

RULE 11—GUILTY PLEA

[Ask the prosecutor if she/he has provided reasonable, accurate and timely notice of the proceeding to any victim(s) of the offense as required by the Justice for All Act of 2004. 18 U.S.C. § 3771.]

1. ARE YOU _____, THE PERSON NAMED AS A DEFENDANT IN THIS INDICTMENT?
2. HOW FAR DID YOU GO IN SCHOOL?
3. HAVE YOU RECENTLY BEEN SEEING ANY DOCTOR OR PSYCHIATRIST?
4. ARE YOU CURRENTLY TAKING ANY MEDICATION?
5. HAVE YOU USED ANY DRUG OR ALCOHOL IN THE LAST 24 HOURS?
6. **[If any medication, alcohol or drug use, inquire of both lawyers whether in their dealings with the defendant there is any cause for concern about his/her competence to do Rule 11.]**
7. DO YOU FEEL YOU UNDERSTAND WHAT IS HAPPENING IN THESE PROCEEDINGS?
8. HAS YOUR LAWYER EXPLAINED TO YOU THE CONSEQUENCES THAT MAY FLOW FROM THESE PROCEEDINGS?
9. DO YOU AUTHORIZE _____ **[name of lawyer]** TO SPEAK ON YOUR BEHALF?

10. I UNDERSTAND THAT YOU WISH TO CHANGE YOUR PLEA TO COUNTS ____ AND ____ OF THE INDICTMENT/INFORMATION. IS THAT CORRECT?
11. MR./MS. _____ [*lawyer*], DO YOU APPROVE OF THE CHANGE OF PLEA AND RECOMMEND THAT I ACCEPT IT?
12. THE CLERK MAY PROCEED.
[*Clerk obtains tender of a guilty plea*]
13. (A) EXPLAIN PURPOSE OF RULE 11 HEARING AND QUESTIONS.
(B) IF AT ANY TIME YOU DON'T UNDERSTAND ANY QUESTION I ASK YOU, DON'T TRY TO ANSWER IT. TELL ME YOU DON'T UNDERSTAND AND I WILL REPHRASE IT.
(C) IF AT ANY TIME YOU WANT TO TALK TO YOUR LAWYER, DON'T TRY TO ANSWER MY QUESTION—TELL ME YOU WANT TO TALK TO YOUR LAWYER AND I'LL PERMIT YOU TO DO SO.
14. **[*To Defendant*]** HAVE YOU PLEADED GUILTY TO THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THIS INDICTMENT/INFORMATION BECAUSE YOU ARE ACTUALLY GUILTY?
IF THE PLEA TURNS INTO AN ALFORD PLEA (400 U.S. 25), DETERMINE:
(A) WHETHER THE DEFENDANT HAS CONSIDERED ALTERNATIVE COURSES OF ACTION AND MADE VOLUNTARY AND INTELLIGENT CHOICE;
(B) WHETHER COMPETENT COUNSEL'S ADVICE IS THAT PLEA IS TO DEFENDANT'S ADVANTAGE;
(C) WHETHER DEFENDANT DEMONSTRATES CLEARLY EXPRESSED DESIRE TO PLEAD GUILTY.

SPECIFICALLY, ASK DEFENDANT:

- (i) TO EXPLAIN IN DETAIL WHY PLEADING GUILTY;
- (ii) WHAT BENEFIT HE/SHE BELIEVES WILL COME FROM PLEADING GUILTY;
- (iii) HAVE YOU CONSULTED WITH YOUR LAWYER IN DETAIL ON THIS SUBJECT AND ARE YOU SATISFIED WITH HIS/HER ADVICE?

15. **[To Lawyer]** ARE YOU SATISFIED THAT _____ **[defendant]** HAS PLEADED GUILTY BECAUSE HE/SHE IS ACTUALLY GUILTY?

16. **[To Defendant]** HAVE YOU RECEIVED A COPY OF THE INDICTMENT/INFORMATION?

17. HAVE YOU HAD ENOUGH TIME TO DISCUSS THE CHARGE[S] WITH YOUR LAWYER?

18. HAVE YOUR LAWYER EXPLAINED TO YOU:
(A) THE ELEMENTS AND NATURE OF THE OFFENSES CHARGED?
(B) THE PENALTIES THAT CAN BE IMPOSED?

19. **[To Lawyer]** ARE YOU SATISFIED THAT _____ **[defendant]** UNDERSTANDS THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THE INDICTMENT/INFORMATION AND THE PENALTIES THAT CAN BE IMPOSED?

20. **[To Defendant]** YOU ARE CHARGED IN AN INDICTMENT/INFORMATION CONTAINING ____ COUNTS:

[Set out brief description of offenses]

21. DO YOU UNDERSTAND THESE CHARGES?
22. BY PLEADING GUILTY TO THESE CRIMES, YOU MUST PAY A MANDATORY ASSESSMENT OF \$100 ON EACH OF THESE COUNTS ON WHICH YOU ARE CONVICTED FOR A TOTAL OF \$_____. YOU ARE ALSO SUBJECT TO PUNISHMENT OF TOTAL FINES OF UP TO \$_____ AND IMPRISONMENT FOR A TOTAL OF UP TO _____ YEARS [**maximum and minimum—see drug minimums attached**] AND SUPERVISED RELEASE OF UP TO _____ YEARS [**maximum and minimum**] TO FOLLOW ANY TERM OF IMPRISONMENT. IF YOU VIOLATE THE TERMS OF THAT SUPERVISED RELEASE, YOU COULD RECEIVE AN ADDITIONAL PRISON TERM OF _____ YEARS. [**If applicable**] YOU MAY ALSO BE REQUIRED BY COURT ORDER TO MAKE FULL RESTITUTION TO ANY VICTIM OF THE OFFENSE. [**If applicable**] YOU MAY ALSO BE REQUIRED TO FORFEIT CERTAIN PROPERTY TO THE GOVERNMENT.

[In appropriate cases] YOU MAY ALSO BE DEPORTED FROM THIS COUNTRY.

23. [**Warning for drug cases where government charges an offense and the Court is concerned that it may ultimately turn out to be an (A) or the government charges (C) and the Court is concerned it may be an (A) or (B)**]

21:841(b)(1)(B)	At Least 5 years Marijuana Cocaine Cocaine Base Heroin	<i>If</i>	Court finds a quantity of at least 100 kilograms or 100 plants 500 grams 5 grams 100 grams	<i>Plus</i> Supervised Release at least 4 years
21:841(b)(1)(A)	At least 10 years Marijuana Cocaine Cocaine Base Heroin	<i>If</i>	Court finds a quantity of at least 1,000 kilograms or 1,000 plants 5 kilograms 50 grams 1 kilogram	<i>Plus</i> Supervised Release at least 5 years

A SENTENCING FLOOR MAY ALSO BE APPLICABLE IN THIS CASE. THAT DETERMINATION WILL BE BASED ON THE QUANTITY OF DRUGS FOR WHICH YOU ARE ULTIMATELY FOUND RESPONSIBLE. IF THE DRUG QUANTITY IS DETERMINED TO BE _____, THE LOWEST SENTENCE PERMITTED WILL BE _____ YEARS, ETC.

24. DO YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO CONTINUE TO PLEAD NOT GUILTY?
25. YOU HAVE THE RIGHT TO A TRIAL BY JURY, THE RIGHT TO THE ASSISTANCE OF YOUR LAWYER AT SUCH A TRIAL AND, IF YOU CANNOT AFFORD A LAWYER, YOU HAVE THE RIGHT TO HAVE A LAWYER APPOINTED FOR YOU AT GOVERNMENT EXPENSE. DO YOU UNDERSTAND?
26. AT A TRIAL, YOU WOULD NOT HAVE TO PROVE THAT YOU ARE INNOCENT. YOU WOULD BE PRESUMED INNOCENT. THE GOVERNMENT WOULD HAVE TO PROVE YOU GUILTY BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND?
27. AT A TRIAL THE GOVERNMENT'S WITNESSES WOULD HAVE TO COME INTO OPEN COURT AND TESTIFY IN FRONT OF YOU AND YOUR LAWYER. YOUR LAWYER WOULD HAVE THE OPPORTUNITY TO CROSS-EXAMINE ANY GOVERNMENT WITNESSES, OBJECT TO EVIDENCE THE GOVERNMENT OFFERED, TO OFFER EVIDENCE IN YOUR BEHALF, AND TO COMPEL WITNESSES TO COME TO COURT. DO YOU UNDERSTAND?
28. YOU WOULD HAVE THE RIGHT TO TESTIFY AT TRIAL IF YOU WANTED TO, BUT YOU WOULD ALSO HAVE THE RIGHT NOT TO TESTIFY AND YOU COULD NOT BE REQUIRED TO TESTIFY AT TRIAL. IF YOU CHOSE NOT TO TESTIFY, I WOULD INSTRUCT THE JURY THAT THEY COULD DRAW NO INFERENCE OR

SUGGESTION OF GUILT FROM THE FACT THAT YOU DID NOT TESTIFY. DO YOU UNDERSTAND?

29. IF I ACCEPT YOUR GUILTY PLEA, YOU WILL HAVE GIVEN UP YOUR RIGHT TO A TRIAL AND THE OTHER RIGHTS I HAVE JUST DESCRIBED TO YOU AND THERE WILL BE NO TRIAL OF ANY KIND ON THIS INDICTMENT/ INFORMATION. DO YOU UNDERSTAND?
30. I WILL PROCEED TO ENTER A JUDGMENT OF GUILTY AND SENTENCE YOU ON THE BASIS OF YOUR GUILTY PLEA AND IF ALL OF THAT HAPPENS, YOU WILL HAVE VIRTUALLY NO RIGHT OF APPEAL FROM YOUR CONVICTION. DO YOU UNDERSTAND?
31. BY PLEADING GUILTY, YOU ALSO GIVE UP YOUR RIGHT NOT TO INCRIMINATE YOURSELF, AT LEAST TO THE EXTENT OF THE QUESTIONS I ASK YOU TODAY ABOUT YOUR CONDUCT THAT GAVE RISE TO THESE CHARGES. YOU MUST ANSWER MY QUESTIONS TRUTHFULLY, AND I WILL TAKE YOUR ANSWERS AS TRUE AND ACT ACCORDINGLY. DO YOU UNDERSTAND?
32. IN LIGHT OF ALL THAT I HAVE JUST EXPLAINED TO YOU, DO YOU STILL CHOOSE TO PLEAD GUILTY TO THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THE INDICTMENT/INFORMATION?
33. **[To U.S. Attorney]** MR./MS. _____, PLEASE INFORM ME WHAT EVIDENCE THE GOVERNMENT WOULD PRODUCE IF THIS MATTER SHOULD GO TO TRIAL.

[Listen to entire recital of evidence or, in the alternative, admit written prosecution version and do inquiry]

34. **[To Lawyer]** MR./MS. _____, ARE YOU SATISFIED THAT THE GOVERNMENT CAN IN FACT PRODUCE THE EVIDENCE JUST INDICATED BY THE UNITED STATES ATTORNEY?

ARE YOU SATISFIED THAT THE ADMISSIBLE PART OF THAT EVIDENCE WOULD PERMIT A PROPERLY INSTRUCTED JURY TO DETERMINE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF [EACH OF] THE CRIME[S] TO WHICH HE/SHE IS PLEADING GUILTY?

35. **[To Defendant]** HAVE YOU HEARD THE PROSECUTOR DESCRIBE THE EVIDENCE HE/SHE WOULD PRODUCE IF THIS MATTER SHOULD PROCEED TO TRIAL?

36. IS THERE ANY RESPECT IN WHICH YOU DISAGREE WITH WHAT HE/SHE HAS SAID?

37. IS THE INFORMATION TRUE TO YOUR OWN PERSONAL KNOWLEDGE?

[If not satisfied with the status of the factual basis of the plea, inquire of the defendant as to the essential details of the crimes to which a plea is entered]

[FINDING OF A FACTUAL BASIS FOR THE GUILTY PLEAS TO THE CRIMES CHARGED IN EACH OF COUNTS ____ AND ____ OF THE INDICTMENT/ INFORMATION.]

IF ALFORD PLEA, REQUIRE STRONG EVIDENCE OF ACTUAL GUILT.

38. HAS ANYONE THREATENED YOU OR HAS ANYONE ATTEMPTED TO FORCE YOU OR GET YOU IN ANY WAY TO PLEAD GUILTY?

IF ALFORD PLEA, HAS DEFENDANT MADE INTELLIGENT CONCLUSION THAT DEFENDANT'S INTERESTS REQUIRE GUILTY PLEA?

39. DO YOU HAVE ANY PLEA AGREEMENT, WRITTEN OR VERBAL, WITH THE PROSECUTION OR ANY AGREEMENT ABOUT THE SENTENCE OR ABOUT OTHER CHARGES? IF NO AGREEMENT, GO TO QUESTION #41.
40. IN EXAMINING THE WRITTEN PLEA AGREEMENT:
- (A) IS THAT YOUR SIGNATURE ON PAGE ____?
 - (B) DID YOU SIGN IT VOLUNTARILY?
 - (C) DID YOU READ IT BEFORE YOU SIGNED IT?
 - (D) DID YOU UNDERSTAND EVERYTHING IN IT BEFORE YOU SIGNED IT?
 - (E) IN SIGNING IT, DID YOU INTEND TO AGREE TO ALL ITS TERMS AND CONDITIONS?

IF WAIVER OF RIGHT TO APPEAL OR § 2255, OR IF FORFEITURE PROVISION, EXAMINE ON THOSE PARTICULAR ASPECTS. FOR EXAMPLE,

“ORDINARILY YOU WOULD HAVE THE RIGHT TO APPEAL THE SENTENCE OR THE SENTENCING PROCEDURES OR ANY ERROR THAT I MIGHT MAKE IN THESE GUILTY PLEA PROCEEDINGS BY TAKING THE CASE TO A HIGHER COURT, BUT YOU ARE AGREEING HERE NOT TO TAKE ANY SUCH APPEAL TO A HIGHER COURT. IN OTHER WORDS, I AM THE LAST JUDGE IN YOUR CASE AND YOU ARE AGREEING THAT YOU WILL NOT BE ABLE TO OVERTURN WHAT I DO. DO YOU UNDERSTAND?”

41. (A) **[If an 11(e)(1)(B) agreement]** DO YOU UNDERSTAND THAT SO FAR AS SENTENCING IS CONCERNED, THIS PLEA AGREEMENT PERMITS YOU, YOUR LAWYER AND THE PROSECUTOR TO MAKE RECOMMENDATIONS ON SENTENCING, BUT THAT THE AUTHORITY TO DETERMINE THE APPROPRIATE SENTENCE IN THIS CASE RESTS WITH ME AS THE JUDGE IN THIS COURT, AND IF I DO NOT ACCEPT THOSE RECOMMENDATIONS, YOU WILL HAVE NO RIGHT TO WITHDRAW YOUR GUILTY PLEA?

(B) ***[If an 11(e)(1)(A) or (C) agreement, detail the specific agreement re dismissal of counts (A) or sentence limitations (C) and inform the defendant that if the judge does not ultimately accept those provisions, he/she will have the opportunity to withdraw the plea.]***

42. THERE ARE ADVISORY SENTENCING COMMISSION GUIDELINES THAT WILL HAVE AN IMPACT ON YOUR SENTENCE. I HAVE AN OBLIGATION TO CALCULATE THE GUIDELINE RANGE, TO CONSIDER THAT RANGE, TO CONSIDER POSSIBLE DEPARTURES UNDER THE GUIDELINES, AND TO CONSIDER OTHER FACTORS LISTED IN A FEDERAL STATUTE, 18 U.S.C. § 3553(a). HAVE YOU AND YOUR LAWYER TALKED ABOUT HOW THESE VARIOUS ISSUES MAY AFFECT YOUR SENTENCE?

43. I CAN'T DETERMINE WHAT SENTENCE THE ADVISORY GUIDELINES PRODUCE UNTIL AFTER I READ A PRESENTENCE REPORT THE PROBATION OFFICE WILL PREPARE, AND UNTIL I HAVE GIVEN YOUR LAWYER AND THE PROSECUTOR AN OPPORTUNITY TO CHALLENGE THE FACTS THE PROBATION OFFICE REPORTS. AFTER I DETERMINE WHAT GUIDELINE DOES APPLY TO YOUR CASE, THERE STILL MAY BE CIRCUMSTANCES WHERE I DO NOT FOLLOW THE ADVISORY GUIDELINE, BUT INSTEAD IMPOSE A SENTENCE THAT IS MORE SEVERE OR LESS SEVERE THAN THE SENTENCE CALLED FOR BY THE ADVISORY GUIDELINE. DO YOU UNDERSTAND?

44. YOU AND THE GOVERNMENT WILL HAVE THE RIGHT TO APPEAL ANY SENTENCE THAT I IMPOSE. **[UNLESS PLEA AGREEMENT LIMITS]**

45. YOU WILL BE REQUIRED TO ACTUALLY SERVE IN A JAIL OR PRISON ALL OF ANY IMPRISONMENT TERM I IMPOSE EXCEPT FOR GOOD-TIME

DEDUCTIONS AND YOU WILL NOT BE PERMITTED TO SERVE ANY PART OF IT ON PAROLE. DO YOU UNDERSTAND?

46. ASIDE FROM THE WRITTEN PLEA AGREEMENT, HAS ANYONE MADE ANY PROMISE TO YOU IN AN EFFORT TO GET YOU TO PLEAD GUILTY?
47. HAS ANYONE MADE ANY PROMISE TO YOU AS TO WHAT KIND OF SENTENCE I WILL IMPOSE?
48. HAS ANYONE MADE ANY PROMISE TO YOU AS TO WHAT THE PROSECUTOR'S SENTENCING RECOMMENDATION WILL BE?
49. I ASK YOU FINALLY, THEN, DO YOU STILL WISH TO PLEAD GUILTY TO THE CHARGES CONTAINED IN COUNTS ___ AND ___ OF THE INDICTMENT/ INFORMATION?
50. **[To Lawyer]** DO YOU, AS _____'S LAWYER, STILL RECOMMEND THAT I ACCEPT THE GUILTY PLEA?
51. **[To Defendant]** MR./MS. _____, I HAVE OBSERVED YOU, YOUR DEMEANOR AND ATTITUDE THROUGHOUT THESE PROCEEDINGS AND CONCLUDE THAT YOU DO NOT APPEAR TO BE UNDER THE INFLUENCE OF ANY SUBSTANCE THAT MIGHT AFFECT YOUR JUDGMENT. SINCE YOU ACKNOWLEDGE THAT YOU ARE IN FACT GUILTY AS CHARGED IN COUNTS ___ AND ___ OF THE INDICTMENT/INFORMATION, AND SINCE I FIND THAT YOU KNOW OF YOUR RIGHT TO A TRIAL AND THE RIGHTS ASSOCIATED WITH THE RIGHT TO A TRIAL, AND SINCE I FURTHER FIND THAT YOU KNOW THE MAXIMUM POSSIBLE PUNISHMENT [AND MINIMUM, *if applicable*] THAT MAY BE IMPOSED IF YOU ARE CONVICTED, AND SINCE I FIND THAT YOU HAVE NOT BEEN COERCED BUT THAT YOU HAVE VOLUNTARILY AND

KNOWINGLY PLEADED GUILTY TO COUNTS ____ AND ____ OF THIS INDICTMENT/INFORMATION, I NOW ACCEPT YOUR GUILTY PLEA AS TENDERED.

52. ***[If an 11(c)(1)(A) or (C) agreement]*** I WILL RESERVE DECISION ON ACCEPTANCE OF THE PLEA AGREEMENT UNTIL I HAVE REVIEWED THE PRESENTENCE REPORT.

53. I HEREBY ORDER THE PREPARATION OF THE CUSTOMARY PRESENTENCE REPORT.

[Counsel to arrange]

54. ***[Resolve detention status; direct defendant to check with Probation re beginning presentence investigation; and to check with Marshal for processing if not already done]***

(4/26/10)