

INSTRUCTIONS

Motion to Withdraw Guilty Plea and Vacate Conviction

Important Notices and Resources

The Court has forms and instructions, for some types of cases, as a general guide to the court process. These instructions explain the steps in more detail and answer common questions, but are not a full guide to the law. Court employees may be able to give general information on court rules and procedures, but they cannot give legal advice.

Have questions about court forms or instructions?

- Visit www.MNCourts.gov/SelfHelp
- Call the Statewide Self-Help Center at 651-435-6535

Not sure what to do about a legal issue or need advice?

- Talk with a lawyer
- Visit www.MNCourts.gov/Find-a-Lawyer.aspx

Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact court administration or call the Minnesota State Law Library at 651-297-7651.

Forms You May Need

- *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* (CRM1002);
- *Affidavit of Service – Combined* (SOP105).

Forms are available online at www.mncourts.gov/forms.

What You Need to Do

1. Complete the court forms, following all of the steps in these instructions.
2. Schedule a hearing date by contacting Court Administration in the county where the case was filed.
3. File your forms (electronically or at the courthouse).
4. Appear at the hearing. Each “step” here is described in more detail below.

General Information about the Motion to Withdraw Guilty Plea and Vacate Conviction Packet

The information contained in this document is not intended as legal advice but as a general guide to you to explain the legal process. **If you do not understand** any of these procedures, talk to an attorney. **Court staff cannot give legal advice.**

You may be able to use this packet **IF**:

- You were charged with an offense, and a guilty plea was entered because:
 - You did not appear or respond; OR
 - You paid all or part of the fine; OR
 - You pled guilty before a judge or hearing officer and a petty misdemeanor sentence was imposed; OR
 - You entered into a continuance for dismissal which was later updated to reflect a guilty plea and petty misdemeanor conviction;

AND

- Now you want the court to reopen your case.

IMPORTANT: It is strongly recommended that you [get legal advice](https://mncourts.gov/Help-Topics/Find-a-Lawyer.aspx) (mncourts.gov/Help-Topics/Find-a-Lawyer.aspx). If you do not know if you should use these forms, what you should write in your forms, or want the forms reviewed by an attorney, you should get legal advice.

Step 1

Gather Important Information and Contact Court Administration about a Hearing Date

Gather Important Information

You are going to need the following information:

- A court file number (also known as a case number); and
- The name and address of the prosecutor. You may be able to locate this information on the “**Register of Actions**,” which is available at the courthouse and online.

To find the “Register of Actions” online, go to [Minnesota Judicial Branch - AccessCaseRecords \(mncourts.gov\)](https://mncourts.gov/Minnesota-Judicial-Branch-Access-Case-Records). Click on “Minnesota District (Trial) Court Case Search.” If you read and accept the terms and conditions of use, you can search court records online.

Contact Court Administration

It is important that you check with your local [Court Administration](https://mncourts.gov/Find-Courts.aspx) (mncourts.gov/Find-Courts.aspx) to see how to schedule a hearing for your motion. If you do not schedule a hearing, the court will

not do anything with your motion. You will write the hearing date on the *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* (See Step 2 below).

Step 2

Fill Out the *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* (CRM1002)

The Caption

1. At the top of the page, write:
 - a. The **county** where the case is located;
 - b. The **Judicial District** number (each county belongs in one of ten judicial districts. If you need help, see <http://www.mncourts.gov/Find-Courts.aspx>); and
 - c. Your **court file number** (this usually starts with a two-digit number, followed by letters and numbers; for example, 88-VB-17-1234).
 - d. The **case type** has already been filled in for you.
2. Write your name on the line for “Defendant.”

The Notice of Hearing

Fill in the details of the hearing (date, time, location).

The Motion

Explain why you are asking the court to withdraw your guilty plea and to have your conviction vacated.

Signature Block

When you sign the form, you are signing under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth. By signing under penalty of perjury, you are stating that information in your form is true and correct to the best of your knowledge.

Date and sign the form. Then write the names of the county and state you are in when you signed it, and print your personal contact information below your signature.

Step 3

Make Copies

You will need to make one copy of the *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* for the prosecuting authority and one copy for yourself. Be sure to have your copy with you at the court hearing.

Next, you have to arrange for the prosecuting authority to be served with a copy of the form.

Step 4 Arrange for Service

Service of Process

You must arrange for the prosecuting authority to receive notice of the hearing and copies of all documents you have prepared for the hearing. This is called “service of process.” For more information, see the “Service of Process” Help Topic on the court’s website at [Minnesota Judicial Branch - Service of Process \(mncourts.gov\)](http://mncourts.gov/MinnesotaJudicialBranch-ServiceofProcess).

NOTE: Papers cannot be served on a legal holiday as defined in [Minn. Stat. § 645.44, subd. 5](http://revisor.mn.gov/statutes/cite/645.44#stat.645.44.5) (revisor.mn.gov/statutes/cite/645.44#stat.645.44.5).

Service must be completed by either service by mail or personal service.

Service by Mail

You or another adult with need to mail a copy of the *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* (and any attachments) to the prosecuting authority.

Personal Service

You or another adult will hand to someone in the prosecuting authority’s office a copy of the *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction* (and any attachments).

Step 5 Affidavit of Service (Proving the Prosecuting Authority Was Served)

After the paperwork is served on the prosecuting authority (**not before**), the server must fill out the [Affidavit of Service](http://mncourts.gov/GetForms.aspx?c=33&f=147) form (SOP105) (mncourts.gov/GetForms.aspx?c=33&f=147).

Caption

Fill out the form’s caption the same as you did for the *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction*.

<p>I, _____, state that I am at least 18 years of age (Name of person who hand delivered or mailed documents) having been born on _____ and that on _____, I served the following documents, namely <u>Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction</u> (Title of Documents hand delivered or mailed) upon (check one) <input checked="" type="checkbox"/> Petitioner/Plaintiff <input type="checkbox"/> Respondent/Defendant</p>
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Part 1: Information about the Server, What Was Served, and Who Was Served

In this section of the *Affidavit of Service*, the server needs to fill in 5 things:

1. Server’s name;

2. Server's date of birth (to show that the server is at least 18 years old);
3. The date the server either mailed or hand-delivered the papers;
4. The names of the papers that were served (*Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction*, and any attachments);
5. A check mark or "x" showing which party was served (for this form, the "Petitioner/Plaintiff" box should be checked). The Plaintiff (State of Minnesota) is represented by the prosecuting authority, and that is who has to be served.

Part 2: How the Other Party Was Served

Service by Mail

If the server **mailed** a copy of the papers to the prosecuting authority, the server should fill out the "Mail service" section of the *Affidavit of Service* (SOP105).

The server needs to do 4 things in this section if the prosecuting authority was **served by mail**:

1. Check the box next to the words "Mail service";
2. Write the name of the prosecutor (the name that was put on the envelope);
3. Write the address that the papers were mailed to; and
4. Write the city, state, and zip code that the server was in when they mailed the papers.

Personal Service

If the server **hand-delivered** a copy of the papers to the prosecuting authority, or to an employee in the prosecutor's office, then the server should fill out the "Personal service" section of the *Affidavit of Service* (SOP105).

The server needs to do 2 things in this section if the prosecuting authority was **personally served**:

1. Check the box next to the words "Personal service";
2. Write the name of the person the server gave the papers to.

Part 3: Signature Block

The server has to sign the *Affidavit of Service* form under penalty of perjury, and then fill in the county and state they were in when they signed the *Affidavit of Service*, and personal contact information.

After the server signs the *Affidavit of Service* (SOP105), make one copy for your records. The original is filed with the court as part of Step 6 below.

Step 6 File with Court Administration

You will need to file the following with Court Administration:

- *Notice of Motion and Motion to Withdraw Guilty Plea and Vacate Conviction*; and
- *Affidavit of Service*.

IMPORTANT! The forms must be filed before the hearing date, or your hearing may be cancelled. Contact your local court administration to find out how many days before the hearing the forms must be filed.

Step 7

Attend the Hearing

To prepare for your hearing, it is a good idea to look at the court rules. You can visit a [law library](http://mncourts.gov/Help-Topics/Law-Libraries.aspx) (mncourts.gov/Help-Topics/Law-Libraries.aspx) to read court rules.

You must attend court on the date set for the hearing. It is important to be on time. If you are even a few minutes late, the judicial officer may dismiss your motion.

Have your copies of the paperwork with you when you attend the hearing. If the prosecuting authority has served you with a responsive motion, be prepared to talk about your response at the hearing. If you are unsure how to prepare for the hearing, or what evidence you should bring, you should [get legal advice](http://mncourts.gov/Help-Topics/Find-a-Lawyer.aspx) (mncourts.gov/Help-Topics/Find-a-Lawyer.aspx) before your court date.