

Amendments to Rule 12

Rule 12 is amended as follows:

Rule 12. Defenses and Objections; When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

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(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) **[RESERVED]**~~insufficient process;~~
- (4) **insufficient process**~~insufficient service of process;~~
- (5) **insufficient service of process**~~; failure to state a claim upon which relief can be granted; and~~
- (6) **failure to state a claim upon which relief can be granted; and**~~failure to join a party under Rule 19.~~
- (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.

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(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(~~5~~)(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.

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(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived. A party waives any defense listed in Rule 12(b)(2)-(4)(~~5~~) by:

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(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)-~~(6)~~(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.

PRACTICE COMMENT: Prior to July 1, 2015, current CIT Rules 12(b)(4)-(b)(7) were designated CIT Rules 12(b)(3)-(b)(6) even though they directly corresponded to Rules 12(b)(4)-(b)(7) of the Federal Rules of Civil Procedure. This asymmetry was rectified effective July 1, 2015 by reserving CIT Rule 12(b)(3) and by renumbering former parts (b)(3) through (6) as (b)(4) through (7), respectively. Conforming changes were also made to Rule 12 internal cross-references. Practitioners must take this renumbering into account when researching cases involving Rule 12.

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; Oct. 3, 1984, eff. Jan. 1, 1985; July 28, 1988, eff. Nov. 1, 1988; Sept. 25, 1992, eff. Jan. 1, 1993; Oct. 5, 1994, eff. Jan. 1, 1995; Dec. 18, 2001, eff. Apr. 1, 2002; Nov. 25, 2008, eff. Jan. 1, 2009; Dec. 7, 2010, eff. Jan. 1, 2011; **June 5, 2015, eff. July 1, 2015.**)