

## Proposed amendments to Indiana Rules of Trial De Novo (October 2024)

\*The proposed amendments to the Rules of Trial De Novo would do the following:

- clarify the language in several places to make more readable
- include language requiring the clerk to open a Court Business case when there is a request for de novo review of an IF, OV, or criminal case
- clarify the action the court may take if a prosecutor/municipal attorney does not file a duplicate charging instrument within the required deadline
- delete the language requiring a standing order
- clarify language in Rule 2 and 3 to make clear that a petitioner cannot file for de novo review and later ask for reinstatement of the municipal court decision.

### Rules of Trial De Novo

#### Rule 1. Trial de Novo Following Civil Judgment

...

##### (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.

...

(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:

...

(b) more than fifteen ~~(15)~~ days after the date the city court entered its judgment;  
and

...

##### (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, including the civil case filing fee then in effect for the trial de novo court, 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.

...

(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

Proposed amendments to Indiana Rules of Trial De Novo (October 2024)

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.

...

**(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.

...

**(I) Pleadings and Pretrial Procedures.**

(1) The Indiana Small Claims Rules shall apply to the **trial de novo** unless:

...

(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.

...

**(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. The court trying the case de novo is not bound by the judgment amount entered by the city or town court; however, the de novo court cannot enter a judgment amount higher than the statutory maximum limit on judgments applicable in the city or town court from which the trial de novo was taken. The court may add interest on the judgment amount from the date the city or town court's judgment was entered, and the interest does not count toward the statutory limit.~~

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

...

**(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.

## Proposed amendments to Indiana Rules of Trial De Novo (October 2024)

...

**(C) Filing and Court Assignment.** The clerk of the circuit court shall docket and assign the request to a circuit or superior court as ~~a court business (“CB”) case~~~~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. The clerk shall not accept a belated request.

...

**(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 using the “CB” case number, along 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. If the prosecuting attorney or municipal counsel does not file the complaint within the fifteen-day period, the court shall issue an order advising that the court will dismiss the “CB” case if the duplicate complaint is not filed within ten days. After the prosecuting attorney or municipal counsel files the duplicate complaint, the clerk shall close the “CB” case and shall assign an infraction (“IF”) or ordinance violation (“OV”) case number to the case and assign the case to the circuit or superior court with jurisdiction over those proceedings according to the county case allocation plan.

**(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*. The defendant must pay the ordinance violation or infraction fees and costs then in effect if the trial *de novo* results in a judgment. If any amount of the original payment remains

## Proposed amendments to Indiana Rules of Trial De Novo (October 2024)

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.

(G) Case Remains in the Circuit or Superior Court. The defendant may not withdraw the request after the clerk has accepted it for filing. A circuit or superior court cannot refuse a properly submitted request. The circuit or superior court is not limited by the judgment entered by the city or town court.

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

...

#### (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.

...

#### (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 court business (“CB”) case misdemeanor in circuit or superior court in accordance with the county criminal case assignment plan established under Indiana Rule of Criminal Procedure 2.2. The clerk shall not accept a belated request.

...

**(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 using the “CB” case number, along 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. If the prosecuting attorney does not file the complaint within the fifteen-day period, the court shall issue an order advising that the court will dismiss the “CB” case if the duplicate charging instrument is not filed within ten days. After the prosecuting attorney files the duplicate charging instrument, the clerk shall close the “CB” case and shall assign a criminal misdemeanor (“CM”) case number to the case and assign the case to the circuit or superior court with jurisdiction over those proceedings according to the county case allocation plan.

**(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.

...

...

**(I) Case Remains in the Circuit or Superior Court.** The defendant may not withdraw the request after the clerk has accepted it for filing. A circuit or superior court cannot refuse a properly submitted request. The circuit or superior court is not limited by the judgment entered by the city or town court.

...