

[CAPTION]

MOTION FOR CONTINUANCE DUE TO ABSENCE OF EVIDENCE

The Defendant, by counsel, respectfully requests this Court, pursuant to I.C. 35-36-7-1(a) and Trial Rule 53.5, to grant a Motion for Continuance. In support of the Motion, the Defendant states the following:

1. The Defendant is charged with [insert offense(s)].
2. A continuance is needed based on the facts specified in the attached affidavit which is incorporated by reference as Exhibit A.
3. Manifest injustice would result by requiring the trial of this cause to commence as scheduled.
4. Without this evidence, the Defendant will be denied his constitutional rights to a fair trial, to compulsory process and to effective assistance of counsel. U.S. Const. Amend. XI, XIV; Ind. Const., art I, sections 12 and 13.

WHEREFORE, the Defendant, by counsel, respectfully requests that this Court grant a Continuance for [specify time needed], and for all other relief just and proper in the premises.

(Signature)

REFERENCES

CASEBANK D.5.a

T.R. 53.5 (continuances; substantive requirements of affidavit; no postponement if adverse party will admit substance of evidence as true)



I.C. 35-36-7-1(a) (defendant's motion for continuance based on absence of evidence; affidavit required)


I.C. 35-36-7-1(d) (must file affidavit not later than 5 days before date set for trial, but can file within five days if can establish to court that delay was not his fault)


I.C. 35-36-7-1(c)(2) (trial court may not be postponed if after a motion by the defendant to postpone because of the absence of written or documentary evidence, the prosecuting attorney admits that the written or documentary evidence exists).

CASE LAW

Woodfork v. State, [594 N.E.2d 468](#)  (Ind.Ct.App. 1992) (whether to grant continuance falls within sound discretion of trial court)

Blume v. State, [244 Ind. 121](#) , [189 N.E.2d 568](#)  (1963) (affidavit for continuance must set out all of the facts to support application, and this requirement contemplates plain, consistent statement of facts, not conclusions, which clearly state grounds or show sufficient excuse for delay requested).

Vaughn v. State, [590 N.E.2d 134, 135](#)  (Ind. 1992) (it is well settled in Indiana that where a defense motion for a continuance is made because of the absence of a material witness or other material evidence and that motion satisfies the special statutory criteria for such motions as established by I.C. 35-36-7-1, and the prosecuting attorney refuses to admit that the absent witness would testify as alleged, or that the absent evidence exists in the form alleged, then that motion should be granted; even though motion did not comply with statute, it was an abuse of discretion to deny motion).

Drane v. State, [442 N.E.2d 1055](#)  (Ind. 1982) (motion for continuance based on non-statutory grounds may be granted in trial court's discretion).