

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
DIVISION**

UNITED STATES OF AMERICA,]	
]	
Plaintiff,]	
]	
vs.]	No.
]	
]	
Defendant.]	

Guilty Plea Advice of Rights Certification

A. Instructions. Prior to the offer of a plea of guilty, counsel for the defendant **shall** personally discuss, in detail, each of the following matters with the defendant and **shall** indicate compliance in the appropriate places on this form. Once completed, the form shall be filed, in open court, at the beginning of the plea proceeding.

B. Preliminary Matters.

1. The defendant will be placed under oath and, accordingly, his answers to the court's questions and any statements he/she may make will be subject to penalties for perjury or for making a false statement. If he/she should willfully be untruthful, he/she *may* later be prosecuted in a separate proceeding for perjury and, if convicted, may receive a separate and distinct sentence.

Done: _____ Not Done: _____

2. The defendant will be asked to briefly describe his educational and employment history and will be specifically asked whether he/she reads, writes and understands the English language.

Done: _____ Not Done: _____

3. The defendant will be questioned concerning whether he/she, during the preceding 48 hours, has taken any drugs, prescription or otherwise, or whether he/she has consumed or ingested any substance, that might affect his ability to understand the plea and sentence proceedings.

Done: _____ Not Done: _____

**Revision date: May 6, 2011.
Do Not Use any Earlier Version.**

4. The defendant will be questioned concerning whether he/she is suffering from any mental or emotional impairment or physical illness that might affect his/her ability to understand the plea and sentence proceedings.

Done: _____ Not Done: _____

5. The court must be satisfied that the defendant completely understands the proceedings and that he/she is pleading guilty freely, voluntarily and of his own free will. Specifically, the defendant must understand that he/she has an *affirmative* duty to inform the court if, at any time during the plea proceeding, he/she does not understand anything that is said or done. The court will, before proceeding further, undertake all reasonable steps, including a reasonable recess to permit the defendant to further consult with counsel, to make certain that he/she does understand.

Done: _____ Not Done: _____

6. If satisfied that the defendant is capable of proceeding, the court will make a finding that he/she is competent to enter a guilty plea.

Done: _____ Not Done: _____

7. The court must be satisfied that the defendant has not been coerced by any threat or induced by any improper promise (or made indirectly through those close to and capable of influencing the defendant) to enter the guilty plea, but that the plea is the free, uncoerced and voluntary choice of the defendant.

Done: _____ Not Done: _____

C. Substantive Rights.

1. The defendant is presumed to be not guilty of the charge(s) made against him/her in the indictment or information and that presumption, standing alone, is sufficient to assure that the defendant will not be convicted unless he/she either pleads guilty or is found guilty after a trial.

Done: _____ Not Done: _____

2. The defendant has a right to plead not guilty or to persist in that plea if it has already been made.

Done: _____ Not Done: _____

3. If the defendant pleads not guilty, he/she will be entitled to a trial.

Done: _____ Not Done: _____

4. At any trial to be conducted in the matter, the defendant may not be convicted unless the United States first proves each and every element of the charge(s) beyond a reasonable doubt.

Done: _____ Not Done: _____

5. The defendant is entitled, as a matter of right, to be tried before a jury consisting of 12 people who have been selected from a panel of persons whose names have been drawn at random from a cross-section of the community that comprises the Northern District of Alabama.

Done: _____ Not Done: _____

6. Throughout all the proceedings, prior to, during and after trial, the defendant has a right to be represented by constitutionally adequate counsel.

Done: _____ Not Done: _____

7. The defendant is entitled to have all the witnesses who will testify for the government come forward and testify in open court so that he/she may see and hear them and that he/she may "confront" them.

Done: _____ Not Done: _____

8. The defendant then has the right, through counsel, to cross-examine each witness who has testified for the United States – to ask them questions concerning any matter that might be relevant to the charge(s) or his defense, including matters that might be helpful to the jury in evaluating the credibility of the witness.

Done: _____ Not Done: _____

9. The defendant has the right to call witnesses of his own and to use the subpoena power of the court to compel witnesses to testify in his behalf.

Done: _____ Not Done: _____

10. The defendant has the right to testify if he/she wishes to do so but may not be compelled to testify. Whether he/she elects to testify is a matter left solely to the choice of the defendant.

Done: _____ Not Done: _____

11. If the defendant elects to testify, he/she will be placed under oath and will be subject to cross-examination by counsel for the United States.

Done: _____ Not Done: _____

12. If the defendant persists in pleading guilty, he/she will waive the right not to testify. The court will make certain inquiries of him and he/she will be expected to answer the court's questions. The court will consider the defendant's answers to its questions when making decisions necessary to disposition of the charge(s).

Done: _____ Not Done: _____

13. If the defendant pleads guilty, he/she will waive (or give up) the rights which have just been enumerated. Specifically, he/she will waive, or give up:

- a. the presumption that he/she is not guilty of the charge(s);

Revision date: May 6, 2011.
Do Not Use any Earlier Version.

- b. the right to proof beyond a reasonable doubt;
- c. the right to trial by jury;
- d. the right to confront and cross-examine the witnesses against him/her;
- e. the right to call witnesses and to subpoena witnesses to testify in his/her behalf;
- f. the right to refuse to testify;

Done: _____ Not Done: _____

14. The defendant does not, by pleading guilty, waive, or give up, the right to have an attorney to represent him/her.

Done: _____ Not Done: _____

15. If the defendant persists in the plea of guilty, the only thing remaining for the court to do will be to impose the sentence. There will be no trial and the defendant will be guilty of the charge(s) to which he/she has plead guilty. The end result will be the same as if he/she had been found guilty after a trial.

Done: _____ Not Done: _____

D. Explanation of Charges and Possible Penalties:

The defendant must be advised and must understand:

1. the government must prove beyond a reasonable doubt each element of the charge(s) to which the defendant is pleading guilty. Explain each such element: (Do not forget to explain elements such as "knowingly" or "willfully.")

Done: _____ Not Done: _____

2. the mandatory minimum sentence provided by law, if any, and the maximum penalty provided by law, including the effect of any supervised release term;

Done: _____ Not Done: _____

3. any sentence imposed will be subject to the requirements of the United States Sentencing Guidelines but the court may go below or above those guidelines under some limited circumstances; and

Done: _____ Not Done: _____

4. the court may require that he/she make restitution to any victim of the offense to which he/she is pleading guilty.

Done: _____ Not Done: _____

E. Plea Agreement and Voluntariness of Plea:

1. If there is a plea agreement it must be disclosed on the record and, ordinarily, in open court.

Done: _____ Not Done: _____

2. The defendant must know and understand any plea agreement in all its details.

Done: _____ Not Done: _____

3. If the agreement is for the dismissal of other charges (Rule 11(c)(1)(A)) or for a specific sentence (Rule 11(c)(1)(C)), the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until it has considered the presentence report.

Done: _____ Not Done: _____

4. If the agreement is that the government will recommend, or will not oppose the defendant's request for, a particular sentence (Rule 11(c)(1)(B)), the court is not bound by the agreement and, if the agreement is rejected, the defendant will not have a right to withdraw the guilty plea.

Done: _____ Not Done: _____

5. If the plea agreement is accepted, the court will include in the judgment and sentence the disposition provided for in the plea agreement.

Done: _____ Not Done: _____

6. If the plea agreement is rejected, the court will inform the defendant personally in open court that the court is not bound by the plea agreement and the defendant will not be given an opportunity to withdraw the plea of guilty. If the defendant persists, after such notice, in his plea of guilty the disposition of the case may be less favorable to the defendant than contemplated by the plea agreement.

Done: _____ Not Done: _____

F. Accuracy of the Plea.

1. The court will not accept the plea of guilty until it has made such inquiry, as it may deem appropriate, to satisfy itself that there is a factual basis for the plea of guilty.

Done: _____ Not Done: _____

G. Acknowledgment of the Defendant.

I, _____, hereby acknowledge that my attorney, whose name is signed to the attorney certification below, has explained to me, in detail, each of the matters set out above. As to any matters I do not fully understand at this point, I will specifically call to the court's attention during the plea proceeding in open court.

Date

Defendant

H. Certification of Counsel.

As counsel of record for the above named defendant, I hereby certify that:

1. I have discussed with the defendant, in detail, each of the matters set out above;
2. I have observed the defendant today prior to the plea proceeding and am aware of no reason why he/she is not competent to enter a plea of guilty at this time;
3. I am aware of no reason, at this time, why the defendant's plea of guilty should not be accepted.

Date

Counsel for the Defendant