

[CAPTION]

MOTION FOR SEVERANCE FROM CO-DEFENDANT

The Defendant, by counsel, respectfully requests this Court, pursuant to I.C. 35-34-1-11(b), for a separate trial from his co-Defendant. In support of the Motion, the Defendant states the following:

1. The Defendant is charged with [insert offenses].
2. The Defendant is scheduled to be tried in a joint trial with the codefendant(s).
3. A joint trial will prejudice the substantial rights of the Defendant for the following

reasons:

- a. The Defendant will be denied his Sixth Amendment right to cross-examination if incriminating statements made by a codefendant are introduced and the co-defendant does not testify. Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968).

- b. mutually antagonistic defenses;

- c. interferes with Defendant's constitutional rights, including his speedy trial right;

4. Separate trials are necessary to promote a fair determination of the guilt or innocence of the Defendant.

5. This Court has the authority and discretion pursuant to I.C. 35-34-1-11(b) to order a separate trial for the Defendant.

WHEREFORE, the Defendant requests this Court to grant his/her Motion For Severance From Co-Defendant, order a separate trial for the Defendant, and for all other relief just and proper in the premises.

(Signature)

REFERENCES

CASEBANK D.6.a

I.C. 35-34-1-11(b) (separate trial of defendants joined)







I.C. 35-34-1-12(a) (a defendant must move for severance of crimes or motion for separate trial before the commencement of trial, except if the grounds for the motion were not previously known until trial; if so, the motion may be made before or at the close of all evidence)

I.C. 35-34-1-12(b) (the defendant must renew a denied motion for a separate trial before the close of all evidence during trial; failure to renew will waive issue).


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


Indiana Constitution, art. I, Sections 12 and 13


CASE LAW


Bruton v. United States, [391 U.S. 123](#) , [88 S.Ct. 1620](#) , [20 L.Ed.2d 476](#)  (1968) (where co-defendant's confession was admitted at joint trial and co-defendant did not take the stand, defendant was denied his constitutional right of confrontation). See also Cruz v. New York, [481 U.S. 186](#) , [107 S.Ct. 1714](#) , [95 L.Ed.2d 162](#)  (1987).


Roberts v. Russell, [392 U.S. 293](#) , [88 S.Ct. 1921](#) , [20 L.Ed.2d 1100](#)  (1968) (Bruton retroactive and applicable to states).

Hunt v. State, [455 N.E.2d 307](#)  (Ind. 1983) (decision to grant or deny motion for separate trial is within sound discretion of trial court).

Drane v. State, [442 N.E.2d 1055](#)  (Ind. 1982) (to compel a severance, moving party must demonstrate that a fair trial cannot be had otherwise, not merely that a separate trial offers a better chance for acquittal).

Underwood v. State, [535 N.E.2d 507](#)  (Ind. 1989) (mutually antagonistic defenses require severance only if acceptance on one Defendant's mutually antagonistic defense precludes acquittal of the other; held, no error in this case).

U.S. v. Breinig, [70 F.3d 850](#)  (6th Cir. 1995) (in joint trial of formerly married couple for tax evasion, evidence presented by wife that husband was mentally abusive and manipulative, violated husband's due process rights; jury heard highly inflammatory evidence of Defendant's bad character which would not have been admissible in severed trial; because Defendant's credibility was in issue, this evidence was manifestly prejudicial).

U.S. v. McVeigh, [169 F.R.D. 362](#)  (D.C. Colo. 1996) (the government's intent to introduce statements made by Terry Nichols concerning his connections to Timothy McVeigh will require separate trials for the two defendants; moreover, the two have antagonistic defenses).