

[CAPTION]

VERIFIED MOTION FOR CONTINUANCE

The Defendant, by counsel, respectfully requests this Court for a continuance of the trial in the above-captioned cause. In support of this Motion, the Defendant states the following:

1. On [insert date], this Court set this cause for trial by jury commencing on [insert date].

2. Counsel cannot be adequately prepared by [insert trial date] to try this cause. Defendant will be denied the effective assistance of counsel and fundamental due process in violation of the U.S. Constitution, Amendments VI, VIII and XIV and the Indiana Const., Article I, Section 12 and 13 if counsel is forced to trial on that date. Counsel cannot be ready to try the case for the following reasons:

[Set out specific reasons you cannot be prepared for trial. List information you wish to protect from the prosecutor in accompanying sealed affidavits in support of this motion.]

3. Defense counsel's failure to be properly prepared in this case is not due to any strategic or tactical reason but is due solely to the fact that counsel has had inadequate time to prepare the defense case. As this court is well aware defense counsel has devoted substantial time to this case throughout its pendency.

4. This motion is not dilatory but is made in the honest and good faith belief that if forced to proceed to trial on [insert date], counsel will be rendered constitutionally ineffective. Counsel verily believes that this ineffectiveness will ultimately result in a reversal of any conviction that may be obtained and a costly retrial.

5. The Defendant is in full agreement with the filing of this motion. Defendant is of the opinion that it is more important that a case of this magnitude be fully and properly investigated than that it be concluded quickly.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to continue the trial date of [insert date] and requests that the Court conduct a hearing for the purpose of setting a new trial date so that the schedules of the attorneys may be considered to decrease the possibility of conflicts in any new trial date and for all other relief just and proper in the premises.

(Signature)

VERIFICATION

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

(Signature of Attorney)

REFERENCES



CASEBANK D.5.a



T.R. 53.5 (continuances)


IC 35-36-7-1 is (Motion by defendant; affidavit; grounds; requisite; contents)


CASE LAW


Hall v. State, [176 Ind.App. 59](#) , [374 N.E.2d 62](#)  (1978) (continuance should be granted upon showing of good cause).


Phillips v. State, [179 Ind.App. 517](#) , [386 N.E.2d 704](#)  (1979) (trial court must weigh Defendant's right to effective assistance, and to be effective, counsel must be given sufficient opportunity to adequately prepare his case).


Butler v. State, [175 Ind.App. 409](#) , [372 N.E.2d 190, 194](#)  (1978) ("It is well-settled that a trial court must grant a continuance in order for counsel to have adequate time for preparation and investigation.").


Flowers v. State, [654 N.E.2d 1124](#)  [Shepardize](#) (Ind. 1995) (in a case involving DNA issues, trial court abused its discretion in denying the Defendant's motion for one-day continuance, where important interests of defense would have been satisfied, and nothing in record indicated that prosecution's interests would have been substantially undermined by delay; although motion for continuance did not comply with statutory requirements of IC 35-36-7-1, the court's decision in this case to deny continuance made it impossible for the Defendant to vindicate his rights, and thus violated due process).

Vaughn v. State, [590 N.E.2d 134](#)  (Ind. 1992) (even under highly deferential standard of review, it was error for the trial court to deny the Defendant's motion for continuance, because basis for motion clearly predominated over any prejudice to the State; where crucial defense witness could not be available because she was in labor, trial court erred in using prior testimony of witness rather than continuing until witness was available).

Marshall v. State, [438 N.E.2d 986](#)  (Ind. 1982) (adequacy of time for trial preparation cannot be determined according to any inflexible rule, but on case-by-case basis).

Broome v. State, [694 N.E.2d 280](#)  (Ind. 1998) (generally the defense attorney's need for a continuance trumps a defendant's right to a speedy trial; there may exist circumstances in which defense counsel's refusal or neglect to file speedy trial motion specifically requested by the Defendant could constitute deficient performance; however, such circumstances did not exist here), *overruled on other grounds*, Voss v. State, 856 N.E.2d 1211, 1220 (Ind. 2006)

Barber v. State, [911 N.E.2d 641](#)  (Ind.Ct.App. 2009) (in OWI prosecution, trial court abused its discretion in denying Defendant's motion to continue filed on Monday morning of her bench trial. defense counsel filed her motion because she had located two witnesses that weekend who supported her defense of involuntary intoxication).

Day v. State, [643 N.E.2d 1](#)  (Ind.Ct.App. 1994) (although State filed notice one day before trial of three witnesses that would provide F.R.E.404(b) prior sexual misconduct evidence, denial of continuance did not prejudice the Defendant or deny him opportunity to interview witnesses before they testified; the Defendant was unofficially advised about one witness five days before trial, and declined the opportunity to depose witnesses on afternoon before trial).

