

Rule 12. Defenses and Objections; When and How Presented; By Pleading or Motion; Motion for Judgment on Pleadings**12.01 When Presented**

Defendant shall serve an answer within 20 days after service of the summons upon that defendant unless the court directs otherwise pursuant to Rule 4.043. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows unless a different time is fixed by order of the court: (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten days after service of notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within ten days after the service of the more definite statement.

12.02 How Presented

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (a) lack of jurisdiction over the subject matter;
- (b) lack of jurisdiction over the person;
- (c) insufficiency of process;
- (d) insufficiency of service of process;
- (e) failure to state a claim upon which relief can be granted; and
- (f) failure to join a party pursuant to Rule 19.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

12.03 Motion for Judgment on the Pleadings

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on such motion, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(Amended effective March 1, 1994.)

Advisory Committee Comment - 1993 Amendment

The only change made to this rule is to correct a typographical or grammatical error in the existing rule. No change in meaning or interpretation is intended.

12.04 Preliminary Hearing

The defenses and relief enumerated in Rules 12.02 and 12.03, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party unless the court orders that the hearing and determination thereof be deferred until the trial.

12.05 Motion for More Definite Statement, for Paragraphing and for Separate Statement

If a pleading to which a responsive pleading is permitted violates the provisions of Rule 10.02, or is so vague and ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a compliance with Rule 10.02 or for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten days after service of notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

12.06 Motion to Strike

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party, or upon its own initiative at any time, the court may order any pleading not in compliance with Rule 11 stricken as sham and false, or may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

12.07 Consolidation of Defenses in Motion

A party who makes a motion pursuant to this rule may join with it other motions then available to the party. If a party makes a motion under this rule but omits therefrom any then available defense or objection which this rule permits to be raised by motion, that party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in Rule 12.08(b) hereof on any of the grounds there stated.

12.08 Waiver or Preservation of Certain Defenses

(a) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (1) if omitted from a motion in the circumstances described in Rule 12.07, or (2) if it is neither made by motion pursuant to this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15.01 to be made as a matter of course.

(b) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered pursuant to Rule 7.01, or by motion for judgment on the pleadings, or at the trial on the merits.

(c) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.