

WILENTZ

—ATTORNEYS AT LAW—

WILENTZ, GOLDMAN & SPITZER, P.A.

A Plea for Better Plea Forms

06/11/12

In order to enter a guilty plea in Superior Court, the accused and his or her attorney must complete a multi-page document known as a plea form. The plea form is important because it documents many of the rights that a defendant waives when entering a guilty plea, warns the defendant of the consequences of the plea and memorializes the terms of the agreement between the defendant and the prosecutor. The plea form is signed by the defendant, the defense attorney and the prosecutor. Because it is so important, and is really designed for the benefit of the accused, the form should be written in easy-to-understand terms. Unfortunately, the form is very confusing, not well-written and really needs to be revised.

The current version of the plea forms can be accessed through the judiciary's website. An example of my point can be found right on the first page of the plea form, at question 4. Question 4, in subparts a, b and c, informs the defendant that by pleading guilty, he gives up the right to a trial at which the state would have to prove him guilty beyond a reasonable doubt, the right to confront the witnesses and the right to remain silent. In the very next subparagraph, d, the language in the form turns very technical and starts citing provisions of court rules that no defendant will be familiar with. Subparts d and e appear to contain double negatives that do not seem to flow well with the introductory sentence of the paragraph:

4. Do you understand that by pleading guilty you are giving up certain rights? Among them are:

| | |
|---|------------|
| a. The right to a jury trial in which the State must prove you guilty beyond a reasonable doubt? | [Yes] [No] |
| b. The right to remain silent? | [Yes] [No] |
| c. The right to confront the witnesses against you? | [Yes] [No] |
| d. Do you understand that by pleading you are <u>not</u> waiving your right to appeal (1) the denial of a motion to suppress physical evidence (R. 3:5-7(d)) or (2) the denial of acceptance into a pretrial intervention program (PTI) (R. 3:28(g))? | [Yes] [No] |
| e. Do you further understand that by pleading guilty you are <u>not</u> waiving your right to appeal the denial of all other pretrial motions except the following: | [Yes] [No] |

With all due respect to whoever drafted question 4, it needs work. Also, can't we do a better job drafting question 14 so it is not couched in the negative?

14. Has the prosecutor promised that he or she will **NOT**:

| |
|--|
| a. Speak at sentencing? |
| b. Seek an extended term of confinement? |
| c. Seek a stipulation of parole ineligibility? |

I think the [plea form used in the federal courts of New Jersey](#) does a much better job of conveying important information in a clearer and more organized fashion. To be more defendant-friendly and better understood by people who may have little understanding of the full impact of their guilty plea, the Superior Court plea form should be redesigned.

Attorney

- Darren M. Gelber

Practice

- Criminal Defense