

Motions during trial



1. Consolidation of cases (Rule 119, Sec.22); **separate trials** (Sec. 16)

2. Motion for postponement - due to the absence of a party or counsel because of illness, or a conflict in schedules of the counsel de parte or the private prosecutor; absence of a material witness, etc.

3. Motion to discharge the accused to become a State witness - the court may direct one or more of the accused to be discharged with their consent, provided that **(a)** there is absolute necessity for the testimony of the accused whose discharge is requested; **(b)** there is no other direct evidence available for the proper prosecution of the offense, except such testimony; **(c)** the testimony can be substantially corroborated in its material points; **(d)** said accused does not appear to be the most guilty; and **(e)** said accused has not been convicted of any offense involving moral turpitude. The discharge shall amount to an acquittal and shall be a bar to his future prosecution for the same offense. (Rule 119, Section 17 and 18)

4. Motion to secure documents and attendance of witnesses - subpoena ad testificandum, warrant of arrest, contempt, perpetuation of testimony, subpoena duces tecum, modes of discovery, bail for witnesses.

5. Exclusion of other witnesses - to prevent other witnesses from hearing the testimony of the witness currently being examined.

6. Exclusion of the public - the court may by itself exclude the public if the evidence to be presented is offensive to decency or public morals.

7. Provisional remedies - may be availed of in the civil action deemed instituted with the criminal action insofar as they are applicable, e.g. attachment of the property of the accused (Rule 127, Section 1 and 2).

8. Demurrer to evidence - may be filed by the defense after the prosecution rests its case, based on the insufficiency of evidence. If the motion is granted, the accused is in effect acquitted. If the court denies the motion, the accused may present his evidence. When it is filed without express leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the prosecution's evidence. (Rule 119, Sec. 23)

9. Dismissal - **(a)** If the private complainant executes an affidavit of desistance, the fiscal files a motion to dismiss the case. The judge grants it if the case cannot be prosecuted successfully without the participation of the complainant. **(b)** If the complainant has been absent several times despite due notice, the accused may move for provisional dismissal based on failure to prosecute, or dismissal on the merits by invoking his Constitutional right to a speedy trial. **(c)** The accused can file a petition for mandamus to compel dismissal of the information, or a petition for habeas corpus, in case postponements lead to his detention beyond a reasonable period of time. (The fiscal has the control and supervision of the prosecution, so in his absence, hearings must be reset even if the private complainant has his own lawyer, except upon proper endorsement or authorization.)