

Appendix 2 – Example of a Warning Hearing

Good morning.

I am Judge _____.

You are here because we believe that you can be successful on probation, rather than being incarcerated at Halawa or in Mississippi or wherever they are now sending folks.

But you are also here because you haven't been doing your part and following the rules of probation, and the probation officer thinks you are headed for a revocation.

I hope you do succeed on probation. So does your lawyer, your probation officer, and your family. I think you can succeed on probation, or I wouldn't have put you on probation to begin with.

But to do so, you must act responsibly. You are the one responsible for making sure that you comply with your conditions of probation. When you are on probation rather than being sent to prison, you are making a deal with me to follow the rules.

Hopefully, you will learn that the more responsible you are, the more freedom you will have. The less responsible you are, the less freedom you will have.

The 3 things I am immediately concerned about for you on probation are illegal drug use, meeting regularly with your probation officer, and complying with the other conditions of your probation, like going to drug treatment, etc.

[If drugs are an issue] You have to call the drug test hotline every weekday morning [441-8962]. If you miss a drug test a warrant will be issued immediately.

If you are using drugs, you are breaking the law, you are violating your probation and, if you are in treatment, it's not working. Unless you recently found some cash on the sidewalk or inherited some money, continuing to test positive for drugs also means that crimes are probably being committed by someone in order to get the drugs.

If you miss an appointment with your probation officer, it tells me one of 3 things:

- 1) you know you will test positive;
- 2) you are doing something you shouldn't be doing; or
- 3) you are blowing off the probation officer.

All 3 are bad.

You are being brought here to court today so I can clearly spell out what the consequences will be if you don't follow the rules of probation.

From now on, if any of these things happen -- if you fail a drug test, if you fail to meet with your probation officer when you are supposed to, or you fail with other terms of your probation, such as not getting an assessment, not going to treatment, etc. -- you will go to jail.

If you test positive, you will be arrested on the spot, held in custody, and we will have a hearing two days later. If you used drugs, you will go to jail.

If you missed a drug test or a scheduled appointment or don't comply with other conditions of probation, I will issue a bench warrant for your arrest immediately, and HPD's SSD (SWAT Team) or Crime Reduction Unit (CRU) officers will arrest you. They have agreed to serve the warrants for me. They won't come alone. They will arrest you at work or home or wherever. That would be embarrassing and folks may get hurt. It is better to just come in even if you violated. If you did, you will go to jail but not for as long as you will if we have to find and arrest you.

I understand that things happen in life. If your car breaks down on the way to the probation office, push it to the side of the road, call your probation officer, tell her/him that you will be late, and get on the bus. If you or your child is at the Emergency Room, call your probation officer to reschedule your appointment and be ready to bring proof of the medical treatment when you come for that appointment. But apart from that type of thing, if you try to reschedule your appointment, I am expecting the probation officer to say 'no' and to notify me immediately if you miss the appointment so I can issue the warrant.

All of your actions in life have consequences, good or bad. If you confront your problems and learn to change your thinking and your behavior, you will be able to follow the rules of probation and be able to remain free in society. Remember, responsibility brings more freedom.

On the other hand, if you violate the rules, there will be consequences, and they will happen right away. But it's all about choices.

You may now have daily responsibilities like a job, or a class, or you may have a special event coming up -- baby's first luau, son's football game, daughter's graduation, whatever.

If you test positive, miss an appointment or otherwise don't comply, you will go to jail right away. And you may get in trouble with your job or miss that special event. But that will really be your choice. You didn't care about your job or that luau or that graduation when you got high or missed the appointment or didn't go to treatment. It wasn't important enough to you then. You made a choice to use. You are not 13 years old. You are an adult. You can make a choice not to use and to be responsible about seeing your probation officer when you are supposed to and complying with the other terms of your probation.

Remember, these violations will modify your probation and will send you to jail. If the probation officer sees that you continue to violate the terms of your probation and that you are no longer suitable for being on probation at all, they may file a motion to revoke your probation.

If I see such a revocation motion in front of me and the violations are proven, I may well give you the 5, 10 or 20 years in prison. The probation officers are my eyes and ears in working with you and supervising you outside of court. I rely on them and their judgment.

If you are unable or unwilling to comply with the terms of probation, the place for you is prison. That will give the probation officers more time to work with those folks who want to be on probation, who want to change their thinking and change their behavior and learn to be responsible.

Do you understand everything I just said? Do you have any questions for me?

Good. I wish you luck and success on probation and hope I don't see you back here.