voluntarily made by the defendant and is accepted by the court, and enter an order and finding to that effect.*

27. *Show defendant signed plea agreement.* Did you sign this agreement and initial each page to show that you read it and agreed to its terms?

28. Did you have an adequate opportunity to read and discuss the plea agreement with your lawyer before you signed it?

29. Are you fully satisfied with your attorney's representation?

30. *Ask the AUSA to summarize the terms of the plea agreement.*

31. Are those terms included in the plea agreement, as you understand it?

32. [Do you understand that under the plea agreement you waive or give up your right to appeal or collaterally attack your sentence?]

33. Has anyone made any promise to you other than those made in the plea agreement that caused you to want to plead guilty?

34. Has anyone attempted in any way to force you to plead guilty in this case?

35. The maximum possible penalty for each offense is a term of imprisonment for _____ plus a fine of up to \$_____ plus a special assessment of \$100.00 per count. In addition, there will be a period of supervised release after imprisonment. [There is a mandatory minimum term of imprisonment for _____ years.] Supervised release does not reduce the stated term of imprisonment, but rather is a term of supervision in addition to, and following, the term of imprisonment. If there is a violation of a condition of supervised release, the court may impose an additional prison term, regardless of how much time was served before the violation of the condition. In addition, there may be a further term of supervised release following imprisonment. Do you understand?

36. *If the plea relates to a felony offense, consider asking the defendant:*

Do you understand that the offense to which you are pleading guilty (nolo contendere) is a felony offense, that if your plea is accepted, you will be adjudged guilty of that offense, and that such adjudication *may* deprive you of valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess any kind of firearm?

[If the defendant is not a citizen of the United States, ask: Do you understand that your plea of guilty may affect your residency or your status with the immigration authorities?]

[The court also may order restitution be paid to any victim of the offense.]

[The court may require you to forfeit certain property to the Government.]

[The court may order you to provide notice of your conviction to victims of the offense.]

37. Do you understand the possible consequences of your plea?

38. This case is covered by the Sentencing Guidelines.

- A. Have you and your attorney talked about the Sentencing Guidelines?
- B. Do you understand that the judge normally must select a sentence from within the guideline range and that the guideline range will not be determined until after the presentence report has been completed and a sentencing hearing held?
- C. Do you also understand that, after your guideline range has been determined, the judge has the authority in some circumstances to depart from the guidelines and impose a sentence that is more severe or less severe than the sentence called for by the guidelines?

- D. Do you understand that the Sentencing Guidelines are no longer mandatory and after considering the guidelines, and the factors listed under 18 U.S.C. ' 3553(a), the judge may sentence outside of the guidelines and up to the statutory maximum sentence?
- E. Do you also understand that under some circumstances [you or] the government may have the right to appeal any sentence that the court may impose?
- F. Do you also understand that parole has been abolished, and that if you are sentenced to prison you will serve your full term less any good time credit earned?
- G. Do you understand that the sentence imposed may be different from any estimate your attorney, the U.S. Attorney or the Probation Office may have given you?

39. Do you understand that if the court does not accept any sentencing recommendation by the government as set forth in your plea agreement, you will still be bound by your plea and will have no right to withdraw it?

40. Please listen carefully to these rights that are given up when you plead guilty:

A. You have a right to plead not guilty to any offense charged against you, and to persist in that plea; that you would then have the right to a trial by jury, that at trial you would be presumed to be innocent and the government would have to prove your guilt beyond a reasonable doubt; that you would also have the right to the assistance of counsel for your defense, the right to see and hear all witnesses and have them cross-examined in your defense, the right on your part to decline to testify unless you voluntarily elected to do so in your own defense, and the right to compel the attendance of witnesses to testify in your defense. Should you decide not to testify or put on any evidence, these facts cannot be used against you. Do you understand all of these rights?

B. Do you further understand that by entering a plea of guilty, if that plea is accepted by the court, there will be no trial and you will have waived or given

up your right to a trial as well as those other rights associated with a trial as I have just described?

41. *Read the charge(s) to which the defendant is pleading guilty.*

42. Please tell me in your own words what you did that makes you guilty.

43. *To government counsel:* Please state the elements of the offense and make a representation or put on evidence concerning the facts the government would be prepared to prove at trial.

44. *To defendant:* Do you contest any of the facts just presented?

45. How do you now plead to the charge(s) contained in count(s) ____ guilty or not guilty?

46. It is the finding of the court in the case of U. S. v. _____ that the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact as to each of the essential elements of the offense. The plea is therefore accepted and the defendant is now adjudged guilty of that offense.

47. *Inform the defendant:*

A. A written presentence report will be prepared by the probation office to assist the court in sentencing;

B. You will be asked to give information for the report and your attorney may be present if you wish;

C. You and your attorney have the right to read the presentence report and file objections to the report;

D. I remind counsel that written objections to the presentence report must be made within 14 days after receiving the report.

[E. Since the plea agreement involves the dismissal of certain

charges [an agreement not to pursue other charges], I will accept the plea, but defer acceptance of the plea agreement until after the presentence report has been prepared.]

48. *Set date for sentencing.*

49. *Determine possible release.*

50. *To defendant:* You are required to appear for sentencing on _____ at _____. Failure to appear as required is a criminal offense for which you can be sentence to imprisonment, and the penalties of violating any of the conditions of release can be severe.

51. *Adjourn.*