

CHAPTER 2
ARRAIGNMENTS AND PLEAS

Chapter 2 - Arraignments and Pleas

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ARRAIGNMENTS

2.01 KEY POINTS

- Conducted in open court or by audiovisual device
- Judge or clerk or prosecuting attorney reads information or states substance of the charge(s)
- Defendant asked to plead
- Reading of charge may be waived by the defendant
- Counsel representing the defendant may waive arraignment if counsel files a written plea of not guilty at or before arraignment
- Unless there is an objection by the defendant, failure to arraign or irregularity in the arraignment does not affect the validity of any other proceeding if the defendant pleads to the indictment or information or proceeds to trial
- If a person who has been indicted or informed against for an offense has not been arraigned and desires to plead guilty, the court having jurisdiction of the offense may arraign the defendant and permit the person to plead guilty
- After a plea of not guilty, the defendant is entitled to a reasonable time to prepare for trial

2.011 Right To Counsel

- If the defendant is not represented by counsel, the judge shall advise the defendant of the right to counsel
- If the defendant cannot afford counsel, counsel will be appointed if the defendant is determined to be indigent
- Defendant shall execute a financial affidavit that he/she cannot afford counsel
- If counsel appointed, a reasonable time shall be given before the defendant is required to plead to charges or otherwise proceed
- If the judge determines that the defendant will not be sentenced to imprisonment if convicted, the judge shall issue an order of no imprisonment and the public defender shall not be appointed

2.012 Faretta Inquiry : Defendant Wishes To Proceed Pro Se

- Defendant has a constitutional right of self-representation
- Reversible error for the judge to grant or deny the defendant self-representation without making an inquiry to determine if the decision is knowingly, intelligently, and voluntarily made
- Defendant must be informed of the right to counsel and the dangers of self-representation
- Judge must inquire into the defendant's age, education, and prior exposure to and understanding of the legal system
- Appointing standby counsel is not sufficient. An inquiry must always be made. If the judge determines that the decision is knowingly, intelligently, and voluntarily made, it is reversible error not to permit the defendant to represent himself/herself
- If the judge permits self-representation, standby counsel can be appointed, even over the defendant's objection
- At each crucial stage of the proceedings, the defendant's waiver must be renewed
- If the defendant wishes to waive his/her right to counsel, it must be done in writing and filed in the case. Rule 3.160(e), Florida Rules of Criminal Procedure

2.013 Accepting Pleas

- Type of pleas:
 - Not guilty
 - Guilty
 - With the consent of the judge, nolo contendere
- Must be in open court
- If sworn complaint (probable cause affidavit) charges the commission of a misdemeanor, the defendant may plead guilty to the charge at first appearance under Rule 3.130. Formal charges need not be filed.
- If the defendant stands mute, or pleads evasively, a plea of not guilty shall be entered.
- Pleas of guilty or nolo contendere shall be in open court (unless good cause is shown), recorded stenographically or mechanically

- Defendant shall be under oath
- Plea must have a factual basis
- Judge must determine that plea is voluntary:
- Defendant has a full understanding of the charge
- Defendant understands the minimum and maximum penalty of the charge
- If defendant is not represented by an attorney that the defendant understands he/she has the right to be represented by an attorney
- That the defendant understands he/she has the right
 - to plead not guilty
 - to assistance of counsel at trial
 - to compel the attendance of witnesses on his/her behalf
 - to confront and cross examine witnesses
 - not to be compelled to incriminate himself/ herself
 - to a trial by jury
 - That the defendant understands that he/she is giving up the right to appeal all matters relating to the judgment, including the issue of guilt or innocence (unless the defendant expressly reserves that right). The defendant, however, is not giving up the right for review by appropriate collateral attack
 - That the defendant understands that the judge may ask the defendant questions about the offense, and that his/her answers may be used against him/her in a prosecution for perjury
 - That if the defendant is not a United States citizen, the plea may subject him/her to deportation pursuant to the laws and regulations governing the Immigration and Naturalization Service
- The judge must determine that the defendant understands the terms of the plea agreement and all obligations the defendant will incur as a result of the plea agreement.
- Prior to accepting a guilty or nolo contendere plea, the judge must determine that the defendant:
 - Acknowledges his/her guilt

- Acknowledges that he/she feels the plea to be in his/her best interest, while maintaining his/her innocence
- No plea offer or negotiation is binding until it is formally accepted by the trial judge after making all the inquiries, advisements, and determinations required above. Until that time, it may be withdrawn by either party without any justification.
- If a plea is withdrawn, no statement made in connection with the plea is admissible in any civil or criminal proceeding against the person who made the plea or offer.

2.02 **AUTHORITIES**

Florida Rules of Criminal Procedure:

3.160 - Arraignment

3.170 - Pleas

3.172 - Acceptance of Guilty or Nolo Contendere Plea

3.111 - Providing Counsel to Indigents

Florida Statutes:

Section 27.512 - Order of No Imprisonment

Section 27.52 - Determination of Indigency

Section 27.56 - Lien for Payment of Attorney's Fees

Case Law:

Faretta v. California, 422 U.S. 806 (1975)

State v. Bowen, 698 So.2d 248 (Fla. 1997)

2.03 **TIPS/NOTES**

Every court event should be used by the trial judge to resolve the case. Criminal misdemeanor arraignments are a very important opportunity to resolve the matter by a plea of guilty or nolo contendere. An assistant state attorney should be present so that he/she can offer a plea to the defendant and inform the court of the defendant's prior criminal history. If the assistant state attorney does not come to arraignments with the criminal history of the defendant, the judge should consider working with pre-trial release or the sheriff's department so that the defendant's criminal history will be in the court file.

Prior to court, affidavits of indigency can be given to defendants; the court clerk can instruct them that they should fill out the affidavit if they want to have the public defender appointed to represent them.

Written rights waiver forms can be given to defendants by the court clerk to be read and signed before their names are called.

2.04 CHECKLISTS/FORMS

2.041 Arraignment Checklist

- Advise defendant of
- The charge(s)
- The right to counsel; appoint a public defender if defendant's affidavit of indigency shows he/she is unable to afford counsel and Court is certifying jail.

Determine if the defendant is indigent. Ask defendant about:

- Net income
- Other income
- Assets
- Income of parents or guardian if defendant is a minor or defendant is an adult tax-dependent person who is substantially supported by a parent or guardian
- Has defendant been released on bail-\$5,000 or more
- Equity in intangible or tangible personal property or real property or the expectancy of an interest in any such property
- Advise defendant of lien for payment of attorney's fees or costs, and \$40 application fee
- Ask defendant how he/she pleads - guilty or nolo contendere or not guilty

With a plea of guilty or nolo contendere:

- Must be in open court; on record
- Place defendant under oath
- Advise defendant of nature of charge

- ___ Minimum and maximum penalties
- ___ Right to counsel; right to have appointed counsel if defendant cannot afford counsel
- ___ Right to trial by jury
- ___ Right to assistance of counsel
- ___ Right to compel attendance of witnesses on his/her behalf
- ___ Right to confront and cross-examine witnesses
- ___ Right not to be compelled to incriminate himself/herself
- ___ No further trial of any kind
- ___ Waiver of right to appeal (unless defendant expressly reserves right)
- ___ Defendant may be asked questions about offense
- ___ Defendant's answers may be used against him/her in prosecution for perjury
- ___ If defendant is not a United States citizen, the plea may subject him/her to deportation pursuant to the laws and regulations governing the Immigration and Naturalization Service
- ___ State terms of plea agreement, including all obligations of defendant as a result of plea agreement
- ___ Court should determine that the plea was freely and voluntarily given
- ___ Defendant must either:
 - ___ acknowledge his/her guilt
 - ___ acknowledge that he/she feels it is in his best interest to plead nolo contendere while maintaining his/her innocence

2.042 Sample Arraignment Colloquy

GOOD MORNING. I'm Judge _____. This is an arraignment calendar of the criminal division of the COUNTY COURT. You are here because you have been accused of violating a law/or laws of the State of Florida.

PURPOSE OF THIS HEARING

You are here for an arraignment on the criminal charges filed by the State of Florida.

1. At this hearing you will be informed by the court of the following:
 - The criminal charges against you
 - Your constitutional rights in this matter
 - Your right to have an attorney represent you
2. You will have an opportunity to enter a plea today of:
 - Not Guilty
 - Guilty
 - No Contest
3. You will also be given your next court date, if you are to have one.

Do not leave the courtroom today without your paperwork since it will tell you what happened here today.

- **MAXIMUM PENALTIES**

These are misdemeanor offenses. They are separated into two categories:

1. Second degree misdemeanors: punishable by a fine not exceeding \$500.00 or incarceration not exceeding 60 days in the county jail, or both fine and incarceration.
2. First degree misdemeanors: punishable by a fine not exceeding \$1000.00 or incarceration not exceeding 1 year in the county jail, or both fine and incarceration.

- **PLEAS THAT CAN BE ENTERED**

As your name is called, please come forward to the podium, and I will inform you of the charge(s) against you. You may enter one (1) of three (3) pleas:

1. You can plead guilty: This means that you admit the truth of each and every essential element of the crime with which you are charged.
2. You can plead no contest: By entering a no contest plea you are neither admitting nor denying the truth of the charge. You are saying to the court

that you will not contest the matter. I will then treat your plea of no contest in exactly the same manner as if you entered a guilty plea.

3. You can plead not guilty: A plea of not guilty denies the truth of the charge against you. If you enter a not guilty plea, your case will be set down for a trial. Your trial will not be today and you will be notified of your trial date in the near future.

- **CONSTITUTIONAL RIGHTS WAIVED**

If you elect to enter a plea of guilty or a plea of no contest, then you will waive and give up each and every one of the following constitutional rights:

1. Your right to remain silent.
2. Your right not to be compelled to incriminate yourself.
3. Your right to confront your accusers and to question them.
4. Your right to compel witnesses to appear and testify on your behalf through court subpoenas.
5. The presumption of your innocence, and your right to require the state to prove you guilty beyond a reasonable doubt before the presumption of innocence is removed.
6. Your right to testify on your own behalf and to present any defenses which you might have.
7. Your right to a trial by jury when one is required.
8. Your right to appeal any action that the Court has taken in your case unless the Court has entered an illegal sentence or judgment.

- **PRE-TRIAL DIVERSION**

The state may offer some of you pre-trial diversion (PTD). This program consists of educational classes and/or community service hours. If you are eligible for PTD then the state will drop the charges against you once you complete PTD. If you do not complete the requirements of PTD, then the state can still pursue the charges against you. In order for the state to refer you to PTD, you must waive your right to a speedy trial.

I will ask those of you who are going to be referred to PTD if you waive your right to a speedy trial. If you do, then you will receive an enrollment form. If you fail to enroll for PTD, you will be required to return to Court to answer to the charge(s) against you.

- **PLEA BARGAINING**

There is an assistant state attorney present in the courtroom today. The state may be willing to enter into a plea bargain with you on your case. That is,

the state may say that if you plead guilty or no contest today, it will offer you a particular resolution to your case. You can accept or reject the state's offer.

- **RIGHT TO HAVE AN ATTORNEY**

Before I ask you how you wish to plead to the charges, I will ask you:

- Whether you want a lawyer? That question may be answered by: "Yes, I want a lawyer." or "No, I do not want a lawyer."
- You do not have to have a lawyer if you don't want one. That decision is your decision. You may waive your right to a lawyer if you want to.
- If you intend to enter a plea of not guilty and go to trial, I strongly urge that you either hire your own lawyer or accept the services of a public defender (if you qualify).
- A criminal trial is a very complex proceeding that the average person is not usually competent to handle without the professional assistance of a lawyer.
- If you tell me you do not want a lawyer, I will then proceed to find out how you want to plead today.
- If you tell me you want an attorney, and you can afford your own attorney, I will enter a not guilty plea on your behalf and set the case for trial.
- If you tell me you want an attorney, but state that you cannot afford an attorney, I will place you under oath, and ask you certain questions regarding your financial circumstances. Based upon your answers, I will determine if you qualify for the services of the public defender's office.
- If you ask for a public defender, and you qualify financially for a public defender, I will appoint a public defender to represent you. If you eventually enter a plea of guilty or no contest, or if you are found guilty of the offense with which you are charged, then a judgment may be entered against you for the reasonable value of the public defender's services. The judgment will become a lien upon any property that you may now have or hereafter acquire.
- In addition a fee of \$40.00 must be deposited at the time the affidavit of indigency is filed with the Court or at the time of the final disposition.
- The assistant public defender in this courtroom is: _____
- You must contact the public defender. Do not wait until the public defender contacts you. The bailiff will hand you an information sheet listing the public

defender's address and telephone number.

- It is essential that you get in touch with your public defender as soon as possible so that he/she can begin preparing your case as soon as possible.
- In any event you need to contact your public defender within three (3) days from today's date.
- If the state certifies that it will not be seeking jail and the Court determines that it will not impose jail at the time of sentencing, then you are not entitled to court appointed counsel. However, you are free to hire your own private counsel if you are able to do so.
- If you are going to hire your own attorney, you need to do so as soon as possible, so your attorney can prepare your case.

- **PROBATION**

- If you are on probation, you need to let me know that, since your probation can be violated if you plead guilty or no contest.
- If you plead guilty or no contest today, and I order you to be placed on probation, you must report to the probation office within 72 hours of today's date.

- **FINAL INSTRUCTIONS**

It is my job to see to it that you are treated fairly, that you understand what is going on, that nobody is using any force or coercion or is twisting your arm to make you enter a plea that you otherwise do not want to, and that no one has promised you a light or suspended sentence in exchange for your plea.

If you have any questions, I will do my best to answer them when your case is called.

- **CALL THE CASE**

AS YOUR NAME IS CALLED, PLEASE STEP FORWARD TO THE PODIUM, AND I WILL INFORM YOU OF THE CHARGE OR CHARGES AGAINST YOU.

2.043 Criminal Traffic Arraignment Colloquy

- **INTRODUCTION**

Ladies and Gentlemen, welcome to County Criminal Traffic Court. Please listen carefully as I will explain to you what we hope to accomplish today and how we go about it.

Unless you are just visiting with us, you are here today because you have been charged with a violation of one or more of our county criminal laws. The purpose of you being here today is to formally answer the charge against you - what we call entering a plea to the charge. When you enter a plea to a charge you have three choices. You may plead not guilty, guilty, or no contest. Let me explain to you what each of these pleas mean and what will happen depending on which plea you choose to enter.

- **PLEA OF NOT GUILTY**

If you plead not guilty, you are denying the charge, and you may take advantage of a number of valuable rights that are allowed to you under our law, including the following:

1. In all criminal cases you are entitled to a trial. In the more serious cases, you are entitled to a trial by jury - the right to have six people chosen from the community to determine your guilt or innocence.
2. At such trial, you will not have to prove your innocence. Under our law, you are presumed to be innocent unless and until the state can present sufficient evidence at trial to prove your guilt beyond a reasonable doubt.
3. You do not have to testify at your trial. That is, you have the right to remain silent - and the fact that you remain silent cannot be used against you at your trial.
4. If you wish, you can testify and have your testimony considered as any other witness.
5. You may bring witnesses to testify on your behalf and, if they will not come voluntarily, you may use the subpoena power of this court to force them to come and tell what they know.
6. At your trial, you will have the right to confront your accusers. That is, the right to see and hear and question or cross examine the state's witnesses against you.
7. You have the right at trial, and throughout the proceedings against you, including today, to have the assistance of legal counsel. You may consult or hire an attorney of your choice. If you wish to have an attorney assist you in this case but cannot afford to hire your own attorney, you may

qualify to have the office of the public defender appointed to represent you.

8. You have the right to appeal your conviction if you are found guilty at your trial. On appeal, you may raise any issue that you raised at trial, including the question of your guilt or innocence. You are entitled to an attorney to assist with an appeal and if you cannot afford to hire your own, one may be appointed for you.

- **PUBLIC DEFENDER LIEN**

If you decide to request the services of the public defender, you need to know now that getting a court appointed attorney does not necessarily mean that you are getting a free attorney. If you are found not guilty, or if the state drops the charge against you, there will be no cost to you for the services of this attorney. If, however, you are found guilty, or enter a plea of guilty or no contest, you may owe the county some money for these legal services provided to you. If you are simply unable to pay for these services over a period of time, a lien may be placed on your personal or real property to insure payment, and the money collected from you when you do obtain the ability to pay.

- **APPEARANCE AT FUTURE COURT DATES**

If you decide to enter a plea of not guilty this morning, you will be given a written notice of your next court date by the clerk before you leave. I want to emphasize that it is very important that you make sure you get this notice, that you make a note of the date you are to appear, and that you make sure you show up then.

If you are not here on that date a capias or warrant may be issued for your arrest and you may be held in jail until your next court date. If the public defender is appointed in your case, it will be your responsibility to keep in touch with your attorney and to follow his or her directions.

- **PLEA OF GUILTY OR NO CONTEST**

Some of you may decide to plead guilty or no contest today. A plea of guilty means that you are admitting the charge against you. A plea of no contest, or nolo contendere as it is sometimes called, means that you neither admit nor deny the charge against you. You simply do not wish to fight it or contest it. For purposes of this case and these proceedings today, however, there is no difference in terms of what may happen to you and what sentence may be imposed. If you enter either a plea of guilty or no contest, you give up or waive all of those rights which I have described above that are available when you enter a plea of not

guilty. There will be no trial, the state will not have to prove you guilty. I will impose sentence today.

Also, you should understand that if you enter a plea of guilty or no contest today and you are adjudicated guilty, there will be a conviction of record in this case. If you are not a United States citizen, you may be deported. Also, as a result of such a conviction, you may be subject to greater penalties if you are ever convicted again in another case.

Even if you decide to enter a plea of guilty or no contest, you still have the right to consult with an attorney and have that attorney represent your interest and speak on your behalf. If you are not able to hire an attorney, one may be appointed for you. In light of the valuable rights that you waive and the adverse consequences that result when you enter a plea of guilty or no contest, you want to make sure that such a plea is in your best interest.

PLEA AGREEMENT

In most of your cases, the state has had an opportunity to review your file and your record, if any, and will be prepared today to suggest a sentence or disposition in your case which he or she feels is fair. If you agree with the assistant state attorney's offer, you may enter a plea today of guilty or no contest subject to my acceptance of this plea agreement. Although no judge is required to accept a plea agreement, most cases are, in fact, disposed of in this manner. If I am not willing to accept the plea agreement, you will be allowed to withdraw your plea of guilty or no contest, and plead not guilty.

MINIMUM/MAXIMUM PENALTY

Let me take a few minutes to talk about the possible range of sentences which might be imposed if you enter a plea of guilty or no contest today. If you are charged with a first degree misdemeanor, the maximum sentence is one year in jail, or a \$1,000 fine, plus court costs, or both. If you are charged with a second degree misdemeanor the maximum sentence is sixty days in jail, or a \$500 fine, plus court costs, or both. The absolute minimum sentence for either a first degree or second degree misdemeanor if you enter a plea of guilty or no contest today, is a withholding of adjudication and the payment of court costs of \$_____. A withholding of adjudication means that even though you enter a plea of guilty or no contest, you would not be adjudicated guilty by me and there would not be a conviction on your record for that charge.

For offenses other than DUI the absolute minimum sentence you will receive if you enter a plea of guilty or no contest would be a withholding of adjudication and court costs totaling \$____. A withholding of adjudication means that even if you enter plea no contest or guilty, there would not be an adjudication

of guilt, upon your record. You could truthfully say that you have not been convicted of the offense. A withholding of adjudication is usually reserved for a first time minor offense.

If you are charged with DUI and your blood alcohol level is below .20%, the absolute minimum sentence you will receive today if you plea guilty or no contest is as follows: Six months reporting probation, \$250 fine, court costs and surcharges, 50 hours of community service, DUI school, driver's license revocation for six months. Your driving privileges will be revoked for six months and your vehicle will be impounded for 10 days. Also, on a DUI charge, you must be adjudicated guilty. That is, there will be a conviction on your record for that offense if you plea guilty or no contest today.

If you have any questions at all about any of the information that I have gone over here with you, or any questions at all concerning your case, please do not sign anything and do not leave the courtroom until you have had an opportunity to speak with me. If you wish to speak with an attorney before you decide how you wish to plea to the charge against you, I will postpone your arraignment and allow you an opportunity to do so. If you wish to have the public defender's office appointed to represent you, you will need to inform the clerk and obtain a financial affidavit to be completed so I can review it when I come into the courtroom.

One of the most important parts of my job is to make sure that whatever you decide to do, you do so voluntarily and knowingly. You will not be penalized, ridiculed, or in any way treated more harshly because you decide to ask me a question. So, I emphasize to you, that if you are unsure about anything at all, have any questions at all, do not leave the courtroom and do not sign anything, until you have had a chance to speak with me.

2.044 Faretta Inquiry - Plea Stage

RIGHT TO COUNSEL SECTION

1. Do you understand that you have the right to a lawyer?

-The State of Florida and the U.S. Constitution guarantee your right to a lawyer.

-If you can't afford to hire your own lawyer, and if you qualify for a court appointed lawyer, I will appoint a lawyer right now.

-The State of Florida will even pay for this lawyer to help you with the decision as to whether or not to enter a plea.

2. Shall I appoint a lawyer to represent you?

ADVANTAGES AND DISADVANTAGES SECTION

3. Let me tell you a few ways a lawyer might help you:

-a lawyer can tell you if this plea is in your best interest

-a lawyer may tell you that you have a good case and even not to accept conditions of this plea.

-a lawyer has the experience to help you work with the assistant state attorney and even bargain for different terms.

-a lawyer can tell you the advantages and disadvantages of what you might say to the Court.

4. As an alternative, if you like, I could ask the public defender to act as standby counsel if you have any questions in the course of these proceedings.

5. Do you understand how necessary a lawyer is and how he or she could help you?

CONSEQUENCES OF THE PLEA SECTION

6. If you decide to take this plea you will (terms of the plea go here).

-The maximum sentence that can be imposed against you is _____.

-You may be forced to report to a probation officer for (length of time).

-You may have a permanent criminal record.

7. Do you understand that if you do not fulfill the conditions of your plea the assistant state attorney can ask to revoke your probation and you could be arrested and brought back to court for a probation hearing, and sentenced to up to _____ in jail?

8. Do you understand the serious nature of the charges against you and the consequences of any violation of probation.

COMPETENCY SECTION

9. I need to ask you a few questions about your background:

- Can you read?
- Did you go to high school?
- Did you graduate from high school?
- Did you go to college?
- Are you under the influence of any drugs or alcohol?
- Have you ever been diagnosed with a mental illness?

10. Has anyone told you to hire a lawyer or ask for an appointed lawyer? Has anyone threatened you if you do so?

11. Do you understand that the lawyer will be appointed for free, but that a lien may be imposed for the services of the office of the public defender?

12. Do you have any questions about having a lawyer appointed to defend you?

13. Do you understand the advantages and disadvantages of representing yourself?

14. Are you sure you don't want me to appoint a lawyer to defend you?

[Renew at sentencing if sentence is to imposed at a subsequent hearing].

FINDINGS OF THE COURT

COURT PERMITS PRO SE REPRESENTATION

1. The Court finds that the Defendant is literate, competent, and understands the ramifications of the decision to represent himself/herself.
2. The Court further finds that the defendant has freely, voluntarily and intelligently exercised his/her judgment in deciding to represent himself/herself.
3. Do you request that there be a STANDBY COUNSEL to advise and assist you in representing yourself?

COURT DOES NOT PERMIT PRO SE REPRESENTATION

The Court does not find that the defendant is competent to freely and voluntarily waive his/her right to be represented by counsel in this matter.

2.043 Accepting the Plea Colloquy

1. Mr./Ms. _____, you are charged with the crime of _____:
2. It is a _____ degree misdemeanor. The maximum sentence imposed by the statute is _____
3. Do you understand that you have the right to have an attorney represent you? (see if no jail/no adjudication applies).
 - a. Do you want an attorney to represent you? Are you waiving your right to have an attorney represent you?
 - b. Can you afford an attorney (have defendant also fill out the indigency affidavit)?

Ask indigency questions:

- Net income
 - Other income
 - Assets: cash, savings accounts, bank accounts, stocks, bonds, certificate of deposits, equity in real estate, and equity in a boat or motor vehicle or in other tangible property
 - Income of an accused minor or an accused adult tax-dependent person who is substantially supported by a parent or parents or by a guardian, who continues to be claimed as a dependent for tax purposes shall include the income of that dependent person's parent or parents or guardian, except a parent or guardian who has an adverse interest in the proceedings
 - Release on bail in the amount of \$5,000 or more.
 - Defendant owns or has equity in any intangible or tangible personal property or real property or the expectancy of an interest in such property.
4. How do you wish to plead?

Raise your right hand - administer oath to defendant

- State your full name.
- How do you wish to plead to the charge of _____?
 - Do you understand the mandatory minimum penalty (if any) and the maximum penalty provided by the statute in this matter?
 - Has anyone forced you or threatened you to enter this plea?
 - Has anyone promised you anything in order to get you to enter this plea?
 - Have you taken any pills, drugs, or alcoholic beverages in the past 24 hours?
 - Do you feel you are mentally alert and capable of exercising your best judgment at this time?
 - Do you understand that if you are not a United States citizen, the entry of your plea may subject you to deportation pursuant to the laws and regulations of the Immigration and Naturalization Service?
- Waiver of rights if represented by counsel:
 - Ms./Mr. _____ has represented you in this matter.
 - Are you satisfied with his/her representation?
 - Have you had the opportunity to fully discuss this case with him/her?
- To both represented and unrepresented defendants:
 - Did you hear the constitutional rights I read at the beginning of these proceedings?
 - Do you understand those rights?
 - Do you understand that you are giving up those rights?
- If not represented by counsel:
 - Do you understand that you are giving up your right to:
 - Remain silent

- Not be compelled to incriminate yourself
 - Confront your accusers and to question them
 - Compel witnesses to appear and testify on your behalf through court subpoenas
 - A presumption of your innocence, and your right to require the state to prove you guilty beyond a reasonable doubt before the presumption of innocence is removed
 - Testify on your own behalf and to present any defenses which you might have
 - A trial by jury when one is required
 - Appeal any action that the court has taken in your case unless the court has entered an illegal sentence or judgment.
- Do you understand that I will be asking you questions about the offense and that your answers may be used against you in a prosecution for perjury?
 - Do you understand the complete terms of the plea agreement and the obligations that you will incur as result of this plea?
 - Do you understand that there will not be a trial of any kind if I accept this plea and you are giving up your right to a trial?
- Do you
 - Acknowledge your guilt?

OR

- Acknowledge that this plea is in your best interest even if you are maintaining your innocence?

The Court finds that the waiver of the defendant's rights were knowingly, voluntarily and intelligently made, that the defendant understands the nature of the charge(s) and the consequences of his/her plea. The Court further finds that there is a factual basis for the plea as set forth in (charging document).

- ***I will accept your plea and I will sentence you as follows:***

- Do you understand that you have the right to appeal an illegal judgment or sentence, and that you have 30 days to do so? If you intend to appeal, you need to file the notice of appeal with the clerk's office in thirty (30) days from today's date. If you cannot afford an attorney, one will be appointed to represent you..

Chapter 2 – Arraignments and Pleas

Right to Counsel

6th amendment right to counsel attaches at arraignment. 5th amendment right to counsel attaches during custodial interrogations.

Attempts by government to get information from defendant after arraignment occur during a “crucial stage” at which 6th amendment right applies.

•**Michigan v. Jackson, 89 L.Ed. 2d 631 (1986)**

Under art. I §16, a defendant in Florida state courts has the right to counsel at each crucial stage of a prosecution. A crucial stage is one that may significantly affect the outcome of the case.

The right to counsel attaches when a defendant is charged with a crime.

At the commencement of each crucial stage the defendant is entitled to decide if he desires counsel and know the consequences of his decision. A waiver must be knowing and intelligent, and the court should indulge every reasonable presumption against waiver.

Once the right to counsel has attached, the state may not initiate any crucial confrontation with the defendant, including interrogation, without a valid waiver. A waiver applies only to the current crucial stage and must be renewed at each stage where the defendant is unrepresented.

Once the right to counsel has attached and a lawyer retained or requested, the state may not initiate a confrontation with the defendant without the lawyer present, but the defendant is free to initiate a confrontation without counsel at any time.

The right to counsel is charge-specific, and the invocation of rights in one case imposes no restrictions on the police in another.

Defendant is entitled to counsel at the earliest of the following points (1) when he is formally charged by the filing of an information, (2) as soon as feasible after custodial restraint, or at first appearance. Rule 3.111 procedures pertaining to appointment of counsel for indigents apply equally to non-indigent defendants.

(See this case for incorporation into Florida law under art. I §§16 and 2 the sixth amendment right to counsel and confession law of Faretta, Wade, Kirby, Brewer v. Williams, Jackson, and McNeil).

•**Traylor v. S., 596 So. 2d 957 (Fla. 1992)**

The right to counsel under the US constitution attaches at the earliest of the following points: formal charge, preliminary hearing, indictment, information, or arraignment. Under the Florida Constitution, the right attaches at the earliest of the following points: formal charge by information or indictment, as soon as feasible after custodial restraint, or first appearance.

Where an indictment is filed against defendant before his arrest, the right to counsel attaches before he is arrested.

The right to counsel must be invoked before it is effective. Thus, where defendant waives his right to talk to a lawyer after his arrest on the warrant, no violation of the right occurs. the mere appointment of counsel does not invoke the right.

Smith v. S., 699 So. 2d 629 (Fla. 1997), 22 F.L.W. S396 (7/3/97)

Defendant has right to attorney at VOP hearing unless he knowingly and voluntarily waives right.

S. v. Hicks, 478 So. 2d 22 (Fla. 1985)

While rule 3.160 allows for the filing of a written plea of not guilty, the court has discretion to require some defendants to appear in court for arraignment. While a blanket policy of requiring appearance would be improper, in specific cases it may be proper.

Tellis v. S, 779 So. 2d 352 (2d DCA 2000), 25 F.L.W. D734 (3/22/2000)

Court errs in refusing to consider defendant's request for a public defender where defendant was found not indigent at arraignment, but after his plea he lost his job and requested a public defender at sentencing.

Smith v. S., 590 So. 2d 1078 (2d DCA 1991)

Defendant has no 6th amendment right to an attorney when taking breathalyzer test. No formal charges have been instituted, so no right attaches.

Defendant has no 5th amendment right to attorney when taking breathalyzer test, since test is not testimonial.

Defendant has no 14th amendment due process right to attorney during breathalyzer test.

Defendant has no right to refuse test, so he is giving up no right by taking test.

Society's right to keep drunks off the road outweighs defendant's interest in keeping his license, and there is no abusive process used in administering test.

Section 901.24, F.S. does not require police to allow defendant to consult with attorney before taking breathalyzer test.

•S. v. Hoch, 500 So. 2d 597 (3d DCA 1986)

Court errs in requiring defendant to go to trial without an attorney over his objection when defendant had been through several private attorneys and public defenders, all of whom had withdrawn.

Stanojevich v. S., 567 So. 2d 37 (3d DCA 1990)

When the court in a DUI prosecution discharges the PD because the court will not impose a jail sentence, and defendant pleads guilty, upon a subsequent VOP the court may not impose a jail sentence.

Tur v. S., 797 So. 2d 4 (3d DCA 2001), 26 F.L.W. D195 (1/10/2001)

Forcing defendant to trial without an attorney is error where defendant at arraignment said he would hire an attorney, but showed up at trial without one claiming indigency and the court failed to make an adequate inquiry into his finances.

Landry v. S., 562 So. 2d 843 (4th DCA 1990)

Court errs in allowing defendant only a few minutes to confer with public defender before accepting defendant's no contest plea to violation of community control. Offer of counsel was not adequate.

J.G. v. S., 595 So. 2d 256 (4th DCA 1992)

Where defendant at arraignment indicates he wants to represent himself, the court errs in failing to renew the offer of counsel at all subsequent proceedings.

Norman v. S., 699 So. 2d 854 (4th DCA 1997), 22 F.L.W. D2296 (10/1/97)

Court errs in proceeding with restitution hearing without defendant's counsel present.

Hodas v. S., 603 So. 2d 21 (4th DCA 1992)

Court errs in failing to comply with rule 8.165 by not advising a child accused of a delinquent act of his right to counsel at each stage and failing to conduct a "thorough inquiry" that a waiver of his right to counsel is freely and intelligently made.

J.H. v. S., 679 So. 2d 67 (5th DCA 1996), 21 F.L.W. D2009 (9/6/96)

Faretta Inquiry

(See •**Faretta v. California, 45 L.Ed. 2d 562 (1975)** for requirements of hearing before allowing defendant to represent himself)

No Nelson inquiry is required when defendant does not allege that counsel's representation is incompetent. When defendant merely expresses dissatisfaction with his attorney, no inquiry is required.

Disagreement with trial strategy or lack of communication with defendant does not require the court to do a Nelson inquiry.

(See this case for extensive discussion of Nelson requirements.)

Morrison v. S., 818 So. 2d 432 (Fla. 2002), 27 F.L.W. S253 (3/21/2002)

Counsel is not required to blindly follow defendant's desire in conducting his defense. Counsel's refusal to follow defendant's instructions does not constitute good cause for discharging counsel such that new counsel must be appointed.

**Gore v. S., 784 So. 2d 418 (Fla. 2001), 26 F.L.W. S257
(4/19/2001)**

Where defendant's complaint about his attorneys concerns the failure to provide copies of paperwork and does not involve the lawyer's competence, the court need not do a Nelson inquiry.

**Stephens v. S., 787 So. 2d 747 (Fla. 2001), 26 F.L.W. S161
(3/15/2001)**

A court's inquiry into defendant's dissatisfaction with his counsel can be only as specific as the defendant's complaint. Thus, when defendant complains about counsel's trial strategy and he makes no formal allegations of incompetence, the court has no obligation to inquire further and no Nelson error occurs.

**Sexton v. S., 775 So. 2d 923 (Fla. 2000), 25 F.L.W. S818
(10/12/2000)**

A ruling on a request to permit self-representation is entitled to great weight and will be affirmed if supported by competent substantial evidence in the record.

(See this case for discussion of the right to self-representation and a discussion of the purpose of Faretta inquiry.)

Potts v. S., 718 So. 2d 757 (Fla. 1998), 23 F.L.W. S450 (9/10/98)

Where there is no unequivocal request for self-representation, the court does not err in not doing a Faretta inquiry.

**Davis v. S., 703 So. 2d 1055 (Fla. 1997), 22 F.L.W. S701
(11/6/97)**

Where defendant merely expresses dissatisfaction with the progress of his case, but does not claim incompetence by his counsel, the court does not err in not doing a Nelson inquiry.

**Davis v. S., 703 So. 2d 1055 (Fla. 1997), 22 F.L.W. S701
(11/6/97)**

While telling a defendant who wishes to represent himself of the disadvantages of self-representation is preferred, it is not required. Thus, where defendant had represented himself several times previously, and had been successful, and it is clear that he understood what he was doing, the court does not err in allowing self-representation.

Rogers v. Singletary, 698 So. 2d 1178 (Fla. 1997), 22 F.L.W. S561 (9/11/97)

Technical legal knowledge is not the criterion for assessing the knowing exercise of defendant's right to represent himself.

Bell v. S., 699 So. 2d 674 (Fla. 1997), 22 F.L.W. S485 (7/17/97)

When the court determines that defendant has knowingly and intelligently waived his right to counsel, the trial court may not deprive the defendant of his right to self-representation by ruling that he would not receive a fair trial if he proceeded without counsel.

Faretta only requires that the defendant waive his right to counsel with his eyes open. When the court determines that the defendant has knowingly and intelligently waived his right to counsel, it must allow him to represent himself irrespective of whether he will do a good job.

(See this case for extensive discussion of Faretta requirements).

**S. v. Bowen, 698 So. 2d 248 (Fla. 1997), 22 F.L.W. S208
(4/24/97)**

When defendant complains about his public defender, but the court in a Nelson hearing determines that the PD is rendering effective assistance, the court does not err if it fails to inform defendant of his right to self-representation so long as defendant makes no indication that he wants to represent himself.

S. v. Craft, 685 So. 2d 1292 (Fla. 1996), 22 F.L.W. S3 (12/26/96)

A Nelson inquiry is appropriate when an indigent defendant seeks to discharge court-appointed counsel and obtain new counsel before trial due to allegations of ineffectiveness. Nelson rules do not apply to privately-retained counsel.

**Branch v. S., 685 So. 2d 1250 (Fla. 1996), 21 F.L.W. S497
(11/21/96)**

Court errs in requiring defendant to represent himself even where defendant uses his right to counsel as a way to frustrate the administration of justice. Where defendant fired previously-appointed lawyer and refused to cooperate, a Faretta hearing must be held before requiring defendant to represent himself.

(See this case for extensive discussion of Faretta requirements in light of belligerent defendants who try to thwart the system).

**•S. v. Young, 626 So. 2d 655 (Fla. 1993), 18 F.L.W. S556
(10/28/93)**

Where the court does not inquire into defendant's age, ability to read, ability to write, education, drug or alcohol use, or mental status, the Faretta inquiry is insufficient and gets reversal.

Harmless error does not apply to Faretta errors.

**Wilson v. S., 724 So. 2d 144 (1st DCA 1998), 23 F.L.W. D2673
(12/4/98)**

When defendant wants to act as co-counsel, the court must conduct a Faretta hearing. The court has no obligation to allow defendant to act a co-counsel with his attorney. If the court denies the request, no Faretta hearing is required. However, when the court

decides to allow hybrid representation, a Faretta hearing must be done (but see dissent).

Brooks v. S., 703 So. 2d 504 (1st DCA 1997), 23 F.L.W. D41 (12/23/97)

(See •**Eady v. S., 695 So. 2d 752 (1st DCA 1997), 22 F.L.W. D799 (3/25/97)** for extensive discussion of the proper method of handling an obstreperous defendant who refuses court-appointed counsel and insists on representing himself, and then behaves in a disruptive way during trial).

Failure to re-offer counsel at each stage of the proceedings gets conviction reversed, including in a situation where defendant rejects counsel following a full Faretta hearing, but no subsequent offer is made.

(See this case for discussion of the circumstance under which the failure to renew an offer of counsel is harmless error.)

Smith v. S., 787 So. 2d 902 (2d DCA 2001), 26 F.L.W. D1164 (5/4/2001)

While there is no constitutional requirement under *State v. Hicks*, 478 So. 2d 22, 23 (Fla. 1985), to appoint counsel in all VOPs, counsel must be provided unless there is an informed waiver of counsel.

Failure to do an adequate Faretta inquiry before accepting waiver of counsel at a VOP gets reversal.

Gibson v. S., 747 So. 2d 420 (2d DCA 1999), 24 F.L.W. D2740 (12/8/99)

Failure to do an adequate Faretta inquiry is reversible error and harmless error rules do not apply.

If the court does not have sufficient time to do a full hearing at the time the request is made, the court should reschedule the hearing rather than place the burden on defendant to renew his motion. Failure to renew the request after the court fails to do an adequate inquiry does not waive review on appeal.

Hutchens v. S., 730 So. 2d 825 (2d DCA 1999), 24 F.L.W. D918 (4/9/99)

While defendant has a right to counsel of his own choice, the court can properly refuse to allow defendant to be represented by a non-attorney.

(See this case for discussion of unlicensed practice of law and requirement that defendant be represented by a licensed attorney).

Bauer v. S., 610 So. 2d 1326 (2d DCA 1992)

When defendant seeks to discharge his lawyer and asks for a different one, the court is not required to inquire about self-representation and do a Faretta inquiry. If the defendant does not ask to represent himself, the court need not offer it.

**Wilson v. S., 753 So. 2d 683 (3d DCA 2000), 25 F.L.W. D638
(3/15/2000)**

When defendant represents at sentencing that he has hired a new attorney, the court should recess the hearing to verify the statement and, if true, should allow the new attorney to appear.

**Ventura v. S., 741 So. 2d 1187 (3d DCA 1999), 24 F.L.W.
D2190 (9/22/99)**

Pursuant to the sixth amendment, a defendant has the right to present a closing argument, regardless of the length of the proceedings or the apparent simplicity of the issues. A pro se defendant has the right to give a closing argument in a non-jury trial, and conviction is reversed when the right is violated.

**Rodriguez v. S., 770 So. 2d 740 (4th DCA 2000), 25 F.L.W.
D2630 (11/8/2000)**

Where private counsel appears for defendant the day after jury selection and defendant indicates that he wants private counsel to substitute in for the PD, and indicates that he wants a delay, the court properly finds that the substitution of counsel was made in bad faith for the purpose of delay.

**Hurtado v. S., 760 So. 2d 279 (4th DCA 2000), 25 F.L.W.
D1383 (6/7/2000)**

A defendant has no sixth amendment right both to represent himself and have appointed counsel. Thus, pleadings filed by a represented defendant are a nullity. The exception to that rule is when defendant seeks to discharge appointed counsel. When defendant files a motion to discharge his lawyer, the court reversibly errs when it strikes the motion and refuses to consider it.

**Lewis v. S., 766 So. 2d 288 (4th DCA 2000), 25 F.L.W. D423
(2/16/2000)**

Defendant has the right to self-representation so long as the right to assistance of counsel is knowingly and intelligently waived. While a thorough inquiry in a Faretta inquiry is the best way to determine competency to waive counsel, a judge's familiarity with the defendant may prompt the judge to conclude that defendant is not competent to waive the right. However, the record still must reflect that court's findings on the Faretta factors.

**Beaton v. S., 709 So. 2d 172 (4th DCA 1998), 23 F.L.W. D866
(4/1/98)**

Under Nelson, a defendant always has the right to discharge his court-appointed counsel. The purpose of Nelson is to determine whether the defendant will be entitled to other court-appointed counsel following discharge of his present counsel. If

counsel is rendering effective assistance, then defendant has the right to accept his lawyer or represent himself.

When defendant seeks to discharge court-appointed counsel and hire his own lawyer, Nelson is not implicated.

Where on the day of trial defendant appears with a private attorney, and the court refuses to permit the substitution, but allows the court appointed counsel a continuance, the court errs in refusing to allow the new attorney in. Since the substitution would not have delayed the proceedings, defendant's right to the counsel of his choice is violated.

Refusal to allow the defendant the right to the counsel of his choice is reversible per se.

Foster v. S., 704 So. 2d 169 (4th DCA 1997), 23 F.L.W. D14 (12/17/97)

Where defendant at arraignment indicates he wants to represent himself, the court errs in failing to renew the offer of counsel at all subsequent proceedings.

Norman v. S., 699 So. 2d 854 (4th DCA 1997), 22 F.L.W. D2296 (10/1/97)

The right to counsel prevails over the right to self-representation. The right to counsel attaches automatically while the right to self-representation must be affirmatively invoked.

To invoke the right, defendant must affirmatively state his desire to proceed pro se. The request must be manifested in a written or oral request in order to trigger a Faretta inquiry.

Where defendant expressed dissatisfaction with his public defender, and wanted a different court-appointed lawyer, and upon being told no he expressed disappointment by saying, "I'd appreciate you getting him off my case, or go to trial by myself," the statement is not a request for self-representation and court does not err in not doing a Faretta inquiry.

(See this case for extensive discussion of when defendant's statements rise to the level required to do a Faretta inquiry.

Gibbs v. S., 623 So. 2d 551 (4th DCA 1993), 18 F.L.W. D1769 (8/11/93)

When the PD withdraws due to a conflict, and defendant's conflict attorney seeks to withdraw due to the fact that defendant filed a Bar grievance, but defendant states he does not want to represent himself, the court errs in requiring defendant to represent himself without a proper Faretta inquiry.

Clary v. S., 818 So. 2d 686 (5th DCA 2002), 27 F.L.W. D1387 (6/14/2002)

Merely signing a waiver of counsel form, without the court inquiring the waiver, does not constitute a proper waiver, and guilty plea should be withdrawn.

Failure to move to withdraw a plea results in a failure to preserve error, but failure to comply with rule 8.165 is fundamental.

J.O. v. S., 717 So. 2d 185 (5th DCA 1998), 23 F.L.W. D2159 (9/18/98)

Where the court does not meet all of the Faretta requirements each time defendant comes before him, but meets all requirements at least once and most several times, the inquiry is sufficient to allow defendant to represent himself.

There is no “fair trial” exception to Faretta. The fact that defendant may not get a fair trial if he represents himself does not permit the court to appoint counsel for defendant against his will.

(See this case for extensive discussion of Faretta requirements).

•Morris v. S., 667 So. 2d 982 (5th DCA 1995), 21 F.L.W. D33 (12/22/95)

Pleas

A voluntary and intelligent plea of guilty by a person who has been advised by competent counsel cannot be collaterally attacked.

Plea agreements (sentencing recommendation) are consistent with the requirements of voluntariness and intelligence. Because each side can obtain advantages when a guilty plea is exchanged for sentencing concessions, the agreement is no less voluntary than any other bargained-for exchange.

Only when a defendant was not properly apprised of the consequences of his plea can defendant make a due process claim.

When prosecutor offers specific sentencing recommendation in exchange for plea, and defendant accepts the offer, and prosecutor rescinds offer before plea, and prosecutor makes another more stringent offer which is ultimately accepted by defendant, and court sentences defendant in accordance with prosecutor’s recommendation, defendant has no constitutional right to specific performance of prosecutor’s initial offer and sentence and plea is upheld.

•Mabry v. Johnson, 81 L.Ed. 2d 437 (1984)

Even though a plea has been accepted and the court has participated in the plea negotiations, and there is a firm agreement for a specific sentence, the judge is never bound to honor the agreement. However, when there is a firm agreement and the judge decides to impose a greater sentence, the defendant has the right to withdraw the plea.

If the agreement calls only for the state to recommend a particular sentence and it is clear that the trial judge may impose a greater sentence, the defendant cannot withdraw the plea if a greater sentence is imposed so long as the state carries out its promise.

When the judge cannot honor a plea bargain, the judge must affirmatively offer the defendant the right to withdraw the plea. A motion to withdraw the plea need not be made to preserve the issue for appeal.

•**Goins v. S., 672 So. 2d 30 (Fla. 1996), 21 F.L.W. S158 (4/11/96)**

Where defendant displays irrational behavior, abnormality of demeanor, or other strange behavior that causes court to call defendant's competency into question, court on its own motion should conduct inquiry into competency.

Defendant's despondency and suicidal thoughts did not as a matter of law constitute grounds to believe that defendant was incompetent to plead guilty.

Where record shows that defendant entered pleas intelligently and voluntarily and understood the consequences of pleading guilty, court did not err in accepting plea to first-degree murder despite despondency.

Trawick v. S., 473 So. 2d 1235 (Fla. 1985)

The court must inform defendant of the possible consequences when accepting a VOP plea.

Johnson v. S., 776 So. 2d 1024 (1st DCA 2001), 26 F.L.W. D323 (1/22/2001)

Prior to the court's acceptance of a plea, the defendant has an absolute right to withdraw the plea.

Herald v. S., 755 So. 2d 763 (2d DCA 2000), 25 F.L.W. D784 (3/31/2000)

Until the court affirmatively states that a plea is accepted, the defendant can withdraw the plea.

If a plea is not binding on the defendant, it is not binding on the state. If the state nolle prosses counts based on a plea, and defendant withdraws from the plea, the state can withdraw the nol pros.

Mackey v. S., 743 So. 2d 1117 (2d DCA 1999), 24 F.L.W. D1929 (8/20/99)

Before accepting a guilty plea, the court must determine whether a factual basis exists for the plea. The purpose of the factual basis requirement is to make sure the defendant is pleading to the right charge. To withdraw a plea for lack of a factual basis, the defendant must show prejudice or manifest injustice.

A sufficient factual basis can be shown by the contents of the arrest affidavit.

Suarez v. S., 616 So. 2d 1067 (3d DCA 1993), 18 F.L.W. D896 (4/6/93)

When the court fails to ask all of the appropriate questions when accepting a plea, but the motion to withdraw the plea is not made until more than 30 days after sentencing, the court does not err in refusing to allow the plea to be withdrawn. In the absence

of a showing of manifest injustice, the court need not allow the plea to be withdrawn.

Barlow v. S., 784 So. 2d 482 (4th DCA 2001), 26 F.L.W. D766 (3/14/2001)

A plea can be withdrawn at any time before sentencing so long as the court has not accepted the plea. Thus, where defendant goes through a plea hearing involving substantial assistance, and part of the agreement is that he will not seek to withdraw the plea, but the court does not formally accept the plea, he must be allowed to withdraw it.

Miller v. S., 775 So. 2d 394 (4th DCA 2000), 26 F.L.W. D16 (12/20/2000)

Defendant announced an intent to plead, and the state then announced a nol pros. The court then proceeded to take the plea, ruling that defendant started to plead before the nol pros. Held: The state has the sole authority to determine whether to proceed with a case, and once a nol pros is announced, there is no case before the court for which a plea can be accepted.

S. v. R.J., 763 So. 2d 370 (4th DCA 1998), 23 F.L.W. D2686 (12/9/98)

No plea bargain is binding until the judge accepts it in open court. Until it is accepted, either party can withdraw from the agreement without any necessary justification. The court errs in accepting a plea bargain where the state indicates it was not agreeing to the plea.

S. v. Parisi, 660 So. 2d 372 (4th DCA 1995), 20 F.L.W. D2104 (9/13/95)

Court may not refuse categorically to accept negotiated sentence pleas, best interest pleas, or no contest pleas. The court has discretion to accept those pleas, and refusal to exercise discretion is subject to mandamus.

Boykin v. Garrison, 658 So. 2d 1090 (4th DCA 1995), 20 F.L.W. D1595 (7/12/95)

There is no federal constitutional right to have the court accept a best interest plea. Under rule 3.172, once the court determines that a factual basis for the plea exists, and the court determines that the plea is made voluntarily and the state agrees with the plea, the defendant cannot be forced to go to trial anyway. The court cannot unilaterally refuse to accept best interest pleas when the defendant is willing to concede guilt. There is no residuum of discretion available to the judge once the defendant makes a public acknowledgement of actual guilt, and the plea must be accepted.

•Rigabar v. Broome, 658 So. 2d 1038 (4th DCA 1995), 20 F.L.W. D812 (4/5/95)

The judge has no authority to enter into a sentence bargain with the defendant without the consent of the state. While the court has the authority to accept or reject a plea under rule 3.172(g), the court cannot interfere with the state's function.

Agreeing to a downward departure without the agreement of the state and without hearing the state's evidence exceeds the judge's power, even where the reasons for the ultimate downward departure are valid.

(See this case for extensive discussions of the court's authority in plea bargaining.)

**S. v. Gitto, 731 So. 2d 686 (5th DCA 1999), 24 F.L.W. D1105
(4/30/99)**