
DE NOVO

Texas Family Code Subtitle C, Chapter 201, Subchapter C, allows the presiding judge of each administrative judicial region, to appoint a full-time or part-time associate judge to handle cases filed under Subtitle E of the Texas Family Code. Except as otherwise provided by Chapter 201, Subchapter C, Subchapter A applies to any associate judge appointed by a presiding judge to handle child protection cases filed under Subtitle E, including all powers and duties. The Family Code authorizes judges in civil proceedings to refer cases to associate judges appointed both under Subchapter A and C to handle the disposition of a variety of case-related matters, including trials on the merits in termination of parental rights.⁴⁰

Referral to an associate judge is not binding on the parties, so if either party timely objects, the referring court must hear the trial on the merits or preside at a jury trial.⁴¹ Barring an objection, however, a Subchapter A or C associate judge may determine the merits in either a bench or a jury trial, subject to the parties' post-trial right to request a "de novo hearing" before the referring court within thirty days.⁴²

A. Objection to Associate Judge

A party desiring a trial before the referring court rather than the associate judge need only to object to the associate-judge referral.⁴³ The objection must be filed not later than the 10th day after the date the party receives notice that the associate will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial, if a jury demand has been timely made.⁴⁴

B. De Novo Hearings

Texas Family Code Section 201.015 applies to a request for a de novo hearing before the referring court for matters adjudicated by an associate judge appointed under Subchapter A and C. Under Section 201.015, when a case is referred to an associate judge for any authorized purpose, a party may request a de novo hearing before the referring court by filing a written request with the clerk of the referring court not later than the third working day after the date the party receives notice of [the substance of the associate judge's ruling or order].⁴⁵ For de novo hearings requested in matters handled by associate judges appointed under Subchapter C, the party requesting the de novo hearing must file notice with the clerk of the referring court as well as the court to ensure that the referring court judge is timely notified along with the clerk of the court. The referring court must conduct the de novo hearing within thirty days of the request,⁴⁶ and de novo hearings are limited to the specific issues stated in the de novo hearing request.⁴⁷

Parties may present witnesses at the de novo hearing, and the referring court may consider the record from the hearing before the associate judge, including any charge to the jury and any verdict returned, if the matter was tried before a jury.⁴⁸ Although a party may request a de novo hearing before the referring court, a party is not entitled to demand a second jury if the order or proposed judgment reviewed by the referring court was the result of a jury trial presided over by the associate judge in the first instance.⁴⁹

C. De Novo Hearing vs. Trial De Novo

The Supreme Court of Texas has held that neither Section 201.015 nor any other provision of the Texas Family Code expressly confers a right to a jury trial in a de novo hearing.⁵⁰ That A.L.M.-F case distinguishes a De Novo Hearing and a Trial De Novo. A “trial de novo” is a new and independent action in the reviewing court with “all the attributes of an original action” as if no trial of any kind has occurred in the court below.⁵¹ But under Chapter 201, a hearing is not equivalent to a trial, and review under section 201.015 is not entirely independent of the proceedings before the associate judge. Accordingly, the term “de novo hearing,” as used in Chapter 201, does not equate to a “trial de novo.” Rather, the term “de novo hearing” has meaning that is unique to the associate judge referral statutes and governed by the procedures specified in the authorizing statutes.⁵²

D. Judicial Action on Associate Judge’s Proposed Order or Judgment

Parties can forego their right to have their case decided by the referring court in two ways: a party can waive the right to a de novo hearing by executing a waiver prior to the hearing or trial before the associate judge or the party can fail to or forego filing a request for a de novo hearing within the time required by statute on the back end. Thus, if a request for a de novo hearing before the referring court is not timely filed or the right to de novo hearing before the referring court is waived, the proposed order or judgment of the associate judge, becomes the order of the referring court by operation of law without ratification by the referring court.⁵³ Further, regardless of whether a de novo hearing is requested before the referring court, a proposed order or judgment rendered by an associate judge that meets the requirements of Section 263.401(d) is considered a final order for purposes of Section 263.401.