

# MOTION TO VACATE JUDGMENT/ORDER

## Civil Rule 60

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### A. WHAT IS A MOTION TO VACATE?

A Motion to Vacate is a request to the court to withdraw a previous order or judgment it entered. It has to be based on one of the specific reasons set forth in Civil Rule 60 (we have attached Superior Court Civil Rule 60). A Motion to Vacate may be filed in Superior Court or in a court of limited jurisdiction such as district court.

Generally, a Motion to Vacate will be granted if you are able to convince the court that you did not have a fair opportunity to present your case. If you had such an opportunity, then you should not file a Motion to Vacate as it is not a way to ask the court to change its mind or reconsider the evidence or law.

A Motion to Vacate is not a substitute for an appeal. An appeal, generally, must be filed within 30 days from the date a judgment or order is entered. An appeal is a request to a higher court to change the decision made by a lower court. A Motion to Vacate asks the same court to withdraw its decision.

A Motion To Vacate is a rarely granted motion. Before filing such a motion, you should make sure that you have solid legal grounds for the motion. If you file a Motion To Vacate without having a good legal reason to do so, the court may conclude your motion is frivolous and order you to pay the other side's costs, including attorney's fees.

Before filing a Motion to Vacate, we recommend that you talk to an advocate on the CLEAR toll-free legal services advice line (1-888-201-1014), or to another lawyer or legal services provider.

### B. WHAT ARE SOME OF THE REASONS THAT A COURT WOULD GRANT A MOTION TO VACATE?

The most likely reason that you would file a Motion to Vacate is because you did not have notice of the lawsuit or a particular hearing that was part of the lawsuit. You have a right to have had the original lawsuit served on you. If it was served on you and you responded, you are entitled to notice of all other hearings. Sometimes a lawsuit is not served on a party. It is important to check the court file and see if it includes a completed Return of Service (sometimes called an Affidavit of Service) or a Certificate of Service. If there is a Return of Service or Certificate of Service you should see what it says about how you were served. If it is not accurate you should consider how you are going to prove it is not correct.

There are other reasons that you might file a Motion to Vacate but, before proceeding, you should discuss your case with a CLEAR advocate (1-888-201-1014) or other lawyer or legal services provider. As we stated above, filing what the court thinks is a frivolous motion may lead to your being ordered to pay the other side's costs, including attorney's fees.

## **C. HOW DO I MAKE A MOTION TO VACATE?**

### **SUMMARY OF STEPS**

Step 1: Obtain the Required Forms and Documents

Step 2: Complete the Forms

Step 3: Talk to an Attorney, if Possible

Step 4: Obtain a Judge or Commissioner's Signature / Copy Forms

Step 5: File / Deliver Working Papers / Have the Other Party Served

Step 6: Confirm Hearing / Attend Hearing

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### **STEP 1: OBTAIN THE REQUIRED FORMS AND DOCUMENTS (FORMS # 1,2,3,4, and 6 Are Part Of This Brochure)**

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 wish to have vacated

FORM #6: Return of Service (also known as an Affidavit of Service)

ADDITIONAL DOCUMENTS (OPTIONAL): Any other document you want the court to consider for your Motion

### **STEP 2: COMPLETE THE FORMS**

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

**FORM #1** [Order to Show Cause (Vacate Judgment/Order)] An Order To Show Cause is used to schedule a court date so your Motion To Vacate will be heard by a judge or commissioner. Pick a court date at least 5 court days from the day you plan to have the other party (or parties) served with a copy of the required forms and documents. You will need to contact the court clerk or Courthouse Facilitator to find out what day you may pick to schedule your hearing in court.

Fill in the names of the parties, the case number and the date of the order exactly as it appears on the order you intend to vacate. Write in the court date you have chosen for the hearing on the form. At the bottom of this form, sign your name under “Presented by”, but do not write in the date in the space above “Presented by” and to the left of the line where the judge or commissioner signs: this should be done when you present your order to show cause to the judge or commissioner ex parte (see step 4 below).

**FORM #2** (Motion for Order to Show Cause Regarding Vacation of Judgment/Order) Fill out this form by writing down the name of each order you want to vacate (for example, a Judgment in favor of a Collection Agency) and a brief explanation of the reason why you believe the order should be vacated.

In the section on Evidence Relied Upon In Addition to Evidence in Court File, you should list any Declarations (see Form #3) being submitted by you or anyone else on your behalf, as well as any other documents (see below) you are submitting to support your motion. Copies of these documents should be attached.

In the section on Authority, you should check the box or boxes which seem to apply to your case.

**FORM #3** (Declaration Form) Make several extra copies of this form before you write on it. This form provides you the opportunity to provide detailed facts to the court so that the judge or commissioner will be convinced the judgment or order previously entered should be vacated. 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 (for 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) Fill out this form by entering the date of the judgment or order which you are trying to vacate, whether you are making this motion as the plaintiff, defendant (you usually will be the defendant) or in some other capacity, and then indicate what you want the vacating order to say. Sign under “presented by.”

**FORM #5** This is really not a form but is a copy of the Order(s) you are attempting to vacate or dismiss; **this document must be submitted to the court**. Highlight the specific sections of the Order(s) you would like vacated. Be sure to attach this document to your Declaration (Form #3).

**FORM #6** (Return of Service also known as an Affidavit of Service) Someone, other than yourself, who is over the age of 18 and is not a witness or otherwise connected with the case, must serve (**note:** serve means to give) the other party with copies of your forms. This person will need to fill out a Return of Service.

**ADDITIONAL DOCUMENTS (OPTIONAL)** If you have any other document(s) which you would like to bring to the attention of the court, you should refer to the document(s) in the section on Form #2 called "Evidence Relied Upon in Addition to Evidence in Court File". Copies of these documents should be attached to Form #2.

### **STEP 3: TALK TO AN ATTORNEY, IF POSSIBLE**

**These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee you a favorable result. It is always advisable to talk to a lawyer about your problem before filing your action.** If you cannot afford to hire an attorney to represent you, you may be able to pay a lawyer to give you advice and review your paperwork at a lesser cost, or you may be able to obtain legal advice by calling CLEAR's toll-free line, 1-888-201-1014.

### **STEP 4: OBTAIN A JUDGE/COMMISSIONER'S SIGNATURE / COPY FORMS**

After all documents are complete and in proper order, you will need to have a judge or commissioner sign Form #1, Order to Show Cause to Vacate Judgment/Order. This will be done "ex parte," which means the other party or parties need not be notified or present (in some counties, there is a separate Ex Parte Department which handles such matters).

**Make 3 copies of Forms #1 - #5.** In addition, on Form #4 only, write "PROPOSED" on the copies only; do not write "PROPOSED" on the original of Form #4. You will 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 the following forms with the Clerk's office. Form #1, Form #2 and Form #3 (a copy of Form #5 should be attached to the original of Form #3). **Do not file the original or a copy of Form #4.** Stamp your copies of the forms with the Clerk's date stamp to prove that 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 Courthouse Facilitator if you are not sure if you will need to file working papers. If you need to file working papers, you should write 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)

**\*Be sure to fill in the date and time of your hearing.**

**Have the other party served with a copy of your “motion packet” at least 5 days (unless local court rules say otherwise) prior to the hearing. Bring the remaining copy of your “motion packet” to your hearing. (See Form #6 above for instructions on how to serve the other party.)**

The Return of Service (may also be known as an Affidavit of Service) should be completed by the person who serves your motion packet. The server must sign the Return of Service after service is completed and return it to you. Make one copy for yourself and file the original with the Clerk’s office. Stamp your copy with the Clerk’s date stamp and bring the copy with you to your hearing.

If personal service on the opposing party has been tried but is not successful, you may ask the court to allow you to serve by certified mail at the last known address of the other party or by publication. You should talk with the Court Clerk or Courthouse Facilitator about obtaining the forms necessary to serve the opposing party by certified mail or publication.

**STEP 6: CONFIRM YOUR HEARING AND ATTEND HEARING**

**Confirmation:**

Check with the Courthouse Facilitator or Court Clerk to determine when and how you must confirm your hearing. Some counties will require you to confirm your hearing several days before the actual hearing will take place. **IF YOU FAIL TO CONFIRM YOUR HEARING, IT MIGHT BE AUTOMATICALLY CANCELLED!**

If the other party chooses to file a written response to your motion, he or she must do so no later than the end of the court day before the day of the hearing. If the other party fails to timely file a written response, then you have the right to object to the response being considered by the judge/commissioner. **(NOTE: check with the Courthouse Facilitator or Court Clerk in your county to make sure of the appropriate court rule as this time line may vary from county to county.)**

**At Your Hearing:**

EXPECT THAT YOU MAY HAVE TO WAIT UP TO 3 HOURS FOR YOUR HEARING. DO NOT BRING CHILDREN WITH YOU. Arrive 30 minutes early for your hearing to check in.

**Bring the following with you to the hearing:** The original of Form #4, your copy of your “motion packet”, and 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 present, make a copy and mail it to the other party. All original orders signed by the Judge/Commissioner must be filed in the Clerk’s office. **Do not leave the courthouse with the original orders signed by the Commissioner or Judge.**

**WARNING:** The laws and court rules are complex and following these instructions will not guarantee you a favorable result. It is always a good idea to speak 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.

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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  
(opposing party's name)  
cause, if any, why the order(s) dated \_\_\_\_\_ should not be vacated  
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)

1 (Form # 2)

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6 \_\_\_\_\_ COURT OF WASHINGTON  
7 COUNTY OF \_\_\_\_\_

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10 \_\_\_\_\_,  
11 Plaintiff,

12 v.

13 \_\_\_\_\_,  
14 Defendant.

No.

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

15 **RELIEF REQUESTED**

16 \_\_\_\_\_ respectfully moves the Court for an Order requiring  
17 (Your Name)

18 \_\_\_\_\_ to appear and show cause why the Motion to Vacate  
19 (Opposing Party)

Judgment/Order(s) of the Court should not be granted.

20 **STATEMENT OF THE CASE AND GROUNDS TO VACATE THE ORDER**

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

23 *MOTION FOR ORDER TO SHOW CAUSE*  
*RE: VACATE JUDGMENT/ORDER - 1*



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

2 Signed at \_\_\_\_\_ [City and state] on \_\_\_\_\_ [Date]

3  
4 \_\_\_\_\_  
Signature

5  
6 \_\_\_\_\_  
Print or type name

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11 **EVIDENCE RELIED UPON IN ADDITION TO EVIDENCE IN COURT FILE**

12 \_\_\_\_\_ 's Motion to Vacate Judgment/Order.

(Your Name)

13 Declaration by: \_\_\_\_\_  
(Writer's name)

14 Declaration by: \_\_\_\_\_  
(Writer's name)

15 Other: \_\_\_\_\_  
(other supporting documents/evidence)

16 \_\_\_\_\_  
[These documents are attached.]

17  
18  
19 **AUTHORITY**

20 \_\_\_\_\_ 's Motion to Vacate Judgment/Order is made pursuant to one or

21 more of the following:

22  Civil Rule 60(a): Clerical mistake(s) in the Judgment, Order, or other parts of the record;

23 *MOTION FOR ORDER TO SHOW CAUSE*  
*RE: VACATE JUDGMENT/ORDER - 3*

- 1  Civil Rule 60(b)(1): Mistake, inadvertence, surprise, excusable neglect or irregularity in obtaining  
2 the Judgment/Order;
- 3  Civil Rule 60(b)(2): Erroneous proceedings against a minor or person of unsound mind and the  
4 condition of the defendant/respondent did not appear in the record nor was the error discovered  
5 during proceedings;
- 6  Civil Rule 60(b)(3): Newly discovered evidence which by due diligence could not have been  
7 discovered in time to move for a new trial under CR 59(b);
- 8  Civil Rule 60(b)(4): Fraud, misrepresentation or other misconduct of an adverse party;
- 9  Civil Rule 60(b)(5): The Judgment/Order is void;
- 10  Civil Rule 60(b)(6): The judgment has been satisfied, released, or discharged, or a prior judgment  
11 upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the  
12 judgment should have prospective application;
- 13  Civil Rule 60(b)(7): If the defendant was served by publication, relief may be granted as prescribed  
14 in RCW 4.28.200;
- 15  Civil Rule 60(b)(8): Death of one of the parties before the Judgment in the action;
- 16  Civil Rule 60(b)(9): Unavoidable casualty or misfortune preventing the party from prosecuting or  
17 defending;
- 18  Civil Rule 60(b)(10): Error in judgment shown by a minor, within 12 months after arriving at full  
19 age;
- 20  Civil Rule 60(b)(11): Any other reason justifying relief from the operation of the judgment;
- 21  [Any other relevant legal authority: specify]
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23 *MOTION FOR ORDER TO SHOW CAUSE*  
*RE: VACATE JUDGMENT/ORDER - 4*

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**PROPOSED ORDER**

A proposed order accompanies this motion.

DATED: \_\_\_\_\_

Respectfully Submitted,

\_\_\_\_\_  
(Your Signature)

\_\_\_\_\_  
(Print or Type Name)





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(Attach Additional Pages if Necessary and Number Them.)

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 (Form # 4)

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6 \_\_\_\_\_ COURT OF WASHINGTON  
COUNTY OF \_\_\_\_\_

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9 \_\_\_\_\_,  
Plaintiff,  
10  
11 v.  
12 \_\_\_\_\_,  
Defendant.

No.  
ORDER ON MOTION TO VACATE  
JUDGMENT/ORDER

13 The above-entitled Court, having heard a Motion to Vacate the Judgment/Order entered on  
14 \_\_\_\_\_ :  
(Date)

15 IT IS HEREBY ORDERED that the \_\_\_\_\_'s Motion to Vacate  
16 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 4. Service was made pursuant to Civil Rule 4(d)

2  by delivery to the person named in paragraph 2 above.

3  by delivery to \_\_\_\_\_ [Name], a person of suitable age and  
discretion residing at the respondent's usual abode.

4  by publication as provided in RCW 4.28.100. (A copy of the summons is attached.)

5  (check only if there is a court order authorizing service by mail) by mailing two copies  
postage prepaid to the person named in the order entered by the court on  
\_\_\_\_\_ [Date]. One copy was mailed by ordinary first class mail, the other  
copy was sent by certified mail return receipt requested. (Attach return receipt below.)  
The copies were mailed on \_\_\_\_\_ [Date].

6 5. Other:  
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11 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and  
12 correct.

13 Signed at \_\_\_\_\_, on \_\_\_\_\_.  
14 [Place] [Date]

15 \_\_\_\_\_  
Signature

16 \_\_\_\_\_  
Print or Type Name

17 Fees:

18 Service \_\_\_\_\_

19 Mileage \_\_\_\_\_

20 Total \_\_\_\_\_

21 (Attach Return Receipt here, if service was by mail)  
22  
23

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.