

GUILTY PLEA COLLOQUY

1. INTRODUCTION

The case before the Court is *United States v.* _____, case no. _____.

This matter comes on for a change of plea, pursuant to Rule 11 of FRCrP.

The United States is represented by [Special] AUSA _____.

The defendant is personally present and is represented by _____.

2. INTERPRETER [if applicable].

Do you swear or affirm that you will justly, truly, fairly, and impartially act as interpreter in the case now before the court?

[Mr./Ms. Defendant], are you able to hear the interpreter?

Is [e.g. Spanish] your primary language?

Can you understand the interpreter?

Do you speak any English?

Are you requesting the assistance of an interpreter?

If you are unable to hear the interpreter, or if you do not understand something that's said, will you please let me know?

3. NATURE OF THE CHARGES.

Mr./Ms. Defendant, you have been charged by Indictment/Information in _____ counts. Count 1 charges you with the crime of _____. [Etc.].

Have you had a chance to discuss these charges in detail with your attorney?

I have been advised that you now wish to change your plea and enter a plea of guilty to Counts _____ of the Indictment/Information.

Is that correct?

4. CONSENT TO MAGISTRATE JUDGE.

[Does not apply to petty offenses.]

Mr./Ms. Defendant, I am a United States Magistrate Judge. This case is assigned to a district court judge. You have the right to have a district court judge preside over any guilty plea proceeding. As a magistrate judge, I can preside over this hearing, but only with your voluntary consent.

Do you agree that this guilty plea proceeding may be conducted by me?

Mr./Ms. Defense Counsel, has Defendant has signed a written consent form?

Is that your signature and Defendant's signature on the form?

5. DEFENDANT PLACED UNDER OATH.

Mr./Ms. Defendant, before I can recommend that your plea be accepted, I have to ask you certain questions and your answers must be under oath.

Please stand and raise your right hand.

Do you swear or affirm that the testimony before me will be the truth, under penalty of perjury?

You are now under oath. If you make any false statements, then you may be prosecuted for the crime of perjury or making a false statement and if convicted of those crimes you could be sentenced to a period of imprisonment, fined or both.

Do you understand that?

Do you understand that the government could use against you anything you say if you fail to tell the truth?

5. ENSURING MENTAL CAPACITY.

First, I have to ask you some preliminary questions to make sure you are able to understand your rights.

Please state your full name.

How old are you?

How far did you go in school?

Do you have any difficulty reading or understanding the English language?

Have you ever suffered from depression, anxiety, or any other mental illness? *[If yes: Is there anything about your mental health condition or the medication you're taking might affect your ability to understand the proceedings here today?]*

Have you ever abused drugs or alcohol? *[If yes; Do you think your prior drug or alcohol use might affect your ability to understand the proceedings here today?]*

Do you take any prescription medication? *[If yes, have Defendant explain; Do you think your physical condition or the medicine you're taking might affect your ability to understand the proceedings here today?]*

Do you know of any reason why you might have difficulty understanding these proceedings?

It is important that you understand everything we do today. If you have any problems hearing me or if you don't understand something that comes up during the hearing, would you please let me know?

Mr./Ms. Defense Counsel, do you have any reason to believe the Defendant may not be competent to enter a guilty plea?

7. CONSTITUTIONAL RIGHTS

Before I can recommend the district court accept your guilty plea, I have to ask you some additional questions to make sure you understand your rights.

A. **Right to Counsel**

You have the right to a lawyer to help and represent you during every stage of this case. In this case, Attorney _____ has been appointed to represent you at public expense. His/her representation would continue throughout the time of trial at no expense to you. [*Alter if retained counsel to advise defendant that if can no longer afford an attorney, the court would appoint one*]

Do you understand your right to an attorney?

Are you generally satisfied with the representation that you have received from your attorney?

B. **Right to Speedy and Public Trial**

You have the right to a **speedy and public trial** before a jury of twelve people selected from a cross-section of the community. You and your attorney would help choose the people who would serve on your jury. Any verdict by the jury would have to be unanimous, which means all twelve jurors would have to agree to the verdict. Your jurors would promise under oath to try your case fairly, based only on what is submitted into evidence at trial and the instructions given to them by the trial judge. Do you understand your right to a jury trial?

C. **Presumption of Innocence**

Also, there is a **presumption of innocence**. The trial judge would tell the jury that you are presumed innocent, and that the presumption of innocence remains with you unless, at the end of your trial, the government has convinced the jury of your guilt beyond a reasonable doubt. The trial judge would also tell the jury that the presumption of innocence alone is enough for you to be found not guilty of this charge/these charges. Do you understand that?

D. Right to Confrontation

Also, you have the **right to Confrontation**. This means the government would have to call its witnesses to testify under oath here in court. You would be able to see the witnesses as they testify, and they would be able to see you. Your attorney would not have to question the government's witnesses, but if he/she wanted to, he/she could confront them by cross-examining them. Do you understand that by pleading guilty, you are giving up your right to confront witnesses?

E. Right to Present a Defense

You also have the **right to Present a Defense**. The burden of proof would remain on the government throughout the trial. You would not have to put on a defense or produce any evidence. However, if you wanted to, you could present any relevant evidence to the jury. For example, you could make witnesses come to court by having subpoenas served on them. If you could not afford to pay the costs necessary to serve the subpoenas or get your witnesses to court, I would make the government pay those costs. Do you understand that by pleading guilty, you are giving up your right to present any defense?

F. Right to Remain Silent

Finally, you have the **right to remain silent**. You could testify at the trial if you wanted to, but you would not have to. If you decided not to testify, the prosecutor would not say anything about it to the jury. In fact, the trial judge would tell the jurors that you have a Constitutional right not to testify, and she would also tell them that they must not hold it against you if you do not testify. Do you understand that?

G. Summary

In **summary**, if you plead guilty here today Mr./Ms. Defendant, you will have no trial. You will be judged guilty based on your plea, just as if we had a trial and a jury returned a guilty verdict against you.

Do you understand that by pleading guilty you are giving up your right to a jury trial?

8. ELEMENTS AND FACTUAL BASIS.

Before I can recommend that your guilty plea be accepted, I must also establish that there are facts which would support a conviction in this case.

Count _ of the Indictment/Information charges you with the crime of _____.

A. Elements

To convict you of that offense, the government would have to prove, _____ things: [*The judge will recite the elements and obtain Defendant’s admission on each element and for each count. E.g., “The first thing the government would have to prove is _____. Do you understand the first thing the government would have to prove? Did you, in fact, _____?]*

B. Plea Agreement

The parties have entered into a plea agreement, which is in the form of a letter from Mr./Ms. Prosecutor to Mr./Ms. Defense Counsel, dated _____. It has been marked as Government’s Exhibit 1. Mr./Ms. Prosecutor, is that being offered into evidence at this time?

Mr./Ms. Defendant, I would like to draw your attention to the last page of the agreement. Is that your signature? Did your attorney review the document with you in detail before you signed it? Do you understand all of the terms of the agreement? Do you have any questions about the plea agreement which you reached with the Government?

[If the plea agreement calls for dismissal of charges: The plea agreement provides for the government to dismiss charges at the time of sentencing. That must be approved by the district court judge. If the district court judge does not agree to the dismissal of the charge(s), you will be allowed to withdraw your guilty plea if you wish. Do you understand that?]

Mr./Ms. Defendant, I would like to draw your attention to paragraph ___ on page ___ of Exhibit 1, entitled Stipulation of Facts. Are those your initials by that paragraph and the subparagraph? Do you admit that the information set forth in those paragraphs is true?

C. No Plea Agreement

Mr./Ms. Prosecutor, was any formal plea offer made to defendant? [If so, ensure defense counsel advised defendant of the plea offer]

D. Confirm Accuracy of Elements and Sufficiency of Facts

Mr./Ms. Prosecutor:

Did I accurately describe the elements of the charge(s)?

Have I established an adequate factual basis for guilty plea?

Mr./Ms. Defense Counsel:

Do you think your client understands the elements of the charge(s) against him/her?

Have I established an adequate factual basis for the plea?

Have you had full access to the Government's discovery materials?

Do you believe they support a factual basis for Defendant's guilty plea?

Do you know of any possible defense to the charge(s) which you have not considered and discussed with your client?

9. PENALTIES.

Mr./Ms. Defendant, at this time I want to talk to you about the penalties which apply in this case.

A. Maximum/Minimum Sentences

On Count _____, you could be sent to prison for up to _____ years (life) [*and there is a mandatory minimum prison sentence of _____ years*].

Following your imprisonment, you could be placed on supervised release for up to _____ years (life) [*and there is a mandatory minimum term of supervised release of _____ years*].

Also, you could be fined up to \$_____.

In addition, you will have to pay a special assessment of \$100 (on each count)

The judge also has the power to order forfeiture of property and restitution.

Do you understand the [minimum and] maximum penalties which may be imposed in this case?

[If there are multiple counts of conviction, make sure the defendant knows that the penalties could be stacked]

B. Guidelines

At the time of sentencing, the judge will perform a calculation under the federal sentencing guidelines, which are guidelines issued by the United States Sentencing Commission. This calculation will result in what's called an "advisory guideline range," which is a range of months within which the Sentencing Commission suggests that you be sent to prison. The judge must consider this range in determining your sentence, but the judge is not required to sentence you within this range. So long as the sentence the judge gives you is reasonable, the judge can depart from the advisory guideline range based on the factors listed in the sentencing guidelines, or can vary from the range based on the factors listed in the sentencing statutes. So, you could receive a sentence below or above the advisory guideline range and, in fact, you could receive a sentence all the way up to the maximum statutory sentence, which is ____ years. Do you understand all of that?

C. Mandatory Minimum Sentence [If applicable]

You also should understand that however the guideline range is calculated, and regardless of whether the judge departs or varies from the guidelines, the judge cannot sentence you below ____ years, which is the statutory mandatory minimum, even if the judge wants to.

There are two exceptions. If you qualify for what's called for the so-called safety valve or if you provide substantial assistance to the Government and the United States Attorney's Office asks the judge to sentence you below the mandatory minimum, then the court may sentence you below the mandatory minimum sentence. You should understand that even if you believe you have provided substantial assistance to the Government, there is no guarantee the U.S. Attorney will file a departure motion or that the judge will sentence you below the mandatory minimum.

I have no idea whether you will qualify for either of these exceptions. You need to understand, though, that if neither of these exceptions apply to you, then the court will have no choice but to sentence you to the mandatory minimum sentence.

Do you understand that?

D. Reduction for Goodtime/No Parole

You should understand that you will be in custody for all of any prison sentence you receive, reduced only by any credit for good time you may earn. You can earn a reduction in your prison sentence for “good time” of up to approximately 13% of your sentence [*but only if you are sentenced to more than one year in custody. If you are sentenced to a year or less in custody, you cannot earn any good time, and you would have to serve all of your sentence in some type of custody.*]. Whatever sentence you receive, you will never see a parole board or be paroled out of prison because there is no parole in the federal court system. Do you have any questions about that?

E. Loss of Rights [Use if Citizen]

Are you a United States citizen?

As a result of this conviction, you will also be deprived of the right to vote, to serve on a jury, to hold public office, and to possess firearms and ammunition. Do you understand the loss of rights associated with a felony conviction?

F. Supervised Release **if Citizen**

After you have served your prison sentence, you will be placed on supervised release, during which time your conduct will be monitored by a probation officer. There are a number of standard conditions of supervised release. You cannot commit any federal, state, or local crimes, nor can you possess firearms, ammunition, or illegal controlled substances. The sentencing judge could also impose additional special conditions. If you violate any of the conditions of your supervised release, the judge could revoke your supervised release, and require you to serve in prison all or part of the time you otherwise would have been on supervised release. Do you understand the requirements of supervised release?

G. Immigration Impact/Supervised Release [If not Citizen]

After you have served your prison sentence, you'll be required to serve a term of supervised release. Since you are not a U.S. citizen, it is likely that you will be deported immediately after serving your prison sentence, and a condition of your supervised release will be that you not reenter the United States while on supervised release.

If you reenter the United States while on supervised release, the judge could revoke your supervised release and require you to serve in prison all or part of the time you otherwise would have been on supervised release. This prison term would be in addition to any sentence you receive on a new charge of illegally reentering the United States.

Do you have any questions about supervised release or removal from the United States?

You should also understand that a conviction in this case may have an effect on your right to ever legally reenter the United States. Do you understand that? Is that something your attorney has discussed with you?

10. COLLATERAL CONSEQUENCES.

[If this case involves FRAUD or other intentionally deceptive practices, the judge will say the following:]

The sentencing judge could also order you to provide notice of your conviction to victims of the offense.

[If this is a SEX CRIME, the judge will say the following:]

As a result of this conviction, you will be required to register as a sex offender with the national registry of sex offenders, and you will likely be required to register as a sex offender under the laws of the state where you live. Such registration may be required of you for the rest of your life.

Do you understand that?

[If this case involves RESTITUTION, the judge will say the following:]

As a result of this conviction [and/or plea agreement], you will be required to pay restitution to any victims in this case.

Do you understand that?

[If FORFEITURE is involved, the judge will say the following:]

As a result of this conviction [and/or plea agreement], you will be required to forfeit any right, title or interest you have in the property subject to forfeiture in this case, specifically ____.

Do you stipulate and agree that there is a connection or nexus between the crime of conviction in this case and the property subject to forfeiture?

Mr./Ms. Prosecutor, what is the factual nexus for property the government seeks for forfeit?

Do you understand that there will be no trial or hearing on that matter and your rights to the property will be forfeited just as if forfeiture was determined appropriate by a jury or a judge?

Mr./Ms. Prosecutor, are there any other collateral consequences to the guilty plea of which the defendant should be made aware?

11. PSR & SENTENCING HEARING.

If you plead guilty here today, I will order a **presentence investigation**. A probation officer will conduct a thorough investigation of this case and will prepare a draft presentence report. A copy of the draft report will be sent to the lawyers.

You should go over the report carefully with your attorney. Be sure to point out any errors or omissions in the report, so he/she can let the probation officer know about them. The probation officer will then change the report to make sure it is complete and accurate.

After the report has been finalized, it will be sent to the sentencing judge and you will then have a sentencing hearing. At the sentencing hearing, the parties can present witnesses and exhibits on any sentencing issue, and you will be given a chance to talk to the judge directly to tell the judge anything you want.

Do you have any questions about the sentencing procedure?

12. RIGHT TO APPEAL.

Both you and the Government have the right to appeal the sentence to the Eighth Circuit Court of Appeals.

Do you have any questions regarding your right to appeal?

[Or if there is a WAIVER OF APPEAL]

Generally, both you and the Government have the right to appeal the sentence to the Eighth Circuit Court of Appeals. In this case, however, as part of your plea agreement you have waived your right to appeal, except under very limited circumstances as set forth in paragraph _____ of your plea agreement.

Do you understand that as part of your agreement, you are waiving your right to appeal?

13. ENSURING VOLUNTARINESS OF PLEA.

Mr./Ms. Defendant, if you plead guilty and the district court judge accepts your guilty plea, you will have no right to withdraw your guilty plea. Do you understand that?

Has anyone forced or pressured you to plead guilty, or made any promises to you to get you to plead guilty [*other than what's in the plea agreement*]?

Mr./Ms. Defense Counsel:

Do you believe a guilty plea in this case would be voluntary?

Do you know of any legal reason why the plea should not be accepted?

Do you know of anything the court has omitted which could affect the validity of the plea?

Mr./Ms. Prosecutor:

Do you know of anything the court has omitted which could affect the validity of the plea?

Mr./Ms. Defendant:

We've covered a lot of information here today and I want to make sure that you understood it, so you don't come back next week, or next month, or next year, and say you were confused or that someone forced you to plead guilty.

- Have you been able to understand everything we've talked about?
- Do you have any questions about it?
- Has anyone forced or pressured you to plead guilty?
- Is your guilty plea voluntary?

14. FORMAL PLEA

Then **FORMALLY AND FOR THE RECORD**, how do you plead to Count _____ of the Indictment/Information -- guilty or not guilty? (*Repeat for any other counts.*)

The record should reflect that the defendant has pleaded guilty to [Counts _____ of] the Indictment/Information.

15. FINDINGS.

I find that: the defendant is competent, (s)he fully understands the charge(s) against him/her; there's a factual basis for his/her plea(s); (s)he knows the [*minimum and*] maximum punishment that could be imposed on the charge(s); and (s)he knows his/her jury rights and has voluntarily waived those rights.

I further find that: the defendant's decision to plead guilty was voluntary, knowing, and not the result of any force, pressure, threats, or promises [*other than the promises made by the Government in the plea agreement*].

Therefore, I conclude the defendant should be found guilty based on his/her plea(s) of guilty.

[If FORFEITURE]

I also find that there is a requisite nexus established between the crime of conviction and the property subject to forfeiture in this case.

16. REPORT AND RECOMMENDATION.

I will sign and will file my Report and Recommendation, recommending that the district court judge accept the defendant's guilty plea. Counsel will be provided with a copy of the Report.

The parties have 14 days to file objections to the Report. If no objection is made, then the district court judge may accept my Recommendation, and the Defendant's guilty plea, by simply entering a written order doing so.

[If 14 day period was WAIVED]

Normally, the parties would have 14 days to waive any objections to my Report and Recommendation. I understand you have waived that right, is that correct? Is that your signature that appears on the written waiver?

17. PRESENTENCE INVESTIGATION REPORT.

I hereby order a presentence investigation. The parties should pay careful attention to the deadlines relating to the preparation of the report.

The court will schedule a sentencing hearing in this case for a later date.

20. DETENTION.

[The judge will take care of any detention issues and, if appropriate, remand the defendant to the custody of the U.S. Marshal.]

21. CONCLUSION

Defendant, do you have any questions about anything we've discussed today?

Is there anything else that needs to be addressed at this time?

[Mr./Ms. Prosecutor]?

[Mr./Ms. Defense Counsel]?

That concludes the hearing.