

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings

(a) TIME TO SERVE A RESPONSIVE PLEADING.

(1) *In General.* The time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer within 21 days after being served with:

- (i) the summons and complaint, except when service is made under Rule 4(f) and another time is specified by the applicable statute or rule; or
- (ii) a petition and notice of hearing and order directing appearance under Rule 4(d), but unless the court orders otherwise, filing of such an answer does not relieve the defendant or respondent of the obligation to appear in court on the day set out in the notice or order.

(B) A plaintiff must serve a reply within 21 days after being served with an answer containing a counterclaim, unless the court orders otherwise.

(2) *Effect of a Motion.* Unless the court sets a different time, if a defendant files and serves a motion to dismiss under this rule, the time for the defendant to file and serve a responsive pleading is extended until 14 days after notice that the court denied the motion or postponed its disposition until trial.

(b) **HOW TO PRESENT DEFENSES.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

- (1) lack of subject-matter jurisdiction;
- (2) lack of personal jurisdiction;
- (3) [Omitted];
- (4) insufficient process;
- (5) insufficient service of process;
- (6) failure to state a claim upon which relief can be granted; and
- (7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) **MOTION FOR JUDGMENT ON THE PLEADINGS.** After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.

(d) **RESULT OF PRESENTING MATTERS OUTSIDE THE PLEADINGS.** If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) **MOTION FOR A MORE DEFINITE STATEMENT.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must point out the defects complained of and the details desired. If the motion is granted and the court's order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) MOTION TO STRIKE. The Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) JOINING MOTIONS.

(1) *Right to Join*. A motion under this rule may be joined with any other motion allowed by this rule.

(2) *Limitation on Further Motions*. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) WAIVING AND PRESERVING CERTAIN DEFENSES.

(1) *When Some Are Waived*. A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2)); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) *When to Raise Others*. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19, or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject-Matter Jurisdiction*. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) HEARING BEFORE TRIAL. If a party so moves, any defense listed in Rule 12(b)(1)-(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

(j) NON-APPEARANCE OF PARTIES. If at the time set for hearing of any motion, there is no appearance by a party or counsel for a party, the court may treat the motion as submitted, withdrawn, or conceded by the non-appearing party, and rule on it.

COMMENT TO 2018 AMENDMENTS

This rule has been amended to conform to the civil rule.