

Procedural Issues

Trial De Novo Rules

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A trial *de novo* is a new trial or retrial in which the whole case is retried as if a trial had never been held in the first instance.

Trials *de novo* are authorized by Ind. Code 33-35-5-9. The four procedural rules for a Trial de Novo can be found in the Indiana Rules for Trial de Novo and relate to judgments entered in City or Town Courts. The first 3 Trial *de Novo* rules are organized by the type of case tried by the city or town court.

Rule 1. Trial de Novo Following Civil Judgment

General Information

When the term “City Court” is used in Trial de novo Rule 1, it includes the town court described in I.C. 33-35-2-5 (Merrillville Town Court, Lake County).

1. Who can request a trial de novo under Trial de Novo Rule 1? See Trial de Novo Rule 1(A).

Anyone who had a judgment entered against them in a civil action:

- in any city court or
- in these Lake County City Courts (Crown Point, East Chicago, Gary, or Hobart) or Lake County Town Court (Merrillville)

may request an appeal of the judgment under Trial de Novo Rule 1. See I.C. 33-35-2-5.

2. Is there a deadline to request a trial de novo? See Trial de Novo Rule 1(B)(1).

Yes. A person must file a request for trial de novo with the circuit court clerk in the county in which the city court is located within 15 days after the city court enters its judgment.

3. What happens if the deadline is missed? See Trial de Novo Rule 1(D).

A person may apply for an order from the circuit or superior court directing the clerk of the circuit court to accept and file his or her late request for trial de novo. This is done by filing an application with the circuit or superior court stating the missed deadline was due to circumstances beyond the person's control. Trial Rule 11 requires verification of the application. The court will rule on the application without a hearing after giving any opposing party/parties fifteen days to file written objections.

4. What must be included in the request for trial de novo? See Trial de Novo Rule 1(B)(2), (3) & (4).

The clerk cannot accept and file a request for trial de novo without the copies of the original complaint, responsive pleadings, and city court judgment, more than 15 days after the date the city court entered its judgment and without the bond/cash deposit or affidavit of indigency required by Rule 1(C) except as ordered by the circuit or superior court.

All these items must be included/attached to the request:

- a. the requesting party's name, address, and telephone number;
- b. the requesting party's attorney's name, address, and telephone number;
- c. the opposing party or parties' names, addresses, and telephone numbers;
- d. the opposing party's or parties' attorneys' names, addresses, and telephone numbers;
- e. the name of the city court in which judgment was entered against the defendant;

- f. the date on which judgment was entered in the city court;
- g. request a new trial in the circuit or superior court;
- h. indicate whether the party filing the request demands or waives the right to have the new trial be by jury;
- i. a copy of the original complaint filed with the city court;
- j. a copy of each responsive pleading filed with the city court;
- k. a copy of the judgment entered by the city court; and
- l. either a surety bond or cash deposit or affidavit of indigency.

The surety bond or cash deposit must meet these requirements:

- a. be payable to the party's opponent or parties' opponent;
- b. be an amount sufficient to secure the opponent's or opponents' claims, interest, and court costs; and
- c. 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.

If the requestor cannot afford to file a surety bond or cash deposit, they may file an affidavit of indigency that states why they are unable to afford the required surety bond or cash deposit. The person must also attach a written promise ("personal undertaking"), to prosecute the Trial de novo to final judgment and to pay any judgment which might be entered against him or her.

5. Can a person who requested a trial de novo change his or her mind? See Trial de Novo Rule 1(H)(1).

It is possible to withdraw a request for trial de novo by filing a written motion of withdrawal with the circuit or superior court. The court is required to grant this motion and will notify the city court of the dismissal and instruct it to reinstate its judgment.

6. Can a circuit or superior court refuse to grant a trial de novo? See Trial de Novo Rule 1(H)(2).

Yes. A circuit or superior court may, on its own motion or on the motion of the party/parties who did not request the Trial de novo, dismiss a request for Trial de novo for good cause and order the city court to reinstate its judgment.

7. Do the Indiana Trial Rules of Trial Procedure or Indiana Small Claims Rules apply to a trial de novo? See Trial de Novo Rule 1(I)(1) and 1(I)(2).

The Indiana Small Claims Rules apply to a Trial de novo unless

- the requesting person demands a jury trial in the request for trial de novo;
- an opposing party files a request for jury trial within 15 days of notification of a party's request for trial de novo; or
- an opposing party files a request that the trial de novo be conducted pursuant to the Indiana Rules of Trial Procedure within 15 days of notification of a party's request for trial de novo.

Regardless of which set of rules apply, the copies of the original complaint and any responsive pleadings filed with the request for trial de novo 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 are considered pleadings to which a responsive pleading is not required or permitted.

8. What are the circuit court clerk's duties if a complete request for trial de novo is filed timely? See Trial de Novo Rule 1(E), 1(F) and 1(G).

- a. If the request for trial de novo is complete and filed timely, the clerk must docket the request plus copies of the complaint and any responsive pleadings as a civil action in a circuit or superior court. The court to which the request is assigned has full jurisdiction of the case and of the parties from the time the request for Trial de novo is filed with the clerk.
- b. The clerk must send notice to the party/parties' opponent.
- c. The clerk also must notify the city court of the de novo filing. The city court must vacate its judgment and send notice of this vacation of judgment to all agencies/entities to which it had sent notice of its judgment within 15 days of the receipt of notice.

9. Are there any limitations on the judgment that may be entered by the circuit or superior court? See Trial de Novo Rule 1(J)

Yes. The court trying the case de novo is not bound by the amount of the judgment entered by the city court. However, it cannot enter a judgment amount higher than the statutory maximum limit on judgments applicable in the city court from which the trial de novo was taken. Interest on the judgment amount may be added beginning from the date the city court's judgment was entered without the interest amount counting toward the statutory limit.

10. What filing fees should be charged when a trial de novo is requested?

See I.C. 33-37-4-4.

If the trial de novo is requested following a civil judgment in city court, regular civil filing costs/fees are paid. It is not necessary to pay these costs/fees when the request for trial de novo is filed if a surety bond, cash deposit or affidavit of indigency meeting the requirements of Trial de Novo Rule 1(C) is provided.

Rule 2. Trial de Novo Following Infraction or Ordinance Violation Judgment

General Information

1. Who can request a trial de novo under Trial de Novo Rule 2? See Trial de Novo Rule 2(A)

Any defendant may request a trial de novo after a trial for an infraction or ordinance violation in a city or town court.

In addition, any city or town court defendant who admitted committing an infraction or ordinance violation and therefore did not have a trial, may request that the circuit or superior court either permit him or her to withdraw the admission and have a trial de novo or provide a trial de novo on the sanctions.

2. Is there a deadline to request a trial de novo? See Trial de Novo Rule 2(B)(1).

Yes. A person must file a request for trial *de novo* with the circuit court clerk in the county in which the city court is located within 15 days after the city or town court enters its judgment for the infraction or ordinance violation.

3. What happens if the deadline is missed?

Unlike Trial de Novo Rule 1, Rule 2 does not provide any method for a requester to ask permission to file a belated "Request for Trial de Novo". If the deadline is missed, the clerk cannot accept a "Request for Trial de Novo."

4. What must be included in the request for Trial de novo? See Trial de novo Rule 2(B).

The clerk cannot accept/file the defendant's request for trial de novo if the defendant does not also file the bond/pretrial undertaking or affidavit of indigency. See Trial de Novo Rule 2(D)(3).

All these items must be included/attached to the request:

- a. The defendant's name, address, and telephone number;
- b. the city or town court in which judgment was entered against the defendant;
- c. the date on which judgment was entered in the city or town court; and
- d. whether the judgment was entered on a trial or on an admission of the violation.
 - 1) 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.
 - 2) 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.
- e. Plus, either a surety bond or cash deposit or affidavit of indigency
 - 1) The surety bond or cash deposit must meet these requirements (See Trial de Novo Rule 2(D)):
 - a) must be payable to the State or municipality and
 - b) in an amount sufficient to secure the State's or municipality's claims plus 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 the requestor cannot afford to file a surety bond or cash deposit, they may file an affidavit of indigency stating why they cannot afford the required surety bond or cash deposit. The person must also attach a written promise (“personal undertaking”), to prosecute the trial de novo to final judgment and to pay any judgment which might be entered.

5. Can a person who requested a trial de novo change their mind?

No. The requester has asked for a new trial. The de novo court is not constrained by the city/town court sentence. The intent behind a trial de novo is not to give the requester a choice between the city/town court sentence and the circuit/superior sentence. Unlike Trial de Novo Rule 1 (where the requester is permitted to change their mind), once the requester starts down the de novo road under Rule 2 or 3, there is no going back.

6. Can a circuit or superior court refuse to grant a trial de novo?

While Trial de Novo Rule 2 does not provide any guidance on this issue, it does not appear that the circuit or superior court has any authority to refuse a properly submitted “Request for Trial de Novo”.

7. What are the circuit court clerk’s duties if a complete request for trial de novo is filed timely? See Trial de Novo Rules 2(C), 2(E), 2(F)(1), and 2(F)(2).

- a. Although the rule indicates the clerk of the circuit court docket the request as an infraction or ordinance violation proceeding, the clerk initially docket the de novo request as a court business (“CB”) case because the clerk cannot open an infraction or ordinance violation case for the de novo request until the prosecutor or municipal counsel files the duplicate summons and complaint required by Trial de Novo Rule 2(E). The CB case is assigned to a circuit or superior court with jurisdiction over infraction or ordinance violation proceedings according to the county’s case allocation plan. The clerk will use the CB case to:

- 1) issue the notice to the city or town court required by Trial de novo Rule 2(F)(1);
 - 2) issue the notice required by Trial de Novo Rule 2(E) to the prosecutor or municipal counsel; and
 - 3) deposit the required surety bond or cash deposit.
 - 4) The judge may also issue notices to the prosecutor or municipal counsel if he or she misses the 15-day deadline to file the duplicate summons and complaint from the CB case. 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. See Trial de Novo Rule 2(C).
- b. The clerk of the circuit court must promptly send notice of the Request for Trial de Novo 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. See Trial de Novo Rule 2(E).
- 1) The prosecutor or municipal counsel must 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 within 15 days. Once the duplicate summons and complaint is received by the clerk, the clerk shall open a new infraction or ordinance violation case.
 - 2) If the clerk is notified that no proceeding will be filed, the clerk must bring the case to the attention of the judge who shall issue an order of dismissal.

- c. The clerk of the circuit court must promptly send notice of the filing of the Request for Trial de Novo to the city or town court from which the trial de novo is taken. See Trial de Novo Rule 2(F)(1).
 - 1) The city or town court must vacate its judgment against the defendant and must send notice of this vacation to any agency or entity to which it had sent notice of the prosecution or the judgment within fifteen (15) days of its receipt of the notice.
 - 2) 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 and fees, to the clerk of the circuit court. See Trial de Novo Rule 2(F)(2).
 - a) 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.
 - b) 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.
 - c) 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.

8. Are there any limitations on the judgment that may be entered by the circuit or superior court?

No. While Trial de Novo Rule 2 does not provide guidance on this issue, this is a new trial, so the de novo court is not limited by the judgment handed down by the city/town court.

9. What filing fees are charged when a trial de novo is requested?

See I.C. 33-37-4-2.

If the trial de novo is requested following an infraction or ordinance violation judgment in a city or town court, regular infraction/ordinance violation costs/fees must be paid if the trial de novo results in a judgment.

Rule 3. Trial de Novo Following Misdemeanor Trial

1. Who can request a trial de novo under Trial de Novo Rule 3? See Trial de Novo Rule 3(A).

Any defendant may request a trial de novo after a trial for a misdemeanor in a city or town court.

In addition, any city or town court defendant who entered a guilty plea to a misdemeanor charge may request that the circuit or superior court either:

- 1.) permit him or her to withdraw the guilty plea and have a Trial de novo or provide a Trial de novo on the sanctions, or
- 2.) resentence and enter a new judgment of conviction and sentence.

2. Is there a deadline to request a trial de novo? See Trial de Novo Rule 3(B)(1).

Yes. A person must file a request for trial de novo with the circuit court clerk in the county in which the city court is located within 15 days of the hearing at which the city or town court imposes sentence for the misdemeanor.

3. What happens if the deadline is missed?

Unlike Trial de Novo Rule 1, Rule 3 does not provide any method for a requester to ask permission to file a belated "Request for Trial de Novo". If the deadline is missed, the clerk cannot accept a "Request for Trial de Novo."

4. What must be included in the request for Trial de novo? See Trial de novo Rule 3(B)(2).

All these items must be included/attached to the request.

- a. The defendant's name, address, and telephone number;
- b. the city or town court in which judgment was entered against the defendant;
- c. the date on which judgment was entered in the city or town court;
- d. whether the judgment was entered after a trial or after a guilty plea;
- e. state the name of the penal facility where the defendant is being held if applicable; and
- f. request a new trial in the circuit or superior court.

5. Can a person who requested a trial de novo change their mind?

No. The requester has asked for a new trial. The de novo court is not constrained by the city/town court sentence. The intent behind a trial de novo is not to give the requester a choice between the city/town court sentence and the circuit/superior sentence. Unlike Trial de Novo Rule 1 (where the requester can change their mind), once the requester starts down the de novo road under Rule 2 or 3, there is no going back.

6. What happens if the defendant requesting the trial de novo is subject to incarceration or probation pursuant to the city/town court judgment? See Trial de Novo rule 3(D).

- a. If the defendant is subject to incarceration or probation under the terms of the city/town court judgment, he or she may file a surety bond or other pretrial bail undertaking with the circuit court clerk. The surety bond/undertaking must meet these requirements:
 - 1) conditioned on appearance for trial and sentencing as required by the statutes on bail in criminal prosecutions and
 - 2) be 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.
- b. Filing this bond/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.
- c. The defendant, if incarcerated, shall be released under a standing order made by the circuit and superior courts for such cases.
- d. 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.

7. Can a circuit or superior court refuse to grant a trial de novo?

While Trial de Novo Rule 3 does not provide any guidance on this issue, it does not appear that the circuit or superior court has any authority to refuse a properly submitted "Request for Trial de Novo".

8. What are the circuit court clerk's duties if a complete request for trial de novo is filed timely? See Trial de Novo Rules 3(C), 3(E), 3(F)(1), 3(F)(2) and Indiana Rules of Criminal Procedure 2.2.

- a. Although Trial de Novo Rule 3(C) instructs the clerk of the circuit court to docket and assign the request as a misdemeanor in circuit or superior court, the clerk initially docket the request as a court business ("CB") case

because the clerk cannot open a misdemeanor case for the de novo request until the prosecuting attorney files the duplicate charging instrument required in Trial de Novo Rule 3(E). The CB case is assigned to a circuit or superior court in accordance with the county criminal case assignment plan. The court to which the request is assigned has full jurisdiction of the case and of the defendant from the time the request is filed with the clerk. See Trial de Novo Rule 3(C) and Indiana Rule of Criminal Procedure 2.2. The clerk will use the CB case to:

- 1) send the notice and order required by Trial de novo Rule 3(E) to the prosecutor of the de novo;
 - 2) send the notice required by Trial de novo Rule 3(F) to the city or town court;
 - 3) deposit any bond/undertaking filed by the requestor under Trial de Novo Rule 3(D); and
 - 4) deposit any fine/payment made to the city or town court.
 - 5) The judge may also issue notices to the prosecutor if he or she misses the 15-day deadline to file the duplicate charging instrument.
- b. The clerk of the circuit court shall promptly send notice of the Request to the prosecuting attorney with an order from the trial de novo court requiring the prosecutor file a duplicate charging instrument with the clerk charging the offense or offenses as originally filed with the city or town court. See Trial de Novo Rule 3(E).
- 1) Upon receiving the notice of the Request, the prosecutor shall file the duplicate charging instrument with the clerk of the circuit court within 15 days.
 - 2) Failure of the prosecutor to file within the fifteen (15) day period is not grounds for dismissal of the charges.

- 3) Once the clerk receives the duplicate charging instrument, the CB case should be closed, and a new misdemeanor case should be opened.
- c. 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. See Trial de Novo Rule 3(F)(1).
 - 1) If the defendant paid a fine/payment and court costs/fees to the city or town court as part of the misdemeanor sentence, the city or town court shall send the fine only to the clerk of the circuit court. See Trial de Novo Rule 3(F)(2).
 - 2) The city or town court retains court costs/fees.
 - 3) The clerk of the circuit court holds the fine/payment pending the outcome of the trial de novo and will apply this to any judgment for a fine, costs, probation users' fees, or recoupment of trial expenses imposed by the de novo court.
 - 4) The clerk will refund any balance remaining after all required payments to the defendant.

9. Are there any limitations on the judgment that may be entered by the circuit or superior court?

No. While Trial de Novo Rule 3 does not provide guidance on this issue, this is a new trial, so the de novo court is not limited by the sentence handed down by the city/town court.

10. How should the de novo court handle a plea of guilty entered in city or town court? See Trial de Novo Rule 3(G)

If a plea of guilty was entered in the city or town court, the de novo court shall resolve any request for permission to withdraw the plea.

- a. If the guilty plea is withdrawn, the de novo court provides 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 sends an order to the city or town court to vacate its judgment of conviction and sentence.
- b. If the guilty plea is not withdrawn, the de novo court conducts a sentencing hearing de novo and enters its judgment of conviction and sentence. Upon entering its judgment of conviction and sentence, the de novo court sends an order to the city or town court to vacate its judgment of conviction and sentence.

11. How should the de novo court handle a plea of not guilty entered in the city or town court? See Trial de Novo Rule 3(H).

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 the Rules on Access to Court Records

Trial de Novo Rule 4 merely confirms that Access to Court Records Rules and Trial Rule 5(G) concerning confidential information apply to trials de novo.