

**RULE 11 -- CHANGE OF PLEA
(12-5-13)**

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 MEDICATIONS?

WHAT IS THE DRUG?

QUANTITY?

HOW RECENTLY TAKEN?

PURPOSE & EFFECTS?

5. HAVE YOU USED ANY DRUG OR ALCOHOL IN THE LAST 24 HOURS?

6. DO YOU FEEL YOU UNDERSTAND WHAT IS HAPPENING IN THESE PROCEEDINGS?

7. [IF ANY MEDICATION, ALCOHOL OR DRUG USE, INQUIRE OF BOTH LAWYERS WHETHER THEIR DEALINGS WITH DEFENDANT THERE IS ANY CAUSE FOR CONCERN ABOUT HIS/HER COMPETENCE TO DO RULE 11.]

THE COURT, HAVING OBSERVED THE DEFENDANT IN MAKING HIS ANSWERS AND HIS Demeanor AND Manner AND HIS ATTITUDE, AND THE COURT HAVING OBSERVED THE DEFENDANT DOES NOT APPEAR TO BE UNDER THE INFLUENCE OF MEDICINE, DRUGS OR OTHER SUBSTANCE THAT MAY AFFECT HIS/HER JUDGMENT IN THE MATTER, I FIND THE DEFENDANT IS COMPETENT TO ENTER A PLEA.

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 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 guilty plea]

13. (A) A PURPOSE OF THIS PROCEEDING IS THAT I NEED TO BE CONFIDENT THAT YOUR PLEA IS KNOWING AND VOLUNTARY.
- (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?

OPTION: 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.

ALFORD: 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. HAS 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

1. YOU ARE SUBJECT TO IMPRISONMENT FOR A TOTAL OF _____ YEAR(S) (WITH A MINIMUM IMPRISONMENT OF _____ YEAR(S)).

2. YOU ARE ALSO SUBJECT TO TOTAL FINES OF UP TO \$_____.

3. FOLLOWING ANY TERM OF IMPRISONMENT, YOU ARE SUBJECT TO SUPERVISED RELEASE OF UP TO _____ YEARS (WITH A MINIMUM OF _____ YEARS). IF YOU VIOLATE THE TERMS OF THAT SUPERVISED RELEASE YOU COULD RECEIVE AN ADDITIONAL PRISON TERM OF _____ YEARS.

4. YOU MUST ALSO PAY A MANDATORY ASSESSMENT OF \$100 ON EACH COUNT ON WHICH YOU ARE CONVICTED, FOR A TOTAL OF \$_____.

OPTION: YOU MAY ALSO BE REQUIRED BY COURT ORDER TO MAKE FULL RESTITUTION TO ANY VICTIM OF THE OFFENSE. [AND,

IF APPLICABLE, YOU MAY ALSO BE REQUIRED TO FORFEIT CERTAIN PROPERTY TO THE GOVERNMENT.]

22A. IF YOU ARE NOT A U.S. CITIZEN, YOU MAY BE REMOVED FROM THE UNITED STATES, DENIED CITIZENSHIP, AND DENIED ADMISSION TO THE U.S. IN THE FUTURE. DO YOU UNDERSTAND?

23. DO YOU UNDERSTAND THAT YOU HAVE THE RIGHT TO CONTINUE TO PLEAD NOT GUILTY?

24. 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?

25. AT TRIAL, YOU WOULD BE PRESUMED INNOCENT AND THE GOVERNMENT WOULD HAVE THE BURDEN OF PROVING YOU GUILTY BEYOND A REASONABLE DOUBT AND YOU WOULD NOT HAVE THE BURDEN OF PROVING THAT YOU ARE NOT GUILTY. DO YOU UNDERSTAND?

26. 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, AND OFFER EVIDENCE IN YOUR HALF. YOUR COUNSEL WOULD ALSO HAVE THE RIGHT TO COMPEL THE ATTENDANCE OF WITNESSES AT TRIAL. DO YOU UNDERSTAND?

27. 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 GUILTY FROM THE FACT THAT YOU DID NOT TESTIFY. DO YOU UNDERSTAND?
28. 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?
29. IF I PROCEED TO ENTER A JUDGMENT OF GUILTY AND SENTENCE YOU ON THE BASIS OF YOUR GUILTY PLEA AND IF ALL THAT HAPPENS, EXCEPT FOR VERY LIMITED CIRCUMSTANCES, YOU WILL HAVE NO RIGHT OF APPEAL FROM YOUR CONVICTION. DO YOU UNDERSTAND?
30. AS PART OF YOUR PLEADING GUILTY I MUST FIND THAT THERE IS A FACTUAL BASIS FOR YOUR GUILTY PLEA. TO ASSURE MYSELF THAT THERE IS SUCH A FACTUAL BASIS, I WILL BE ASKING YOU QUESTIONS ABOUT THE CONDUCT THAT GAVE RISE TO THESE CHARGES, AND YOU MUST ANSWER MY QUESTIONS TRUTHFULLY. DO YOU UNDERSTAND?
31. 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?

32. **[To U.S. Attorney]** MR./MS. _____, PLEASE INFORM ME WHAT EVIDENCE THE GOVERNMENT WOULD PRODUCE IF THIS MATTER SHOULD GO TO TRIAL

PROSECUTION VERSION

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

33. **[To Defense Attorney]** 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?

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

[READ PROSECUTION VERSION]

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

36. 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.]

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

OPTION: IF ALFORD PLEA, REQUIRE STRONG EVIDENCE OF ACTUAL GUILTY.

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

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

38A. *TO PROSECUTOR:* HAS YOUR OFFICE EXTENDED ANY FORMAL PLEA OFFERS TO THE DEFENSE? IF SO, PLEASE IDENTIFY THE DATES THEY WERE MADE.

TO DEFENSE LAWYER: HAVE YOU COMMUNICATED THOSE FORMAL OFFERS TO YOUR CLIENT?

TO DEFENDANT: DO YOU AGREE YOU RECEIVED NOTICE OF THOSE OFFERS? WERE THEY EXPLAINED TO YOU?

38B. DOES YOUR WILLINGNESS TO PLEAD GUILTY RESULT FROM YOUR DISCUSSIONS BETWEEN YOU AND YOUR LAWYER AND THE GOVERNMENT? (IF NO AGREEMENT, GO TO QUESTION #40.)

39. 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?

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

- A. [**To Defendant**] YOUR PLEA AGREEMENT CONTAINS A PROVISION BY WHICH YOU WAIVE THE RIGHT TO APPEAL THE SENTENCE I IMPOSE. HAVE YOU READ THIS PORTION OF YOUR PLEA AGREEMENT? DO YOU UNDERSTAND IT?

- B. ARE YOU AWARE THAT YOU NORMALLY WOULD HAVE A RIGHT TO APPEAL TO A HIGHER COURT ANY SENTENCE I IMPOSE, BUT THAT BY THIS AGREEMENT, YOU ARE WAIVING THAT RIGHT OF APPEAL?

C. I WANT YOU TO UNDERSTAND THAT I CAN IMPOSE A WIDE RANGE OF POSSIBLE SENTENCES AND IF YOU DID NOT WAIVE THIS RIGHT TO APPEAL YOU WOULD HAVE THE RIGHT TO HAVE ANOTHER COURT REVIEW MY DECISION ON SENTENCE. BECAUSE YOU ARE WAIVING THAT RIGHT TO APPEAL, EXCEPT FOR THE MOST LIMITED CIRCUMSTANCE, I WILL MAKE THE FINAL DECISION REGARDING SENTENCE. DO YOU UNDERSTAND ALL OF THIS?

OPTION:

D. I MUST REMIND YOU THAT DESPITE YOUR AGREEMENT WITH THE GOVERNMENT, I, AS THE JUDGE, HAVE THE AUTHORITY TO LESSEN OR INCREASE YOUR SENTENCE. IN THE EVENT THAT I IMPOSE A SENTENCE DIFFERENT FROM THE ONE RECOMMENDED IN YOUR PLEA AGREEMENT, AND EXCEPT IN VERY **NARROW** AND **RARE** INSTANCES, YOU ARE AGREEING NOT TO APPEAL THE SENTENCE EVEN THOUGH IT IS DIFFERENT FROM THE ONE IN YOUR PLEA AGREEMENT. DO YOU UNDERSTAND THIS?

E. [**To Counsel**] ARE YOU CONFIDENT THAT YOUR CLIENT FULLY UNDERSTANDS THE RIGHT TO APPEAL THAT HE/SHE IS WAIVING AND IS WAIVING THIS RIGHT KNOWINGLY AND VOLUNTARILY?

F. **[To U.S. Attorney]** ARE YOU SATISFIED THAT THE DEFENDANT UNDERSTANDS THE WAIVER OF APPEALS PROVISION AND IS WAIVING HIS/HER RIGHT AFTER DUE CONSIDERATION?

40. **[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 REGARDING 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?

[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.]

41. THE SENTENCING COMMISSION'S ADVISORY GUIDELINES WILL BE CONSIDERED BY ME IN DETERMINING YOUR SENTENCE. I HAVE AN OBLIGATION TO CALCULATE THE APPLICABLE SENTENCING GUIDELINE RANGE AND TO CONSIDER THAT RANGE, POSSIBLE DEPARTURES UNDER THE GUIDELINES, AS WELL AS OTHER FACTORS UNDER 18 U.S.C. § 3553(a). HAVE YOU AND YOUR LAWYER TALKED ABOUT HOW THESE ISSUES MAY AFFECT YOUR SENTENCE?

42. I CAN'T DETERMINE THE ADVISORY GUIDELINE SENTENCE UNTIL AFTER I HAVE 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 ADVISORY GUIDELINE DOES APPLY TO YOUR CASE, I STILL HAVE THE AUTHORITY TO IMPOSE A SENTENCE THAT IS MORE SEVERE OR LESS SEVERE THAN THE SENTENCE SET FORTH IN THE APPLICABLE GUIDELINE. DO YOU UNDERSTAND?

AND YOU STILL WILL NOT BE PERMITTED TO WITHDRAW YOUR PLEA. DO YOU UNDERSTAND?

43. YOU AND THE GOVERNMENT WILL HAVE THE RIGHT TO APPEAL ANY SENTENCE THAT I IMPOSE.

44. IF A TERM OF IMPRISONMENT IS IMPOSED, YOU WILL BE REQUIRED TO ACTUALLY SERVE IN A JAIL OR PRISON ALL OF THE IMPRISONMENT TERM, EXCEPT GOOD-TIME DEDUCTIONS AND YOU WILL NOT BE PERMITTED TO SERVE ANY PART OF IT ON PAROLE. DO YOU UNDERSTAND?

45. ASIDE FROM THE WRITTEN PLEA AGREEMENT, HAS ANYONE MADE ANY PROMISE TO YOU IN AN EFFORT TO GET YOU TO PLEAD GUILTY?

46. HAS ANYONE MADE ANY PROMISE TO YOU AS TO WHAT KIND OF SENTENCE I WILL IMPOSE?
47. HAS ANYONE MADE ANY PROMISE TO YOU AS TO WHAT THE PROSECUTOR'S RECOMMENDATION WILL BE?
48. I ASK YOU FINALLY, THEN, DO YOU STILL WISH TO PLEAD GUILTY TO THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THE INDICTMENT/INFORMATION?
49. **[to Lawyer]** DO YOU, AS _____'S LAWYER, STILL RECOMMEND THAT I ACCEPT THE GUILTY PLEA?
50. **[to Defendant]** MR./MS. _____, SINCE YOU ACKNOWLEDGE THAT YOU ARE IN FACT GUILTY AS CHARGED IN COUNTS ____ AND ____ OF THE INDICTMENT/INFORMATION, AND SINCE I FIND THERE IS A FACTUAL BASIS FOR THE PLEA, AND SINCE I FIND, BASED ON YOUR RESPONSES TO MY QUESTIONS AND MY DIRECT OBSERVATIONS, THAT YOU ARE COMPETENT TO ENTER A PLEA, 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 TENDERED A PLEA OF GUILTY TO COUNTS ____ AND ____ OF THIS INDICTMENT/INFORMATION, I NOW ACCEPT YOUR GUILTY PLEA AS TENDERED.

Option: I WILL RESERVE DECISION ON ACCEPTANCE OF THE PLEA AGREEMENT UNTIL I HAVE REVIEWED THE PRESENTENCE INVESTIGATION REPORT.

51. I HEREBY ORDER THE PREPARATION OF THE CUSTOMARY PRESENTENCE INVESTIGATION REPORT.

52. MADAM CLERK, PLEASE PROVIDE TO MR./MS. _____ (DEFENSE COUNSEL) A COPY OF THE COURT'S STANDING ORDER AND PROCEDURE IN GUIDELINE SENTENCING CASES. IF YOU ARE NOT FAMILIAR WITH ITS CONTENTS, I ASK THAT YOU REVIEW IT PROMPTLY SO THAT WHATEVER IS REQUIRED OF DEFENSE COUNSEL TO PREPARE FOR IMPOSITION OF SENTENCE CAN BE DONE WITHOUT UNNECESSARY DELAY.

53. **RESOLVE DETENTION STATUS AND TAKE APPROPRIATE ACTION.**

[THE DEFENDANT IS REMANDED HEREWITH INTO THE CUSTODY OF THE UNITED STATES MARSHAL FOR THE DISTRICT OF MAINE. HE IS TO BE RETAINED IN THAT CUSTODY PENDING FURTHER ORDER OF THIS COURT.]

54. THE COURT WILL BE IN RECESS. THE DEFENDANT WILL BE IN THE CUSTODY OF THE OFFICERS.

Option: THE DEFENDANT IS RELEASED ON BAIL (WARN OF BAIL-JUMPING OFFENSE.)

