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Arizona Supreme Court
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IN THE SUPREME COURT
STATE OF ARIZONA

Sua Sponte Petition to Amend)
Rule 41, Forms 18(a) and 18(b),) Arizona Supreme Court
Arizona Rules of Criminal Procedure) No. _____
)
_____)

Pursuant to Rule 28(B), Rules of the Supreme Court, amendments to Rule 41, Forms 18(a) and 18(b), Arizona Rules of Criminal Procedure, are proposed. The forms (plea agreements for non-capital felonies and misdemeanors, respectively) require defense counsel to avow, among other things, that he or she “believe[s] that the plea and disposition set forth [in the plea agreement] are appropriate under the facts of this case,” and that he or she “concur[s] in the entry of the plea as indicated above and on the terms and conditions set forth [in the plea agreement].”

The avowal may cause ethical problems for defense counsel in some cases. For example, counsel may not believe the plea agreement is “appropriate under the facts” in a case in which counsel believes the State’s offer is too harsh for the crime committed. Counsel may nevertheless believe that it is the best plea offer the client will receive and that it is in the client’s best interest to take the plea. *See also* State Bar Ethics Opinion 2000-02, *Confidentiality; Candor Toward Tribunals; Criminal Representation; Perjury*, n. 6 (March 2000).

To resolve this ethical dilemma, it is proposed that the last two sentences of the avowal be deleted and replaced with the following sentence: “I believe that the defendant’s plea is knowing, intelligent, and voluntary and that the plea and disposition are consistent with law.” The proposed amendments are set forth in Attachment A hereto.

DATED this _____ day of April 15, 2013.

By:

Ellen M. Crowley
Chief Staff Attorney
Arizona Supreme Court

Attachment A

Arizona Rules of Criminal Procedure

* * * *

Rule 41. Forms

The forms contained in the following Appendix are recommended for use in Arizona courts and are sufficient to meet the requirements of these rules. All forms shall comply with the formatting requirements of Rule 10, Rules of Civil Procedure.

* * * *

Form 18(a). Felony Plea Agreement -- Non-Capital

_____ **COURT** _____ **County, Arizona**

STATE OF ARIZONA Plaintiff [CASE/COMPLAINT NO.]

-vs-

Defendant (FIRST, MI, LAST)

**FELONY
PLEA
AGREEMENT
(Non-Capital)**

The defendant agrees to plead guilty / no contest to _____ committed on or about _____.

This crime is a [] dangerous [] non-dangerous, [] repetitive [] non-repetitive offense under the criminal code.

Terms: On the following understandings, terms and conditions:

__ 1. The crime carries a presumptive sentence of ___ years; a minimum sentence of ___ years; and a maximum sentence of ___ years. Probation is / is not available. A maximum amount of restitution for economic loss to the victim not to exceed the amount specified in paragraph 2 and waiver of extradition for probation revocation procedures may be required. The maximum fine that can be imposed is \$150,000 plus a surcharge of ___ + ___. Special conditions regarding the sentence imposed by statute (if any) are:

[] None

[] If sentenced to a term of imprisonment, the defendant shall also be

sentenced to a term of community supervision equal to one-seventh of the prison sentence to be served consecutively to the actual period of imprisonment. If the defendant fails to abide by the conditions of community supervision, the defendant can be required to serve the remaining term of community supervision in prison.

[] Other: _____

___ 2. The parties stipulate to the following additional terms, subject to court approval at sentencing as set forth in paragraph 7: _____

___ 3. The following charges are dismissed, or if not yet filed, shall not be brought against the defendant. _____

___ 4. This agreement serves to amend the complaint, indictment, or information to charge the offense to which the defendant pleads, without the filing of any additional pleading. However, if the plea is rejected by the court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea agreement are automatically reinstated.

___ 5. The defendant hereby gives up the right to a preliminary hearing or other probable cause determination on the charges to which he or she pleads. In the event the court rejects the plea, or either the state or the defendant withdraws from the plea, the defendant hereby waives and gives up his or her right to a preliminary hearing or other probable cause determination on the original charges.

___ 6. Unless this plea is rejected by the court or withdrawn by either party, the defendant hereby gives up any and all motions, defenses, objections or requests which he or she has made or raised, or could assert hereafter, to the court's entry of judgment against him or her and imposition of a sentence upon him or her consistent with this agreement. The defendant acknowledges by entering this agreement that he or she will have no right to direct appeal (ARS 13-4033) and that the only available review is pursuant to Rule 32, Rules of Criminal Procedure.

___ 7. If after accepting this plea agreement the court concludes that any of its provisions regarding the sentence or the terms and conditions of probation are inappropriate, it can reject the plea. If the court decides to reject the plea agreement provisions regarding sentencing, it must give both the State and the defendant each an opportunity to withdraw from the plea.

- ___ 8. If the court decides to reject the plea agreement provisions regarding sentencing and neither the State nor the Defendant elects to withdraw the plea agreement, then any sentence either stipulated to or recommended herein in paragraph 2 is not binding upon the court, and the court is bound only by the sentencing limits set forth in paragraph 1 and the applicable statutes.
- ___ 9. I understand that if I am not a citizen of the United States, my decision to go to trial or enter into a plea agreement may have immigration consequences. Specifically, I understand that pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in my deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen. I understand that I am not required to disclose my legal status in the United States to the court.
- ___ 10. I have read and understand the provisions of all pages of this agreement. I have discussed the case and my constitutional rights with my attorney. I understand that by pleading (guilty) (no contest) I will be giving up my right to a determination of probable cause, to a trial [] by jury [] by a judge [] by jury on facts used to aggravate a sentence, to confront, cross-examine, and compel the attendance of witnesses, to present witnesses on my behalf; my right to remain silent, my privilege against self-incrimination, the presumption of innocence and right to direct appeal. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I fully understand that, as part of this plea agreement, if I am granted probation by the court, the terms and conditions thereof are subject to modification at any time during the period of probation in the event that I violate any written condition of my probation. I understand that if I violate any of the written conditions of my probation, my probation may be terminated and I can be sentenced to any term or terms stated above in paragraph 1.

I have personally and voluntarily placed my initials beside each of the above paragraphs and signed the signature line below to indicate that I read, or had read to me, understood and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement. My plea is voluntary and not the result of force, or threat, or promises other than those contained in the plea agreement.

DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT COMPLETELY, OR HAD IT READ TO YOU AND UNDERSTAND IT FULLY.

Date

Defendant

I have discussed this case with my client in detail and advised my client of his or her constitutional rights and all possible defenses. ~~I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.~~ I believe that the defendant's plea is knowing, intelligent, and voluntary and that the plea and disposition are consistent with law.

Date

Defense Attorney

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date

Prosecutor

Form 18(b). Misdemeanor Plea Agreement

_____ COURT _____ County, Arizona

STATE OF ARIZONA Plaintiff
-vs-

[CASE/COMPLAINT NO.]

**MISDEMEANOR
PLEA
AGREEMENT**

Defendant (FIRST, MI, LAST)

The defendant agrees to plead guilty / no contest to the following offense(s):

- _____ class misdemeanor petty/civil traffic offense

on the following understandings, terms and conditions:

1. The Defendant agrees to a sentence of: _____

2. The following charges are dismissed, or if not yet filed, shall not be brought against

the defendant. _____

3. This agreement, serves to amend the complaint, indictment, or information to charge the offense to which the defendant pleads, without the filing of any additional pleading. However, if the plea is rejected by the court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea agreement are automatically reinstated.
4. Unless this plea is rejected by the court or withdrawn by either party, the defendant hereby waives and gives up any and all motions, defenses, objections or requests which he or she has made or raised, or could assert hereafter, to the court's entry of judgment against him or her and imposition of a sentence upon him or her consistent with this agreement. The defendant acknowledges by entering this agreement he or she will have no right to direct appeal (ARS 13-4033) and the only available review is pursuant to Rule 32, Rules of Criminal Procedure.
5. If the court decides to reject the proposed sentencing in the plea agreement after accepting the defendant's plea, it must give each party an opportunity to withdraw from the plea.
6. If the court decides to reject the plea agreement provisions regarding sentencing and neither the State nor the Defendant elects to withdraw the plea agreement, then any sentence either stipulated to or recommended herein is not binding upon the court, and the court is bound only by the sentencing limits set forth in the applicable statutes.
7. I understand that if I am not a citizen of the United States, my decision to go to trial or enter into a plea agreement may have immigration consequences. Specifically, I understand that pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in my deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen. I understand that I am not required to disclose my legal status in the United States to the court.
8. I have read and understand the provisions of all pages of this agreement. I have discussed the case and my constitutional rights with my attorney. I understand that by pleading (guilty) (no contest) I will be giving up my right to a determination of probable cause, to a trial [] by jury [] by a judge, to confront, cross-examine, and compel the attendance of witnesses, to present witnesses on my behalf; my right to remain silent, my privilege against self-incrimination, the presumption of innocence and right to direct appeal. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I fully understand that, as part of this plea agreement, if I am granted probation by the court, the terms and conditions thereof are subject to modification at any time during the period of probation in the event

that I violate any written condition of my probation. I understand that if I violate any of the written conditions of my probation, my probation may be terminated and I can be sentenced up to the maximum term.

I have personally signed the signature line below to indicate that I read, or had read to me, understood and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement. My plea is voluntary and not the result of force, or threat, or promises other than those contained in the plea agreement.

DO NOT SIGN THIS FORM UNLESS YOU HAVE READ IT COMPLETELY, OR HAD IT READ TO YOU AND UNDERSTAND IT FULLY.

Date

Defendant

I have discussed this case with my client in detail and advised my client of his or her constitutional rights and all possible defenses. ~~I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.~~ I believe that the defendant's plea is knowing, intelligent, and voluntary and that the plea and disposition are consistent with law.

Date

Defense Attorney

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date

Prosecutor

* * * *