

[CAPTION]

**VERIFIED PETITION FOR APPOINTMENT OF SPECIAL PROSECUTOR**

The Defendant, by counsel, respectfully requests that the Court appoint a special prosecutor in this cause, pursuant to IC 33-39-1-6. In support of this Motion, the Defendant states the following:

[Set forth facts which would demonstrate that appointment is necessary to avoid an actual conflict of interest, or probable cause to believe that the prosecutor has committed a crime.]

WHEREFORE, the Defendant, by counsel, respectfully requests that this Court appoint a special prosecutor in this cause. The Defendant further requests that the Court set this matter for an evidentiary hearing, pursuant to IC 33-39-1-6(b)(2)(B)(ii), and for all other relief just and proper in the premises.

**VERIFICATION**

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

(Signature of Attorney)

## REFERENCES



## CASEBANK B.8.c


IC 33-39-1-6 (appointment of special prosecutors; grounds; consent to appointment; powers and duties; terms and compensation).


Commentary to Indiana Rules of Professional Conduct, Rule 1.11 (current prosecutor who was former defense lawyer).


Indiana Rules of Professional Conduct, Rule 3.8 (special responsibilities of a prosecutor)


## CASE LAW


Harrington v. State, [588 N.E.2d 509](#)  (Ind.Ct.App. 1992) (delay due to the Defendant's motion for special prosecutor was caused by conflict arising from prosecutor's prior representation of the Defendant in a criminal matter; the prosecutor's failure to recognize conflict was not the fault of the Defendant), *disapproved of on other grounds by* Cook v. State, [810 N.E.2d 1064, 1067](#)  (Ind. 2004).


Sears v. State, [457 N.E.2d 192](#)  (Ind. 1983) (special prosecutor was properly appointed for habitual offender phase of proceeding against the Defendant, where the prosecutor had represented the Defendant in one or more cases which were listed in habitual offender charge).


Daugherty v. State, [466 N.E.2d 46](#)  (Ind.Ct.App. 1984) (it is not necessary to disqualify a prosecutor's entire staff or to dismiss an indictment because a deputy prosecutor has a conflict of interest).


State ex rel. Meyers v. Tippecanoe County Court, [432 N.E.2d 1377](#)  (Ind. 1982) (the prosecutor who had the administrative control over the entire staff was the one who had formerly represented the particular Defendant involved and, therefore, the trial court properly disqualified the entire staff of deputies).

State ex rel. Long v. Warrick Circuit Court, [591 N.E.2d 559](#)  (Ind. 1992) (prior to disqualification of prosecutor, a hearing must be conducted upon a verified petition at which the prosecutor is afforded opportunity, tailored to specific circumstances, to be heard on issue).


Wininger v. State, [526 N.E.2d 1216](#)  (Ind.Ct.App. 1988) (special prosecutor appointed at request of outgoing prosecutor improperly continued in his role absent an affidavit filed by incoming prosecutor alleging conflict of interest in his prosecution of the defendants, or finding that special prosecutor's appointment was necessary to avoid appearance of impropriety).


State ex rel. Kirtz v. Del. Circuit Court No. 5, [916 N.E.2d 658](#)  (Ind. 2009) (appearance of impropriety barred lawyer from being appointed special prosecutor, without proof of actual conflict).

Camm v. State, [957 N.E.2d 205](#)  (Ind.Ct.App. 2012) (Prosecutor's literary contract to publish a book about Camm case while case was pending on appeal created an irreversible, actual conflict of interest with his duty to the people of the State of Indiana, thus requiring appointment of special prosecutor; an actual conflict of interest arises where a prosecutor places himself in a situation inherently conducive to dividing loyalties between his duties to the State and his personal interests).

King v. State, [397 N.E.2d 1260](#)  (Ind.Ct.App. 1979) (if elected prosecutor admits his disqualification and requests appointment of special prosecutor, judicial determination of factual basis for such disqualification is not necessary; if elected prosecutor opposes appointment of special prosecutor, judicial

determination of factual basis for elected prosecutor's disqualification must be made prior to special prosecutor's appointment).

Wilcoxen v. State, [619 N.E.2d 574](#)  (Ind. 1993) (although the prosecutor had limited role in investigation, the trial court did not err in refusing to appoint special prosecutor; to require disqualification, it must be shown that prosecutor would be necessary witness to the defense and that his testimony would be significantly useful; investigation did not make prosecutor a necessary witness).

Williams v. State, [631 N.E.2d 485](#)  (Ind. 1994) (the trial court did not err in refusing to appoint special prosecutor, even though deputy prosecutor had formerly been defense attorney for one of the Defendant's co-Defendants, and negotiated a plea agreement for him that required his testimony against the Defendant).