

1 **DEFENSES AND OBJECTIONS; HOW PRESENTED; BY PLEADING OR MOTION; MOTION**
2 **FOR JUDGMENT ON THE PLEADINGS**

3 **RULE 21**

4 **A How presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a
5 complaint, counterclaim, cross-claim or third party claim, shall be asserted in the responsive pleading
6 thereto, except that the following defenses may at the option of the pleader be made by motion to dismiss:
7 (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) that there is
8 another action pending between the same parties for the same cause, (4) that plaintiff has not the legal
9 capacity to sue, (5) insufficiency of summons or process or insufficiency of service of summons or
10 process, (6) that the party asserting the claim is not the real party in interest, (7) failure to join a party
11 under Rule 29, (8) failure to state ultimate facts sufficient to constitute a claim, and (9) that the pleading
12 shows that the action has not been commenced within the time limited by statute. A motion to dismiss
13 making any of these defenses shall be made before pleading if a further pleading is permitted. The
14 grounds upon which any of the enumerated defenses are based shall be stated specifically and with
15 particularity in the responsive pleading or motion. No defense or objection is waived by being joined with
16 one or more other defenses or objections in a responsive pleading or motion. If, on a motion to dismiss
17 asserting defenses (1) through (7), the facts constituting such defenses do not appear on the face of the
18 pleading and matters outside the pleading, including affidavits, declarations and other evidence, are
19 presented to the court, all parties shall be given a reasonable opportunity to present affidavits, declarations
20 and other evidence, and the court may determine the existence or nonexistence of the facts supporting
21 such defense or may defer such determination until further discovery or until trial on the merits. If the
22 court grants a motion to dismiss, the court may enter judgment in favor of the moving party or grant leave
23 to file an amended complaint. If the court grants the motion to dismiss on the basis of defense (3), the
24 court may enter judgment in favor of the moving party, stay the proceeding, or defer entry of judgment
25 [*pursuant to subsection B(3) of Rule 54*].

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