

[TRIAL COURT CAPTION]

**VERIFIED MOTION TO PROCEED IN *FORMA PAUPERIS* FOR
PURPOSES OF EXPENSES**

The Defendant, by counsel, respectfully requests to proceed *in forma pauperis* for the purpose of the expense of the appeal, including expenses related to trial transcription, record preparation and filing fee. In support of the Motion, the Defendant states the following:

1. On [insert date], the trial court issued [insert Order from which you are appealing].
2. The Defendant is indigent being that [insert facts supporting indigency].
3. A non-party is paying for legal fees that will be incurred by undersigned counsel in the representation of the Defendant on appeal. Undersigned counsel's legal fees do not include the payment of the county's fees for preparation of the transcript or the payment of filing fees to the Court of Appeals.
4. The County's public defender comprehensive plan "in order to qualify for State reimbursement" pursuant to I.C. 33-40-7-5, must comply with the Indiana Public Defenders Commissions (Standards for Indigent Defense Services in Non-Capital Cases)", standard N which provides as follows:

The comprehensive plan shall authorize expenditures for investigative, expert, or other services for a person who has retained private counsel for a trial or appeal when the person is unable to pay for the services and such services are necessary to prepare and present an adequate defense. Such services are eligible for reimbursement from the public defense fund if authorized by the Court.

5. In order to qualify for any reimbursement of public defender expenditures, the County must comply with this standard.
6. In order to assure the Defendant's absolute right to appeal guaranteed by Article VII, § 6 of the Indiana Constitution and I.C. 35-38-4-1, the Defendant's request should be granted.

WHEREFORE, the Defendant, by counsel, respectfully requests to proceed *in forma pauperis* for the purposes of the expense of appellate record, including trial transcript and Clerk's Portion preparation and filing fee, and for all other relief and just in the premises.

The undersigned affirm under penalties of perjury that the foregoing representations are true to the best of their knowledge and belief.

(Attorney Signature)

REFERENCES

Indiana Rule of Appellate Procedure 40 (providing procedure for Appellant to request to proceed in *forma pauperis* for purposes of the appeal if such motion is denied in the trial court; appellate motion must be filed within thirty (30) days of denial).

Form App. R. 40-1 (sample affidavit of indigency used in appellate motion).

I.C. 33-40-3-7 (allows court to order partial payment of the cost of services received by an indigent person if certain findings are made).

NOTE

A copy of the Motion should be served on the County Public Defender's Office being that the Motion asks the Public Defender Office to pay for expenses.

CASE LAW

Griffin v. Illinois, 351 U.S. 12 (1955) ("[There] can be no equal justice where the kind of trial a man gets depends on the amount of money he has.").

LaMonte v. State, 839 N.E.2d 172 (Ind.Ct.App. 2005) (the trial court erroneously ordered the Defendant to pay \$400 toward his appeal costs; determination of indigency must be based on a "thorough" rather than "superficial" examination of income and ownership of property).

Hall v. State, 826 N.E.2d 99 (Ind.Ct.App. 2005) (the trial court abused its discretion when it appointed appellate counsel for the Defendant, but ordered him to pay one-half of his appellate attorney fees and all of the costs of preparing transcript at a rate of \$100 per month).

Moore v. State, 401 N.E.2d 676 (Ind. 1980) (the fact that a defendant is able to post bond is not determinative of his non-indigency but is only one factor to be considered).

Campbell v. Criterion Group, 605 N.E.2d 150, 160 (Ind. 1992) (civil appellants cannot be denied an appeal because of their lack of funds; however, only when reconstruction of the record via the appellate rules is an inadequate mechanism to provide a record can the trial courts authorize additional accommodations, including transcripts, to assure indigents the right of appeal).

Beauchamp v. State, 788 N.E.2d 881 (Ind.Ct.App. 2003) (trial court urged to reconsider ruling, in event of retrial, denying a requests for funds for a forensic pathologist, ophthalmologist, and a pediatric neurologist made by Beauchamp who hired a private attorney but could not afford experts; the State's case hinged on inferences from opinions of six medical doctors with various specialties and the charge was serious, a Class B felony).