



**Superior Court of California
COUNTY OF ALAMEDA**

September 13, 2019

Notice to Attorneys and to All Interested Parties:

Invitation to Comment on Proposed Amendments to Local Rules and Forms

As required by California Rules of Court, Rule 10.613(g), the Superior Court of California, County of Alameda hereby distributes for public comment the attached proposal to amend its local forms.

The proposal also may be viewed on the [Court's website](#). In addition, a hard copy of the proposal is available upon request by email at pcomments@alameda.courts.ca.gov or by phone at 510-891-6012.

Important dates:

- The last day to comment is **October 28, 2019**.
- The proposed local form will take effect **January 1, 2020**, pursuant to Rule 10.613(i)(1).

Summary and Text of Proposed Amendments: *see attached.*

Comments must be submitted in writing to:

Jasmine Polar
Superior Court of California, County of Alameda
1225 Fallon Street, Room 209
Oakland, CA 94612
510-891-6276 fax
pcomments@alameda.courts.ca.gov

**SUMMARY OF PROPOSED AMENDMENTS
TO THE SUPERIOR COURT'S LOCAL RULES AND FORMS**

Effective Date: January 1, 2020

Affected Rule, Form, or Section: Advisement and Waiver of Right to Counsel (Faretta Waiver)

Proposed Action: The form provides a comprehensive notice to the defendant of the consequences the defendant may face if the defendant chooses to be self-represented. It also provides the court with sufficient information to determine whether to grant the defendant's motion to be self-represented. The amended form does not replace the oral examination and hearing that the judge will conduct in any case in which the defendant makes a motion to be self-represented.

Text of Amendments:

NEW FORM – PLEASE SEE BELOW

ADVISEMENT AND WAIVER OF RIGHT TO COUNSEL (*Faretta* Waiver)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA	<i>Reserved for Clerk's File Stamp</i>	
PLANTIFF PEOPLE OF THE STATE OF CALIFORNIA		
DEFENDANT		
ADVISEMENT AND WAIVER OF RIGHT TO COUNSEL (<i>Faretta</i> Waiver)	CASE NUMBER	DEPT

Instructions:

Fill out this form if you wish to act as your own attorney (also referred to as “pro per”). Initial the box for each item below only if you understand and agree with it, and sign and date the form on page 5. If you have any questions about anything on this form, ask your attorney or the judge.

I am the defendant in the above-entitled case. I can read and write. *Initials* _____

CONSTITUTIONAL RIGHTS

1. I understand that my constitutional rights include the following:
 - A. **Right to an Attorney** – I understand that I have the right to be represented by an attorney at all stages of the proceedings and, if I cannot afford to hire an attorney, one will be appointed for me by the Court. *Initials* _____
 - B. **Right to a Speedy Trial and Public Jury Trial** – I understand that I have a right to a speedy trial and a public trial by a jury of twelve citizens. *Initials* _____
 - C. **Right to Subpoena Witnesses and Records** – I understand that I have a right to the reasonable use of the subpoena power of the Court to subpoena any witnesses or any records that I may need in my defense. *Initials* _____
 - D. **Right to Confront and Cross-Examine Witnesses** – I understand that I have the right to confront in open court all witnesses who will be called to testify against me. I have the right to cross-examine those witnesses at the time of trial. *Initials* _____
 - E. **Right Against Self-Incrimination** – I understand that I cannot be compelled to testify at the trial unless I so desire. *Initials* _____
 - F. **Right to Testify and Produce Evidence** – I understand that I have the right to testify at my trial and to produce evidence on my own behalf. *Initials* _____
 - G. **Right to be Released on Bail** – I understand that I may have the right to be released from jail on reasonable bail or to be released on my own recognizance (“OR”) pending the trial. *Initials* _____

- H. **Right to Self-Representation** – I understand that I have a right to act as my own attorney and may waive my right to the assistance of an attorney. I further understand that if I am permitted to represent myself, I will have to conduct my own defense without the assistance of an attorney. *Initials* _____

BIOGRAPHICAL INFORMATION

2. In support of my petition to represent myself I offer the Court the following biographical information:

- A. Age _____ Year of Birth: _____
- B. Education:
- (1) Number of years attended school: _____
 - (2) High School Graduate: _____ Yes _____ No
 - (3) Legal Education (if any): _____
- C. Employment Experience: _____
- _____
- _____

DANGERS AND DISADVANTAGES TO SELF-REPRESENTATION

3. I understand there are many dangers and disadvantages in representing myself. Among the dangers and disadvantages of not having an attorney are the following:

- A. I understand that if I am permitted to represent myself it will be necessary for me, without the assistance of an attorney, to follow the rules of court, evidence and criminal law and criminal procedure. *Initials* _____
- B. I understand the case against me will be handled by a prosecutor who is an experienced trial attorney. I will not be entitled to special consideration or assistance by the prosecutor, judge, or court staff. *Initials* _____
- C. I understand that if I am permitted to represent myself, it will be necessary for me, without the assistance of any attorney, to defend myself, including, but not limited to: making pretrial motions; selecting a jury; making an opening statement; cross-examining the witnesses for the prosecution; subpoenaing and presenting my own witnesses; making appropriate objections and motions during the course of the trial; preparing and presenting proposed jury instructions to the Court; making the final argument; and in the event of a conviction, making appropriate motions after trial and representing myself at sentencing hearings. *Initials* _____
- D. I understand that I cannot and will not receive any special consideration or assistance from the Court. I further understand that the Court will not answer any questions I have concerning how I should proceed, what law might apply, or what is the correct procedure. *Initials* _____

E. I understand that if I wish to ask the Court for funds to be used in my defense, I will have to show good cause. I will be required to keep and show the Court receipts for anything I have purchased with the money granted to me.

Initials _____

F. I understand that if I am in jail, it will be difficult for me to contact witnesses and investigate my case. I understand that I will have limited access to a telephone, to legal research and to legal information which will make preparations for my defense more difficult.

Initials _____

G. I understand that no continuance of the trial will be allowed without a showing of good cause. Such requests made just before the start of trial will most likely be denied.

Initials _____

H. I understand that, depending on the stage of my case, if I change my mind and request an attorney to handle my case, the Court may deny this request, and I may have to proceed to trial without an attorney. If the Court does grant this request, the attorney will be at a disadvantage if the attorney does not have sufficient time to prepare for trial.

Initials _____

I. I understand that in conducting the trial, I may be limited in my movements in the courtroom. All documents, for example, will be handed to witnesses when necessary through the bailiff. I may be required to remain in my seat at counsel table.

Initials _____

J. I understand that I must act respectfully in court. I understand that the Judge may terminate my right to act as my own attorney if I engage in serious misconduct or obstruct the administration and progress of the trial. I understand that if my right to act as my own attorney is terminated, I may have to be represented by an attorney, appointed by the Judge, who will continue the case from that point.

Initials _____

K. I understand that if an appointed attorney does take over my case, that attorney may be at a disadvantage as a result of my self-representation. Such a disadvantage will not be considered an issue on appeal.

Initials _____

L. I understand that misconduct by me occurring outside of court may result in restriction or termination of my right to act as my own attorney. I also understand that my right to act as my own attorney will not shield me from disciplinary actions within jail. I will be subject to the same disciplinary measures as all other inmates for misconduct occurring in the jail.

Initials _____

M. I understand that a defendant who is represented by an attorney and is convicted may complain on appeal that the attorney's assistance was ineffective. I understand that by acting as my own

attorney, I am giving up any right to claim on appeal that I had ineffective assistance of counsel.

Initials _____

CHARGES AND CONSEQUENCES

4. The crimes and enhancements with which I am charged are:

Initials _____

The minimum and maximum sentences for those crimes and enhancements are:

Initials _____

5. I understand that I am giving up having an attorney explain to me what crime(s) I am charged with, the elements of the crimes charged, the associated mental state required, and any possible legal defenses I might have to those charges.

Initials _____

6. I understand that I am giving up the right to have an attorney determine what facts must be proved before I can be found guilty.

Initials _____

7. I understand that if I am not now a United States citizen, I am giving up having an attorney analyze whether the charges could affect my right to legally remain in or return to the United States, or to become a United States citizen. I am also giving up having an attorney advise me on how I could settle my case and not harm my right to remain in the United States.

Initials _____

8. I understand that I am giving up having an attorney determine what post-trial motions and sentencing options I may have if I am convicted, and to present these motions and options to the Court.

Initials _____

9. I understand that this Court advises and recommends that I accept a court-appointed attorney. The Court has advised me to not act as my own attorney. I understand that if I accept the appointment of a court-appointed attorney, a trial attorney will be assigned to defend me. I understand that the attorney would be able to investigate my case, file pretrial motions, and conduct the trial.

Initials _____

10. I understand that this written request to act as my own attorney will be filed and become part of the court case file. I further understand that on any appeal that may be taken from a conviction, or on the filing of a petition for an extraordinary writ, this request will be forwarded to any court of appeal and will be considered by that court in determining whether I knowingly and intelligently waived my right to any attorney.

Initials _____

I have read, understood, and considered all the above warnings included in this petition, and I still want to act as my own attorney. I freely and voluntarily give up my right to have an attorney represent me.

Dated: _____

Signed: _____

Defendant's Signature

INTERPRETER'S STATEMENT (If applicable)

I, having been duly sworn or having a written oath on file, certify that I accurately translated this Advisement and Waiver of Right to Counsel (*Faretta* waiver) form to the defendant in the language indicated below. The defendant stated that defendant understood the contents on the form, and then initialed and signed the form.

Language: _____

(Specify)

Dated: _____

Signed: _____

Court Interpreter

Type or Print Name

The court finds that the defendant has been advised of defendant's constitutional rights and the dangers and disadvantages of self-representation. The defendant has made a voluntary, knowing, and intelligent waiver of the right to counsel. The court grants the defendant's request for self-representation.

Dated: _____

Signed: _____

Judge of the Superior Court