

# Ask for reconsideration or revision in a family law or protection order case

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You can try to change an order or judgment in your family law or protection order case by asking for revision or reconsideration. Learn about the difference, when to file each one, and how to find forms.

## **1. Fast facts**

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If you want a judge to change an order or judgment in your family law or protection order case, you should talk to a lawyer right away about whether it's a good idea to try to do so. Depending on whether a court commissioner or a judge made the order, you could file a Motion for Revision or a Motion for Reconsideration. In either situation, you'll have a short deadline to file your Motion.

## Should I file a Motion for Revision or a Motion for Reconsideration?

It depends on who made the order you want to change.

A **Motion for Revision** asks a judge to change a court commissioner's order. You can file this type of motion if you disagree with the commissioner's decision, or you believe the court commissioner got the facts or law wrong. Here are some **examples**:

- You presented evidence, including drug tests and arrests, at a hearing showing the other parent has a current substance use problem. Based on the other parent's drug abuse, you asked the commissioner to limit the other parent's time with the children. But the commissioner didn't do so.
- You are a domestic violence survivor. You asked for a protection order to last for at least a year. The commissioner gave you a Domestic Violence Protection Order that was shorter. This is an error because the law says that a domestic violence protection order must last for at least a year unless you ask for less time. (This law is at [RCW 7.105.315](https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.315) (<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.315>).)

You can read the state law about the revision process at [RCW 2.24.050](http://apps.leg.wa.gov/rcw/default.aspx?cite=2.24.050). (<http://apps.leg.wa.gov/rcw/default.aspx?cite=2.24.050>)

A **Motion for Reconsideration** asks a judge or commissioner to change their own order because something went substantially wrong at the hearing or trial that led to the order, or because you have newly discovered evidence that you couldn't have been expected to find before the hearing or trial. Here are some **examples** of things going wrong at hearing or trial that could lead to this

## Motion:

- The court didn't follow its own procedures that usually keep things fair. This is called "irregularity in the proceeding". For **example**, the judge ignored your request for an interpreter or a reasonable accommodation, or the judge allowed one side to present evidence, but not the other.
- The court's decision was wrong on the law, or there was no evidence to support it.

For the complete list of reasons why a judge would reconsider their decision or give you a new hearing or trial, you can read the court rule about this at Civil Court Rule (CR) 59

([https://www.courts.wa.gov/court\\_rules/pdf/CR/SUP\\_CR\\_59\\_00\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/CR/SUP_CR_59_00_00.pdf)).

Talk with a lawyer about whether you should file one of these Motions. If the judge thinks your Motion is a waste of time, the judge could order you to pay the other side's court costs.

## Are these motions the same as an appeal?

**No.** Motions for revision or reconsideration aren't the same as an appeal. An **appeal** asks a higher court to change a lower court's decision. You generally can't ask the court to look at new evidence or re-weigh the evidence in an appeal. The higher court must follow certain "standards of review". This limits the changes a higher court can make.

## What's my deadline to file either of these motions?

You have **10 days** from when the court made the order you want to change to file either a Motion for Revision or a Motion for Reconsideration. If the 10th day falls on a weekend or judicial holiday, your deadline is the next judicial day.

If you don't file within 10 days, you've missed your chance and must follow the order. You can consider an appeal, which is harder to do on your own and harder to win.

### **What if there's no written order? The commissioner or judge just announced their ruling from the bench.**

You may have to draft an order yourself to present to the commissioner or judge for signature. **The order you draft must say what the commissioner or judge ruled, not what you want.** You'll have a chance later in this process to draft a proposed order showing how you want them to rule.

You should send the other party a copy of your draft proposed Order to make sure they agree it says what the commissioner or judge ruled at your hearing or trial. If the other party will sign off on it, you can probably present it to the commissioner or judge at an "ex parte" docket, if your county has one. Ask the Superior Court clerk how. Otherwise, you must schedule a "presentment" or "presentation" hearing where the commissioner or judge will sign the order. Your **10-day deadline** starts from the day the order is signed and filed with the court clerk.

## **2. Process**

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## Where do I file my motion?

You must file either motion in the same court where the commissioner or judge heard your case.

## Do I have to pay to file a motion?

It shouldn't cost anything to file a motion. You may have to pay for copies of whatever orders the judge signs.

## Will the other party have a chance to respond to my motion?

**Yes.** Ask the court clerk or facilitator (if there is one) what the other party's deadline is to respond.

## How will the judge decide whether to change the decision?

**In a motion for revision:** The judge must look at the case record and the findings of fact and conclusions of law in the commissioner's order.

The judge **may** (does not have to) revise the commissioner's decision if the judge believes that the commissioner interpreted the law wrong or didn't consider important facts you presented.

**In a motion for reconsideration:** If the judge interpreted the law wrong (called making a "legal error" or an "error in law"), the judge **must** give you a new hearing or trial if you objected to the error of law at hearing or trial and that error of law worked against you.

Otherwise, the judge can choose to grant your motion for reconsideration if the judge decides to change the judgment, reopen the record to take new testimony, or grant a new hearing or trial on any or all issues.

## **Can I use one of these Motions to bring in new evidence?**

**Motion for revision: No.** The judge will only review the commissioner's decision based on the evidence that was in front of the commissioner. You cannot bring new evidence in. If you really want to try to get new evidence into the record at this stage of the case, talk to a lawyer.

**( )Motion for reconsideration: It depends.** The judge might let you bring in new evidence if it's so important that it'll probably change the result if you get a new trial, and you couldn't have discovered the evidence before hearing or trial even if you'd been diligently looking for it.

Examples:

- After a protection order hearing, you get a CPS report or police report that could change the judge's mind. A Protection Order case happens very quickly. A judge may agree you couldn't have found the evidence during the Protection Order proceeding even using "due diligence."
- You couldn't get or present the evidence before due to a language barrier or disability. You let the court know in advance that you would need an interpreter at your trial, but the court didn't get you one. In this situation, you might say that you couldn't present evidence at the trial without an interpreter.

## **Will there be a hearing on my motion?**

It depends on the county. Ask the court clerk, facilitator (if there is one), or judge's assistant.

If you must have a hearing on this motion and other motions are also pending in your case, the judge may consider all the motions at the same hearing.

### Will the judge watch a recording of the earlier hearing?

**No.** The judge won't watch a recording of the hearing that led to the order you now want to change. If there was witness testimony at that hearing, you must file a declaration describing what the witnesses said, and possibly a transcript or hearing record. Ask the court clerk if you must file a transcript. We don't have instructions for writing a declaration in this type of case. You can use the [declaration form, FL All Family 135](#).

The judge may review the **documents** that were filed for that earlier hearing. It's best to tell the judge in your motion exactly what other documents you want to judge to review from the case file.

## 3. Step-by-step

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Use this checklist for either motion.

1. Answer a few questions on **Get Family and Safety Forms** to get the right forms for your situation. There are different forms depending on the type of case and motion.

Before filling out your forms, ask your superior court clerk if they have special (local) forms you must use for a Motion for Revision or Reconsideration. If so, use those instead of ours.

2. **Fill out the forms** (except for the Proof of Mailing and Hand Delivery).

Fill out the **motion** form to explain what you want the judge to do and why they should do it. Fill out the **order** form the way you want the judge to decide. It's your "proposed order."

3. **Make copies.** You need one copy of each completed form for yourself, one for the judge, and one for each other party to your case.

Organize the copies in sets, so there's one set for each person who needs a copy. You don't have to give the other party a copy of the Proof of Mailing or Hand Delivery. Put each set of papers into an envelope addressed to each party, with your return address. You'll use these sets for service.

If a child support prosecutor (often called "the state") is involved in your case, you'll need to serve them with a copy of



everything you file in court. Make an extra copy to serve on them.

4. **File the originals** with the Superior Court Clerk. Give the clerk the originals of all your forms for filing **except** you should ask the clerk what to do with the originals of any proposed orders. Follow the clerk's instructions.

Ask the clerk to stamp your copies to show the date you filed the originals. Take the stamped copies back from the clerk. The clerk keeps the original.

Deliver working copies to the judge, if required in your county.

5. **Serve the other party (or parties)** with copies of everything you filed, and any proposed orders. Most counties require service **at least 14 days before a hearing**. Ask the clerk if your county's deadline is different.

Follow the rules for service after a case starts. You can serve most motion papers yourself, but it's better to have someone else do it. Ask an adult friend or relative to do it for you. If the other party has a lawyer, have the papers served on the lawyer.

In protection order cases, you can serve electronically (by email, text, or social media), by hand delivery, or by mail.

**In family law cases:**

You can serve by **hand delivery** or **first class mail**. Sometimes you can serve by **email** or **fax**, but only if the other party has put in writing that they agree to accept legal papers for this case in that way.

**For hand delivery**, the other party (or lawyer) must receive their copy by the deadline. Ask them or their office staff to date-stamp your copy.

Hand delivery means one of these:

- Handing it to the other party (or their lawyer)
- Leaving it at their office with their clerk or other person in charge of the office
- If no one is in charge, leaving it in a place in the office where someone can easily find it (example: on top of the front desk)
- If the office is closed or the person has no office, leaving it at their home with an adult who lives there

**If you mail**, you must mail your papers **more than 3 days before** your deadline.

- When counting, don't count the day of mailing, weekends, or court holidays (example: if you mail something on a Monday, it counts as served on Thursday)
- If the third day is on a weekend or holiday, it isn't "served" until the next court day

If you send your papers by regular first-class mail, you can have an extra copy sent by certified mail, return receipt requested, for extra proof of mailing. Attach a copy of the tracking information or signed return receipt card to your proof of service.

**If you email,** keep a copy of the email you sent and any reply from the other party that shows they received it.

**If you fax,** keep the transmission confirmation page that shows it was delivered.

6. **Have the server fill out the Proof of Mailing or Hand Delivery. Make 2 copies.** File the original with the Superior Court Clerk. If there will be a hearing, bring your copies to the hearing.

7. If there will be a hearing, **go to your hearing.**

**Take your court papers with you.** Bring along copies of all the papers you filed and all proposed orders you want the judge to sign.

If there won't be a hearing, wait for the judge's decision.

## 4. Extend temporary weapons surrender

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### For protection order cases only

If you had a temporary **Order to Surrender and Prohibit Weapons**, your full protection order was denied, and you are filing a motion to revise or reconsider that denial, the court **must** extend the temporary **Order to Surrender and Prohibit Weapons** until your motion is decided. The court can decide **not** to extend only if it finds that extending would be a manifest

injustice. You can read the law at [RCW 7.105.362](https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.362)  
(<https://app.leg.wa.gov/RCW/default.aspx?cite=7.105.362>).

To get the extension, when you file your motion you must also present a [proposed Order Extending Order to Surrender and Prohibit Weapons, WS 400](#), to a judicial officer to sign **before** the deadline for revision or reconsideration passes.