

[CAPTION]

MOTION REQUESTING GRAND JURY TESTIMONY

The Defendant, by counsel, respectfully requests this Court for an Order permitting the Defendant, by and through counsel, to inspect the testimony of the Grand Jury, which returned an indictment against the Defendant herein on [insert date]. In support of this Motion, the Defendant states the following:

1. Inspection of the Grand Jury testimony is material to the preparation of the Defendant's case. Without inspection, the Defendant has no adequate means to obtain necessary information to move to dismiss pursuant to I.C. 35-34-1-4(a)(3).
2. The inspection of the Grand Jury testimony will enable the Court to determine substantial legal and constitutional questions raised by any motions of the Defendant to dismiss the indictment that should be determined by the Court prior to arraignment and trial of this cause.
3. The time limitation set forth in I.C. 35-34-1-4(b) has not yet run.
4. The denial of inspection of the Grand Jury testimony would arbitrarily deprive the Defendant of a fair trial and his/her liberty without due process of the law, contrary to the due process and fair trial provisions of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Article 1, Sec. 13 of the Indiana Constitution.
5. Due and timely inspection of the Grand Jury testimony is necessary in order to prevent the suppression of constitutionally protected material and to guarantee the public access to such material under the First Amendment of the United States Constitution. The Defendant's constitutional rights to discovery of material evidence and to a fair trial substantially outweigh any policy interest in grand jury secrecy. [INSERT ANY SPECIFICS AS TO THE RELEVANCE OF THE GRAND JURY TESTIMONY; FOR INSTANCE, GRAND JURY WITNESS WILL BE A WITNESS IN THIS CASE, AND

INCONSISTENCIES IN THE STATEMENTS IS MATERIAL TO THE
DEFENDANT'S DEFENSE].

6. Pursuant to I.C. 35-34-2-10(b)(2)(A), the Court may provide the Defendant with a transcript of the grand jury testimony.
7. The Defendant is indigent and under I.C. 35-34-2-3(d) the Defendant is entitled to a transcript of the testimony at no cost.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to order that the testimony of the Grand Jury be transcribed, a copy of the transcript be delivered to the Defendant's counsel, and for all other relief just and proper in the premises.

(Signature)

REFERENCES

CASEBANK M.2.b.4

I.C. 35-34-1-4(a)(3) (the court may, upon motion of the defendant, dismiss the indictment upon grounds that the grand jury proceeding was defective).

I.C. 35-34-1-4(b) (timeliness provision).

I.C. 35-34-2-3 (drawing, selecting and impaneling; discharge of panel or juror; grounds; foreman and clerk; minutes; record transcript; oath, instructions, report of offense).

I.C. 35-34-2-10(b)(2) (transcript of testimony of witness before grand jury may be produced upon order of the court which impaneled the grand jury, the court trying a case upon an indictment of the grand jury, or a court trying a prosecution for perjury, but only after a showing of particularized need for the transcript).

CASE LAW

Sappenfield v. State, 462 N.E.2d 241 (Ind.Ct.App. 1984) (trial court did not abuse its discretion when it denied the Defendant's motion to produce transcript of grand jury proceedings, which was filed 171 days later than required by statute).

Gunn v. State, 174 Ind.App. 26, 365 N.E.2d 1234 (1977) (there is no right to a transcript of the grand jury proceedings).

State ex rel. Keller v. Criminal Court of Maron County Division IV, 262 Ind. 420, 317 N.E.2d 433 (1974) (discovery order directing the State to produce, *inter alia*, a transcript of those portions of the grand jury minutes containing testimony of persons whom the State intended to call as witnesses at the hearing or trial was within the discretionary power to the trial judge).

Jorgensen v. State, 567 N.E.2d 113 (Ind.Ct.App. 1991) (minutes of grand jury convened to investigate escape of the Defendant and another while awaiting trial on murder charge were not shown to be relevant to the Defendant's murder trial, and thus, the Defendant was not entitled to inspect the grand jury minutes), *opinion aff'd in part, vacated in part*, 574 N.E.2d 915 (Ind. 1991).

Hinojosa v. State, 781 N.E.2d 677 (Ind. 2003) (to obtain a transcript of grand jury testimony, a party must show, with particularity, a need to prevent injustice that outweighs reasons for long-established policy of grand jury secrecy; a showing of mere relevance does not constitute a need to prevent injustice; the Court remanded for the trial court to make a finding in regard to whether a moving party established particularized need of pretrial release of transcripts under I.C. 35-34-2-10(b)).