

1       **Rule 12. Defenses and objections.**

2       (a) **When presented.** Unless otherwise provided by statute or order of the court, a  
3 defendant shall serve an answer within ~~twenty~~21 days after the service of the summons  
4 and complaint is complete within the state and within ~~thirty~~30 days after service of the  
5 summons and complaint is complete outside the state. A party served with a pleading  
6 stating a cross-claim shall serve an answer thereto within ~~twenty~~21 days after the  
7 service. The plaintiff shall serve a reply to a counterclaim in the answer within ~~twenty~~21  
8 days after service of the answer or, if a reply is ordered by the court, within ~~twenty~~21  
9 days after service of the order, unless the order otherwise directs. The service of a  
10 motion under this rule alters these periods of time as follows, unless a different time is  
11 fixed by order of the court, but a motion directed to fewer than all of the claims in a  
12 pleading does not affect the time for responding to the remaining claims:

13       (a)(1) If the court denies the motion or postpones its disposition until the trial on  
14 the merits, the responsive pleading shall be served within ~~ten~~14 days after notice of  
15 the court's action;

16       (a)(2) If the court grants a motion for a more definite statement, the responsive  
17 pleading shall be served within ~~ten~~14 days after the service of the more definite  
18 statement.

19       (b) **How presented.** Every defense, in law or fact, to claim for relief in any pleading,  
20 whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the  
21 responsive pleading thereto if one is required, except that the following defenses may at  
22 the option of the pleader be made by motion: (1) lack of jurisdiction over the subject  
23 matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of  
24 process, (5) insufficiency of service of process, (6) failure to state a claim upon which  
25 relief can be granted, (7) failure to join an indispensable party. A motion making any of  
26 these defenses shall be made before pleading if a further pleading is permitted. No  
27 defense or objection is waived by being joined with one or more other defenses or  
28 objections in a responsive pleading or motion or by further pleading after the denial of  
29 such motion or objection. If a pleading sets forth a claim for relief to which the adverse  
30 party is not required to serve a responsive pleading, the adverse party may assert at the

31 trial any defense in law or fact to that claim for relief. If, on a motion asserting the  
32 defense numbered (6) to dismiss for failure of the pleading to state a claim upon which  
33 relief can be granted, matters outside the pleading are presented to and not excluded  
34 by the court, the motion shall be treated as one for summary judgment and disposed of  
35 as provided in Rule 56, and all parties shall be given reasonable opportunity to present  
36 all material made pertinent to such a motion by Rule 56.

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

44 (d) **Preliminary hearings.** The defenses specifically enumerated (1)-(7) in  
45 subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for  
46 judgment mentioned in subdivision (c) of this rule shall be heard and determined before  
47 trial on application of any party, unless the court orders that the hearings and  
48 determination thereof be deferred until the trial.

49 (e) **Motion for more definite statement.** If a pleading to which a responsive  
50 pleading is permitted is so vague or ambiguous that a party cannot reasonably be  
51 required to frame a responsive pleading, the party may move for a more definite  
52 statement before interposing a responsive pleading. The motion shall point out the  
53 defects complained of and the details desired. If the motion is granted and the order of  
54 the court is not obeyed within ~~ten~~14 days after notice of the order or within such other  
55 time as the court may fix, the court may strike the pleading to which the motion was  
56 directed or make such order as it deems just.

57 (f) **Motion to strike.** Upon motion made by a party before responding to a pleading  
58 or, if no responsive pleading is permitted by these rules, upon motion made by a party  
59 within ~~twenty~~21 days after the service of the pleading, the court may order stricken from

60 any pleading any insufficient defense or any redundant, immaterial, impertinent, or  
61 scandalous matter.

62 (g) **Consolidation of defenses.** A party who makes a motion under this rule may  
63 join with it the other motions herein provided for and then available. If a party makes a  
64 motion under this rule and does not include therein all defenses and objections then  
65 available which this rule permits to be raised by motion, the party shall not thereafter  
66 make a motion based on any of the defenses or objections so omitted, except as  
67 provided in subdivision (h) of this rule.

68 (h) **Waiver of defenses.** A party waives all defenses and objections not presented  
69 either by motion or by answer or reply, except (1) that the defense of failure to state a  
70 claim upon which relief can be granted, the defense of failure to join an indispensable  
71 party, and the objection of failure to state a legal defense to a claim may also be made  
72 by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at  
73 the trial on the merits, and except (2) that, whenever it appears by suggestion of the  
74 parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall  
75 dismiss the action. The objection or defense, if made at the trial, shall be disposed of as  
76 provided in Rule 15(b) in the light of any evidence that may have been received.

77 (i) **Pleading after denial of a motion.** The filing of a responsive pleading after the  
78 denial of any motion made pursuant to these rules shall not be deemed a waiver of such  
79 motion.

80 (j) **Security for costs of a nonresident plaintiff.** When the plaintiff in an action  
81 resides out of this state, or is a foreign corporation, the defendant may file a motion to  
82 require the plaintiff to furnish security for costs and charges which may be awarded  
83 against such plaintiff. Upon hearing and determination by the court of the reasonable  
84 necessity therefor, the court shall order the plaintiff to file a \$300.00 undertaking with  
85 sufficient sureties as security for payment of such costs and charges as may be  
86 awarded against such plaintiff. No security shall be required of any officer,  
87 instrumentality, or agency of the United States.

88       (k) **Effect of failure to file undertaking.** If the plaintiff fails to file the undertaking as  
89 ordered within 30 days of the service of the order, the court shall, upon motion of the  
90 defendant, enter an order dismissing the action.

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