

Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
PART THREE A
CRIMINAL PRACTICE AND PROCEDURE

Rule 3A:9. Pleadings and Motions for Trial; Defenses and Objections.

(a) *Pleadings and Motions.* Pleadings in a criminal proceeding shall be the indictment, information, warrant or summons on which the accused is to be tried and the plea of not guilty, guilty or nolo contendere. Defenses and objections made before trial that heretofore could have been made by other pleas or by demurrers and motions to quash shall be made only by motion to dismiss or to grant appropriate relief, as provided in these Rules.

(b) *The Motion Raising Defenses and Objections.*

(1) Defenses and Objections That Must Be Raised Before Trial. Defenses and objections based on defects in the institution of the prosecution or in the written charge upon which the accused is to be tried, other than that it fails to show jurisdiction in the court or to charge an offense, must be raised by motion made within the time prescribed by paragraph (c) of this Rule. The motion shall include all such defenses and objections then available to the accused. Failure to present any such defense or objection as herein provided shall constitute a waiver thereof. Lack of jurisdiction or the failure of the written charge upon which the accused is to be tried to state an offense shall be noticed by the court at any time during the pendency of the proceeding.

(2) Defenses and Objections That May Be Raised Before Trial. In addition to the defenses and objections specified in subparagraph (b) (1) of this Rule, any defense or objection that is capable of determination without the trial of the general issue may be raised by motion before trial. Failure to present any such defense or objection before the jury returns a verdict or the court finds the defendant guilty shall constitute a waiver thereof.

(3) Form of Motion. Any motion made before trial shall be in writing if made in a circuit court, unless the court for good cause shown permits an oral motion. A motion shall state with particularity the grounds or grounds on which it is based.

(4) Hearing on Motion. A motion before trial raising defenses or objections shall be determined before the trial unless the court orders that it be deferred for determination at the trial of the general issue. An issue of fact shall be heard and determined by the court, unless a jury trial is required by constitution or statute.

(5) Effect of Determination. If a motion is determined adversely to the accused, his plea shall stand or he may plead over or, if the accused has not previously pleaded, he shall be permitted to plead. The motion need not be renewed if the accused properly saves the point for the purpose of appeal when the court first determines the motion.

(c) *Time of Filing Notice or Making Motion.* A motion referred to in subparagraph (b) (1) shall be filed or made before a plea is entered and, in a circuit court, at least 7 days before the day fixed for trial, or, if the motion raises speedy trial or Double Jeopardy grounds as specified in Code § [19.2-266.2](#) A (ii), at such time prior to trial as the grounds for the motion or objection shall arise, whichever occurs last. A copy of such motion shall, at the time of filing, be ~~mailed~~submitted to the judge of the circuit court who will hear the case, if known.

(d) *Relief From Waiver.* For good cause shown the court may grant relief from any waiver provided for in this Rule.