

Motion to Vacate Judgment/Order in a Family Law Case

Civil Rule 60

What is a Motion to Vacate?

It requests that the court withdraw a previous order it entered. The motion must be based on a reason listed in [Superior Court Civil Rule 60](#). (We have attached a copy of the rule at the end of this packet.) You may file a Motion to Vacate in Superior Court or a court of limited jurisdiction, such as district court.

❖ In this publication, “order” refers to an order or a judgment.

Generally, the court will grant your Motion to Vacate if you can convince it that you did not have a fair chance to present your case. If you did have the chance, do **not** file a Motion to Vacate. A Motion to Vacate is not a substitute for an appeal. An appeal asks a higher court to change a lower court’s decision. A Motion to Vacate asks the same court to take back its own decision.

Courts rarely grant a Motion to Vacate. Before filing this motion, make sure you have solid legal grounds for it. Otherwise, the court may decide your motion is frivolous and order you to pay the other side’s costs, including attorney’s fees. Before filing, talk to a lawyer. (The last section of this publication has contact info.)

When will a court grant a Motion to Vacate?

Most people file this motion because they did not have notice of the lawsuit or a particular hearing that was part of it. You have a right to have had the original lawsuit served on you. If it was served on you and you responded, you should get notice of all other hearings in the case.

Sometimes a lawsuit is not served on a party. Check the court file to see if there is a completed Proof of Personal Service. If so, see what it says about how you were served. If it is not accurate, think about how to prove it is wrong.

❖ The [Superior Court Civil Rule 60](#) attached to this publication lists all the reasons you can file a Motion to Vacate.

Talk about your case with a lawyer before filing. You may feel you have enough evidence to show one of the reasons the rule lists. But if you file what the court thinks is a frivolous motion, it may order you to pay the other side’s costs, including attorney’s fees.

❖ The rule generally requires that you bring a motion within a reasonable time. For three of the reasons listed - [CR60\(b\)\(1\)](#), [CR60\(b\)\(2\)](#), and [CR 60\(b\)\(3\)](#) - you must bring the motion no more than one year after the court entered the order. A lawyer can help you figure out whether your motion is timely before you file.

How do I file a Motion to Vacate?

CHECKLIST 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 or Commissioner’s Signature. Copy the Forms.
- Step 5:** File and Deliver the Working Papers.
- Step 6:** Have the Other Party Served.
- Step 7:** Confirm and Go to Hearing.

STEP 1: Get the Forms and Documents You Need

❖ Forms numbers 1, 2, 3, 4, and 6 are at the end of our instructions.

FORM #1: Order to Show Cause

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

FORM #3: Declaration

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

FORM #5: Copy of the Order you wish to have vacated

FORM #6: Proof of Personal Service

OTHER (OPTIONAL): Any other document you want the court to consider for your motion
- to attach to your declaration as exhibits, such as letters or records

❖ If you attach exhibits to your declaration, you must assign either to each exhibit either a number (Exhibit 1, Exhibit 2, Exhibit 3) or letter (Exhibit A, Exhibit B, Exhibit C).

STEP 2: Fill Out the Forms

On the first page of all forms, fill out the **caption** (the top portion of each form naming the county, parties involved and case number) by copying the caption from the order you are trying to vacate.

FORM #1: Order to Show Cause - FL All Family 183

You use this form to schedule a hearing date when a judge or commissioner hears the Motion. You select the date. Check local rules to figure out how much notice you must give the other party and which judge will hear the motion. The rules can vary greatly.

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- ❖ **Example:** You are trying to vacate a family law order a commissioner entered in King County. You would have to schedule the motion to vacate before a family law commissioner with at least fourteen days' notice before the hearing. If you a judge signed the order, you would schedule it before a judge with at least six days' notice.
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Generally, you must pick a court date at least five court days from the day you plan to have the other party (or parties) served with a copy of your papers. Ask the court clerk or facilitator what day you can schedule your hearing in court.

Put the parties' names, the case number, and the date of the order exactly as it appears on the order you want to vacate. Put the hearing date.

Presented by: sign your name here.

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- ❖ Do **not** fill out the date in the space above to the left of the line where the judge signs. Do this when you present your order to show cause to the judge in ex parte. (See Step 4, below.)
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FORM #2: Motion for Order to Show Cause and Order to Vacate Judgment/Order

I. Relief Requested: In the first blank, put your name. In the second blank, put the other party's name. In the third blank, put the date of the order you want to vacate

Statement of Facts/Statement of Grounds: In the first paragraph, list the orders or parts of Orders you want the court to vacate now.

In the short blank, put the date the court entered the order/s you now want vacated.

In the second paragraph, list the facts supporting your motion. If the facts are in any Declarations (Form #3) you are submitting to the court, you should mention that here AND in section IV.

Statement of Issues: You must state, in the form of a question, the issue you want the court to decide. You should quote from the rule you believe provides the reason for your motion. **Examples:**

- Should the court vacate the Order under [CR60 \(b\)\(3\)](#) because there is newly discovered evidence which due diligence could not have been discovered in time to move for a new trial?
- Should the court vacate the Order under [CR60 \(b\)\(1\)](#) because there was excusable neglect and irregularity in the proceeding?

Evidence Relied Upon: If you make your own declaration and/or others make declarations on your behalf, list them here.

Authority and Argument: Check the box/es that apply. Explain what evidence supports your request that the court vacate the order.

FORM #3: Declaration Form

Make several extra copies of this before filling it out.

A Declaration allows you to 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 write a declaration on your behalf.

Make the statements short and factual, not argumentative and opinionated. (**Example:** “My former husband did not pay child support for two years,” not “My former husband has always been cheap and cruel.”) Number each fact separately. Wherever possible, try to use headings to organize different topics. Try to break large paragraphs into smaller ones for easier reading.

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

Put the date of the order you are trying to vacate, and which party you are. (You usually will be the defendant.) Then put what you want the vacating order to say.

Presented by: sign here.

FORM #5: Copy of Your Order

You must give the court a copy of the Order(s) you are trying to vacate. Highlight the specific sections of the Order(s) you want vacated. You must attach this document to your Declaration (Form 3).

FORM #6: Proof of Personal Service

Someone, other than yourself, who 18 or over and not a witness or otherwise connected with the case, must do one of these:

- personally serve (give) the other party with copies of your forms.
- give your papers to someone of suitable age and discretion (adult or older teenager) living at the other party’s home.

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- ❖ The server cannot give the paperwork to children at the home. The server also cannot leave the paperwork outside the door.
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After serving the papers, the server must fill out a Proof of Personal Service.

Other Documents (Optional)

You can attach to your declaration as exhibits any other document(s) you want to bring to the court's attention and are not declarations. (Other declarations are **not** exhibits.) In your declaration, describe these exhibits and refer to them when explaining why the evidence supports vacating the order. Refer to the exhibit number you have assigned it.

STEP 3: Talk to a Lawyer, If Possible

These instructions are not a substitute for legal advice. The laws and court rules are complicated. Following these instructions will not guarantee success. It is always better to talk to a lawyer about your problem before filing your motion. The end of this publication has contact info.

STEP 4: Get a Judge/Commissioner's Signature / Copy Forms

After filling everything out, you must have a judge or commissioner 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. (Some counties have a separate Ex Parte Department to handle such matters.)

Make three copies of Forms 1 - 5. On Form 4 only, put **PROPOSED** on the copies only. Do not put this on the original of Form 4. You bring the completed original Form 4 to your hearing for the judge to sign.

STEP 5: File and Deliver Working Papers

Once you have gotten a judge's signature in ex parte, you will file the originals of the following forms with the Clerk's office:

- Form 1
- Form 2
- Form 3 (attach a copy of Form 5 to the original of Form 3)

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- ❖ Do not file the original or a copy of Form 4.
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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.

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 courthouse facilitator if you need to file working papers. If you do, put the following in the top right hand corner of the first page of this set:

WORKING PAPERS: MOVING PARTY
CIVIL LAW MOTIONS

DATE: _____ TIME: _____AM/PM

NAME: _____

(Your Name)

*** You must fill in your hearing date and time.**

STEP 6: Have the Other Party Served

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.)

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- ❖ If you are trying to vacate a paternity or child support order, and any children have ever been on public assistance, you must also serve a set of copies on the Prosecuting Attorney’s Office, Family Support Division, and all the parties involved in the original proceedings.
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The person who serves your motion packet should fill out the Proof of Personal Service. The server must sign the Proof of Personal Service after service is completed and return it to you. Make one copy for yourself. File the original with the Clerk. Stamp your copy with the clerk’s date stamp. Bring the copy with you to your hearing.

If the server has been unable to serve the other party, you can ask for court permission to serve by certified mail at the other party’s last known address, or by publication. Ask the court clerk or courthouse facilitator about the forms you need to serve the opposing party by certified mail or publication. You can also contact CLEAR (1-888-201-1014) for advice and forms to get an order for service by mail or publication. Our packet [Service by Certified Mail or Publication](#) has forms and instructions.

STEP 7: Confirm Your Hearing and Go To Hearing

Confirmation: Ask the facilitator or clerk when and how to confirm your hearing. Some counties require you to confirm your hearing several days before the actual hearing takes place. **IF YOU DO NOT CONFIRM YOUR HEARING, THE COURT MAY AUTOMATICALLY CANCEL IT!**

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- ❖ Ask the courthouse facilitator or court clerk about the appropriate court rule. This time line may vary by county.
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If the other party files a response to your motion, s/he must do so no later than the end of the court day before the day of the hearing (unless local rules say otherwise).

If the other party does not timely file a written response, you have the right to object the judge/commissioner considering the response.

At Your Hearing:

YOU MAY HAVE TO AS LONG AS THREE HOURS FOR YOUR HEARING. DO NOT BRING CHILDREN WITH YOU. Arrive a half hour early for your hearing to check in.

Bring all of these with you to the hearing:

- The original of Form 4
- Your copy of your motion packet
- A copy of Form 6

After Your Hearing:

Make yourself of copy of whatever document(s) the Commissioner or Judge signed. If the other party was not there, make a copy and mail it to the other party. You must file all signed original orders in the clerk's office. **Do not leave the courthouse with original orders the judge has signed!**

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- ❖ **WARNING:** The laws and court rules are complicated. Following these instructions will not guarantee you a good 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.)
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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 intended as a substitute for specific legal advice.
This information is current as of May 2016.

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