

1.15 Pro Se Defendant

[Name of defendant] has decided to represent [himself] [herself] in this trial and not to use the services of a lawyer. [He] [She] has a constitutional right to do that. [His] [Her] decision has no bearing on whether [he] [she] is guilty or not guilty, and it must not affect your consideration of the case.

Because [name of defendant] has decided to act as [his] [her] own lawyer, you will hear [him] [her] speak at various times during the trial. [He] [She] may make an opening statement and closing argument and may ask questions of witnesses, make objections, and argue legal issues to the court. I want to remind you that when [name of defendant] speaks in these parts of the trial, [he] [she] is acting as a lawyer in the case, and [his] [her] words are not evidence. The only evidence in this case comes from witnesses who testify under oath on the witness stand and from exhibits that are admitted.

Comment

A defendant has a constitutional right to waive his or her Sixth Amendment right to assistance of counsel and proceed pro se. *Faretta v. California*, 422 U.S. 806 (1975). This instruction informs the jury of the defendant's choice to proceed pro se and directs the jury to treat the words spoken by the defendant while functioning as counsel like those of any other lawyer and not to treat them as evidence in the case. This Instruction is modeled on the Third Circuit's Criminal Jury Instruction § 1.18, which is similar to the Eighth Circuit's Criminal Jury Instruction § 2.23. The Eighth Circuit's model also includes the following paragraph that may be added when the court has appointed standby counsel:

Although [name of defendant] has chosen to represent [himself] [herself], the court has appointed [name of standby counsel] to assist [name of defendant] as standby counsel. This is a standard procedure. [Name of standby counsel] may [confer with [name of defendant]] [,] [make an opening statement] [,] [question witnesses] [,] [make objections] [and] [or] [argue legal issues to the court]. Just as when [name of defendant] speaks in [this part] [these parts] of the trial, when [name of standby counsel] speaks in [this part] [these parts] of the trial, [his] [her] words are not evidence.]

Eighth Circuit, Criminal Jury Instruction § 2.23 (formatting modified).

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