

proffer pg2.jpg

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your client will be given a polygraph examination. At the option of this office, your client will be given a polygraph examination to verify the truthfulness and completeness of any proffer statement. This office shall have the exclusive right to choose the polygraph examiner.

(6) **Restrictions on use of proffer statements.**

- (a) **To prove guilt.** Except as otherwise specified in this agreement, this office will not offer any proffer statement made by you or your client in this office's case-in-chief in any criminal prosecution of your client.
- (b) **At sentencing.** Except as otherwise specified in this letter, if your client is convicted, this office will not use your client's proffer statements as direct evidence in support of any increase to the applicable offense level under the United States Sentencing Guidelines or in support of any upward variance from the applicable guideline range, as permitted by USSG § 1B1.8. But this office retains the right to otherwise use your client's proffer statements at sentencing. And this office may also use for sentencing purposes all information previously known to the government, and all information obtained or discoverable through another source.

(7) **Permissible uses of proffer statements.**

- (a) **Cross-examination and rebuttal of inconsistencies.** This office may use your client's proffer statements in any proceeding to cross-examine your client. This office may use your client's proffer statements to counter any evidence offered by or on behalf of your client that is inconsistent with any proffer statement made by your client, including testimony of any witness elicited by your client or an attorney representing your client, on direct or cross-examination, and any reasonable inference suggested by evidence offered or elicited by or on behalf of your client.
- (b) **Derivative use of information.** There is no restriction on this office's use of any evidence derived directly or indirectly from your client's proffer statements.
- (8) **Consequences of failure to tell the truth, nondisclosure, and misleading the government.**