

Alabama Rules of Criminal Procedure

Rule 15. Preparation for trial; pleadings and motions.

Rule 15.2. Objections and defenses which must be raised by motion.

(a) OBJECTIONS WHICH MUST BE RAISED BY PRE-TRIAL MOTION. Objections based on defects in the commencement of the proceeding or in the charge, other than lack of subject matter jurisdiction or failure to charge an offense, may be raised only by pre-trial motion as provided in Rule 15.3.

(b) ALL OBJECTIONS AND DEFENSES INCLUDED. The pre-trial motion shall include all objections and defenses then available to the defendant.

(c) WAIVER. Failure to present any objection or defense as provided in sections (a) and (b) constitutes a waiver thereof, but the court for good cause shown may grant relief from the waiver.

(d) OBJECTIONS WHICH MAY BE RAISED AT ANY TIME. The lack of subject matter jurisdiction or the failure of the charge to state an offense may be raised by the court or by motion of the defendant at any time during the pendency of the proceeding. Once such an issue is raised by the court, the procedure thereafter shall be the same as if the defendant had raised the issue by appropriate motion.

(e) EFFECT OF MOTION ON PLEA. If a plea has been entered before a pre-trial motion is made, the plea shall stand and need not be withdrawn before the motion is made, nor need the plea be reentered after the motion is ruled upon.

Committee Comments

Rule 15.2 requires that certain objections be made and defenses raised by motion before trial. Objections to the venire or to an individual grand juror or to the venue must be raised by such a motion before trial.

The exceptions are lack of subject matter jurisdiction and failure to charge an offense. The rule is different from Rule 12(b)(2), Fed.R.Crim.P., in that it adds the words "subject matter" before the word "jurisdiction." This merely expresses the accepted interpretation of the federal rule, since objections to personal jurisdiction can be waived by failure to timely object. See *Hess v. United States*, 254 F.2d 578 (8th Cir.1958).

If a defendant wishes to raise the defense of double jeopardy, the denial of a speedy trial, or any similar defense, the defense should be raised by a motion under this rule.

Section (e) provides that one does not have to withdraw a plea previously entered before one can take advantage of a defense or objection by motion. Under prior practice, a plea of not guilty had to be withdrawn before a plea in abatement or motion to quash could be entered.