

IN THE CIRCUIT COURT OF MORGAN COUNTY, ALABAMA

STATE OF ALABAMA,

PLAINTIFF,

VS.

CASE NO. CC \_\_\_\_\_

DEFENDANT.

NOTICE AND WAIVER OF INDIGENCY STATUS

NOTICE

Comes now the State of Alabama and serves notice upon the Defendant that under Alabama law and the applicable Rules of Court, the Defendant is entitled to have a due process hearing for the purpose of determining whether he will be ordered to pay restitution and, if so, in what amount.

At such a hearing, the Defendant would be entitled to be represented by an attorney. The hearing would be before a judge and without a jury. The Defendant would be entitled to be heard and would be allowed to present evidence and call witnesses. The Defendant or his counsel would be permitted to confront and cross-examine any witnesses called by the State of Alabama to testify against him. The Court would then be required to enter a written order and findings of fact to support its decision.

Before the Court could order any restitution to be paid, the financial resources and obligations of the Defendant and the burden that payment of court-ordered restitution would impose on him would be taken into consideration in determining how much, if any, restitution should be ordered. Where the imposition of a fine is being considered by the Court, the trial judge is similarly required to take into consideration, among other things, the financial status of the Defendant before it imposes such a penalty. Docket fees and other costs of court are also required to be assessed upon conviction.

If the Court orders restitution, fines or costs to be paid, and the Defendant fails to pay as directed, the Court may cause an investigation to be made into the Defendant's financial, employment and family standing and the reasons for non-payment, including whether non-payment was willful and intentional or due to "indigency" - the inability to pay as a result of poverty.

Before any remedial action could be taken by the Court, a due process hearing, similar to the one described above, would be held. The Court could, as a result of such a hearing, reduce the amount of the obligation to a sum that the Defendant is able to pay, continue or modify the schedule of payments, direct that the Defendant be incarcerated until the unpaid balance is paid (subject to Rule 26.11, Alabama Rules of Criminal Procedures), or order the Defendant's wages withheld. In the case of fines and costs, the Defendant could be released from the obligation altogether. If restitution, fines or costs were ordered as a result of a traffic infraction, the Defendant's privilege to drive could be suspended until the obligation has been satisfied.

In addition, willful failure to pay could be punished by contempt of court. Also, if payment of restitution, fines or costs have been made a condition of probation or parole, the willful non-payment of these obligations could result in the revocation of those privileges, the modification of those privileges or the extension of those privileges.

Indigency, or the financial inability to provide for one's own support, is both a factor in determining the amount of restitution, fines and costs to be ordered and the conditions of payment. In addition, indigency or a plea of poverty is a defense to the non-payment. In Alabama, an indigent Defendant cannot be incarcerated for the inability to pay a fine, court costs, or restitution.

WAIVER

After discussion and negotiation between the parties, after a full explanation of rights has been given to the Defendant as evidenced by the attached Explanation of Rights form, and after such disclosure of information between the parties as each deems sufficient, it is agreed in this case, subject to acceptance by the Court, that the Defendant knowingly and voluntarily agrees to confess the restitution claims made by the State in this cause and that the Defendant knowingly and voluntarily agrees to waive his right to plead poverty or to assert a claim of indigency, should he subsequently fail to honor the payment provisions of the agreement. This waiver is made a part of and is given in consideration of the plea agreement reached in this cause by the Defendant and the State of Alabama. In addition, the Defendant agrees to fully and timely pay any fines and court costs imposed in this case. The defendant understands and agrees that payments will be deducted from any money or earnings that he receives, from any source whatsoever, during any term of incarceration imposed as a result of the plea agreement reached between the Defendant and the State of Alabama (this includes, but is not limited to, any earnings from work release or prisoner deposits, etc.). The Defendant agrees to pay over, deliver, convey, transfer, or assign any income or assets to which he is entitled while incarcerated to the Clerk of the Court or to cause the same to be done in order to satisfy the

terms and provisions of his plea agreement. It is further agreed that any restitution, fines or costs ordered pursuant to the Defendant's plea agreement with the State of Alabama will be made a condition of any probation ordered by the Court, regardless of the position taken by the State of Alabama with reference to the granting of probation. Should probation be ordered and subsequently revoked, it is agreed by the parties that any restitution, fines or costs ordered shall be made a condition of any future parole.

The Defendant understands that by signing this waiver, he is giving up his right to assert an indigency defense in any future contempt proceedings, probation revocation proceedings, or parole revocation proceedings, the basis of which is non-payment of restitution, fines or costs in the instant case. The Defendant acknowledges that he would not only be barred from pleading poverty or indigency as a defense in such actions, but that attempts to raise such a defense by him would act to make the plea agreement reached in the above-styled case voidable by the District Attorney.

IN MAKING THIS WAIVER, THE DEFENDANT UNDERSTANDS THAT HE IS GIVING UP HIS RIGHT TO CLAIM THAT HE IS UNABLE OR INCAPABLE OF COMPLYING WITH THE PAYMENT PROVISIONS OF HIS PLEA AGREEMENT. THE DEFENDANT UNDERSTANDS AND ANTICIPATES THAT ANY FAILURE ON HIS BEHALF TO HONOR THOSE PROVISIONS OF HIS PLEA AGREEMENT WILL RESULT IN HIM BEING HELD IN CONTEMPT OF COURT, HAVING HIS PROBATION REVOKED, OR HAVING HIS PAROLE REVOKED. HE ENTERS INTO THIS WAIVER FOR THE PURPOSE OF RECEIVING THE BENEFITS OF THE NEGOTIATED PLEA, AND, AFTER CONSULTATION WITH HIS ATTORNEY, OR, IF HE IS ACTING *PRO SE*, AFTER HAVING HAD THE OPPORTUNITY TO CONSULT WITH THE COURT REGARDING ANY QUESTIONS ABOUT THIS WAIVER BASED UPON A REASONABLE EXPECTATION THAT HE WILL HAVE SUFFICIENT FUNDS AVAILABLE TO HIM TO MEET THE TERMS OF THE PAYMENT PROVISIONS OF HIS PLEA AGREEMENT WHEN THEY BECOME DUE AND PAYABLE. The Defendant states to the Court that he has read, or has had read to him, the matters and rights hereinabove set forth, as well as those explained by the Court; that his attorney has discussed said matters and rights with him in detail, or, if he is acting *pro se*, the Court has afforded him an opportunity to ask any questions about this waiver, and the Defendant fully understands its content and meaning; that he is not under the influence of any drugs, medicines, or alcoholic beverages and has not been threatened or abused or offered any inducement or reward to get him to execute this agreement.

Having read and understood the foregoing, I agree to:

\_\_\_\_\_ 1) waive my right to claim indigency or enter a plea of poverty in any subsequent proceedings resulting from  
Initials the nonpayment of court costs in this case.

\_\_\_\_\_ 2) waive my right to claim indigency or enter a plea of poverty in any subsequent proceedings resulting from  
Initials the nonpayment of fines in this case.

\_\_\_\_\_ 3) waive my right to claim indigency or enter a plea of poverty in any subsequent proceedings resulting from  
Initials the nonpayment of restitution in this case.

SHOULD YOU HAVE ANY QUESTIONS WHATSOEVER CONCERNING THIS DOCUMENT, DO NOT SIGN IT UNTIL YOU HAVE ADDRESSED THOSE QUESTIONS TO THE COURT.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

I am the attorney for the above-referenced Defendant, and I certify that the preceding notice and waiver were read by the Defendant in my presence, or were read to him by me, that I discussed such rights with the Defendant in detail and that a written copy of the above rights were given to the Defendant by me. Having gone over his rights and the consequences of this waiver, I am of the opinion that the Defendant understands his right to plead poverty or to claim indigency and knowingly, intelligently, and voluntarily waives said right.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney for Defendant