

RULES GOVERNING PROCEEDINGS UNDER D.C. CODE § 23-110

Rule 1. Scope of Rules.

These rules govern the procedure in the Superior Court on a motion under D.C. Code §23-110.

(1) by a person in custody pursuant to a judgment of the Court for a determination that the judgment was imposed in violation of the Constitution or laws of the United States or the District of Columbia, or that the Court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack; and

(2) by a person in custody pursuant to a judgment of a state or federal court and subject to future custody under a judgment of the Superior Court for a determination that such future custody will be in violation of the Constitution or laws of the United States, or that the Superior Court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or it otherwise subject to collateral attack.

Rule 2. Motion.

(a) Nature of application for relief. If the person is presently in custody pursuant to the judgment in question, or if not presently in custody may be subject to such custody in the future pursuant to such judgment, the application for relief shall be in the form of a motion to vacate, set aside, or correct the sentence.

(b) Form of motion. The motion shall specify all the grounds for relief which are available to the movant and of which he has or, by the exercise of reasonable diligence, should have knowledge and shall set forth in summary form the facts supporting each of the grounds thus specified. It shall also state the relief requested. The motion shall be typewritten or legible handwritten and shall be signed under penalty of perjury by the petitioner. Motions filed by the movant pro se must be filed on standard forms to be supplied by the clerk upon request without cost. Counsel filing a motion under this rule need not use a standard form, but any such motion shall contain essentially the same information set forth on the standard form.

(c) Motions to be directed to one judgment only. A motion shall be limited to the assertion of a claim for relief against one judgment only. If a movant desires to attack the validity of other judgments under which he or she is in custody or may be subject to future custody, as the case may be, he or she shall do so by separate motions.

Rule 3. Filing motion.

(a) Place of filing; copies. A motion under these rules shall be filed in the office of the clerk. If a motion is delivered directly to a judge, the judge shall transmit the motion to the clerk for review and filing pursuant to Rules 2 and 3.

(b) Filing and service. Upon receipt of the motion and having ascertained that it appears on its face to comply with Rules 2 and 3, or as may be directed by the judge, the clerk shall file the motion and enter it on the docket in his or her office in the criminal action in which was entered the judgment to which it is directed. The clerk shall thereupon deliver or serve a copy of the motion together with a notice of its filing on the prosecutor. The filing of the motion shall not require the prosecutor to answer the motion or otherwise move with respect to it unless so ordered by the court.

(c) Return of insufficient motion. If a motion received by the clerk does not substantially comply with the requirement of Rule 2 or Rule 3, it may be returned to the movant, together with a statement of the reason for its return. The clerk shall retain a copy of the motion. The clerk shall send the movant a copy of the standard form if the non-complying motion did not substantially comply with the form requirements of this rule if the judge determines that the motion sufficiently states a claim for relief.

Rule 4. Preliminary consideration by judge; appointment of counsel.

(a) Reference to judge; dismissal or order to answer. The original motion shall be presented promptly to the judge who presided at the movant's trial and sentenced him or her, or, if the judge who imposed sentence was not the trial judge, then it shall go to the judge who was in charge of the part of the proceedings being attacked by the movant. If the appropriate judge is unavailable to consider the motion, it shall be presented to another judge in accordance with the procedure of the court for the assignment of its business.

(b) Initial consideration by judge. The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it conclusively appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the prosecutor to file an answer or other pleading within the period of time fixed by the court or take such other action as the judge deems appropriate.

(c) After preliminary consideration by judge. The Court has discretion to appoint counsel to represent the movant pursuant to D.C. Code § 11-2601 in the interest of justice at any time, provided the movant is eligible for appointment under that section.

(d) To conduct discovery. In any case in which the assistance of counsel is required in order to effectively make use of discovery procedures under either the Rules of Criminal Procedure or the Rules of Civil Procedure or elsewhere in the usages and principles of law, the Court shall appoint counsel to represent the movant, provided the movant is eligible for appointment under D.C. Code § 11-2601.

(e) To conduct an evidentiary hearing. The Court shall appoint counsel to represent the movant if the court determines that an evidentiary hearing is required under Rule 8, provided the movant is eligible for appointment under D.C. Code § 11-2601.

Rule 5. Answer; contents.

(a) Contents of answer. The answer shall respond to the allegations of the motion. In addition it shall state whether the movant has used any other available remedies including any prior post-conviction motions under these rules or those existing previous to the adoption of the present rules.

(b) Supplementing the answer. The Court shall examine its files and records to determine whether it has available copies of transcripts and briefs whose existence the answer has indicated. If any of these items should be absent, the government shall be ordered to supplement its answer by filing the needed records. The Court shall allow the government an appropriate period of time in which to do so, without unduly delaying the consideration of the motion.

Rule 6. Discovery.

(a) Leave of court required. A party may invoke the processes of discovery available under the Superior Court Rules of Criminal Procedure or Rules of Civil Procedure (Civil Rules 26-37) or elsewhere in the usages and principles of law if, and to the extent that, the judge in the exercise of his or her discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for effective utilization of discovery procedures, counsel shall be appointed by the judge for a movant who qualifies for appointment of counsel under D.C. Code § 11-2601.

(b) Requests for discovery. Requests for discovery involving interrogatories, requests for admission, or requests for documents under the Rules of Civil Procedure shall be accompanied by a statement of the interrogatories or requests for admission and a list of the documents, if any, sought to be produced. Requests to conduct depositions under the Rules of Civil or Criminal Procedure shall be accompanied by a list of the persons to be deposed and a brief description of testimony to be elicited.

(c) Expenses. If the government is granted leave to take the deposition of the movant or any other person, the judge may as a condition of taking it direct that the government pay the expenses of travel and subsistence and fees of counsel for the movant to attend the taking of the deposition.

Rule 7. Expansion of record.

(a) Direction for expansion. If the motion is not dismissed summarily, the judge may direct that the record be expanded by the parties by the inclusion of additional materials relevant to the determination of the merits of the motion.

(b) Materials to be added. The expanded record may include, without limitation, letters predating the filing of the motion in the court, documents, exhibits, and answers under oath, if so directed, to written interrogatories propounded by the judge. Affidavits may be submitted and considered as part of the record.

(c) Submission to opposing party. In any case in which an expanded record is directed, copies of the letters, documents, exhibits, and affidavits proposed to be included shall be submitted to the party against whom they are offered, and he or she shall be afforded an opportunity to admit or deny their correctness.

(d) Authentication. The Court may require the authentication of any material under subdivision (b) or (c).

Rule 8. Evidentiary hearing.

(a) Determination by court. If the motion has not been dismissed at a previous stage in the proceeding, the judge, after the answer is filed and any transcripts or records of prior court actions in the matter are in his or her possession, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the motion as justice dictates.

(b) Appointment of counsel; time for hearing. If an evidentiary hearing is required, the judge shall appoint counsel for a movant who qualifies for the appointment of counsel under D.C. Code § 11-2601 and the hearing shall be conducted as promptly as practicable, having regard for the need of counsel for both parties for adequate time for investigation and preparation. These rules do not limit the appointment at any stage of the proceeding if the interest of justice so requires.

(c) Production of statement at evidentiary hearing.

(1) In general. Rule of Criminal Procedure 26.2 applies at an evidentiary hearing under these rules.

(2) Sanctions for failure to produce statement. If a party elects not to comply with an order under Rule of Criminal Procedure 26.2(a) to deliver a statement to the moving party at the evidentiary hearing, the Court may not consider the testimony of the witness whose statement is withheld.

Rule 9. Delayed or successive motions.

(a) Delayed motions. A motion for relief made pursuant to these rules may be dismissed if it appears that the government has been prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds of which he or she could not have known by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(b) Successive motions. A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.

Rule 10. Powers of magistrates.

NOTES:

COMMENT

Although the equivalent federal rule is inapplicable to the Superior Court of the District of Columbia, it is included here in order to maintain consistency in numbering with the Federal Rules.

Rule 11. Time of appeal.

The time for appeal from an order entered on a motion for relief made pursuant to these rules is as provided in the Rules of the D.C. Court of Appeals. Nothing in these rules shall be construed as extending the time to appeal from the original judgment of conviction in the Superior Court.

Rule 12. Superior Court Rules of Criminal and Civil Procedure; extent of applicability.

If no procedure is specifically prescribed by these rules, the Court may proceed in any lawful manner not inconsistent with these rules, or any applicable statute, and may apply the Superior Court Rules of Criminal Procedure or Rules of Civil Procedure, whichever it deems most appropriate, to motions filed under these rules.

APPENDIX OF FORMS

Form 1. Model form for use in resolving motions pursuant to D.C. Code § 23-110 involving a Rule 9(b) issue.

Explanation and Instructions -- Read Carefully

The Court has reviewed the motion you filed challenging your sentence and/or conviction in the D.C. Superior Court pursuant to D.C. Code § 23-110. Because you appear to have filed a previous motion challenging the same sentence and/or conviction, your motion may be subject to dismissal under Rule 9(b) of the Rules Governing Proceedings Under D.C. Code § 23-110.

Rule 9(b) states:

(b) Successive Motions. A second successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.

Your motion may be subject to dismissal under Rule 9(b) for the following reason(s):

You must complete this form, "**MOVANT'S RESPONSE AS TO WHY THE MOTION SHOULD NOT BE DISMISSED UNDER RULE 9(b)**," and return it to the Court by placing it in the United States mail or by delivering it to the appropriate prison official for mailing within days. If you fail to return it within that time, your motion will be automatically dismissed. Your motion should be addressed to: Clerk, Superior Court of the District of Columbia, Criminal Division, 500 Indiana Avenue, N.W., Washington, D.C. 20001.

Form 2. Superior Court of the District of Columbia Criminal Division.

UNITED STATES OF AMERICA
[DISTRICT OF COLUMBIA, if applicable]

V.
[YOUR NAME] _____

Case Number _____

**MOVANT'S RESPONSE AS TO WHY THE MOTION
SHOULD NOT BE DISMISSED UNDER RULE 9(b)**

1. Have you had the assistance of any attorney, paralegal, or other person(s) trained in the law since the date you were sentenced for the conviction you are attacking?

Yes _____ No _____.

2. If you answered "yes" above, state the period(s) of time when you received such assistance, up to and including the present.

3. Describe the nature of the assistance you received in each period listed in question 2, above including the names of those who provided the assistance.

4. If your motion includes a ground you included in an earlier motion attacking the same sentence and/or conviction, explain why you think this ground should be reconsidered. Specify any new facts or changes in the law you think justify reconsideration. If you are relying on new facts, explain when and how you learned the new facts:

5. If your motion raises a new ground, not included in an earlier motion attacking the same sentence and/or conviction, explain why you did not raise this ground in your previous motion:

6. If you believe the court has made a mistake in concluding that you previously filed a motion under D.C. Code § 23-110 attacking the same sentence and/or conviction, please explain why your earlier motion or petition should not bar consideration of your motion under Rule 9(b)?

I declare under penalty of perjury that the foregoing is true and correct.

Name

Date

**Form 3. Model form for use in motions for post-conviction relief under
D.C. Code § 23-110.**

Instructions -- Read Carefully

Use this form, "MOTION TO VACATE, SET ASIDE OR CORRECT SENTENCE AND JUDGMENT PURSUANT TO D.C. CODE § 23-110," if you believe that the sentence or conviction imposed on you in the District of Columbia Superior Court should be vacated, set aside, or corrected **because it violated the United States Constitution or the laws of the District of Columbia**. This form should not be used to challenge conditions of your confinement, issues related solely to parole eligibility or revocation of parole, or disciplinary proceedings resulting in segregation or loss of good time. Do not use this form to challenge the conditions of your confinement, or to challenge a sentence or conviction imposed in any court other than the District of Columbia Superior Court.

Your motion must be legibly handwritten or typewritten. You must sign it in the space provided, with the understanding that **an intentional false statement may be the basis for a prosecution and conviction for perjury**.

Provide specific information about your case and the reasons you believe the sentence or conviction is unlawful. If you have a transcript of the trial or hearing, you should refer to the specific places in the transcript that show the error you believe the court made. You may attach a copy of the relevant transcript pages.

You do not have an absolute right to a lawyer in a post-conviction proceeding. The court may appoint a lawyer to assist you if the court concludes that appointing a lawyer would be in the interest of justice. If you would like the court to appoint a lawyer to represent you, fill out the separate form to request appointment of counsel under the D.C. Criminal Justice Act.

You must include all of the reasons you believe the sentence or judgment should be vacated, set aside, or corrected in this motion. If your motion includes the claim that a lawyer who represented you provided ineffective assistance, you should include the name of the lawyer in your motion.

Form 4. Superior Court of the District of Columbia Criminal Division.

UNITED STATES OF AMERICA
[DISTRICT OF COLUMBIA, if applicable]

V.
[YOUR NAME] _____

Case Number _____

MOTION TO VACATE, SET ASIDE OR CORRECT
SENTENCE AND JUDGMENT
PURSUANT TO D.C. CODE § 23-110

I. PARTIES AND JURISDICTION.

1. Enter your full name: _____

2. Date of birth: _____

3. D.C.D.C. Number (if applicable): _____

4. Fed. Reg. number (if applicable): _____

5. Are you now:

a. On probation, parole or supervised release? _____ If "yes," what is your current home address?

b. In a correctional facility? _____ If "yes," which facility? _____

c. In some other status or residence? _____ If "yes," explain and give address:

6. Are you now serving any other sentence, or do you have another sentence to serve after completing the sentence you are challenging in the motion? _____

a. If "yes," what are terms for violation of probation, parole, or supervised release? _____

b. Enter name(s) of court(s) where sentence(s) was(were) imposed: _____

II. CASE HISTORY.

7. Provide the following information, or attach a copy of the Superior Court Judgment and Commitment Order or Judgment and Probation Order:

a. Enter the case number of the sentence and judgment you want to vacate, set aside or correct only :

b. Name of sentencing judge: _____

c. Name of attorney who represented you at trial/plea: _____

d. Name of attorney who represented you at sentencing (if different): _____

e. Date of sentence: _____

f. Term of sentence: _____

8. How were you found guilty?

a. Entered a guilty plea? _____

b. Found guilty by a jury? _____

c. Found guilty by a judge? _____

9. Did you appeal your conviction? _____

a. If "yes," enter Court of Appeals case number, if known: _____

b. What action did the Court of Appeals take? _____

10. Other than a direct appeal to the D.C. Court of Appeals, have you previously filed any other challenges to this sentence and judgment in any other court? _____
If "yes," did you file

a. A petition for certiorari to the United States Supreme Court? _____

b. A motion for correction or reduction of sentence? _____

c. A previous motion to vacate, set aside or correct sentence and judgment? _____

d. Another pleading? Explain _____

11. If you previously filed a motion to vacate this sentence and judgment, list all of the grounds for relief you raised in that motion: _____

III. GROUNDS FOR RELIEF.

You may raise as many grounds (i.e., reasons) to vacate, set aside or correct the sentence and judgment as you believe are supported by the Constitution of the United States or the laws of the District of Columbia. **Remember that if you know of any reason you believe your conviction or sentence is unlawful and you do not raise it in this motion, you will probably lose the right to raise it later.**

For each reason, you should briefly state the legal basis for the claim. Then you should provide the facts about your case that support the claim. Provide as much specific information about your case and the reasons you believe the sentence or conviction is unlawful as possible. If you have a transcript of the trial or hearing, you should refer to the specific places in the transcript that show the error you believe the court made. You should, if possible, attach copies of transcript pages that

support your claim. After that, you may attach additional legal arguments in support of the claim. Number each different claim, and attach the pages related to each claim in numerical order, followed by the conclusion page.

Legal Basis

a. Supporting Facts

b. Legal Argument

IV. CONCLUSION

Therefore, movant respectfully asks the Court to vacate, correct, or set aside the judgment and sentence and grant such other and further relief as may be warranted. I declare under penalty of perjury that the foregoing is true and correct.

Name

Date

Attachments (check if included):

____ Motion for appointment of counsel

____ Discovery requests