

Rule 117 - Motion to Quash

SECTION 1. *Time to move to quash.*— At any time before entering his plea, the accused may move to quash the complaint or information. (1)

SEC. 2. *Form and contents.*—The motion to quash shall be in writing, signed by the accused or his counsel and shall distinctly specify its factual and legal grounds. The court shall consider no ground other than those stated in the motion, except lack of jurisdiction over the offense charged. (2a)

SEC. 3. *Grounds.*—The accused may move to quash the complaint or information on any of following grounds:

- (a) That the facts charged do not constitute an offense;
- (b) That the court trying the case has no jurisdiction over the offense charged;
- (c) That the court trying the case has no jurisdiction over the person of the accused;
- (d) That the officer who filed the information had no authority to do so;
- (e) That it does not conform substantially to the prescribed form;
- (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
- (g) That the criminal action or liability has been extinguished;
- (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
- (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (3a)

SEC. 4. *Amendment of complaint or information.* — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made. (4a)

If it is based on the ground that the facts charged do not constitute an offense, the

prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment. (n)

SEC. 5. Effect of sustaining the motion to quash.—If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this Rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody for another charge. (5a)

SEC. 6. Order sustaining the motion to quash not a bar to another prosecution; exception.—An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in section 3 (g) and (i) of this Rule. (6a)

SEC. 7. Former conviction or acquittal; double jeopardy.—When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

(a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;

(b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or

(c) the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in section 1(f) of Rule 116.

In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense. (7a)

SEC. 8. *Provisional dismissal.*— A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived. (n)

SEC. 9. *Failure to move to quash or to allege any ground therefor.* — The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule. (8a)