IRFLP 502 Defenses and Objections; When and How Presented; By Pleading or Motion; Motion for Judgment on Pleadings – When Presented

Idaho Rules of Family Law Procedure Rule 502. Defenses and Objections; When and How Presented; By Pleading or Motion; Motion for Judgment on Pleadings – When Presented.

A respondent shall serve a response within twenty (20) days after the service of the summons upon the party, or within such longer period as is provided by statute. A party served with a pleading stating a cross-claim against him shall serve a response thereto within twenty (20) days after the service of the cross-claim upon the party. The petitioner shall serve a reply to a counterclaim in the response within twenty (20) days after service of the response or, if a reply is ordered by the court, within twenty (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 ten (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 ten (10) days after the service of the more definite statement. In either case the time for service of the responsive pleading shall not be less than remains of the time which would have been allowed under these rules if the motion had not been made.

A. How defenses and objections 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 shall 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,

7. failure to join an indispensable party,

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

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 505 [1], and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 505 [1].

B. 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 as provided in Rule 505 [1], and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 505 [1].

C. Motion for more definite statement. If a pleading to which a responsive pleading is permitted violates the provisions of Rule 207 [2] or is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a compliance with the Rules or for a more definite statement before interposing the 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 ten (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.

D. 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 twenty (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.

E. Waiver or preservation of certain defenses.

1. A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived unless it is made by motion prior to filing a responsive pleading and prior to filing any other motion, other than a motion for an extension of time to respond or otherwise appear or a motion under Rule 107 [3] or 108 [4]. It is not waived, however, by being joined with one or more other motions or by filing a special appearance as provided in Rule 206 [5].

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 502 [6], a defense of another action pending between the same parties for the same cause, and an objection of failure to state a legal defense to a claim may be raised by motion made at or before the trial on the merits.

3. An objection to improper venue is waived unless a timely motion for proper venue is made as provided in Rule 105 [7].

4. 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.

(Adopted April 2, 2014, effective for early adopters July 1, 2014, effective statewide July 1, 2015.)

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