

[CAPTION]

MOTION TO PRODUCE DEFENDANT FOR DEPOSITIONS

The Defendant, by counsel, respectfully requests this Court to issue an Order to the [warden/superintendent] of the [correctional institution] and to the Sheriff of [insert County] to produce the Defendant for depositions at _____.m., on _____, at _____, in order to observe and assist counsel in his defense.

(Signature)

CASE LAW

CASEBANK M.3.b

Jones v. State, 445 N.E.2d 98 (Ind. 1983) (where a witness later testifies against the Defendant at trial, court ordered absence of the Defendant at taking of deposition does not violate the Defendant's right to confront witnesses).

Driver v. State, 594 N.E.2d 488 (Ind.Ct.App. 1992) (testimony taken in violation of the Defendant's right to face-to-face confrontation cannot be used at trial).

State v. Owings, 622 N.E.2d 948 (Ind. 1993) (admission at trial of deposition which the Defendant was not permitted to attend, taken by State and given by a witness unavailable for trial, results in the Defendant never having the opportunity to confront that witness; such procedure may violate the Defendant's right to confrontation).

Gallagher v. State, 466 N.E.2d 1382 (Ind.Ct.App. 1984) (admission of deposition, requested by the Defendant and taken by counsel without the Defendant present was proper where the witness was unavailable and the statements contain sufficient indicia of reliability).

Kindred v. State, 540 N.E.2d (Ind. 1989) (trial court's refusal to permit Defendant to be transported from reformatory to jail in order to depose witnesses, where Defendant had made repeated escape attempts, did not evidence imbalance in discovery process and did not violate due process; trial court permitted Defendant's standby counsel to depose State's witnesses).

Mathews v. State, 26 N.E.3d 130 (Ind.Ct.App. 2015) (Defendant waives his right to confrontation, even if witness is unable to testify at trial, where there is no showing in the record that Defendant was unable to attend the deposition of witness and he made no objection to it proceeding).