

DUTY TO WARN WITNESS OF FIFTH AMENDMENT

However, a trial court is authorized to appoint an assistant public defender to advise a witness of her fifth amendment rights. See, e.g., *Pantoja*, 35 Ill. App. 3d at 380, 342 N.E.2d 110; *People v. Hammond*, 196 Ill. App. 3d 986, 993, 143 Ill.Dec. 599, 554 N.E.2d 534 (1990).

People v. Sapp, 2022 IL App (1st) 200436, ¶ 47, appeal denied, 193 N.E.3d 23 (Ill. 2022)

While trial court need not inform witness of his or her fifth amendment privilege against self-incrimination, court has discretion to do so, particularly when witness appears in court unrepresented; however, judge's conduct in admonishing defense witness has potential to improperly interfere with defendant's right to fair trial.

People v. Radovick, 275 Ill. App. 3d 809, 656 N.E.2d 235 (1995)

Although trial judge has discretion to warn witness of possibility that, by testifying, witness will incriminate himself, abuse of this discretion can occur when trial judge actively encourages witness not to testify or badgers witness into remaining silent.

People v. Morley, 255 Ill. App. 3d 589, 627 N.E.2d 397 (1994)

Where trial judge senses prior to witness' testimony that witness might unwittingly incriminate himself, judge is within his authority to remind witness of his Fifth Amendment right against self-incrimination.

United States v. Silverstein, 732 F.2d 1338 (7th Cir. 1984)

Where it was clear that defense witness was not aware that he was in danger of subjecting himself to further prosecutorial actions on the basis of his in-court testimony, it was appropriate for the trial judge to inform the witness of his Fifth Amendment rights and to appoint a public defender for the purpose of consultation

People v. Pantoja, 35 Ill. App. 3d 375, 342 N.E.2d 110 (1976)

The court below correctly called co-defendant Cvetich out of the presence of the jury to determine if he was going to exercise his privilege against self-incrimination. Once it was established that Cvetich would exercise his privilege, there was no useful purpose of forcing him to exercise this privilege in front of the jury. If, as in *Cole*, the defendant was concerned that the jury would make an unfavorable inference from a failure to call a co-defendant, any such unfavorable inference was overcome by the court's explanation to the jury that "on the advice of counsel Mr. Cvetich had decided that he does not wish to testify under the Fifth Amendment."

People v. Cvetich, 73 Ill. App. 3d 580, 584, 391 N.E.2d 1101, 1105 (1979)