

Motion for Relief from Judgment Checklist

If the defendant has requested appointment of counsel, and it has been determined that the defendant is indigent, it is permissible to appoint counsel for the defendant at any time during the proceedings under [MCR 6.500](#) *et seq.* [MCR 6.505\(A\)](#).

If counsel is appointed to represent the defendant, afford counsel 56 days to amend or supplement the motion; the time may be extended on a showing that a necessary transcript or record is not available to counsel. [MCR 6.505\(B\)](#).

Note that “[MCR 6.502](#) does not contain a deadline by which motions for relief from judgment must be filed.” *People v Suttles*, 505 Mich 1038 (2020).

- Determine whether the motion has been assigned to the proper judge, (the judge to whom the case was assigned at the time of the defendant’s conviction), or that it has been properly reassigned. [MCR 6.504\(A\)](#).¹
- Ensure proper notice has been served. See [MCR 6.503\(B\)](#).
- Promptly examine the motion, together with all the files, records, transcripts, and correspondence relating to the judgment. [MCR 6.504\(B\)](#).
- Determine whether the motion for relief from judgment is in the form of a motion to set aside or modify the judgment conforming substantially to the form approved by the State Court Administrative Office. [MCR 6.502\(A\)](#); [MCR 6.502\(C\)](#). See CC 257, *Motion for Relief from Judgment*.

¹The chief judge may reassign cases in order to correct docket control problems arising from the requirements of [MCR 6.504\(A\)](#). [MCR 6.504\(A\)](#).

- If the motion is not submitted on a form approved by the SCAO, either:
 - direct that it be returned to the defendant with a statement of the reasons for its return, along with the appropriate form, OR
 - adjudicate the motion under the provisions of [MCR 6.500 et seq.](#) [MCR 6.502\(D\)](#).
- If a *pro se* defendant files their first motion effectively seeking to set aside or modify the judgment but does not style the motion as a motion for relief from judgment, the court must:
 - promptly notify the defendant of its intention to recharacterize the pleading as a motion for relief from judgment;
 - inform the defendant of any effects this might have on subsequent motions for relief; and
 - provide the defendant 90 days to withdraw or amend the motion before it is recharacterized.
 - If the court fails to provide this notice and opportunity for withdrawal or amendment, or if the defendant establishes that notice was not actually received, the defendant's motion cannot be considered a motion for relief from judgment for purposes of [MCR 6.502\(B\)](#) or [MCR 6.502\(G\)](#).
- Ensure that the motion seeks relief from one judgment only. [MCR 6.502\(B\)](#).
 - Multiple convictions resulting from a single trial or plea proceeding are treated as a single judgment. [MCR 6.502\(B\)](#).
- Verify that the motion is typed or legibly handwritten and includes a verification by the defendant or the defendant's lawyer in accordance with [MCR 1.109\(D\)\(3\)](#). [MCR 6.502\(C\)](#).
- Verify that the combined length of the motion and any memorandum of law in support does not exceed 50 pages double-spaced, exclusive of attachments and exhibits, except as otherwise ordered by the court. [MCR 6.502\(C\)](#).
 - If the court enters an order increasing the page limit for the motion, ensure that the same order indicates that the page limit for the prosecutor's response provided for in [MCR 6.506\(A\)](#) is increased by the same amount. [MCR 6.502\(C\)](#).
- Verify that the motion includes:

- The name of the defendant;
- The name of the court in which the defendant was convicted and the file number of the defendant's case;
- The place where the defendant is confined, or, if not confined, the defendant's current address;
- The offenses for which the defendant was convicted and sentenced;
- The date on which the defendant was sentenced;
- Whether the defendant was convicted by a jury, by a judge without a jury, or on a plea of guilty, guilty but mentally ill, or nolo contendere;
- The sentence imposed (probation, fine, and/or imprisonment), the length of the sentence imposed, and whether the defendant is now serving that sentence;
- The name of the judge who presided at trial and imposed sentence;
- The court, title, and file number of any proceeding (including appeals and federal court proceedings) instituted by the defendant to obtain relief from conviction or sentence, specifying whether a proceeding is pending or has been completed;
- The name of each lawyer who represented the defendant at any time after arrest, and the stage of the case at which each represented the defendant;
- The relief requested;²
- All of the grounds for relief requested which are available to the defendant and of which the defendant has, or by the exercise of due diligence, should have knowledge;
- The facts supporting each ground, stated in summary form;
- Whether any of the grounds for the relief requested were raised before; if so, at what stage of the case, and, if not, the reasons they were not raised;
- Whether the defendant requests the appointment of counsel, and, if so, information necessary for the court to

²The defendant may attach to the motion any affidavit, document, or evidence to support the relief requested. [MCR 6.502\(E\)](#).

determine whether the defendant is entitled to appointment of counsel at public expense. [MCR 6.502\(A\)](#); [MCR 6.502\(C\)](#).

- Determine whether the motion for relief from judgment is a successive motion,³ and if so, determine whether the motion is based on:
 - a retroactive change in law that occurred after the first motion for relief from judgment; OR
 - a claim of new evidence⁴ that was not discovered before the first such motion; OR
 - a final court order vacating one or more of the defendant's convictions either described in the judgment from which the defendant is seeking relief or upon which the judgment was based; OR
 - waive the provisions of this rule if there is a significant possibility that the defendant is innocent of the crime. [MCR 6.502\(G\)\(2\)](#).

If after reviewing the above requirements, the court is still entertaining the motion, determine whether the court will summarily decide the motion or whether it will schedule an evidentiary hearing. See [MCR 6.504\(B\)\(2\)](#); [MCR 6.508\(B\)](#). If rejecting or denying relief on the basis of the successive motion, “enter an appropriate order disposing of the motion.” [MCR 6.502\(G\)\(2\)](#).

Summarily Decide Motion

- If an evidentiary hearing is not required:
 - rule on the motion, OR
 - afford the parties an opportunity for oral argument, in the court's discretion. [MCR 6.508\(B\)](#).
- If it plainly appears from the face of the materials that the defendant is not entitled to relief, deny the motion without directing further proceedings and include a concise statement of the reasons for the denial. [MCR 6.504\(B\)\(2\)](#).^{5 6}

³Except as provided in [MCR 6.502\(G\)\(2\)](#), regardless of whether a defendant has previously filed a motion for relief from judgment, after August 1, 1995, one and only one motion for relief from judgment may be filed with regard to a conviction. [MCR 6.502\(G\)\(1\)](#).

⁴*New evidence* includes new scientific evidence, including but not limited to “shifts in science entailing changes: (a) in a field of scientific knowledge, including shifts in scientific consensus; (b) in a testifying expert's own scientific knowledge and opinions; or (c) in a scientific method on which the relevant scientific evidence at trial was based.” [MCR 6.502\(G\)\(3\)](#).

- It is permissible to dismiss some requests for relief or grounds for relief while directing a response or further proceedings with respect to other specified grounds. [MCR 6.504\(B\)\(2\)](#).
- If the entire motion is not dismissed under [MCR 6.504\(B\)\(2\)](#), order the prosecuting attorney to file a response as provided in [MCR 6.506](#)⁷, and conduct further proceedings as provided in [MCR 6.505–MCR 6.508](#). [MCR 6.504\(B\)\(4\)](#).
- Verify that the prosecutor filed the response and one copy with the clerk of the court and served one copy on the defendant. [MCR 6.506\(B\)](#).
- If the motion has not been denied under [MCR 6.504\(B\)\(2\)](#), it is permissible to direct the parties to expand the record by including any additional materials it deems relevant to the decision on the merits of the motion. [MCR 6.507\(A\)](#).
 - The expanded record may include letters, affidavits, documents, exhibits, and answers under oath to interrogatories propounded by the court. [MCR 6.507\(A\)](#).
 - Whenever a party submits items to expand the record, verify that the party served copies of the items to the opposing party, and afford the opposing party an opportunity to admit or deny the correctness of the items. [MCR 6.507\(B\)](#).
 - Require authentication of any item submitted under [MCR 6.507](#) as necessary. [MCR 6.507\(C\)](#).
- Either orally or in writing, set out in the record findings of fact and conclusions of law, and enter an appropriate order disposing of the motion. [MCR 6.508\(E\)](#).

Evidentiary Hearing

⁵The clerk must serve a copy of the order on the defendant and the prosecutor. [MCR 6.504\(B\)\(2\)](#).

⁶If the motion is summarily dismissed under [MCR 6.504\(B\)\(2\)](#), the defendant may move for reconsideration of the dismissal within 21 days after the clerk serves the order. [MCR 6.504\(B\)\(3\)](#). The motion must concisely state why the court's decision was based on a clear error and that a different decision must result from correction of the error. *Id.* A motion which merely presents the same matters that were considered by the court will not be granted. *Id.*

⁷On direction of the court under [MCR 6.504\(B\)\(4\)](#), the prosecutor must respond in writing to the allegations in the motion, and the trial court must allow the prosecutor a minimum of 56 days to respond; if the response refers to transcripts or briefs that are not in the court's file, the prosecutor must submit copies of those items with the response. [MCR 6.506\(A\)](#).

- If an evidentiary hearing is required, schedule and conduct the hearing as promptly as practicable. [MCR 6.508\(C\)](#).
 - At the hearing, the rules of evidence other than those with respect to privilege do not apply. [MCR 6.508\(C\)](#).
 - Assure that a verbatim record is made of the hearing. [MCR 6.508\(C\)](#).
- Determine whether the defendant meets his/her burden of establishing entitlement to the relief requested. [MCR 6.508\(D\)](#). Relief may not be granted to the defendant if the motion:
 - seeks relief from a judgment of conviction and sentence that still is subject to challenge on appeal under [MCR 7.200 et seq.](#) or [MCR 7.300 et seq.](#);
 - alleges grounds for relief which were decided against the defendant in a prior appeal or proceeding under [MCR 6.500 et seq.](#), unless the defendant establishes that a retroactive change in the law has undermined the prior decision, but the court may consider “previously-decided claims in the context of a new claim for relief, such as in determining whether new evidence would make a different result probable on retrial, or if the previously-decided claims, when considered together with the new claim for relief, create a significant possibility of actual innocence;”
 - alleges grounds for relief, other than jurisdictional defects, which could have been raised on appeal from the conviction and sentence or in a prior motion under [MCR 6.500 et seq.](#), unless the defendant demonstrates:
 - good cause***⁸ for failure to raise such grounds on appeal or in the prior motion, AND
 - actual prejudice*** from the alleged irregularities that support the claim for relief:
 - in a conviction following a trial, but for the alleged error, the defendant would have had a reasonably likely chance of acquittal;
 - in a conviction following a trial where the defendant rejected a plea based on incorrect information from the trial court or ineffective assistance of counsel and it is reasonably likely

⁸The “good cause” requirement may be waived if the court concludes that there is a significant possibility that the defendant is innocent of the crime. [MCR 6.508\(D\)](#).

that (1) the prosecutor would not have withdrawn any plea offer, (2) the defendant and the trial court would have accepted the plea but for the improper advice, and (3) under the plea's terms the conviction or sentence or both would have been less severe than what was in fact imposed;

in a conviction entered on a plea of guilty, guilty but mentally ill, or nolo contendere, the defect in the proceedings was such that it renders the plea an involuntary one to a degree that it would be manifestly unjust to allow the conviction to stand;

in any case, the irregularity was so offensive to the maintenance of a sound judicial process that the conviction should not be allowed to stand regardless of its effect on the outcome of the case;

in the case of a challenge to the sentence, the sentence is invalid. [MCR 6.508\(D\)](#).

NOTE: When deciding a motion under [MCR 6.508\(D\)\(2\)](#), be sure to determine whether the factual basis for the defendant's claim of ineffective assistance of counsel or prosecutorial error is the same as the claim raised in his/her initial appeal; a mistake here leads to de novo review by the federal courts, and this is a key pitfall to avoid so AEDPA deference will apply to the court's decision on habeas corpus review.

NOTE: If denying motion under [MCR 6.508\(D\)\(3\)](#), state that it is because the defendant has failed to show cause and prejudice and, in any event, all of his/her claims are without merit.

Either orally or in writing, set out in the record findings of fact and conclusions of law, and enter an appropriate order disposing of the motion. [MCR 6.508\(E\)](#).

Note in opinion when the motion for relief from judgment was filed.

