

WAIVER OF TRIAL BY JURY¹

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1. NY Const, art I, § 2, in relevant part, reads: “Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever. . . . A jury trial may be waived by the defendant in all criminal cases. . . by a written instrument signed by the defendant in person in open court before and with the approval of a judge or justice of a court having jurisdiction to try the offense.”

CPL 320.10 Non-jury trial; when authorized

“1. Except where the indictment charges the crime of murder in the first degree, the defendant, subject to the provisions of subdivision two, may at any time before trial waive a jury trial and consent to a trial without a jury in the superior court in which the indictment is pending.

2. Such waiver must be in writing and must be signed by the defendant in person in open court in the presence of the court, and with the approval of the court. The court must approve the execution and submission of such waiver unless it determines that it is tendered as a stratagem to procure an otherwise impermissible procedural advantage or that the defendant is not fully aware of the consequences of the choice he is making. If the court disapproves the waiver, it must state upon the record its reasons for such disapproval.”

People v Smith, 6 NY3d 827, 828 (2006): “[I]n defendant's presence the trial court inquired of defendant's counsel concerning his client's understanding of the rights waived. *Although an allocution by the trial judge eliciting defendant's full understanding of the importance of the right being waived would have been better practice*, no particular catechism is required to establish the validity of a jury trial waiver. The inquiry here, though minimal, was sufficient to establish that defendant understood the ramifications of such waiver” (emphasis added).

Introduction

(Mr./Ms.)_____: Your attorney has indicated that you wish to waive your right to a trial by jury. I must, however, decide whether to accept that waiver. In order to make that decision, I must ask you certain questions and, of course, listen to and evaluate the answers. Before you answer a question, you may talk to your lawyer about the question and then answer. If you do not hear or understand a question, tell me. Do you understand?

Have you spoken with your lawyer about your case and about waiving your right to trial by jury?

Are you satisfied with the services of your lawyer?

Do you understand that under the Constitution and laws of New York, you are guaranteed the right to a trial by jury?

Your lawyer has indicated that you wish to waive your constitutional and statutory right to a trial by jury and, in turn, request a trial by a judge. Is that what you wish to do?

Difference between Jury and Judge trial

I am going to explain to you the difference between a trial by jury and a trial by a single judge. I will start by explaining what a trial by jury is.

Trial by jury

In a trial by jury, (6/12) people from (*specify*) County are chosen as the jury. You, through your lawyer, participate in the selection of those people. Do you understand?

In a trial by jury, the jury determines whether you are guilty or not guilty of the crime(s) charged. Do you understand?

In a trial by jury, the judge only presides over the trial, makes rulings of law and instructs the jury on what the law is that it must follow. The judge does not decide whether the defendant is guilty or not guilty. Do you understand?

In a trial by jury, the jury's verdict of guilty or not guilty of a charged crime must be unanimous, that is all (6/12) jurors must agree on the verdict, guilty or not guilty. Thus, in effect, in a trial by jury, you have (6/12) people who act as judges of the facts and who must be unanimous in their decision. Do you understand?

In effect, the Constitution and laws of New York express the belief that a defendant is normally better served by a trial by a jury of citizens than one judge. Do you understand?

Single-Judge Trial

Now, I will explain to you what a trial by a single judge is.

In a trial by a single judge, that judge alone will decide whether the defendant is guilty or not guilty of the crime(s) charged. Do you understand?

I will be that judge. Do you understand?

Have I indicated to you or, to your knowledge, to your lawyer or anyone else, what the verdict on any count would be?

Do you understand that I have reached no decision with respect to any crime charged, and that my ultimate decision will rest on the law and on the evidence presented at trial?

Voluntariness

Is it still your desire to waive your right to trial by jury and, in turn, to be tried by a single judge?

Has anyone made any promise or commitment of any kind to get you to waive your right to a trial by jury?

Has anyone threatened you, or forced you, or pressured you to waive your right to trial by jury against your will?

Have I, or your lawyer, or anyone else said anything to have you waive your right to a trial by jury against your will?

Are you waiving your right to a trial by jury voluntarily, of your own free will and choice?

Written waiver of Jury Trial

Finally, for your waiver to be acceptable, you must sign here in court a writing expressly stating that you waive your right to a trial by jury. The text of that writing reads as follows:

Note: The judge may also wish to have a copy of the waiver provided to the defendant in order to permit him/her the option of viewing it at the same time.

“I, the above-named defendant in this case, [referring to you], having been indicted for the crime(s) of: (*specify as in the form*) and having been informed of my right to be tried under that indictment by a jury of (six/twelve) persons, hereby, in open court, waive my right to trial by jury, as guaranteed by the Constitution of the United States, the Constitution of the State of New York and the New York Criminal Procedure Law, and request that I be tried by the Court without a jury.”

Do you understand what I read?

If you still wish to go forward with the waiver of your right to a trial by jury, please now sign the form in the presence of your counsel and the court.

Counsel must sign as a witness.

Court approval of waiver

The form having been signed and witnessed here in open court, and the Court, being satisfied that defendant is intelligently, knowingly and voluntarily entering upon the waiver, the waiver of a trial by jury is accepted.

The defendant will be tried by a single judge.

The Court is accordingly signing the waiver form as so ordered.

Appendix

WAIVER FORM: (next page)

_____ COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

THE PEOPLE OF THE STATE OF NEW YORK,

Waiver of
Jury Trial
(CPL 320.10)

-against-

Indictment #

Defendant.

-----X

I, the defendant in this case, having been indicted for the crime(s) of:

as specified in the above-numbered indictment, and having been informed of my right to be tried under that indictment by a jury of (six/twelve) persons, hereby, in open court, waive my right to trial by jury, as guaranteed by the Constitution of the United States, the Constitution of the State of New York, and the New York Criminal Procedure Law, and request that I be tried by the Court without a jury.

Date:

Defendant

Attorney for the Defendant

SO ORDERED:

Judge