

# Rules of Probate Procedure

## Rule 12. Notice of Initial Hearing; Defenses and Objections-When and How Presented

(a) **Notice of initial hearing; when and how defenses presented.** The notice of the initial hearing in a probate proceeding shall set a date for hearing which shall be at least 14 days after the completion of service upon all persons to be served. However, relinquishment hearings held under 15 V.S.A. § 432(b) shall be scheduled as provided in that section. Late service is effective but, unless waived by those persons served late, the court must reschedule the initial hearing to occur at least 14 days after the completion of service upon the last person served and notify those served by first class mail. Any answer to the petition shall be in writing and be filed at or before the hearing except that an oral answer may be made at the hearing unless the court directs otherwise. If an oral answer is made at the hearing, the court may direct that a written answer be filed within a specified period of time. An answer, whether oral or written, may state objections to the action or order sought in the petition or any other matter the party wishes to raise. If a written answer is filed at any time, the hearing may be continued as to all issues involved in the objections or other matter there stated for a period sufficient to allow all parties fairly to be heard on these issues.

(b) **Preliminary motion.** At the option of the pleader, the objections of lack of jurisdiction of the person, improper venue, and legal insufficiency of the petition may be raised by motion at any time before a hearing set under subdivision (a). The court may determine the issues raised before hearing or may postpone determination until the hearing. Any further pleading required shall be served within 10 days after notice for the court's action.

(c) **Waiver.** If a motion is made under subdivision (b), all objections mentioned in that subdivision that were then known to the movant are waived if not stated in the motion, and if no motion is made every objection or other matter that could reasonably have been known to and presented by an interested person shall be deemed waived if not presented as provided in subdivision (a); provided that:

(1) An objection asserting the legal insufficiency of the petition may be presented by motion at any time prior to final disposition of the petition; and

(2) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the petition.

Amended Dec. 8, 1988, eff. March 1, 1989; Nov. 20, 1989, eff. March 1, 1990.