

\* The proposed amendment to Trial Rule 12 would add timing for responsive pleadings and update language.

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**Rule 12. Defenses, ~~and objections, and motions on the pleadings—When and how presented—By pleading or motion—Motion for judgment on the pleadings~~**

(A) When presented.

The time allowed for the presentation of defenses and objections in a motion or responsive pleading ~~must~~shall be computed ~~as set forth in this rule. pursuant to the provisions of Rule 6(E). Service of a motion permitted under this rule alters the time for service of responsive pleadings as follows, unless a different time is fixed by the court:~~

~~(1) if the court does not grant the motion, the responsive pleading must be served ten days after notice of the court's action;~~

~~(2) if the court grants the motion and corrective action is allowed to be taken, it must be taken within ten days, and the responsive pleading must be served within ten days thereafter.~~

(B) 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, ~~must~~shall be asserted in the responsive pleading thereto if one is required; except that at the option of the pleader, the following defenses may be made by motion:

(1) Lack of jurisdiction over the subject matter;~~;~~

(2) Lack of jurisdiction over the person;~~;~~

(3) Incorrect venue under Trial Rule 75, or any statutory provision. The disposition of this motion ~~must~~shall be consistent with Trial Rule 75,

(4) Insufficiency of process;

(5) Insufficiency of service of process;

(6) Failure to state a claim upon which relief can be granted, which ~~must~~shall include failure to name the real party in interest under Rule 17;

(7) Failure to join a party needed for just adjudication under Rule 19;

(8) The same action pending in another state court of this state.

A motion making any of these defenses ~~must~~shall be made before pleading if a further pleading is permitted or within twenty ~~[20]~~ days after service of the prior pleading if none is required. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, any of the defenses in section (B)(2), (3), (4), (5) or (8) is waived to the extent constitutionally permissible unless made in a motion within twenty ~~[20]~~ days after service of the prior pleading. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion.

When a motion to dismiss is sustained for failure to state a claim under subdivision (B)(6) of this rule the pleading may be amended once as of right pursuant to Rule 15(A) within ten ~~[10]~~ days after service of notice of the court's order sustaining the motion and thereafter with permission of the court pursuant to such rule.

If, on a motion, asserting the defense number (6), to dismiss for failure ~~of the pleading~~ 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 ~~must~~shall be treated as one for summary judgment and disposed of as provided in Rule 56. In such case, all parties ~~must~~shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

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(E) Motion for more definite statement.

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, ~~he may move for a motion for~~ more definite statement ~~before interposing his~~ may be filed before the responsive pleading. The motion ~~shall must point out the~~ include all defects complained of and the details desired. If the motion is granted, ~~and the order of the court is not obeyed,~~ the non-movant has ~~within~~ twenty ~~[20]~~ days after notice of the order, or ~~within~~ such other time as the court may fix, to comply. Failure to do so may result in striking of the pleading ~~the court may strike the pleading to which the motion was directed~~ or ~~make~~ such other relief as the court may order. ~~as it deems just.~~

(F) 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 twenty ~~[20]~~ days after the service of the pleading ~~upon him~~ or at any time upon the court's own initiative, the court

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may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter.

(G) Consolidation of defenses in motion.

~~A party who makes a~~Any motion or defense ~~motion under~~in this rule may be consolidated in one motion ~~join with it any other motions herein provided for and then available to him.~~ If a party makes a motion under this rule but omits ~~therefrom~~ any available defense or objection ~~then available to him~~ which this rule permits to be raised by motion, ~~he shall not thereafter make a~~no motion based on the omitted defense or objection is permitted ~~so omitted. He may, however, make such motions as are except as~~ allowed under subdivision (H)(2) of this rule.

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