

Faretta Inquiry

[FARETTA v. CALIFORNIA, 422 U.S. 806 \(1975\)](#)

When a defendant demands self-representation, the court should first establish that the defendant has the present mental capacity to make an intelligent waiver. This would be similar to the inquiry made when accepting a plea in lieu of a jury trial. For example, inquiry should be made regarding the defendant's age, education, ability to read and write, influence of drugs or alcohol, and whether the defendant has ever been adjudicated incompetent or is currently suffering from any mental disability.

The defendant should be asked questions similar to the following:

1. Have you ever studied law?
2. Have you ever represented yourself in a criminal action?
3. Do you understand the charge(s) against you?
4. Are you aware of the maximum penalty for each charge?
5. Are you familiar with the exact legal elements for each charge?
6. Do you realize that if you are found guilty of more than one of these crimes, this may result in an order that the sentences be served consecutively: that is, one after another?
7. Do you realize that if you represent yourself, you are on your own? As the judge, I cannot tell you how you should try your case or even advise you as to how to try your case. I cannot help you in any way.
8. Are you familiar with the Florida Evidence Code and Florida case law?
9. Do you realize that the Florida Evidence Code and Florida case law govern what evidence and, in representing yourself, you must abide by those rules? For example:
 - do you know what voir dire means?
 - do you know how to conduct a voir dire examination?
 - do you know the grounds for excusing a juror for cause?
 - do you understand **Neil** or **Slappy** objections?
 - do you know the definition of hearsay?
 - do you know the exceptions to the hearsay rule?
 - do you know the best evidence rule?

- do you know what constitutes proper impeachment?
- do you know when character evidence is appropriate and when it is not appropriate?
- do you know when and how to make proper objections?
- do you know when and how to move for judgment of acquittal?
- do you understand that failure to properly move for judgment of acquittal may result in a waiver?
- do you know how to proffer evidence to protect the record for appeal?
- are you familiar with a motion for mistrial?
- do you know the proper grounds for mistrial?
- are you aware that failure to timely move for mistrial may waive crucial mistakes made by the State or this court?
- do you know how to request and object to jury instructions?

10. Are you familiar with the Florida Rules of Criminal Procedure?

11. Do you realize that those rules govern the way in which a criminal action is tried in court?

12. (Then say to the defendant something to this effect): I must advise you that in my opinion you would be far better defended by a trained lawyer than you can be by yourself. I think it is unwise of you to try to represent yourself. You are not familiar with the law. You are not familiar with court procedure. You are not familiar with the Rules of Evidence. I would strongly urge you not to try to represent yourself.

13. Now, in light of the penalty that you might suffer if you are found guilty, and in light of all the difficulties of representing yourself, is it still your desire to represent yourself and to give up your right to be represented by a lawyer?

14. Is your decision entirely voluntary on your part?

15. (If the answers to the two preceding questions are in the affirmative, you should then say something to the following effect): I find that the defendant has knowingly and voluntarily waived his (or her) right to counsel. I will therefore permit him (or her) to represent himself (or herself).

Although it is not necessary to repeat this initial inquiry, the defendant should be reminded of the warnings contained in the inquiry and the court should renew the offer of assistance of counsel at each subsequent critical state of the proceedings.