

Rule 12. Pleadings and Pretrial Motions

(a) **PLEADINGS.** The pleadings in a criminal proceeding are the indictment, the information, and the pleas of not guilty, guilty, and nolo contendere.

(b) **PRETRIAL MOTIONS.**

(1) *In General.* A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial on the merits. Rule 47 applies to a pretrial motion.

(2) *Motions That May Be Made at Any Time.* A motion that the court lacks jurisdiction may be made at any time while the case is pending.

(3) *Motions That Must Be Made Before Trial.* The following defenses, objections, and requests must be raised by pretrial motion if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits:

(A) a defect in instituting the prosecution, including:

- (i) improper venue;
- (ii) preindictment delay;
- (iii) a violation of the constitutional right to a speedy trial;
- (iv) selective or vindictive prosecution; and
- (v) an error in the grand-jury proceeding or preliminary hearing;

(B) a defect in the indictment or information, including:

- (i) joining two or more offenses in the same count (duplicity);
- (ii) charging the same offense in more than one count (multiplicity);
- (iii) lack of specificity;
- (iv) improper joinder; and
- (v) failure to state an offense;

(C) suppression of evidence;

(D) severance of charges or defendants under Rule 14; and

(E) discovery under Rule 16.

(4) *Notice of the Government's Intent to Use Evidence.*

(A) *At the Government's Discretion.* At the arraignment or as soon afterward as practicable, the government may notify the defendant of its intent to use specified evidence at trial in order to afford the defendant an opportunity to object before trial under Rule 12(b)(3)(C).

(B) *At the Defendant's Request.* At the arraignment or as soon afterward as practicable, the defendant may, in order to have an opportunity to move to suppress evidence under Rule 12(b)(3)(C), request notice of the government's intent to use (in its evidence-in-chief at trial) any evidence that the defendant may be entitled to discover under Rule 16.

(c) **DEADLINE FOR A PRETRIAL MOTION; CONSEQUENCES OF NOT MAKING A TIMELY MOTION.**

(1) *Setting the Deadline.* The court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing. If the court does not set one, the deadline is the start of trial.

(2) *Extending or Resetting the Deadline.* At any time before trial, the court may extend or reset the deadline for pretrial motions.

(3) *Consequences of Not Making a Timely Motion Under Rule 12(b)(3)*. If a party does not meet the deadline for making a Rule 12(b)(3) motion, the motion is untimely. But a court may consider the defense, objection, or request if the party shows good cause.

(d) **RULING ON A MOTION**. The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

(e) **DEFENDANT'S CONTINUED CUSTODY OR RELEASE STATUS**. If the court grants a motion to dismiss based on a defect in instituting the prosecution, in the indictment, or in the information, it may order the defendant to be released or detained under D.C. Code § 23-1321 et seq. (2012 Repl. & 2017 Supp.) for a specified time until a new indictment or information is filed. This rule does not affect any statutory period of limitations.

(f) **PRODUCING STATEMENTS AT A SUPPRESSION HEARING**. Rule 26.2 applies at a suppression hearing under Rule 12(b)(3)(C). If the defendant has called a law enforcement officer as a witness, both the government and the defendant are required to produce statements of the officer in their possession under the terms of Rule 26.2.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2014 amendments to *Federal Rule of Criminal Procedure 12*, except that section (e) has not been reserved. In addition to the 2014 federal amendments, the Superior Court rule now includes federal subsections (c)(1)-(2), which allow the court to establish the motion deadlines. Correspondingly, motion deadlines have been removed from Rule 47.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

Consistent with the former rule, paragraphs (c) and (f) of the federal rule have been omitted. Paragraph (c) of the federal rule (Motion Deadline) is unnecessary because the time for filing motions is governed by Rule 47. Paragraph (f) (Recording the Proceedings) is unnecessary in light of Superior Court Rule 36-I, which requires the recording of all proceedings.

Consistent with the organization of the federal rules, paragraphs (c) and (e) of this rule have been incorporated from former Superior Court Rule 47-I (g) and (h).

Paragraph (c) now includes the federal rule's requirement that the court state its essential factual findings on the record when deciding a motion.

Paragraph (e) has been modified to refer to local rather than federal law.

Paragraph (f) retains a difference between the federal and local rule with respect to producing statements of law enforcement officers called by the defendant.