**Rule 212 – Proposed Revisions**

**Version 10-31-2018**

**[REDLINE VERSION]**

**Rule 212. Pleadings and Motions Before Trial.**

…

**(b) Oral or Written Motions.**All motions shall be ~~oral~~ written unless otherwise ordered by the court.

…

**(e) Time for Making Motion.** Motions shall be made before a plea is entered, ~~but the court may permit it to be made within a reasonable time thereafter~~ or within 21 days of the date of entry of a plea. If a party wishes to file a brief in support of a Motion, such brief shall be filed with the Motion.

…

(No other proposed changes to this Rule)

**[CLEAN VERSION]**

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(No other proposed changes to this Rule)

[FULL TEXT]

**Rule 212. Pleadings and Motions Before Trial.**

**(a) Pleadings and Motions.**Pleadings shall consist of the complaint or summons and complaint and pleas of guilty, not guilty, or nolo contendere. All other pleas, demurrers, and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, or as provided in these rules.

**(b) Oral or Written Motions.**All motions shall be written unless otherwise ordered by the court.

**(c) Defenses and Objections Which May be Raised.**Any defense or objection which is capable of determination without the trial of the general issue may be raised by motion.

**(d) Defenses and Objections Which Must Be Raised.**Defenses and objections based on defects in the institution of the prosecution or in the complaint or summons and complaint other than that it fails to show jurisdiction in the Court or to charge an offense may be raised only by motion. The motion shall include all such defenses and objections then available to the defendant. Failure thus to present any such defense or objection constitutes a waiver of it, but the Court, for good cause shown, may grant relief from the waiver. Lack of jurisdiction or the failure of the complaint or summons and complaint to charge an offense shall be noticed by the Court at any time during the proceeding.

**(e) Time for Making Motion.** Motions shall be made before a plea is entered, or within 21 days of the date of entry of a plea. If a party wishes to file a brief in support of a Motion, such brief shall be filed with the Motion.

**(f) Hearing on Motion.**A motion before trial raising defenses or objections under section (c) or (d) shall be determined before the day of trial unless the Court orders that it be deferred for determination at or after the trial of the general issue.

**(g) Effect of Determination.**If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if no plea has previously been made. A plea previously entered shall stand.

**Notes of subcommittee on CMCR 212:**

The subcommittee recommends amending the Rule to require motions to be in writing unless otherwise ordered by the court and to impose a deadline for filing.

The subcommittee made the following considerations **in favor** of motions in writing and imposing a filing deadline:

* CMCR 202 regarding purpose and construction encourages simplicity in procedure. Arguably requiring written motions unless otherwise ordered by the court streamlines procedure, allows for better preparation by the attorneys and the judicial officer, encourages resolution with focus on the law prior to trial.
* CMCR 202 regarding purpose and construction the elimination of unjustifiable expense and delay. In many jurisdictions jury trials in particular are delayed or even continued unnecessarily on the day of trial due to oral motions that are sufficiently convoluted to have required briefing by both sides.

The subcommittee made the following considerations **against** motions in writing and imposing a filing deadline:

* CMCR 202 regarding purpose and construction encourages simplicity in procedure and such an amendment could be over burdensome, particularly for pro se defendants.
* Expense.