

[CAPTION]

**PRAECIPE FOR A DETERMINATION**  
**WHETHER A RULING HAS BEEN DELAYED BEYOND**  
**THE TIME LIMITATION SET FORTH UNDER TRIAL RULE 53.1**

The Petitioner, by counsel, pursuant to Ind. Trial Rules 53.1(E), respectfully files his Praecipe For A Determination Whether A Ruling Has Been Delayed Beyond the Time Limitation Set Forth Under Trial Rule 53.1, as follows:

1. Ind. Trial Rule 53.1(E) states: “Upon the filing by an interested party of a praecipe specifically designating the motion or decision delayed, the Clerk of the court shall enter the date and time of the filing in the Clerk’s praecipe book, record the filing in the Chronological Case Summary under the cause, and promptly forward the praecipe and a copy of the Chronological Case Summary to the Executive Director of the Division of State Court Administration (Executive Director).”

2. To specifically designate the motion or ruling delayed, it is the ruling on the [insert motion], which was heard by [insert trial court] on [insert date].

3. [Insert Defendant’s name] is an interested party because he is a party in the case, i.e., he is the Defendant.

4. Ind. Trial Rule 53.1(A) states: “In the event a court fails for thirty (30) days to set a motion for hearing or fails to rule on a motion within thirty (30) days after it was heard or thirty (30) days after it was filed, if no hearing is requested, upon application by an interested party, the submission of the cause may be withdrawn from the trial judge and transferred to the Supreme court of the appointment of a special judge.”

5. On [insert date], this cause was taken under advisement. Therefore, the judge has failed to determine any issue of law or fact for more than ninety days.

6. None of the exceptions set out in Ind. Trial Rule 53.1(B) are applicable.

7. Ind. Trial Rule 53.1(E)(2) states: “If the Executive Director determines that a ruling or decision has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2, the Executive Director shall give written notice to the judge of the cause, the Clerk of the trial court, and the

Clerk of the Supreme Court of Indiana that the submission of the case has been withdrawn from the judge. The withdrawal is effective as of the time of the filing of the praecipe. The Clerk of the trial court shall record this determination in the Chronological Case Summary under the cause and provide notice to all parties in the case. The Executive Director shall submit the case to the Supreme Court of Indiana for appointment of a special judge or such other action deemed appropriate by the Supreme Court.”

WHEREFORE, the Petitioner, by counsel, pursuant to Ind. Trial Rules 53.1(E), respectfully files his Praecipe For A Determination Whether A Ruling Has Been Delayed Beyond the Time Limitation Set Forth Under Trial Rule 53.1.

(Signature)

## REFERENCES


## CASEBANK B.7.a


Trial Rule 53.3 (excluding motion to correct error from lazy judge rule; a motion to correct errors is deemed denied if court fails to set a hearing within forty-five (45) days or to rule within thirty (30) days after motion was heard or forty-five (45) days after filed if not set for a hearing).

Trial Rule 53.4 (excluding repetitive motions and motions to reconsider from lazy judge rule; deemed denied unless ruled upon within five (5) days).

Criminal Rule 15 (The time limitation for ruling and decision set forth under Trial Rules 53.1, 53.2 and 53.3 shall apply in criminal proceedings.)

## CASE LAW

Osborne v. State, [481 N.E.2d 376](#)  (Ind. 1985) (the Indiana Supreme Court's denial of the Defendant's praecipe, requesting that case be withdrawn from judge (who did not rule until 15 months after PCR hearing) and that new judge be appointed in accordance with TR 53.2, is not reviewable or appealable; rule's purpose is to expedite proceedings by withdrawing causes from trial judges who have delayed their rulings for an unreasonable length of time).

Williams v. State, [716 N.E.2d 897](#)  (Ind. 1999) (proper remedy for challenging denial of "lazy judge" motion under this rule is to seek writ of mandate from Indiana Supreme Court to compel clerk to give notice and disqualify judge; here, the Defendant was estopped from claiming that post-conviction court lost jurisdiction to rule on his petition, because the Defendant waited until unfavorable judgment instead of seeking a writ of mandate after clerk failed to withdraw case from the trial court).