

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

2 **(a) When presented.**

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

15 (A) If the court denies the motion or postpones its disposition until the trial on
16 the merits, the responsive pleading must be served within 14 days after notice of
17 the court's action;

18 (B) If the court grants a motion for a more definite statement, the responsive
19 pleading must be served within 14 days after the service of the more definite
20 statement.

21 ~~(2) In domestic relations actions. A party served with a domestic relations action~~
22 ~~must serve an answer within 21 days after service of the summons and petition is~~
23 ~~complete within the state and within 30 days after service of the summons and~~
24 ~~petition is complete outside the state. Any counterpetition must be filed with the~~
25 ~~answer. A party served with a counterpetition must serve an answer within 21 days~~
26 ~~after service of the counterpetition.~~ For purposes of domestic relations actions as
27 defined in Rule 26.1, and as used in this rule, the terms "plaintiff" means petitioner,

28 | the term “defendant” means respondent, the term “complaint” means petition, and
29 | the term “counterclaim” means counterpetition.

30 | **(b) How presented.** Every defense, in law or fact, to claim for relief in any pleading,
31 | whether a claim, counterclaim, cross-claim, or third-party claim, must be asserted in the
32 | responsive pleading thereto if one is required, except that the following defenses may at
33 | the option of the pleader be made by motion: (1) lack of jurisdiction over the subject
34 | matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of
35 | process, (5) insufficiency of service of process, (6) failure to state a claim upon which
36 | relief can be granted, (7) failure to join an indispensable party. A motion making any of
37 | these defenses must be made before pleading if a further pleading is permitted. No
38 | defense or objection is waived by being joined with one or more other defenses or
39 | objections in a responsive pleading or motion or by further pleading after the denial of
40 | such motion or objection. If a pleading sets forth a claim for relief to which the adverse
41 | party is not required to serve a responsive pleading, the adverse party may assert at the
42 | trial any defense in law or fact to that claim for relief. If, on a motion asserting the
43 | defense numbered (6) to dismiss for failure of the pleading to state a claim upon which
44 | relief can be granted, matters outside the pleading are presented to and not excluded by
45 | the court, the motion must be treated as one for summary judgment and disposed of as
46 | provided in Rule [56](#), and all parties must be given reasonable opportunity to present all
47 | material made pertinent to such a motion by Rule [56](#).

48 | **(c) Motion for judgment on the pleadings.** After the pleadings are closed, but within
49 | such time as not to delay the trial, any party may move for judgment on the pleadings.
50 | If, on a motion for judgment on the pleadings, matters outside the pleadings are
51 | presented to and not excluded by the court, the motion must be treated as one for
52 | summary judgment and disposed of as provided in Rule [56](#), and all parties must be
53 | given reasonable opportunity to present all material made pertinent to such a motion by
54 | Rule [56](#).

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

60 **(e) Motion for more definite statement.** If a pleading to which a responsive pleading is
61 permitted is so vague or ambiguous that a party cannot reasonably be required to frame
62 a responsive pleading, the party may move for a more definite statement before
63 interposing a responsive pleading. The motion must point out the defects complained
64 of and the details desired. If the motion is granted and the order of the court is not
65 obeyed within 14 days after notice of the order or within such other time as the court
66 may fix, the court may strike the pleading to which the motion was directed or make
67 such order as it deems just.

68 **(f) Motion to strike.** Upon motion made by a party before responding to a pleading or,
69 if no responsive pleading is permitted by these rules, upon motion made by a party
70 within 21 days after the service of the pleading, the court may order stricken from any
71 pleading any insufficient defense or any redundant, immaterial, impertinent, or
72 scandalous matter.

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

79 **(h) Waiver of defenses.** A party waives all defenses and objections not presented either
80 by motion or by answer or reply, except (1) that the defense of failure to state a claim
81 upon which relief can be granted, the defense of failure to join an indispensable party,
82 and the objection of failure to state a legal defense to a claim may also be made by a

83 later pleading, if one is permitted, or by motion for judgment on the pleadings or at the
84 trial on the merits, and except (2) that, whenever it appears by suggestion of the parties
85 or otherwise that the court lacks jurisdiction of the subject matter, the court must
86 dismiss the action. The objection or defense, if made at the trial, must be disposed of as
87 provided in Rule [15\(b\)](#) in the light of any evidence that may have been received.

88 **(i) Pleading after denial of a motion.** The filing of a responsive pleading after the
89 denial of any motion made pursuant to these rules must not be deemed a waiver of
90 such motion.

91 **(j) Security for costs of a nonresident plaintiff.** When the plaintiff in an action resides
92 out of this state, or is a foreign corporation, the defendant may file a motion to require
93 the plaintiff to furnish security for costs and charges which may be awarded against
94 such plaintiff. Upon hearing and determination by the court of the reasonable necessity
95 therefor, the court must order the plaintiff to file a \$300.00 undertaking with sufficient
96 sureties as security for payment of such costs and charges as may be awarded against
97 such plaintiff. No security must be required of any officer, instrumentality, or agency of
98 the United States.

99 **(k) Effect of failure to file undertaking.** If the plaintiff fails to file the undertaking as
100 ordered within 30 days of the service of the order, the court must, upon motion of the
101 defendant, enter an order dismissing the action.

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103 *Effective: 11/1/2021*