

TIME LIMITS ON RULE 12(b) MOTIONS

Source: Ann M. Anderson, UNC School of Government (February 2010)

1) Rule 12(b) provides seven bases for a motion to dismiss a complaint or claim:

- (1) Lack of jurisdiction over the subject matter
- (2) Lack of jurisdiction over the person
- (3) Improper venue or division
- (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 a necessary party.

Subsections (1)-(5) and (7) are jurisdictional or process-related. Subsection (6) — perhaps the basis judges see most often — is based on the substance of the allegations. Each basis is often stated as an affirmative defense in a responsive pleading rather than made by separate motion.¹

2) Specific timing requirements apply to several of these motions. Certain Rule 12 motions are waived if not made within the specified time. Rule 12(b), (g).

Must be made prior to (or within) responsive pleading²	May be made before trial or at trial (any time before verdict)	May be made <i>anytime</i> by parties or court (no waiver)
(2) Lack of jurisdiction over the person (3) Improper venue or division (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 a necessary party	(1) Lack of jurisdiction over the subject matter

3) There is also a consolidation requirement for subsections (b)(2) through (b)(5). Each of the bases “then available” to a party must be stated with the other bases in that party’s motion. Rule 12(g); *Evangelistic Outreach Center v. General Steel Corp.*, 181 N.C. App. 723, 725 (2007).

4) The judge may hear any Rule 12(b) motion prior to trial or at trial. Rule 12(d).

¹ Local rules may specify the court’s preference. Raising these defenses in the form of a motion generally facilitates calendaring the matter for hearing. Rule 6(d) would apply to such motions.

² These four defenses may also be included in an amended pleading made as a matter of course under Rule 15(a).