

70 PRELIMINARY INSTRUCTION: DEFENDANT PROCEEDING PRO SE

[TO BE GIVEN IF THE DEFENDANT HAS EXPRESSLY WAIVED COUNSEL AND HAS CHOSEN TO PROCEED PRO SE.]

The defendant has a constitutional right to represent (himself) (herself). I have advised the defendant that the same rules apply whether a lawyer acts for (him) (her) or (he) (she) acts for (himself) (herself). The defendant has decided to represent (himself) (herself) and this decision must not influence your verdict in any manner.

ADD THE FOLLOWING IF STANDBY COUNSEL HAS BEEN APPOINTED:

[I have appointed (name of lawyer) to be available to give legal advice to the defendant if the defendant requests it.]¹

COMMENT

Wis JI-Criminal 70 was originally published in 1998. This revision was approved by the Committee in June 2000.

This instruction is for the case involving a defendant who has expressly waived counsel and has chosen to proceed pro se. It is recommended for use after voir dire is completed and before presentation of the case begins. The Committee concluded that in a case involving a pro se defendant, a jury may wonder why the defendant has no lawyer and that it is best to tell the jury something rather than ignore the issue and possibly encourage speculation. The instruction is adapted in part from No. 1.06, Federal Criminal Jury Instructions, by Potuto, Saltzburg, and Perlman.

This instruction is **not** recommended for use in a case where the defendant has been found to have forfeited the right to counsel. Express waiver and forfeiture of counsel are discussed in detail in **SM-30 WAIVER AND FORFEITURE OF COUNSEL; SELF-REPRESENTATION; STANDBY COUNSEL; "HYBRID REPRESENTATION"; COURT APPOINTMENT OF COUNSEL**.

1. The role of standby counsel is discussed in SM-30, supra, at section IV.