

## 2018 Kansas Statutes

**60-212. Defenses and objections; presentations, when and how; certain motions; waiver.** (a) *Time to serve a responsive pleading.* (1) *In general.* Unless otherwise provided by law, the time for serving a responsive pleading is as follows:

- (A) A defendant must serve an answer:
  - (i) Within 21 days after being served with the summons and petition; or
  - (ii) within the time fixed in the notice when service is by publication, which must not be less than 41 days from the time the notice is first published;
- (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; and
- (C) a party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) *Effect of a motion.* Unless the court sets a different time, serving a motion under this section 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 to a claim for relief in any pleading 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; and
- (7) failure to join a party under K.S.A. 60-219, and amendments thereto.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(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 subsection (b)(6) or (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 K.S.A. 60-256, and amendments thereto. 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 section may be joined with any other motions allowed under this section.

(2) *Limitation on further motions.* Except as provided in subsection (h)(2) or (3), a party that makes a motion under this section must not make another motion under this section 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 subsections (b)(2) through (5) by:

- (A) Omitting it from a motion in the circumstances described in subsection (g)(2); or
- (B) failing to either:
  - (i) Make it by motion under this section; or
  - (ii) include it in a responsive pleading, or in an amendment allowed by subsection (a)(1) of K.S.A. 60-215, and amendments thereto, as a matter of course.

(2) *When to raise others.* Failure to state a claim upon which relief can be granted, to join a person required by subsection (b) of K.S.A. 60-219, and amendments thereto, or to state a legal defense to a claim may be raised:

- (A) In any pleading allowed or ordered under subsection (a) of K.S.A. 60-207, and amendments thereto;
- (B) by a motion under subsection (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.

(i) *Hearing before trial.* If a party so moves, any defense listed in subsections (b)(1) through (7), whether made in a pleading or by a motion, and a motion under subsection (c), must be heard and decided before trial unless the court orders a deferral until trial.

(j) *Answer for minor or incapacitated person.* The guardian or conservator of a minor or incapacitated person, or the attorney for a person in prison must in the answer deny all the material allegations in the petition prejudicial to the defendant.

**History:** L. 1963, ch. 303, 60-212; L. 1965, ch. 354, § 1; amended by Supreme Court order dated July 17, 1969; L. 1990, ch. 202, § 24; L. 2010, ch. 135, § 79; July 1.