

[CAPTION]

MOTION TO TAKE DEPOSITIONS AT PUBLIC EXPENSE

The Defendant, by counsel, respectfully requests this Court for an Order directing the State to produce [insert name of witness for depositions] at [insert time and location]. In support of this Motion, the Defendant states:

1. Under Trial Rule 30, the Defendant has a right to depose witnesses for the purpose of preparing his case for trial.
2. Undersigned counsel has advised the Defendant that in order to provide him effective representation she must take the depositions of the State's witnesses, [insert list of names of witnesses]. [Without revealing trial strategy, provide a brief description of the role of each witness or what information hoped to be gained from the depositions].
3. There is no paramount State interest in not allowing Defendant to take the requested depositions.
4. The Defendant is indigent and has no funds to pay the costs of the depositions necessary to prepare this case for trial. [Set forth facts of indigency, such as salary, who posted bond, etc.].

WHEREFORE, the Defendant, by counsel, moves this Court for an Order directing the above depositions be taken at public expense, and for all other relief just and proper in the premises.

(Signature)

REFERENCES

CASEBANK M.3.b

Indiana Trial Rule 30 (in order to take a deposition of an incarcerated individual, counsel must ask for leave of court).

CASE LAW

Murphy v. State, 265 Ind. 116, 352 N.E.2d 479 (1976) (basis for motion for funds for a deposition is that defendant is indigent, deposition procedure will not be unduly burdensome, and witness' testimony is not subject to a protective order).

Tinnin v. State, 416 N.E.2d 116 (Ind. 1981) (we recognize that normally, absent a showing that the State has a paramount interest to protect, criminal defendants have a right to discovery, including the taking of depositions from the persons listed as State's witnesses).

Brewer v. State, 173 Ind.App. 161, 362 N.E.2d 1175 (Ind.Ct.App. 1977) (trial rules 30 and 31 govern the taking of depositions in criminal cases).

Thompson v. State, 702 N.E.2d 1129 (Ind.Ct.App. 1998) (where the Defendant failed to specify persons he wished to depose and information he hoped to obtain, the trial court did not abuse its discretion in denying the Defendant's request for discovery at public expense).

Bailey v. State, 714 N.E.2d 1144 (Ind. 1999) (absent a showing that the Defendant has no legitimate defense interest or that State has paramount interest to protect, criminal defendants have a right to depose those persons listed as potential State's witnesses; however, professional persons have a right to be free from compelled professional service in form of answers to questions that call for professional opinion and analysis without being reasonably compensated for that service).

Reed v. State, 748 N.E.2d 381 (Ind. 2001) (in murder prosecution, the Defendant was denied his Sixth Amendment right of confrontation when the trial court refused to compel deposition of prosecution witness; his inability to depose the witness left the Defendant with no opportunity to expose several inconsistencies in the Defendant's various accounts; at very least, the Defendant was entitled to access to the witness prior to trial to have the opportunity to develop and pin down the witness's testimony or at least have sworn testimony to impeach any variances).