

INITIAL APPEARANCE
Complaint, Information, or Indictment

[**NOTE:** Under the Crime Victims’ Rights Act, 18 U.S.C. § 3771(a)(2) and (3), any victim of the offense has the right to notice of “any public court proceeding . . . involving the crime . . . of the accused,” and to attend that proceeding. It may be advisable to ask the prosecutor if there are any victims and, if so, whether the government has fulfilled its duty to notify them.]

1. **[Announce case]**
2. **[To AUSA]** For speedy trial purposes, please tell me when the defendant was arrested or entered federal custody.
3. **[To Defense Counsel]** Do you agree?
4. Have you received a copy of the [complaint/information/indictment], and have you reviewed it with the defendant?
5. **[To Defendant]** [Would you please stand.] You are in court at this time for what is called an initial appearance. The purpose of an initial appearance is to (1) inform you of the charges against you, (2) explain your rights, and (3) explain the conditions under which you may be entitled to pretrial release.
 - a. **[If complaint]** It is not the purpose of today’s hearing to take a plea from you or determine your guilt or innocence.
 - b. **[If information/indictment, note upcoming arraignment (typically combined with initial appearance)]**
6. You have been charged via [complaint/information/indictment] with _____.

- a. ***[If complaint]*** An affidavit of _____ (name and position) has been filed with the complaint which [summarize contents of affidavit].

- 7. The maximum possible penalty provided by law is _____ [and the mandatory minimum penalty is _____].

- 8. You have the right to remain silent. You do not have to make any statement, and, if you do, that statement may be used against you in court. If you have already made a statement, you need say no more; if you start to make a statement, you may stop at any time. Do you understand?

- 9. You have a right to be represented by an attorney at every stage of these proceedings. You have the right to employ an attorney of your choosing at any time. If you cannot afford an attorney, I will appoint an attorney to represent you at no cost to you. Do you understand?

a. ***[If the defendant requires appointment counsel]***¹

- i. Can you afford to hire a lawyer?

- ii. Have you conferred with Attorney _____ regarding this matter?

- iii. Are you requesting that I appoint Attorney _____ to represent you for all purposes of in this matter?

- iv. I have the financial declaration you filled out.
 - 1. Can you confirm that you signed this declaration?

 - 2. Do you swear to the truth of the information in this declaration?

¹ It was Judge Rich's practice to confirm the affidavit and appointment of counsel even if he had already reviewed the affidavit and appointed counsel prior to the hearing.

v. ***[NOTE: If the defendant has not filled out a financial affidavit, the attorney can be provisionally appointed pending the completion of the affidavit]***

vi. I find that you are eligible for court-appointed counsel and I appoint Attorney _____ to represent you. Thank you, Attorney _____ for accepting this appointment.

b. ***[If the defendant is represented by his/her own counsel]***

i. Have you retained Attorney _____ as your attorney in this matter?

ii. Do you authorize Attorney _____ to act and speak on your behalf in this matter?

c. ***[If the defendant opts to represent himself/herself, refer to the Self Representation Colloquy Addendum at the end of this document]***

10. I must also advise you that if you are not a United States citizen, you may request that an attorney for the government or a federal law enforcement official notify a consular officer from your country of nationality of the charge(s) against you. Even without your request, a treaty or other international agreement may require such notification.

11. ***[If no indictment/information has been filed]*** You have a right to a preliminary hearing to determine whether probable cause exists to believe that you have committed the charged offense(s). At that hearing, the government would have the burden of proof.

a. If an indictment is returned against you by the grand jury or a criminal information is filed before a preliminary hearing is held, you will no longer have the right to such a hearing.

b. You may waive your right to a preliminary hearing. If you elect to do so, a hearing will not be held and you will be deemed to have agreed to the existence of probable cause. This is a matter that you should discuss with Attorney _____, so I won't ask you to state your position on waiver right now.

i. ***[If the defendant is prepared to waive the preliminary hearing immediately]***

1. Have you had adequate time to consult with Attorney _____ about waiving your right to a preliminary hearing?

2. Has Attorney _____ answered all your questions about waiving your right to a preliminary hearing?

3. Is anyone or anything pressuring you to give up your right to a preliminary hearing against your will?

4. ***[Have the defendant sign waiver form]***

5. I am satisfied that your waiver of a preliminary hearing is knowing, intelligent, and voluntary, and I therefore accept your written waiver.

12. I will now explain to you the general circumstances under which you may be entitled to pretrial release.

a. You are entitled to be released prior to trial on your personal recognizance, that is, on your promise to appear in this court whenever ordered to do so, or upon your execution of an [unsecured/secured] appearance bond in an amount determined by the court, subject in either case to the condition that you not commit any federal, state, or local crime during the period of your release.

- b. If the court determines, however, that release on either of these bases will not reasonably assure your appearance as required and the safety of any other person or the community, you will not be entitled to be so released. You will be entitled to pretrial release on such further condition, or combination of conditions, that the court determines is the least restrictive as will reasonably assure your appearance as required and the safety of other persons and the community.
 - c. You have a right to a hearing. Only if, after a hearing, the court determines that there is no condition or combination of conditions that will reasonably satisfy those things will you not be entitled to pretrial release. And, even then, you would have the right under federal law to come back to court and for a reopened hearing based on a change in circumstances.
13. ***[Review motion for detention; if the Government requests a three-day continuance of the detention hearing, that request is usually granted]***
14. ***[To AUSA]*** Finally, pursuant to the Due Process Protection Act and Rule 5(f) of the Federal Rules of Criminal Procedure, the United States is reminded of its obligation to disclose in a timely manner all exculpatory evidence to the defendant, that is, all evidence that is favorable to the defendant or tends to cast doubt on the United States' case, as required by the U.S. Supreme Court's decision in *Brady v. Maryland* and its progeny. Failure to do so may result in consequences, including, but not limited to, the reversal of any conviction, the exclusion of evidence, adverse jury instructions, dismissal of charges, contempt proceedings, disciplinary action, and/or sanctions by the Court. I will follow up with a written order.
15. ***[Schedule probable cause/detention hearing as necessary]***

SELF-REPRESENTATION COLLOQUY ADDENDUM

[**NOTE:** This colloquy is adapted from the Federal Judicial Center's *Benchbook for U.S. District Court Judges* § 1.02(C) (4th ed. 2013)]

1. **[To Defendant]** You have a constitutional right to represent yourself. I must, however, ask you some questions to make sure that in waiving counsel you fully understand the hazards and disadvantages of self-representation.
 - a. Have you ever studied law?
 - b. Have you ever represented yourself in a criminal action?
 - c. Do you understand that you have been charged with _____?
 - d. Do you understand that the maximum possible penalty is _____ [and the minimum possible penalty is _____]?
 - e. **[If applicable]** Do you understand that if you are found guilty of more than one of these crimes, the court can order that the sentences be served consecutively—one after the other?
 - f. Do you understand that the United States Sentencing Commission has issued sentencing guidelines that will affect your sentence if you are found guilty?
 - g. Do you understand that if you represent yourself that the court cannot tell you or advise you how to try your case?
 - h. Are you familiar with the Federal Rules of Evidence?
 - i. Do you understand that the Federal Rules of Evidence govern what evidence may or may not be introduced at trial and, in representing yourself, you must abide by those very technical rules, and they will not be relaxed for your benefit?

- j. Are you familiar with the Federal Rules of Criminal Procedure?
 - k. Do you understand that the Federal Rules of Criminal Procedure govern the way in which a criminal action is tried in federal court, that you are bound by those rules, and that they will not be relaxed for your benefit?
2. I must advise you that it is my opinion that a trained lawyer would defend you much better than you could defend yourself. I think it is unwise of you to try to represent yourself because you are unfamiliar with the law, court procedure, and the rules of evidence. I strongly urge you not to try to represent yourself.
 3. Now, in light of the penalty you may suffer if you are found guilty and in light of the difficulties of representing yourself, do you still desire to represent yourself and to give up your right to be represented by a lawyer?
 4. Is your decision entirely voluntary on your part?
 5. I find that you have knowingly and voluntarily waived your right to counsel. I will therefore permit you to represent yourself. Nevertheless, I will appoint Attorney _____ as standby counsel to assist you and step in if the court determines that you can no longer represent yourself.