

File a motion to vacate

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In certain situations, you can ask a judge to cancel (vacate) a previous court order. Use these forms and instructions to vacate an order in a family law or other non-criminal (civil) case.

We have separate forms and instructions to:

- [Vacate a default eviction judgment and stop a writ of restitution](#)
- [Vacate a criminal conviction](#)

1. Fast facts

What is a motion to vacate?

This written request asks a judge to withdraw or take back (to vacate) a previous order it issued in your case.

We use the word “order” here to refer to an order or a judgment.

Generally, a judge will approve your Motion to Vacate if you can convince them that you didn't have a fair chance to present your case before the order was issued. If you did have that chance, **don't** file a Motion to Vacate. This is **not** 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.

If you want to change an order issued **within the last 10 days**, you might want to file a motion for revision or reconsideration, instead of a vacate.

Judges rarely approve a Motion to Vacate. Before filing this motion, make sure you have solid legal grounds for it. Otherwise, a judge could decide against you and order you to pay the other side's costs, including attorney's fees. Try to talk to a lawyer before you file.

Deadline

You usually must file this kind of motion within a reasonable time. In many cases you must file the motion **within 1 year** after the judge issued the order you want vacated. A lawyer can help you figure out if your motion is timely before you file.

2. Reasons to vacate

You must file your Motion to Vacate based on a reason listed in Superior Court Civil Rule 60

(<https://www.courts.wa.gov/courtrules/superiorCourtCivilRules.cfm?Rule=Relief%20From%20J>)

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. The most common reason is if you didn't get proper notice of the hearing or trial where the judge issued the order.

The judge can vacate an order if you prove any of these:

- **Mistake, inadvertence, surprise, excusable neglect or irregularity** in getting the order.

Use this reason if you didn't get proper notice of the hearing or if you reasonably misunderstood the notice.

- **Unavoidable casualty or misfortune** preventing you from taking part in the case.

Use this reason if something happened, outside of your control, that stopped you from responding on time or going to the hearing.

- **Clerical mistakes** in the order, or other parts of the court record.

Use this reason if you just need to correct a typo or other mistake in the order.

- **Newly discovered evidence** which you couldn't have discovered by reasonable effort (due diligence) in time to move for a new trial under Civil Rule 59(b)

(<https://www.courts.wa.gov/courtrules/superiorCourtCivilRules.cfm?Rule=New%20Trial,%>)

. Use this reason if you found out about important information that could affect the judge's decision **more than 10 days after** the order was issued. But **only** use this if you couldn't have found that same information earlier with reasonable efforts.

If you find out important new information **within 10 days** of when the order is issued, you must file a Motion for Reconsideration instead of a vacate.

- **Fraud, misrepresentation or other misconduct** of the other party.
Use this reason if you can prove that the other party lied, broke rules, or used fraud to get the order.
- **You were served by publication and it's been less than 1 year** since the judge issued the order.

These reasons are less common, but a judge also vacate an order if you prove one of these:

- One of the parties **died** before the order was issued.
- The judgment has been **satisfied**, released, or discharged, or a prior judgment upon which it's based has been reversed or otherwise vacated, or it's no longer fair (equitable) that the judgment should apply going forward.
- The judgment or order is **void**.
Usually this means the judge didn't have authority to issue the order in the first place. This is a complicated legal question. Talk to a lawyer if you think this applies.
- The order relied on a poor decision by someone **under age 18** who's asking to vacate the order before they turn **19**.
- The order was issued against someone **under age 18 or** who didn't have the mental capacity to understand it (a person of **unsound mind**).
Don't use this reason if the person had a Guardian ad Litem (GAL) in the case. This is only a reason to vacate if the court record shows the judge

didn't know about the age or mental condition of the person when they issued the order.

- **Any other reason justifying relief.**

Use this if you have other good reasons that don't fit any other category. It's rarely successful on its own. It's most useful when you have one of the reasons listed above and you also want to explain how the order is deeply unfair or causes great hardship.

3. Improper notice

The most common reason a judge will vacate an order is for improper notice. You can file a Motion to Vacate if you didn't get advance notice that someone filed a court case against you or that a hearing was scheduled in the case. You have a right to be notified of court proceedings against you.

When someone sues you (starts a lawsuit against you in court), they must have someone else over age 18 deliver a copy of the court papers to you, usually in person (personally served on you). This gives you notice that the case is happening.

If you were served and you responded, you should then get notice of everything that happens in the case. Those later notices could come by mail or hand delivery.

Sometimes the person who starts (who files) a court case against you doesn't serve you at all, or they fail to serve you with papers later in the case after you respond.

Call or go to the court clerk's office to ask if the person who sued you filed a **proof of service** with the court. This form should explain how and when they had you served.

There are several names for a Proof of Service form. It can also be called a Return, Certificate, Affidavit, or Declaration of Service. For papers later in the case, it could be a Proof of Mailing or Hand Delivery.

If there is proof of service in your court file, see what it says. If it isn't accurate, think about how to prove it's wrong.

Example: The proof of service says you were handed papers at a time you were working. Ask your boss or coworker to write and sign a statement (declaration) under penalty of perjury to prove you were working and didn't get served.

If there's **no** form showing that the other party claimed to serve you, that's also helpful for your argument that you were never served.

You can lose your right to notice if you fail to respond by your deadline after being properly served (even if the case hasn't been filed yet). If you fail to respond, the other party can ask a judge to default you and sign orders without further notice to you. If that's your situation, you probably **can't** vacate the order based

on improper notice. Consider if any other possible reasons to vacate are true for you. Try to talk to a lawyer.

4. Step-by-step

To file a Motion to Vacate, follow these steps:

1. **Fill out the forms** (except for the Proof of Personal Service).
2. **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 must serve them with a copy of everything you file in court. Make an extra copy to serve on them.

3. **File your original papers and schedule a hearing.** Go to the court clerk's office:

Tell the clerk you're filing a **Motion to Vacate**. Give the clerk the originals of all your forms to file. Ask the clerk how to have a judge review and sign your proposed **Order to Go to Court for Vacate Hearing (Show Cause)**. This is called getting an "ex parte" order.

Many courts have an "Ex Parte" department for a judge to hear certain motions in person the same day you file, or the next day if you file later in the day. If you need to appear remotely, call the clerk's office to ask the clerk if it's possible.

Follow the clerk's instructions to have a judge review your motion and to schedule the hearing. When choosing a hearing date, leave yourself enough time to have the other party served.

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 originals.

Write the hearing details from the original Order to Go to Court onto your copies, and/or pay for copies of the signed Order from the clerk. The copies don't need to be "certified."

4. **Deliver or mail working copies to the judge if local rules require it.** Ask the clerk where to deliver the judge's working copies. (*Skip this step if local rules don't require it.*)

5. **Have the other party personally served** 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 same rules for personal service as if you were starting a new case. Someone age 18 or older must hand deliver the papers to the other party. You can get a friend to do this, or you can pay a professional process server or the county sheriff's office to do it. You can't do it yourself.

6. **Have the server fill out and sign the Proof of Personal Service form. Make 2 copies.** File the original with the Superior Court Clerk. Bring your copy to the hearing.

7. **Review any response. Reply if needed and allowed in your county.**

The other party must give you a copy of any response they file. You don't have to reply, but you may want to if they bring up new issues or say things that aren't true.

Ask the court clerk or facilitator (https://www.courts.wa.gov/court_dir/?fa=court_dir.facils), if your county has one, if replies are allowed in your county and, if so, when they are due. If allowed, you can file a declaration from yourself or others replying to the other party's response. Limit your reply to addressing issues in the other party's response. Serve a copy of your reply on the other party by the deadline. Deliver working copies to the judge if required in your county.

8. **Confirm your hearing, if needed.** In some counties, you must contact the clerk's office to confirm that you want your hearing to happen on the day it is scheduled. If you don't confirm by the deadline, **your hearing will be canceled.** Ask the court clerk for instructions.
9. **Go to your hearing.** Read chapter 5 for how to get ready for and what to expect at your hearing.
10. **Tell the judge's clerk you want a copy of the order.** Follow the clerk's instructions about getting copies.
11. **If you disagree with the judge's decision, try to talk to a lawyer right away.**

You might want to file a motion for revision or reconsideration. You must file those motions **within 10 days** of the order you want to change.

5. Hearing

Get ready for the hearing

Try to go to court before the day of your hearing or check the court clerk's website to see if you can watch a hearing online. Watch how the court generally does hearings. Try to make some notes to yourself about the main points to make at your hearing.

Organize your paperwork. Plan to bring your set of court papers and your copies of any papers the other parties gave you in response. Bring extra copies of any proposed orders you want the judge to sign.

Get to your hearing early. Try to figure out before the day of the hearing how you will get there and how long it will take. Give yourself time to get through security, and to the right courtroom. If you aren't there on time, the judge could cancel the hearing, or the other party may win.

Bring your paperwork, a pad of paper, and a dark pen to take notes. Dress neatly. Try not to bring your children if you can make other arrangements for them. The judge usually won't let them sit in the courtroom.

When you get to the courtroom, tell the person in charge in the courtroom (the clerk or bailiff) your name and your case name and number. Take a seat. When the judge walks in the room, stand.

If your hearing is online, follow these [tips for phone and video hearings](#).

Your case will be one of several that are scheduled for the same time on the court calendar (called a docket). Listen to the judge and wait for them to call your name. When they call your name, tell the court you are present. Stay in court until they call your case for hearing.

When your case is called

In most cases, the judge will have read your papers before the hearing. The judge will make a decision based on the paperwork filed by both parties in advance.

You usually won't be able to testify, have witnesses testify, or otherwise give evidence at the hearing. You'll just get to tell the judge briefly what you want and why. This means you want to prepare beforehand by making notes about the main points you want to say to the judge.

If the other party gets a lawyer: If another party's lawyer contacts you or shows up at a hearing, you may decide to get one yourself. If so, tell the lawyer and the judge you need to postpone (continue) the hearing. The lawyer may ask you to sign some documents. **Don't sign anything you don't understand.**

If the other party shows up at the hearing, each of you will get to tell your side of the case. Stand while speaking. Tell the judge briefly what you want and why. Try to keep your argument short. Only outline your main points. You may have as little as 5 minutes to speak. Don't repeat everything in your papers. If you brought proposed orders, ask permission to hand them up to the judge.

If the judge asks you a question, try to answer it directly. **Don't interrupt the judge.**

If the other party doesn't show up, the judge may ask for your proof of service. Bring a copy of that to show the judge. Ask the judge to sign your proposed orders.

If you couldn't serve the other party in time, or you don't have proof of service, ask the judge to reschedule your hearing.

Hearing the judge's decision

After the judge has heard both sides, the judge decides on the requests. Listen carefully. Make notes. Usually, the judge gives their decision out loud, then it must be put in writing in a court order.

It's best to bring **proposed orders** so the judge can sign them at your hearing. If no one brought proposed orders, the judge may tell you, the other party, or the other party's lawyer to write the orders and come back later for the judge to sign. The judge could schedule another hearing in a week or two just for signing orders.

If the other party prepared the orders, read them carefully. Make sure they say what the judge said. If you're not sure, **don't sign the orders**. Ask to go back before the judge to make sure the order says what the judge said.

If the other party didn't show up for the hearing, send them copies of the court orders. Follow the rules to serve papers *after* a case starts.

6. Forms

Form attached:

Motion for Hearing to Vacate Order/s (NJP General 061)

Form attached:

Order to Go to Court for Vacate Hearing (Show Cause) (NJP General 062)

Form attached:

Order on Motion to Vacate (NJP General 063)

Form attached:

Proof of Personal Service (general civil) (NJP General 001)

Tips for filling out the Motion for Hearing to Vacate Order/s (NJP General 061)

Fill out the **motion** form to explain what you want the judge to do and why they should do it.

Form section 4. Legal Authority. You must identify one of the reasons to vacate from Civil Rule 60 that are listed on the form.

Tips for filling out the Order to Go to Court for Vacate Hearing (Show Cause) (NJP General 062)

Use this form to ask the judge to order a hearing date when you file your motion.

Follow the clerk's instructions to have a judge review your motion and to schedule the hearing. When choosing a hearing date, leave yourself enough time to have the other party served.

Tips for filling out the Order on Motion to Vacate (NJP General 063)

Fill out the **order** form the way you want the judge to sign it. This is a **proposed order** you'll ask the judge to sign at the hearing. If you're not sure about something in the order, leave it blank for the judge to complete.

Tips for filling out the Proof of Personal Service (NJP General 001)

Have your server fill out this form after they've served the other party. Follow the rules for personal service.

Check to be sure your server filled out the date of service, who the papers were delivered to, and how they were delivered. Also be sure the form lists all documents that were served. If your server leaves out a form, you won't have proof it was served

WashingtonLawHelp.org gives general information. It is not legal advice. Find organizations that provide free legal help on our Get legal help page.

_____ **Court of Washington, County of** _____

Petitioner / Plaintiff:

And Respondent / Defendant:

No. _____

Motion for Hearing to Vacate Order/s
(No mandatory form)

Motion for Hearing to Vacate Order/s

Use this form with the Order to Go to Court for Vacate Hearing (NJP General 062) and the Order on Motion to Vacate (NJP General 063)

To both parties:

Deadline! Your papers must be filed and served by the deadline in your county's Local Court Rules, or by the State Court Rules if there is no local rule. Court Rules and forms are online at www.courts.wa.gov.

If you want the court to consider your side, you **must**:

- File your original documents with the Superior Court Clerk; AND
- Give the Judge/Commissioner a copy of your papers (if required by your county's Local Court Rules); AND
- Have a copy of your papers served on all other parties or their lawyers; AND
- Go to the hearing.

The court may not allow you to testify at the motion hearing. Read your county's Local Court Rules, if any.

Bring proposed orders to the hearing.

To the person filing this motion:

To schedule a hearing on this motion, you must ask the court to sign the **Order to Go to Court for Vacate Hearing** (Show Cause) (NJP General 062). This Order may be signed "ex parte" (without the other party there). Contact the Superior Court Clerk's office for the procedure in your county. You must have this Motion and the Order to Go to Court personally served (by someone else) on the other party.

To the person receiving this motion:

If you do not agree with the requests in this motion, file a statement explaining why the court should not approve those requests. You may file other written proof supporting your side.

1. **My name is** _____.

I am the (*check one*) Petitioner/Plaintiff Respondent/Defendant in this case.

2. **Request for Hearing (Show Cause)**

I ask the court to order the other party (*name*) _____ to go to court for a hearing and show why the court should not approve my motion to vacate.

3. **Motion to Vacate**

I ask the court to vacate the following order/s or parts of order/s
(*Name the order/s, if asking to vacate only part of an order, specify which part*):

This court entered these orders on (*date*) _____.

4. **Legal Authority**

My motion to vacate is based on one or more of these Civil Rules (CR) or other authority
(*check all that apply*):

Clerical mistake/s in the judgment, order, or other parts of the record. CR 60(a).

Mistake, inadvertence, surprise, excusable neglect or irregularity in obtaining the judgment or order. CR 60(b)(1).

Erroneous proceedings against a minor or person of **unsound mind** and the condition of the defendant/respondent did not appear in the record nor was the error discovered during proceedings. CR 60(b)(2).

Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under CR 59(b). CR 60(b)(3).

Fraud, misrepresentation or other misconduct of an adverse party. CR 60(b)(4).

The judgment or order is **void**. CR 60(b)(5).

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. CR 60(b)(6).

If the defendant was served by **publication**, relief may be granted as prescribed in RCW 4.28.200. CR 60(b)(7).

Death of one of the parties before the judgment in the action. CR 60(b)(8).

Unavoidable casualty or misfortune preventing the party from prosecuting or defending. CR 60(b)(9).

Error in judgment shown by a minor, within 12 months after arriving at full age. CR 60(b)(10).

Any other reason justifying relief from the operation of the judgment. CR 60(b)(11).

_____ **Court of Washington, County of** _____

Petitioner / Plaintiff:

And Respondent / Defendant:

No. _____

Order to Go to Court for Vacate Hearing
(Show Cause)

(No mandatory form)

Clerk's action required: 2

Need interpreter (*language*) _____

Order to Go to Court for Vacate Hearing (Show Cause)

1. Findings

The court has reviewed the **Motion for Hearing to Vacate Order/s** filed by the
(*check one*): petitioner/plaintiff respondent/defendant.

The court finds there is reason to approve this order.

2. The court orders (*name*): _____ to:



Go to court on: _____ at: _____ a.m. p.m.
date *time*

at: _____ in _____
court's address *room or department*

docket / calendar or judge / commissioner's name

Online or phone: _____

At the hearing, you must show why the court should **not** approve the requests made by the other party.

Warning! If you do not go to the hearing, the court may approve the other party's requests without hearing your side.

3. **Other orders (if any)**

Ordered.

_____  _____
Date *Judge or Commissioner*

Presented by (*check one*): [] Petitioner/Plaintiff [] Respondent/Defendant

 _____ _____
Sign here *Print name*

To both parties:

Deadline! Your papers must be filed and served by the deadline in your county's Local Court Rules, or by the State Court Rules if there is no local rule. Court Rules and forms are online at www.courts.wa.gov.

If you want the court to consider your side, you **must**:

- File your original documents with the Superior Court Clerk; AND
- Give the Judge/Commissioner a copy of your papers (if required by your county's Local Court Rules); AND
- Have a copy of your papers served on all other parties or their lawyers; AND
- Go to the hearing.

The court may not allow you to testify at the motion hearing. Read your county's Local Court Rules, if any.

To the person filing this motion:

You must have this order, and the paperwork you filed with the court to get this order, personally served on the other party by someone 18 or older who is not a party to this case.

Bring a proposed order to the hearing: **Order on Motion to Vacate** (NJP General 063)

To the person receiving this motion:

If you do not agree with the requests in this motion, file a statement explaining why the court should not approve those requests. You may file other written proof supporting your side.

_____ **Court of Washington, County of** _____

Petitioner / Plaintiff:

And Respondent / Defendant:

No. _____

Order on Motion to Vacate

(No mandatory form)

Order on Motion to Vacate

1. Basis

The court has considered the **Motion for Hearing to Vacate Order/s** and supporting documents filed by (*name*): _____, any response from the other party, other documents from the court record identified by the court, if any, and any testimony or argument.

A show cause hearing was held on (*date*) _____.

2. Findings

The finds good cause to approve this order.

Other findings (if any): _____

3. Order

The motion to vacate is granted.

The order/s or parts of order/s entered for this case on (*date*) _____

shall be vacated as follows:

_____ **Court of Washington, County of** _____

In re:

Petitioner/s or Plaintiff/s:

And Respondent/s or Defendant/s:

No. _____

Proof of Personal Service

(No mandatory form)

Proof of Personal Service

Server declares:

1. **My name is:** _____. I am **not** a party to this case.
I am 18 or older.

2. **Personal Service.** I served court documents for this case to (*name of person served*): _____ by (*check one*):

Giving the documents directly to the person being served.

Giving the documents to (*name*): _____, a person of suitable age and discretion who lives at the same address as the person being served.

3. **Date, time, and place of service**

Date: _____ Time: _____ (*check one*) a.m. p.m.

Place:

4. List all documents you served (check all that apply)

(The most common documents are listed below. Check only those documents that were served. Use the "Other" box to write in the title of each document you served that is not already listed.)

Petition to/for _____

Summons (*attach a copy*)

Notice of Hearing (*for date*) _____

Motion for _____

Declaration of _____

Subpoena Duces Tecum

Order on/for: _____

Other:

5. Fees charged for service

None

Fees: \$ _____ + Mileage \$ _____ = Total: \$ _____

6. Other information (if any)

I declare under penalty of perjury under the laws of the state of Washington that the statements on this form are true.

Signed at (*city and state*): _____ Date: _____

▶ _____
Server signs here

Print name