

[CAPTION]

**OBJECTION TO PROSECUTOR'S MOTION FOR USE IMMUNITY AND MOTION TO
QUASH SUBPOENA**

[Insert client's name], the recipient of a prosecutor's subpoena, by counsel, objects to any questioning of the Defendant on the basis of the Fifth Amendment right against self-incrimination, and in support thereof, would show the Court as follows:

1. On [insert date], [insert client's name] was served with a prosecutor's subpoena to present him for questioning at the Prosecutor's Office regarding [insert subject matter].

2. [Insert client's name] is a Defendant in a criminal action, [insert cause number], pending in [insert court]. He is charged with [insert offense(s)].

3. [Insert client's name] has, or intends to, present himself in compliance with the prosecutor's subpoena at the prosecutor's office at the appointed time, place, and date. He further has, or intends to, assert his Fifth Amendment right against self-incrimination with respect to any questions in excess of identifying information.

4. Counsel for [insert client's name] has been advised that if the [insert client's name] refuses to answer the prosecutor's questions pursuant to the prosecutor's subpoena, the prosecutor will offer to him use immunity, and then ask the court to order him to answer the questions submitted.

5. Counsel objects to any ex parte attempt to have the court enter an order granting the Defendant use immunity and requiring him to respond to questions pursuant to the prosecutor's subpoena, since such procedure (that is, the request for and grant of use immunity coupled with an order to answer *incriminating questions*) is applicable only in the context of a grand jury proceeding or during a trial, and not in the context in which the State of Indiana wishes to utilize the procedure.

6. The grant of use immunity is not available for questioning pursuant to a prosecutor's subpoena. A court may grant use immunity, pursuant to the request of a prosecuting attorney, to a witness before the Grand Jury. (Ind. Code 35-34-2-7 and 8), or at a criminal trial. (Ind. Code 35-37-3-1 to 3).

7. Indiana Code 35-37-3-1 provides, in part, as follows:

Sec. 1 (a) If a witness, in any hearing or trial, occurring after an indictment or information has been filed, refuses to answer any question or produce any item . . . the court shall . . . immediately conduct a hearing on the witness's refusal. After such a hearing, the court shall decide whether the witness is required to answer the question or produce the item . . .

(b) If the prosecuting attorney has reason to believe that a witness will refuse to answer a question . . . during any criminal trial, the prosecuting attorney may submit the question or request to the trial court. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item.

8. Indiana Code 35-37-3-2 provides:

If the court determines that the witness, based upon his privilege against self-incrimination, may properly refuse to answer a question or produce an item, the prosecuting *attorney may* make a written request that the court grant use immunity to the witness, in accordance with section 3 of this chapter.

9. Indiana Code 35-37-3-3 provides that “upon the request of the prosecuting attorney, the court shall grant use immunity to a witness.” The section goes on to provide that the grant of use immunity may be by written order or in open court. Read in conjunction and in pari materia with the other sections, use immunity may only be granted to a witness during a criminal trial, or hearing, absent the grand jury proceedings.

10. There is no provision for use immunity pursuant to a prosecutor's subpoena.

11. Accordingly, [insert client's name], by counsel, objects to any purported attempt by the prosecutor to grant him use immunity pursuant to a prosecutor's subpoena, to compel his testimony or answers to any inquiry by the prosecutor's office, absent a trial, court proceeding, or grand jury proceeding.

WHEREFORE, [insert client's name], by counsel, respectfully requests the court to decline any ex parte effort by the State to obtain an order requiring [insert client's name] to answer the prosecutor's questions pursuant to a prosecutor's subpoena, for a hearing on the issue if any such attempt is so made, for an order prohibiting the State of Indiana from utilizing the prosecutor's subpoena power, which is an investigative tool, from being used to evade the provisions of the law relating to the Fifth Amendment privilege against self-incrimination and use immunity, and for all other appropriate relief.

(Signature)