

MOTION TO VACATE JUDGMENT/ORDER

Civil Rule 60

A. What is a motion to vacate?

It asks the court to take back an earlier order or judgment it entered. You must base this motion on a reason [Civil Rule 60](#) lists. (The Rule is at the end of this packet.)

B. Where can I file a Motion to Vacate?

You can file it in Superior Court or in a court of limited jurisdiction such as district court.

C. Should I file a Motion to Vacate?

Generally, the judge will grant your Motion to Vacate if you convince the court that you did not have a fair chance to present your case. If you did, do not file a Motion to Vacate. It is not a way to ask the court to change its mind or reconsider the evidence or law.

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- ❖ If you want to file a Motion to Vacate a Judgment and Writ in an eviction case, do NOT use this packet. Use [Vacating a Judgment and Staying Enforcement of a Writ of Restitution](#) instead.
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D. Do I file a Motion to Vacate if I want to appeal a court order?

No. A Motion to Vacate is not like appealing. An appeal asks a higher court to change the decision made by a lower court. A Motion to Vacate asks the same court to take back its decision.

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- ❖ Before filing a Motion to Vacate, talk to an advocate on the CLEAR toll-free legal advice line (1-888-201-1014), or to another lawyer or legal services provider.
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E. When would a court grant a Motion to Vacate?

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- ❖ **Courts rarely grant Motions to Vacate.** Before filing this motion, make sure you have solid legal grounds for it. Otherwise, the court may decide you wasted its time. It may order you to pay the other side's costs, including attorney's fees.
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The most likely reason the court would grant this Motion is you did not have notice of the lawsuit or a hearing on the case. You have a right to have had the original lawsuit 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 other lawyer or legal services provider. Filing what the court thinks is a waste of time may lead to it ordering you to pay the other side's costs, including attorney's fees.

F. How do I make a Motion to Vacate?

SUMMARY OF STEPS

- 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 /deliver working papers. Have the other party served.
- Step 6: Make sure hearing is happening. Go to hearing.

❖ Many counties have commissioners who hear certain types of cases. To make things simpler, this packet just refers to judges.

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 court to look at as part of your Motion

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

STEP 2: FILL OUT THE FORMS.

❖ **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.

- **FORM #1 [Order to Show Cause (Vacate Judgment/Order)]** - Use this to schedule a hearing on your Motion. Pick a date at least five 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 the court has one) when you can schedule your hearing in court.

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 court 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 court 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, not argumentative and opinionated. (Example: "I was not served with notice of the lawsuit," not "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 (you usually will be Defendant), or some other party. Put what you want the vacating order to say. Sign under "presented by."
- **FORM #5** - This is actually a copy of the Order(s) you are trying to vacate or dismiss. **You must give the court this.** Highlight which parts of the Order(s) 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 age 18 or older and not a witness or otherwise connected with the case, must serve (give) 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 court to see 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 CLEAR’s toll-free line, 1-888-201-1014.

STEP 4: GET A JUDGE’S SIGNATURE. 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.” This means the other party or parties need not be notified or present. (In some counties, a separate Ex Parte Department handles such matters.)

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 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.

NOTE: Some counties require “working papers.” Working papers are an extra copy of your motion packet (the papers you filed plus the order marked “Proposed”) that goes to the judge. Ask the Clerk or Facilitator if you must file working papers. If so, 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 five days (unless local court rules say otherwise) 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 (or Affidavit of Service). The server must sign it after serving the papers, and return it to you. Make one copy 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) what forms you need.

STEP 6: MAKE SURE YOUR HEARING IS ON. GO TO HEARING.

Confirmation:

Ask the Clerk (or Facilitator, if there is one) when/how to confirm your hearing (make sure it is still on). 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 s/he files late, you can object to the judge considering the response. (Check with the Clerk. The time line 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 document(s) 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. (You may be able to hire a lawyer for a small fee to review your completed forms and talk about your problem, but not represent you in court.) If you need a lawyer, contact the appropriate legal services office for your area.

What if I need legal help?

- **Apply online with CLEAR*Online** - <https://nwjustice.org/get-legal-help>
or
- **Call CLEAR at 1-888-201-1014**

CLEAR is Washington's toll-free, centralized intake, advice and referral service for low-income people seeking free legal assistance with civil legal problems.

- **Outside King County:** Call 1-888-201-1014 weekdays from 9:15 a.m. until 12:15 p.m.
- **King County:** Call 211 for information and referral to an appropriate legal services provider Monday through Friday from 8:00 am – 6:00 pm. You may also call (206) 461-3200, or the toll-free number, 1-877-211-WASH (9274). You can also get information on legal service providers in King County through 211's website at www.resourcehouse.com/win211/.
- **Persons 60 and Over:** Persons 60 or over may call CLEAR*Sr at 1-888-387-7111, regardless of income.

Deaf, hard of hearing or speech impaired callers can call CLEAR or 211 using the relay service of their choice.

211 and CLEAR will conference in interpreters when needed at no cost to callers.

Free legal education publications, videos and self-help packets covering many legal issues are available at www.washingtonlawhelp.org.

This publication provides general information concerning your rights and responsibilities. It is not a substitute for specific legal advice. This information is current as of November 2017.

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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.**

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Other:

DATED: _____

JUDGE/COMMISSIONER

Presented by:

Signature (your name)

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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**

3 _____'s Motion to Vacate Judgment/Order.
4 [Your Name]
5 Declaration by: _____.
6 [Writer's name]
7 Declaration by: _____.
8 [Writer's name]
9 Other: _____.
10 [other supporting documents/evidence]
11 _____.

12 [These documents are attached.]

13 **IV. AUTHORITY**

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

- 16 Civil Rule 60(a): Clerical mistake(s) in the Judgment, Order, or other parts of the record;
- 17 Civil Rule 60(b)(1): Mistake, inadvertence, surprise, excusable neglect or irregularity in obtaining
18 the Judgment/Order;
- 19 Civil Rule 60(b)(2): Erroneous proceedings against a minor or person of unsound mind and the
20 condition of the defendant/respondent did not appear in the record nor was the error discovered
during proceedings;
- 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);
- Civil Rule 60(b)(4): Fraud, misrepresentation or other misconduct of an adverse party;
- 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]

11
12 **V. PROPOSED ORDER**

13 A proposed order accompanies this motion.

14 DATED: _____

15 Respectfully Submitted,

16 _____
17 [Your Signature]

18 _____
19 [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.

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This declaration is made by:

13

Name: _____

14

Address: _____

Telephone: _____

15

Age: _____

16

Occupation: _____

17

Relationship to the parties in this action:

18

I DECLARE that:

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1 (Form # 4)

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_____ COURT OF WASHINGTON
_____ COUNTY

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No.

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ORDER ON MOTION TO VACATE
JUDGMENT/ORDER

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_____,
Plaintiff,

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v.

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_____,
Defendant.

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The above-entitled Court, having heard a Motion to Vacate the Judgment/Order entered on

_____;

(Date)

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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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5 _____ COURT OF WASHINGTON
_____ COUNTY

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7 No.
8 RETURN OF SERVICE

8 _____,
9 Plaintiff,

9 v.

10 _____,
11 Defendant.

12 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 _____.
- 16 other:

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 4. Service was made pursuant to Civil Rule 4(d)

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.