

File a Motion to Vacate Judgment / Order in a Civil Case

Should I use this packet?

You should use this packet if both of these are true:

1. Someone filed a non-criminal (a *civil*) case against you in a Washington state court.
2. You did not go to the hearing in that case or file any written response to the case.

Who should *not* use this packet?

If you want to file a Motion to Vacate a Judgment and Writ in an eviction case, do not use this packet. Use [Try to cancel \(vacate\) your eviction: What you can do if you did not show up to your eviction hearing and the judge let the sheriff post a notice on your door](#) instead.

What is a Motion to Vacate?

It asks a judge to cancel (to *vacate*) an earlier order or judgment entered by the same court. You file this Motion in the Washington state court where the Order you want vacated was issued.

Does a Motion to Vacate make sense for my situation?

It depends.

Generally, you must convince the judge that you did not have a fair chance to present your case the first time around. You must base your motion on a reason listed in [Civil Rule 60](#). (A copy of the Rule is below.)

If you did have a fair chance to present your case the first time around, do not file this Motion if what you really want is to ask a judge to change their mind or



reconsider the evidence or law. There are other motions for that, with different deadlines and requirements. Talk to a lawyer about your other options.

Do I file a Motion to Vacate if I want to appeal a court order?

No. An appeal asks a higher court to change the decision made by a lower court. A Motion to Vacate asks the same court to cancel its decision, as if the case never happened.

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- ❖ Before filing a Motion to Vacate, get legal advice. Call the CLEAR toll-free legal advice line (1-888-201-1014) or talk to another lawyer or legal services provider.
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Will the judge grant my Motion to Vacate?

Judges rarely grant Motions to Vacate. Before filing this motion, make sure you have solid legal grounds for it.

If you do not, the judge may decide you wasted everyone's time. In that situation, the judge could order you to pay the other side's costs, including attorney's fees.

The most likely reason a judge would grant this Motion is you did not get notice of the lawsuit or a hearing about the case. You have a right to have had the original lawsuit delivered to (called *served on*) you. If the other party served you and you responded, you should have gotten notice of all other hearings.

Check the court file for a completed Return of Service, Affidavit of Service, or Certificate of Service. If there is one, see what it says about how the other party had you served. If it is not right, think about how to prove that.

There are other reasons to file a Motion to Vacate. Before doing so, talk with a CLEAR advocate (1.888.201.1014) or another lawyer or legal services provider. If you file what the judge thinks is a waste of time, the judge could order you to pay the other side's costs, including attorney's fees.



How do I make a Motion to Vacate?

Step 1: Get the forms and documents you need.

Step 2: Fill out the forms.

Step 3: Talk to a lawyer, if possible.

Step 4: Get a judge's signature. Copy forms.

Step 5: File and deliver working papers. Have the other party served.

Step 6: Make sure your hearing is happening. Go to hearing.

Step 1. Get the forms and documents you need

FORM #1: Order to Show Cause (Vacate Judgment/Order)

FORM #2: Motion for Order to Show Cause regarding Vacation of Judgment/Order

FORM #3: Declaration Form

FORM #4: Order on Motion to Vacate Judgment/Order

FORM #5: Copy of the Order you want vacated

FORM #6: Return of Service (also called an *Affidavit of Service*)

ADDITIONAL DOCUMENTS (optional): Anything else you want the judge to review as part of your Motion

❖ FORMS # 1, 2, 3, 4, and 6 are part of this packet.

Step 2. Fill out the forms.

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- ❖ **Always fill out the case caption** (the top portion of the first page of each form naming the county, parties, and case number) by copying the caption from the order you are trying to vacate.
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FORM #1 [Order to Show Cause (Vacate Judgment/Order)] - Use this to schedule a hearing on your Motion. Pick a date at least 5 court days from the day you plan to have the other party served with a copy of the Motion and other papers. Ask the court clerk (or facilitator if there is one) when you can schedule your hearing.

Put the parties' names, case number, and date of the order exactly as they look on the order you want to vacate. Put the hearing date. At the end, sign your name under "Presented by." Do **not** write in the date in the space above "Presented by" and to the left of the line where the judge signs. Do this when you present your order to show cause to the judge ex parte. (See step 4 below.)

FORM #2 (Motion for Order to Show Cause Regarding Vacation of Judgment/Order) Put the name of each order you want to vacate (**example:** a Judgment in favor of a Collection Agency). Briefly explain why the judge should vacate the order.

Evidence Relied upon In Addition to Evidence in Court File: list any Declarations (see Form #3) you are submitting by you or anyone else on your behalf, and any other documents (see below) you are submitting to support your motion. Attach copies of these documents.

Authority: check all boxes that apply to your case.

FORM #3 (Declaration) - Make several extra copies of this before filling it out. This form lets you give the judge detailed facts to convince the judge to vacate the order. **Your motion must include your own declaration.** Others who know about your case may also submit a declaration for you. Make the statements short and factual. Do not be argumentative or opinionated. (**Example:** you should say things like "I was not served with notice of the lawsuit," and not like "The collection agency is run by a bunch of cold and cruel thugs.") Number each fact separately.

FORM #4 (Order on Motion to Vacate Judgment/Order) – Put the date of the Order you are trying to vacate. Put whether you are Plaintiff, Defendant, or some other party. You usually will be Defendant. Put what you want the vacating order to say. Sign under “presented by.”

FORM #5 - This is a copy of the Order you are trying to vacate or dismiss. **You must give the court this.** Highlight which parts of the Order you want vacated. Attach this to your Declaration (Form #3).

FORM #6 (Return of Service, also called Affidavit of Service) – Someone, other than you, who is at least age 18 and not a witness or otherwise connected with the case, must give (must *serve*) the other party copies of your forms. This person must fill out a Return of Service.

OTHER DOCUMENTS (optional) – You should mention any other document(s) you want the judge to review in the section on Form #2 called “Evidence Relied Upon in Addition to Evidence in Court File.” Attach copies of them to Form #2.

Step 3. Talk to a lawyer, if possible.

These instructions are not a substitute for legal advice. The laws and court rules are complex. Following these instructions will not guarantee you a favorable result. Talk to a lawyer about your problem before filing anything. If you cannot afford to hire a lawyer to represent you, you may be able to pay one to advise you and review your paperwork. If you have a very low income, you may be able to get legal advice by calling 1.888.201.1014.

Step 4. Get a judge’s signature and copy forms.

After you have filled everything out and organized everything, you must have a judge sign Form #1, Order to Show Cause to Vacate Judgment/Order. You do this “*ex parte*.”

Ex parte means the other party or parties do not need to be notified or present. (In some counties, a separate Ex Parte Department handles such matters.) Ask the court clerk what the procedure is in your county.

Make three copies of Forms #1 - #5. Also, on Form #4 only, put “PROPOSED” on the copies only. Do not put “PROPOSED” on the original of Form #4. Bring the completed original of Form #4 to your hearing for the judge to sign.



Step 5. File/deliver working papers. Have the other party served.

File the originals of these forms with the Clerk’s office: #1, #2, and #3. (Attach a copy of Form #5 to the original of Form #3.) **Do not file the original or a copy of #4.** Stamp your copies of the forms with the Clerk’s date stamp to prove you filed the originals of Forms #1, #2 and #3 with the Clerk.

Ask the Clerk or facilitator if you must also file working papers. Working papers, also called working copies, are an extra copy of your motion packet (the papers you filed plus the order marked “Proposed”) that goes to the judge. You can read [What are working copies?](#) to learn more. If you need to file working papers, in the top right-hand corner of the first page of this set, put:

WORKING PAPERS: MOVING PARTY

CIVIL LAW MOTIONS

DATE: _____ TIME: _____ AM/PM

NAME: _____
(Your Name)

***Put your hearing date and time.**

Have the other party served with a copy of your “motion packet” at least 5 days before the hearing. Bring the last copy of your “motion packet” to your hearing. Form #6 above has instructions on how to serve the other party.

The person who serves your motion packet should fill out the Return of Service (also called an *Affidavit of Service*). Your server must sign this form after serving the papers and return the Return or Affidavit of Service to you. Make a copy of it for yourself. File the original with the Clerk’s office. Stamp your copy with the Clerk’s date stamp. Bring the copy to your hearing.

If you tried but could not do personal service on the opposing party, ask the court to allow you to serve by certified mail at the last known address of the other party, or by publication. Ask the Clerk (or facilitator if there is one) what forms you need.



Step 6. Make sure your hearing is still happening. Go to the hearing.

Confirmation:

Ask the Clerk (or facilitator if there is one) when and how to make sure your hearing is still on, called *confirming* your hearing. You might have to do this several days beforehand. **If you do not confirm your hearing, the court might cancel it!**

The other party must file a written response to your motion no later than the end of the court day before the day of the hearing. If the other party files late, you can object to the judge considering the response. (Check with the Clerk. The timeline may vary by county.)

At Your Hearing:

You may have to wait up to three hours for your hearing. Do not bring children with you. Arrive 30 minutes early to check in.

Bring these with you to the hearing: The original of Form #4, your copy of your “motion packet,” and a copy of Form #6.

After the Hearing:

Make yourself a copy of whatever documents the Judge signed. If the other party was not there, make a copy for them to mail to them. All original orders the Judge signed must be filed in the Clerk’s office. **Do not leave the courthouse with original orders signed by the Judge.**

WARNING: The laws and court rules are complex. Following these instructions will not guarantee you a favorable result. Talk to a lawyer about your problem before filing your action. Even if you cannot afford to hire a lawyer to represent you in court, you may be able to pay one a small fee to at least review your completed forms and talk about your problem.

Get Legal Help

- **Apply online:** nwjustice.org/apply-online
- **Facing Eviction?** Call 1-855-657-8387
- **Facing Foreclosure?** Call 1-800-606-4819
- **Facing a legal issue in King County** (other than Eviction or Foreclosure)? Call 211 (or toll-free 1-877-211-9274) weekdays 8:00 am to 6:00 pm. They will refer you to a legal aid provider.
- **Facing a legal issue outside of King County** (other than Eviction or Foreclosure)? Call the CLEAR Hotline at 1-888-201-1014 weekdays between 9:15 am and 12:15 pm or apply online at nwjustice.org/apply-online.
- **Seniors (age 60 and over)** with a legal issue outside of King County can also call CLEAR*Sr at 1-888-387-7111

Deaf, hard of hearing or speech impaired callers can call any of these numbers using the relay service of your choice.

Interpreters provided.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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(Form #1)

_____ COURT OF WASHINGTON
COUNTY OF _____

_____,
Plaintiff,

v.

_____,
Defendant.

No.

ORDER TO SHOW CAUSE
(VACATE JUDGMENT/ORDER)

IT IS ORDERED:

_____ shall appear personally before the court and show
[other party's name]
cause, if any, why this Court should not vacate the order(s) dated _____
_____ as requested in the attached Motion for Order to Show Cause Regarding the Vacate
Judgment/Order.

A hearing shall occur on:

Date: _____ Time: _____ a.m. / p.m.
Place: _____ Room: _____
Courthouse

FAILURE TO APPEAR IN PERSON AND DEFEND MAY RESULT IN AN ORDER BEING ENTERED BY THE COURT WHICH GRANTS THE RELIEF REQUESTED IN THE ACCOMPANYING MOTION WITHOUT FURTHER NOTICE TO YOU.

Other:

DATED: _____

JUDGE/COMMISSIONER

Presented by:

Signature (your name)

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(Form # 2)

_____ COURT OF WASHINGTON
_____ COUNTY

_____,
Plaintiff,

v.

_____,
Defendant.

No.

MOTION FOR ORDER TO SHOW CAUSE
Re: VACATION OF JUDGMENT/ORDER

I. RELIEF REQUESTED

_____ respectfully moves the Court for an Order requiring
[Your name]

_____ to appear and show cause why this Court should not grant the
Motion to Vacate
[Other party]
Judgment/Order(s) requested.

II. STATEMENT OF THE CASE AND GROUNDS TO VACATE THE ORDER

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I am asking the Court to vacate the following Order(s) or parts of Order(s):

This Court entered this/these Order(s) on _____ [date(s)]

The Court should vacate this/these Order(s) because: _____

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at _____ [City and state] on _____ [Date]

Signature

Print or type name

1
2 **III. EVIDENCE RELIED UPON IN ADDITION TO EVIDENCE IN COURT FILE**

_____ 's Motion to Vacate Judgment/Order.

3 [Your Name]
Declaration by: _____
[Writer's name]

4 Declaration by: _____
[Writer's name]

5 Other: _____
[other supporting documents/evidence]

6 [These documents are attached.]

7
8 **IV. AUTHORITY**

9 _____'s Motion to Vacate Judgment/Order is made pursuant to one or
10 more of these:

- 11 Civil Rule 60(a): Clerical mistake(s) in the Judgment, Order, or other parts of the record;
- 12 Civil Rule 60(b)(1): Mistake, inadvertence, surprise, excusable neglect or irregularity in obtaining
the Judgment/Order;
- 13 Civil Rule 60(b)(2): Erroneous proceedings against a minor or person of unsound mind and the
14 condition of the defendant/respondent did not appear in the record nor was the error discovered
15 during proceedings;
- 16 Civil Rule 60(b)(3): Newly discovered evidence which by due diligence could not have been
discovered in time to move for a new trial under CR 59(b);
- 17 Civil Rule 60(b)(4): Fraud, misrepresentation or other misconduct of an adverse party;
- 18 Civil Rule 60(b)(5): The Judgment/Order is void;

- 1 Civil Rule 60(b)(6): The judgment has been satisfied, released, or discharged, or a prior judgment
2 upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the
3 judgment should have prospective application;
- 4 Civil Rule 60(b)(7): If the defendant was served by publication, relief may be granted as prescribed
5 in RCW 4.28.200;
- 6 Civil Rule 60(b)(8): Death of one of the parties before the Judgment in the action;
- 7 Civil Rule 60(b)(9): Unavoidable casualty or misfortune preventing the party from prosecuting or
8 defending;
- 9 Civil Rule 60(b)(10): Error in judgment shown by a minor, within 12 months after arriving at full
10 age;
- 11 Civil Rule 60(b)(11): Any other reason justifying relief from the operation of the judgment;
- 12 [Any other relevant legal authority: specify]

13 **V. PROPOSED ORDER**

14 A proposed order accompanies this motion.

15 DATED: _____

16 Respectfully Submitted,

17 _____
18 [Your Signature]

19 _____
20 [Print or Type Name]

1 (Form #3)

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_____ COURT OF WASHINGTON
_____ COUNTY

6

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No.

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DECLARATION IN SUPPORT OF
MOTION TO VACATE

_____,
Plaintiff,

9

v.

10

_____,
Defendant.

11

12

This declaration is made by:

13

Name: _____

14

Address: _____

15

Telephone: _____

16

Age: _____

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Occupation: _____

Relationship to the parties in this action:

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I DECLARE that:

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(Form # 4)

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_____ **COURT OF WASHINGTON**
_____ **COUNTY**

_____,
Plaintiff,

v.

_____,
Defendant.

No.

**ORDER ON MOTION TO VACATE
JUDGMENT/ORDER**

The above-entitled Court, having heard a Motion to Vacate the Judgment/Order entered on
_____;
(Date)

HEREBY ORDERS that the _____'s Motion to Vacate Judgment/Order
is granted. The Order(s) or parts of Order(s) entered for this matter on _____ (date) shall
be vacated as follows:

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DATED: _____

JUDGE/COURT COMMISSIONER

PRESENTED BY:

APPROVED BY:

[Your Name]

1 (Form #6)

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_____ COURT OF WASHINGTON
_____ COUNTY

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No.

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RETURN OF SERVICE

_____,
Plaintiff,

9

v.

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_____,
Defendant.

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I DECLARE:

13

1. I am 18 years of age or over. I am not a party to this action.

14

2. I served _____ [*other party's name*] with:

15

an Order to Show Cause re: Motion to Vacate dated _____.

other:

16

17

3. The date, time and place of service were (if by mail, refer to Paragraph 4 below):

18

Date: _____ Time: _____ a.m./p.m.

19

Address: _____

20

CIVIL RULE 60

RELIEF FROM JUDGMENT OR ORDER

- (a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).
- (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
 - (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
 - (2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;
 - (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);
 - (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
 - (5) The judgment is void;
 - (6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
 - (7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;
 - (8) Death of one of the parties before the judgment in the action;
 - (9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;
 - (10) Error in judgment shown by a minor, within 12 months after arriving at full age; or
 - (11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.
- (c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.
- (d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.
- (e) Procedure on Vacation of Judgment.
 - (1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.
 - (2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

- (3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.