

Indiana Rules of Court Rules of Trial De Novo

Including Amendments Received Through January 1, 2010

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Rule 1. Trial de Novo Following Civil Judgment

(A) Application. A party who has a statutory right to a trial *de novo* in circuit or superior court after entry of a judgment in a civil action by a city court or an appeal after entry of a judgment in a civil action by a town court described in IC 33-35-2-5 may request and shall receive the trial *de novo* as provided in this Rule. As used in Rule 1, all references to a city court shall also include a town court described in IC 33-35-2-5.

(B) Demand.

- (1) Within fifteen (15) days after the city court enters its judgment, the party seeking the **trial de novo** shall file a written "Request for **Trial de Novo**" with the clerk of the circuit court in the county in which the city court is located.
- (2) The request for **trial de novo** shall:
 - (a) state the requesting party's name, address, and telephone number;
 - (b) state the requesting party's attorney's name, address, and telephone number;
 - (c) state the opposing party or parties' names, addresses, and telephone numbers;
 - (d) state the opposing party's or parties' attorneys' names, addresses, and telephone numbers;
 - (e) state the name of the city court in which judgment was entered against the defendant;
 - (f) state the date on which judgment was entered in the city court;
 - (g) request a new trial in the circuit or superior court; and
 - (h) indicate whether the party filing the request demands or waives the right to have the new trial be by jury.
- (3) The party filing the Request for **Trial de novo** shall attach to it:
 - (a) a copy of the original complaint filed with the city court;
 - (b) a copy of each responsive pleading filed with the city court; and
 - (c) a copy of the judgment entered by the city court.
- (4) Except as ordered by the circuit or superior court, the clerk of the circuit court shall not accept or file a Request for **Trial de novo** for filing:
 - (a) without the copies of the original complaint, responsive pleadings, and city court judgment;
 - (b) more than fifteen (15) days after the date the city court entered its judgment; and
 - (c) without the bond or other undertaking, or affidavit of indigency required by Subsection (C) of this rule.

(C) Bond or Other Undertaking and Affidavit of Indigency.

- (1) The party filing the Request shall file with the clerk of the circuit court a surety bond or cash deposit, payable to the party's opponent or parties' opponent, in an amount sufficient to secure the opponent's or opponents' claims and interest and court costs, and undertaking both the litigation of the **trial de novo** to a final judgment and payment of any judgment entered against the party filing the request by the **trial de novo** court.
- (2) If unable to afford a surety bond or cash deposit, the party filing the request may instead file an affidavit of indigency setting forth information which establishes that the party is unable to afford the required surety bond or cash deposit. The party shall attach to the affidavit of indigency that party's personal undertaking, in writing,

to prosecute the **trial de novo** to final judgment and to pay any judgment which might be entered against that party.

(D) Belated Request for Trial de Novo. When circumstances beyond a party's control prevent the party from filing a timely and complete request for **trial de novo**, the party may apply for an order from the circuit or superior court directing the clerk of the circuit court to accept and file the party's belated Request for **Trial de novo**. The application to the circuit or superior court for the order shall be verified under Trial Rule 11 and shall state facts which demonstrate that the applying party's failure to file a timely and complete request for **trial de novo** was due to circumstances beyond the party's control. The court shall rule on the application without a hearing after giving the opposing parties fifteen (15) days to file written objections.

(E) Filing and Court Assignment. The clerk of the circuit court shall docket the Request for **Trial de novo** and the copies of the complaint and any responsive pleadings as a civil action in a circuit or superior court in the county. The court to which the request is assigned has full jurisdiction of the case and of the parties from the time the request for the **trial de novo** is filed with the clerk of the circuit court.

(F) Notice to Party or Parties' Opponent. Promptly after the request for **trial de novo** is filed, the clerk of the circuit court shall send notice of the request to the party or parties' opponent named in the request.

(G) Notice to City Court of De Novo Filing. Upon the filing of a request for **trial de novo**, the clerk of the circuit court shall promptly send notice of the filing of the request with a copy of the city court's judgment to the city court from which the **trial de novo** is taken. The city court shall within fifteen (15) days of its receipt of the notice vacate its judgment and shall send notice of the vacation of the judgment to any agency or entity to which it had sent notice of its judgment.

(H) Withdrawal or Dismissal of Request for Trial De Novo.

- (1) The party who files the request for **trial de novo** may at any time prior to the **trial de novo** in circuit or superior court withdraw the request by filing a written motion of withdrawal with the circuit or superior court. The court shall grant the motion and shall send notice of its order dismissing the proceeding *de novo* to the city court with an order to the city court to reinstate its judgment.
- (2) The circuit or superior court may, on its own motion or on the motion of the party or parties who did not request the **trial de novo**, for good cause dismiss a request for **trial de novo** and order the city court to reinstate its judgment.

(I) Pleadings and Pretrial Procedures.

- (1) The Indiana Small Claims Rules shall apply to the **trial de novo** unless:
 - (a) the request for **trial de novo** demands that the trial be by jury;
 - (b) the party opponent files within fifteen days of the filing of the request for **trial de novo** a demand for trial by jury; or
 - (c) the party opponent, if that party was the plaintiff or claimant in the city court, demands within fifteen (15) days of the filing of the request that the trial be pursuant to the Indiana Rules of Trial Procedure.
- (2) Whether the **trial de novo** is subject to Small Claims Rules or Trial Rules, the copies of the original complaint and any responsive pleadings filed with the request for **trial de novo** shall serve as the pleadings for the action in circuit or superior court. In **trials de novo** to which the Trial Rules apply, both the original complaint and responsive pleadings will be considered pleadings to which no responsive pleading is required or permitted.

(J) Limit on De Novo Trial Judgment. The court trying the case *de novo* shall not enter judgment in an amount higher than the statutory maximum limit on judgments which applied in the city court from which the **trial de novo** was taken, to which may be added, without it counting toward the statutory limit, interest on the *de novo* court's judgment beginning from the date the city court's judgment was entered.

Rule 2. Trial de Novo Following Infraction or Ordinance Violation Judgment in City or Town Court

(A) Application.

- (1) A defendant who has a statutory right to an appeal after a trial for an infraction or ordinance violation in a city or town court may request and shall receive the *trial de novo* as provided in this rule.

- (2) A city or town court defendant who admitted committing an infraction or ordinance violation and therefore had no trial in city or town court may request as provided in this rule that the circuit or superior court either:
 - (a) permit the defendant to withdraw the admission and have a trial *de novo*; or
 - (b) provide a trial *de novo* on the sanctions.

(B) Demand.

- (1) Within fifteen (15) days of the entry of judgment for the infraction or ordinance violation, the defendant shall file a written "Request for Trial *de Novo*" with the clerk of the circuit court in the county in which the city or town court is located.
- (2) The Request for Trial *de novo* shall state the defendant's name, address, and telephone number; the city or town court in which judgment was entered against the defendant; the date on which judgment was entered in the city or town court; and whether the judgment was entered on a trial or on an admission of the violation. If the city or town court judgment was entered after a trial, the Request shall request a new trial in the circuit or superior court. If the city or town court judgment was entered after an admission of the violation, the Request shall either:
 - (a) request permission to withdraw the admission of the violation and have a trial *de novo*; or
 - (b) request a reassessment of the sanctions imposed in city or town court and a judgment *de novo* as to sanctions.

(C) Filing and Court Assignment. The clerk of the circuit court shall docket and assign the request to a circuit or superior court as an infraction or ordinance violation proceeding. The court to which the request is assigned has full jurisdiction of the case and of the person of the defendant from the time the request for the trial *de novo* is filed with the clerk of the circuit court.

(D) Bond.

- (1) The defendant filing the Request shall also file with the clerk of the circuit court a surety bond or cash deposit, payable to the State or municipality, in an amount sufficient to secure the State's or municipality's claims and interest and court costs, and undertaking both the litigation of the trial *de novo* to a final judgment and payment of any judgment entered against the party filing the Request by the trial *de novo* court.
- (2) If unable to afford a surety bond or cash deposit, the party filing the Request may instead file an affidavit of indigency setting forth information which establishes that the party is unable to afford the required surety bond or cash deposit. The party shall attach to the affidavit of indigency that party's personal undertaking, in writing, to prosecute the trial *de novo* to final judgment and to pay any judgment which might be entered against that party.
- (3) If the party filing the *de novo* Request does not also file the bond or pretrial undertaking or an affidavit of indigency, the clerk of the circuit court shall not docket and file the defendant's Request for trial *de novo*.

(E) Notice to Prosecutor or Municipal Counsel of Trial *de Novo*. Promptly after the Request for Trial *de novo* is filed, the clerk of the circuit court shall send notice of the Request to the prosecuting attorney or the municipal counsel with an order from the trial *de novo* court that the prosecuting attorney or municipal counsel file a duplicate infraction or ordinance complaint and summons with the clerk of the circuit court charging the infraction or ordinance violation as originally filed with the city or town court. Upon receiving the notice of the Request, the prosecutor or municipal counsel shall within fifteen (15) days file the duplicate summons and complaint or, in the prosecutor's or municipal counsel's discretion, notify the clerk in writing that no proceeding will be filed. If the clerk is notified that no proceeding will be filed, the clerk shall bring the case to the attention of the judge who shall issue an order of dismissal.

(F) Notice to City or Town Court of De Novo Filing and Vacation of City or Town Court Judgment.

- (1) Upon the filing of a Request for Trial *de novo*, the clerk of the circuit court shall promptly send notice of the filing of the Request to the city or town court from which the trial *de novo* is taken. The city or town court shall within fifteen (15) days of its receipt of the notice vacate its judgment against the defendant and shall send notice of the vacation of the judgment to any agency or entity to which it had sent notice of the prosecution or the judgment. If the defendant paid an infraction or ordinance violation judgment to the city or town court, the city or town court shall send the payment, after deducting city or town court costs, to the clerk of the circuit court.
- (2) The clerk of the circuit court shall hold any payment received from the city or town court pending the outcome of the trial *de novo* and shall apply the payment to any judgment imposed by the circuit or superior court following the trial *de novo*. If any amount of the original payment remains after application to judgments or orders imposed by the trial *de novo* court, the clerk of the circuit court shall refund the balance to the defendant.

If the case is dismissed in the *de novo* court by the State or the municipality, the clerk of the circuit court shall refund the entire amount to the defendant.

Rule 3. Trial de Novo Following Misdemeanor Trial in City or Town Court

(A) Application.

- (1) A defendant who has a statutory right to an appeal after a trial for a misdemeanor in a city or town court may request and shall receive the trial *de novo* as provided in this Rule.
- (2) A defendant who entered a plea of guilty to a misdemeanor charge in a city or town court may request as provided in this rule that a circuit or superior court either:
 - (a) permit the defendant to withdraw the guilty plea and have a trial *de novo*; or
 - (b) resentence and enter a new judgment of conviction and sentence.

(B) Demand.

- (1) Within fifteen (15) days of the hearing at which the city or town court imposed sentence for the misdemeanor, the defendant shall file a written "Request for Trial *de Novo*" with the clerk of the circuit court in the county in which the city or town court is located.
- (2) The Request for Trial *de Novo* shall:
 - (a) state the defendant's name, address, and telephone number;
 - (b) state the city or town court in which judgment was entered against the defendant;
 - (c) state the date on which judgment was entered in the city or town court;
 - (d) state whether the city or town court judgment was entered after a trial or after a guilty plea;
 - (e) state the name of the penal facility in which the defendant is being held if applicable; and
 - (f) shall request a new trial in the circuit or superior court.

(C) Filing and Court Assignment.

- (1) If the trial *de novo* is taken from a city or town court, the clerk of the circuit court shall docket and assign the request as a misdemeanor in circuit or superior court in accordance with the county criminal case assignment plan established under Indiana Rule of Criminal Procedure 2.2.
- (2) The court to which the request is assigned has full jurisdiction of the case and of the person of the defendant from the time the request for the trial *de novo* is filed with the clerk of the circuit court.

(D) Bail or Incarceration. At the time the Request for Trial *de novo* is filed, the defendant may also file with the clerk of the circuit court a surety bond or other pretrial bail undertaking, conditioned on appearance for trial and sentencing as required by the statutes on bail in criminal prosecutions, of the type and in the amount required by a written trial *de novo* bail schedule provided to the clerk by the circuit or superior court. Filing of the bond or undertaking stays the judgment of the city or town court, and during the period of the stay the defendant shall not be subject to incarceration or probation orders of the city or town court. The defendant, if incarcerated pursuant to the judgment of the city or town court, shall be released under a standing order made by the circuit and superior courts for such cases. If the defendant does not file the bond or bail undertaking, the judgment of the city or town court is not stayed and the defendant will remain incarcerated or subject to probation orders of the city or town court.

(E) Notice to Prosecutor of Trial de Novo. Promptly after the Request for Trial *de novo* is filed, the clerk of the circuit court shall send notice of the Request to the prosecuting attorney with an order from the trial *de novo* court that the prosecutor file a duplicate charging instrument with the clerk charging the offense or offenses as originally filed with the city or town court. Upon receiving the notice of the Request, the prosecutor shall within fifteen (15) days file the duplicate charging instrument with the clerk of the circuit court. Failure of the prosecutor to file within the fifteen (15) day period is not a grounds for dismissal of the charges.

(F) Notice to City or Town Court of *de Novo* Filing.

- (1) Upon the filing of a Request for Trial *de Novo*, the clerk of the circuit court shall promptly send notice of the filing of the Request to the city or town court from which the trial *de novo* is taken. Within fifteen (15) days of its receipt of the notice of the Request the city or town court shall stay its judgment of sentence and conviction against the defendant and shall send notice of the stay of the judgment to any agency or entity to which it had sent notice of the prosecution or the judgment.

- (2) If the defendant paid a fine and costs to the city or town court as part of the misdemeanor sentence it imposed, the city or town court shall send the fine only to the clerk of the circuit court. The clerk of the circuit court shall hold any fine or payment received from the city or town court pending the outcome of the trial *de novo* and shall apply the payment to any judgment for a fine or costs imposed by the circuit or superior court following the trial *de novo* or to any order for probation users' fees or recoupment of trial expenses otherwise authorized by law and ordered by the *de novo* court. If any amount of the original fine payment remains after application to judgments or orders imposed by the trial *de novo* court, the clerk shall refund the balance to the defendant.

(G) Procedure When Plea of Guilty Was Entered in City or Town Court. If the defendant entered a plea of guilty in the city or town court, the *de novo* court shall resolve any request for permission to withdraw the plea. If the plea is allowed to be withdrawn, procedure shall be as provided in Subsection H of this Rule. If the plea is not allowed to be withdrawn, the *de novo* court shall conduct a sentencing hearing *de novo* and enter its judgment of conviction and sentence. Upon entering its judgment of conviction and sentence, the *de novo* court shall send an order to the city or town court to vacate its judgment of conviction and sentence.

(H) Procedure When Plea of Not Guilty Was Entered in City or Town Court. If the defendant entered a plea of not guilty in the city or town court, the *de novo* court shall provide the defendant with a new trial. Following the trial, upon entering its judgment either of acquittal or of conviction and sentence, the *de novo* court shall send an order to the city or town court to vacate its judgment of conviction and sentence.

Rule 4. Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1).

Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).