



## **I.R.C.P. 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Hearings Before Trial**

**Idaho Rules of Civil Procedure Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Hearings Before Trial.**

### **(a) Time to Serve a Responsive Pleading.**

(1) *In General.* Unless another time is specified by rule or statute, the time for serving a responsive pleading is as follows:

(A) a defendant must serve an answer within 21 days after being served with the summons and complaint;

(B) a party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim;

(C) a party must serve a reply to an answer 21 days after being served with an order to reply, unless the court specifies a different time.

(2) *Effect of a Motion.* Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

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

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

**(b) How to Present Defenses.** 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 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) improper venue;



(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted;

(7) failure to join a party under Rule 19; and

(8) another action pending between the same parties for the same cause.

If a pleading states a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim.

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

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

**(e) Motion for a More Definite Statement.** A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

**(f) Motion to Strike.** The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

**(g) Joining Motions.**

(1) *Right to Join.* A motion under this rule may be joined with any other motion allowed by this rule or by filing a special appearance under Rule 4.1.



(2) *Limitation on Further Motions.* Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

**(h) Waiving and Preserving Certain Defenses.**

(1) *When Some Are Waived.* A party waives any defense listed in subsection (b)(2), (4) and (5) by failing to assert it by motion before filing a responsive pleading or filing any other motion, except a motion for an extension of time to answer or otherwise appear or a motion to disqualify a judge under Rule 40(a) or (b).

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 19 or 19.1, a defense of another action pending between the same parties for the same cause, or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) *Lack of Subject Matter Jurisdiction.* If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(4) *Improper Venue.* An objection to improper venue is waived unless a timely motion for proper venue is made as provided in Rule 40.1.

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

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