

[CAPTION]

VERIFIED MOTION TO SET ASIDE THE SELECTION OF VENUE COUNTY

The Defendant, by counsel, respectfully requests this Court to set aside the change of venue to [insert county]. In support of the Motion, the Defendant states the following:

1. On [insert date], the Defendant, by counsel, filed a Motion for Change of Venue which was granted on [insert date].

2. [CHOOSE ONE: The prior court-appointed counsel and the prosecutor agreed upon the county to which venue was changed. OR The prior court-appointed counsel and the prosecutor each struck counties from the written list prepared by the Court, leaving [insert county] as the county to which venue was changed].

3. The prior court-appointed counsel at no time consulted with Defendant concerning the county to which venue would be changed.

4. The selection of [insert county] herein made without the Defendant's knowledge or consent violates his right to due process of law under Article 1, Sec. 12 of the Indiana Constitution and the Fourteenth Amendment to the United States Constitution.

5. The prior counsel's actions denied the Defendant the right to effective assistance of counsel guaranteed under Article 1, Sec. 13 of the Indiana Constitution and the Sixth Amendment to the United States Constitution.

WHEREFORE, the Defendant, respectfully requests that the selection of [insert county] be set aside as being invalid, that this Court order that the county to which venue shall be changed be selected in accordance with Criminal Rule 12 of the Indiana Rules of Procedure, and for all other relief just and proper in the premises.

(Signature of Attorney)

I affirm, under the penalties for perjury, that the foregoing representations are true.

(Signature of Defendant)

REFERENCES



Indiana Rule of Criminal Procedure 12 (Change of venue in criminal cases)


Indiana Rule of Criminal Procedure 12(G) (process for selecting county to which the case will be venued; the parties either must agree to a county within three days from the granting of the change of venue or the parties must strike from a list of counties set forth by the court; if the moving party fails to timely strike, then the party shall not be entitled to a change of venue; if the non-moving party fails to strike, the clerk shall strike for the party).


Indiana Constitution, Article 1, §§12 and 13

[U.S. Constitution, 6th and 14th](#) [Shepardize](#) Amendments

CASE LAW

Mosely v. State, [271 Ind. 164](#)  , [390 N.E.2d 659, 663](#)  (1979) (attorney may verify by affidavit the rationale for seeking a change of venue without the Defendant's signature).

Burdine v. State, [515 N.E.2d 1085](#)  (Ind. 1987), *superseded by statute on other grounds* (trial courts may consider evidence from an objective group of community residents summoned to the court as a “test jury”; denial of change of venue based on lack of knowledge of test jury was proper).

Clemens v. State, [610 N.E.2d 236](#)  (Ind. 1993) (Defendant did not show he was harmed by trial court’s refusal to seat a test jury).