

[CAPTION]

**MOTION TO ALLOW DEFENDANT TO PARTICIPATE AT TRIAL AS
CO-COUNSEL**

The Defendant, by counsel, respectfully requests this Court to allow him/her to participate at trial as co-counsel. In support of this Motion, the Defendant states the following:

1. The Defendant is presently charged with [insert offense(s)].
2. It has become evident from the special facts of this case and from the lists of witnesses proposed by both the State and defense, that the Defendant's trial and pretrial proceedings will be extended and complex.
3. It further appears that most if not all of the evidence which will be presented in this matter lies within the Defendant's personal knowledge, and in many instances the clarification of such evidence may lay within his/her exclusive knowledge.
4. The Defendant has been made aware of the complexities and consequences of a layperson conducting a trial.
5. It is within this Court's discretion to grant hybrid representation. Myers v. State, 510 N.E.2d 1360 (Ind. 1987).
6. The Defendant requests and wants this Motion brought in his/her behalf.

WHEREFORE, the Defendant, by counsel, respectfully requests that he/she be allowed full participation in the trial as co-counsel for his/her own defense, and for all other relief just and proper in the premises.

(Signature of Attorney)

(Signature of Defendant)

CASE LAW

CASEBANK Y.7.a

Lock v. State, 403 N.E.2d 1360 (Ind. 1980) (allowing the Defendant to act as co-counsel in his cause was purely discretionary with court).

Hunt v. State, 459 N.E.2d 730 (Ind. 1984) (trial court did not abuse its discretion in ruling that the Defendant's request to act as co-counsel, made only on morning of trial, was untimely).

Lockhart v. State, 671 N.E.2d 893 (Ind.Ct.App. 1996) (the Indiana Supreme Court has repeatedly refused to recognize constitutional right to hybrid representation, which is right to proceed pro se and to be represented by counsel at the same time; here, the Defendant failed to provide persuasive argument that he had absolute right to hybrid representation under Ind. Constitution). See also Myers v. State, 510 N.E.2d 1360 (Ind. 1987); Carter v. State, 512 N.E.2d 158 (Ind. 1987).

Sherwood v. State, 717 N.E.2d 131 (Ind. 1999) (where the Defendant was competent to stand trial, made knowing, intelligent and voluntary waiver of his right to counsel in a timely and unequivocal manner, and because he was denied actual control of case presented to jury, imposition of hybrid representation violated the Sixth Amendment).

Carter v. State, 512 N.E.2d 158 (Ind.Ct.App. 1987) (the Defendant, who was granted hybrid representation and who defined public defender's responsibilities and had final say on all trial decisions, waived right to allege ineffective assistance of counsel).

Indiana v. Edwards, 128 S. Ct. 2379 (2008) (State may limit a mentally ill, but competent Defendant's right to self representation by insisting upon trial counsel when Defendant lacks the mental competency to conduct trial proceedings themselves). See also Edwards v. State, 902 N.E.2d 821 (Ind. 2009) (on remand for U.S. Supreme Court, upholding trial court's finding of incompetence to proceed pro se).

NOTE

Being that there is no constitutional right to hybrid representation, a Motion to Proceed Pro Se With Standby Counsel may have a better chance of success and create the same result that a Motion for Hybrid Representation. See Jones v. State, 449 N.E.2d 1060 (Ind. 1983) (the appointment of standby counsel is clearly "the recommended procedure to preserve the Defendant's rights when he elects to represent himself."), *overruled on other grounds by* Seay v. State, 698 N.E.2d 732 (Ind. 1998); Goble v. State, 766 N.E.2d 1 (Ind.Ct.App. 2002) (the trial court abused its discretion in refusing to allow pro se Defendant's standby counsel to conduct direct examination of him and closing argument; Court sets forth factors to consider in determining whether pro-se a defendant has been denied his right to counsel).