RULE 12. DEFENSES AND OBJECTIONS--WHEN AND HOW PRESENTED BY PLEADING OR MOTION---MOTION FOR JUDGMENT ON PLEADINGS

(a) When Presented. A defendant shall serve that defendant's answer within 20 days after the service of the summons and complaint upon that defendant, unless the court directs otherwise when service of process is made pursuant to an order of court under Rule 4(d) or 4(g), and provided that a defendant served pursuant to Rule 4(e), 4(f), or 4(j) outside the Continental United States or Canada may serve the answer at any time within 50 days after such service. A party who is served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(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, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; (5) insufficiency of service of process; (6) failure to state a claim upon which relief can be granted; and (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (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 shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be

given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

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

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

(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, the party may move for a more definite statement before filing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such 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 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by a motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Advisory Committee's Notes
May 1, 2000

Subdivision (d) is amended to eliminate the unnecessary word "mentioned."

Subdivision (e) is amended to substitute the word "filing" for the word "interposing."

Advisory Committee's Note
November 1, 1969

Rule 4(j), added on November 1, 1966, provides alternative provisions for service in a foreign country. The amendment of Rule 12(a) makes clear that service under one of the alternative provisions of Rule 4(j) results in the defendant having 50 days within which to serve his answer, if the service is in a foreign country other than Canada.

Explanation of Amendments
November 1, 1966

These amendments were taken from the 1966 amendments to F.R. 12. The purpose of the amendment to Rule 12(b) was to conform to the terminology of the simultaneous amendment of Rule 19.

The purpose of Rule 12(g) as originally adopted was to prevent a party from delaying the action by raising a succession of defenses and objections by motion prior to answer. The 1966 amendment carried forward that purpose with clarifying verbal changes, including a reference to new subdivision (h) (2).

The amended Rule 12(h) was designed to settle the question, on which the federal decisions have been divided, whether an available defense omitted from a motion, which cannot be made the basis of a second motion, may nevertheless be pleaded in the answer. The amendment makes it clear that specified threshold defenses omitted from a motion made prior to answer are waived. This was the preferred construction of the present rule. See § 12.8 of the text. These defenses are lack of jurisdiction over the person, improper venue, insufficiency of process, and insufficiency of service of process. The amendment also provides that any of these same defenses is waived by failure to raise it by motion or to include it in the answer or in any amendment thereto to which a party is entitled as a matter of course under Rule 15(a).

Reporter's Notes
December 1, 1959

This rule is substantially the same as Federal Rule 12. It alters Maine practice very considerably. The requirement that an answer be filed within 20 days after service upon the defendant is new, as are the other time limits in Rule 12(a). Under Rule 12(b), all defenses of law or fact must be asserted in the answer except that the seven enumerated matters may, at the defendant's option, be set up by motion. There is no such thing as a plea in abatement, and the defendant may in effect plead and demur at the same time. A motion to dismiss for failure to state a claim upon which relief can be granted serves the purpose of a general demurrer under present practice. The last sentence allows the court in its discretion to consider an affidavit accompanying a motion to dismiss, making it in effect a speaking demurrer. The court will then treat the motion as one for summary judgment under Rule 56. This is one of several instances in the rules where the failure to label a paper properly is not fatal. *See*, for example, the similar provision in Rule 12(c).

The "unless" clause in the first sentence of Rule 12(a) is not the same as the federal rule. Under it the court may allow additional time for answer when it orders service upon the defendant by leaving a copy of the summons and complaint at his usual place of abode pursuant to Rule 4(d) (1) or by publication pursuant to Rule 4(g). Furthermore, when service outside the state personally or by mail is made in accordance with Rule 4(e) or 4(f), the defendant is given 50 days within which to answer if he is served outside the limits of the Continental United States or Canada. This is comparable to the present Equity Rule 7, but in the light of modern transportation it has seemed sensible to shorten the limits somewhat.

It is to be noted that no defense or objection is waived by being joined with others in a responsive pleading or motion. A challenge to jurisdiction may be combined with an answer to the merits, although it may also be made by motion. Special appearances are no longer necessary in order to avoid submission to jurisdiction. *Orange Theatre Corp. v. Rayherstz Amusement Corp.*, 139 F.2d 871 (3d Cir. 1944). This of course changes the present Maine practice. *See Munsey, Ex'r v. Groves*, 151 Me. 200, 117 A.2d 64 (1955).

A motion for judgment on the pleadings under Rule 12(c) may be made by either the plaintiff or the defendant. When made by the defendant in the normal situation where no reply to the answer is ordered, it has the same effect as a motion to dismiss for failure to state a claim. The defendant cannot take advantage of any denials in his answer, which under Rule 8(d) are taken as denied or avoided. When made by the plaintiff, it challenges the legal sufficiency of the answer.

Rule 12(d) provides in the court's discretion for a preliminary hearing on the seven matters which under Rule 12(b) may be raised by motion. Such a preliminary hearing may be held whether these matters are raised by motion or by answer.

Rule 12(e) allows a motion for a more definite statement only when it is necessary in order to enable the mover to frame his responsive pleading. There is no longer such a thing as a motion for specifications or a bill of particulars. It is contemplated that these matters shall be elicited through the use of the discovery devices, such as interrogatories to the opposing party under Rule 33.

Aside from the obvious purpose of striking redundant, immaterial, impertinent or scandalous matter, the chief point of Rule 12(f) is to allow a means for testing the legal sufficiency of a defense. If, for example, an answer contains two defenses, the sufficiency of either one would be fatal to a motion for judgment

on the pleadings. A motion to strike one of the defenses would permit the elimination from the case at the pleading stage of an insufficient defense. This is akin to a motion to strike all or part of the brief statement under present practice. *Leonard Advertising Co. v. Flagg*, 128 Me. 433, 148 A. 561 (1930). Under the Maine practice where the general issue may be pleaded in all cases accompanied by a brief statement of special matters of defense, R.S.1954, Chap. 113, Sec. 36 (repealed in 1959), a demurrer to the brief statement, if sustained, would not lead to judgment because the general issue would remain to be tried. *Corthell v. Holmes,* 87 Me. 24, 32 A. 714 (1894).

Rule 12(g) is designed to prevent a party from delaying an action by making successively a series of motions.

Rule 12(h) has been held to make it impossible to raise for the first time by motion after verdict or in the appellate court the contention that the complaint is insufficient as a matter of law. *Black, Sivalls & Bryson v. Shondell*, 174 F.2d 587 (8th Cir. 1949). In such a case, however, the defendant might obtain relief from the judgment pursuant to Rule 60(b) if justice so required.