

[CAPTION]

Request For Trial *De Novo*

The Defendant, by counsel, and pursuant to Trial De Novo Rule 3(B) and I.C. 33-10.1-5-9 respectfully request this matter be reviewed *de novo*. In support of this request, the Defendant would state the following:

1. The Defendant resides at [insert address] and her phone number is [insert number];
2. The Defendant was found guilty following a [bench trial on [insert date] of the offense of [insert misdemeanor] in the [insert court] in the [insert county];
3. The sentencing date is scheduled for [insert date];
4. This request is being made within the time deadline set by the Rule 3(B) of the Trial *De Novo* rules.

WHEREFORE, the Defendant, by counsel, respectfully requests a new trial in either the Superior or Circuit Court pursuant to Rule 3(B) of the Supreme Court's Rules on Trial *de novo*, and for all other relief just and proper in the premises.

(Signature)

NOTE

A defendant who pled guilty to a misdemeanor charge in city or town court may also request that a circuit of superior court either permit the defendant to withdraw the guilty plea and have a trial de novo or resented and enter a new judgment of conviction and sentence. Ind. Rules for Trial *De Novo* Following Judgment in City or Town Court, Rule 3(A).

Be aware that I.C. 33-10.1-5-9 provides that a trial de novo from a city court judgment can be taken within thirty days of the entry of the judgment. This provision conflicts with the Indiana Rules for Trial *De Novo*, Rule 3(B) requiring a request for trial *de novo* to be filed within fifteen days. When a rule of procedure conflicts with a statute and cannot be reconciled, the rule trumps the statute. See, e.g., McEwen v. State, 695 N.E.2d 79 (Ind. 1998).

CASE LAW

Azhar v. State, 712 N.E.2d 1018 (Ind.Ct.App. 1999) (because city court's ruling declaring appellant guilty of contempt was not judgment upon merits and did not constitute an adjudication of rights, the contempt citation did not fall within the Rules of Trial *De Novo* and should have been appealed pursuant to I.C. 34-4-7-7 (now I.C. 34-47-2-4 & I.C. 35-47-2-5)).