

## **§6B1.4**

### **Commentary**

This provision implements the requirements of Rule 11(c)(5). It assures the defendant an opportunity to withdraw his plea when the court has rejected a plea agreement.

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| <i>Historical Note</i> | Effective November 1, 1987. Amended effective November 1, 2004 (amendment 674). |
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### **§6B1.4. Stipulations (Policy Statement)**

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- (a) A plea agreement may be accompanied by a written stipulation of facts relevant to sentencing. Except to the extent that a party may be privileged not to disclose certain information, stipulations shall:
  - (1) set forth the relevant facts and circumstances of the actual offense conduct and offender characteristics;
  - (2) not contain misleading facts; and
  - (3) set forth with meaningful specificity the reasons why the sentencing range resulting from the proposed agreement is appropriate.
- (b) To the extent that the parties disagree about any facts relevant to sentencing, the stipulation shall identify the facts that are in dispute.
- (c) A district court may, by local rule, identify categories of cases for which the parties are authorized to make the required stipulation orally, on the record, at the time the plea agreement is offered.
- (d) The court is not bound by the stipulation, but may with the aid of the presentence report, determine the facts relevant to sentencing.

### **Commentary**

This provision requires that when a plea agreement includes a stipulation of fact, the stipulation must fully and accurately disclose all factors relevant to the determination of sentence. This provision does not obligate the parties to reach agreement on issues that remain in dispute or to present the court with an appearance of agreement in areas where agreement does not exist. Rather, the overriding principle is full disclosure of the circumstances of the actual offense and the agreement of the parties. The stipulation should identify all areas of agreement, disagreement and uncertainty that may be relevant to the determination of sentence. Similarly, it is not appropriate for the parties to stipulate to misleading or non-existent facts, even when both parties are willing to assume the existence of such "facts" for purposes of the litigation. Rather, the parties should fully disclose the actual facts and then explain to the court the reasons why the disposition of the case should differ from that which such facts ordinarily would require under the guidelines.