

# Motion for New Trial Checklist

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- Determine whether the motion is timely under [MCR 6.431\(A\)](#):
  - A motion for a new trial may be filed before the filing of a timely claim of appeal. [MCR 6.431\(A\)\(1\)](#).
  - If a claim of appeal has been filed, determine whether the motion for a new trial has been filed in accordance with the procedure set out in [MCR 7.208\(B\)](#) (postjudgment motions in criminal cases) or the remand procedure set out in [MCR 7.211\(C\)\(1\)](#) (motion to remand filed in the Court of Appeals). [MCR 6.431\(A\)\(2\)](#).
  - If the defendant may only appeal by leave or failed to file a timely claim of appeal, determine whether the motion for a new trial has been filed:
    - within 6 months of entry of the judgment of conviction and sentence, or
    - if 6 months have elapsed since entry of the judgment of conviction and sentence, the defendant may file a motion for new trial if:
      - he/she has filed a request for the appointment of counsel under [MCR 6.425\(G\)\(1\)](#) within the 6-month period,
      - he/she or his/her lawyer, if one is appointed, has ordered the appropriate transcripts within 28 days of service of the order granting or denying the request for counsel or substitute counsel, unless the transcript has already been filed or has been ordered by the court under [MCR 6.425\(G\)](#), and
      - the motion for a new trial is filed in accordance with the provisions of [MCR 6.431\(A\)\(3\)\(b\)](#) within 42 days after the filing of the transcript. If

the transcript was filed before the order appointing counsel or substitute counsel, or the order denying the appointment of counsel, the 42-day period runs from the date of that order. [MCR 6.431\(A\)\(3\)](#).

- If the defendant is no longer entitled to appeal by right or by leave, inform the defendant that he/she may seek relief under [MCR 6.500 et seq](#) (motion for relief from judgment). [MCR 6.431\(A\)\(4\)](#).
- A filing by an unrepresented incarcerated individual “must be deemed timely filed if it was deposited in the institution’s outgoing mail on or before the filing deadline.” [MCR 1.112](#). “Proof of timely filing may include a receipt of mailing, a sworn statement setting forth the date of deposit and that postage has been prepaid, or other evidence (such as a postmark or date stamp) showing that the document was timely deposited and that postage was prepaid.” *Id.*
- State the crime(s), date of conviction, and whether the conviction was by plea, court, or jury.
- State whether motion for a new trial was filed by the prosecutor or the defendant, and indicate the date the motion was filed.
- Determine whether ordering a new trial is warranted: on the defendant’s motion, a new trial may be ordered on any ground that would support appellate reversal of the conviction OR because the verdict has resulted in a miscarriage of justice. [MCR 6.431\(B\)](#).
- State reasons for granting or denying a new trial orally on the record OR in a written ruling made a part of the record. [MCR 6.431\(B\)](#).
- If the case was tried without a jury, it is permissible, on granting a new trial and with the defendant’s consent, to vacate any judgment entered, take additional testimony, amend findings of fact and conclusions of law, and order the entry of a new judgment. [MCR 6.431\(C\)](#).
- Consider a motion for a new trial challenging the weight or sufficiency of the evidence as including a motion for a directed verdict of acquittal. [MCR 6.431\(D\)](#).

See [Order Vacating Conviction and Entering New Disposition, CC 387](#).