

**8 GCA CRIMINAL PROCEDURE
CH. 65 PLEADINGS AND MOTIONS**

**CHAPTER 65
PLEADINGS AND MOTIONS**

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§ 65.10. Pleadings Allowed.

Pleadings in criminal proceedings shall be the indictment, information or complaint, and the pleas of not guilty, not guilty by reason of mental illness, disease or defect, guilty and nolo contendere. All other pleas and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one (1) or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in this Code.

NOTE: Section 65.10 continues a portion of former § 996 and former Rule 12(a) but includes appropriate references to the complaint, (§ 1.15) and the plea of not guilty by reason of mental illness, disease or defect (§ 60.40). Compare Fed. R. Crim. P. 12(a).

§ 65.15. Motions Which Must be Made Prior to Trial.

Any defense, objection or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following shall be raised prior to trial:

- (a) Defenses and objections based on defects in the institution of the prosecution;
- (b) Defenses and objections based on defects in the indictment, information or complaint (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings);

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- (c) Motions to suppress evidence;
- (d) Requests for discovery pursuant to Chapter 70 (commencing with § 70.10); or
- (e) Requests for a severance of charges or defendants pursuant to § 65.35.

NOTE: Section 65.15 supersedes Paragraphs 1 and 2 of former § 997 and former Rule 12(b). See also § 65.45 (relief from waiver). It is substantively the same as proposed Rule 12(b) of the Federal Rules of Criminal Procedure. It should be noted, however, that the special procedures provided for raising the defense of not guilty by reason of mental illness, disease or defect constitute an exception to this Section. See, e.g., §§ 60.40 and 65.10 and Criminal and Correctional Code § 7.22. See generally 8 Moore, Federal Practice ¶12.03[1]-[3] (1974). As to the timing of motions, see § 65.20. For a request for notice of intention to use evidence, see § 65.25.

§ 65.17. Review of Suppression Orders.

[Repealed]

SOURCE: Public Law 13-186. Repealed/reenacted by P.L. 15-94, § 2. Repealed by P.L. 15-147, §§ 11 and 12.]

COURT DECISIONS: D.C. GUAM APP. DIV. 1980. Because, by P.L. 12-85 [Court Reorganization Act], the Guam Legislature removed all local jurisdiction from the District Court of Guam, the Guam Legislature may not thereafter give to the District Court new original jurisdiction. Organic Act § 22A. *People v. Quitugua*, D.C. Crim. App. #79-0069A and 79-00075A [June 18, 1980].

C.A.9 1981. All stays of proceeding granted by the District Court pursuant to § 65.17 were ordered lifted by the Ninth Circuit Court of Appeals which, in effect, reversed *Quitugua*. The Ninth Circuit Court of Appeals, in ruling upon § 65.17 before its amendment by P.L. 15-94, held that, because of the Organic Act, the Guam Legislature has the authority to determine the appellate jurisdiction of the District Court of Guam. It seems to be an inference from this decision that the Guam Legislature may determine the type of appeal also. However, this decision is not firm on this point. Further, the Ninth Circuit declared that all pending appeals pursuant to § 66.17 were to be dismissed because the Legislature, by its most recent amendment, removed all jurisdiction from the District Court of Guam to hear appeals or review, from defendants in situations formerly specified by § 65.17. *People v. District Court of Guam [James, real party in interest]*, C.A.9 1981, No. 80-7352, 641 F.2d 616.

§ 65.20. “Omnibus Hearing” or General Hearings Allowed.

The court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

NOTE: Section 65.20 supersedes paragraph 3 of former § 997 and former Rule 12(b). It is substantively the same as proposed Rule 12(c) of the Federal Rules of Criminal Procedure. See generally 8 Moore, Federal Practice ¶12.02[2] (1974). In contrast to

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prior law, § 65.20 anticipates that most pretrial motions will be set for hearing after arraignment; former law provided for hearing before arraignment but permitted extensions of time. Nothing in this Section is intended to preclude the hearing of motions before arraignment, e.g., motions to suppress evidence (at preliminary examination); requests for discovery. As indicated above, commonly motions will be heard after arraignment at the time set by the court for hearing.

§ 65.25. When Discovery May be Requested.

(a) At the arraignment or as soon thereafter as is practicable the government may give notice to the defendant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under § 65.15.

(b) At the arraignment or as soon thereafter as is practicable the defendant may, in order to be afforded an opportunity to move to suppress evidence under § 65.15 request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Chapter 70 (commencing with § 70.10).

NOTE: Section 65.25f is new; it is substantively the same as proposed Rule 12(d) of the Federal Rules of Criminal Procedure.

§ 65.30. Joinder of Offenses Encouraged.

(a) The court may order two or more indictments or information or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

(b) Except as otherwise provided by § 65.35, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode, if such offenses are known to the prosecuting attorney at the time of the commencement of the first trial.

NOTE: Subsection (a) of § 65.30 is identical to former § 1098 and former Rule 13. See also Fed. R. Crim. P. 13. See generally 8 Moore, Federal Practice ¶¶13.01-13.04 (1974). For prerequisites for joinder, see § 55.35.

Subsection (b) is new. It is substantively the same as Model Penal Code § 1.07(2). Its purpose is to limit separate trials and the potential abuse arising therefrom - especially the possibility of avoidance of the rule against consecutive sentencing. See 9 GCA § 80.10(c).

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§ 65.35. When Severance Allowed.

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

NOTE: Section 65.35 is based on former § 1098a and former Rule 14. See also Fed. R. Crim. P. 14. See generally 8 Moore, Federal Practice ¶¶ 14.01-14.05 (1974). The former law provided for the inspection in camera of certain documents on a motion for severance. This provision is deleted. The statements referred to are now required by § 70.10 to be disclosed to the defense; hence, there is no reason to require them to be delivered for inspection in camera.

§ 65.40. When Motions are to be Determined; By Whom.

A motion made before trial shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue or until after verdict. An issue of fact shall be tried by a jury if a jury trial is required and not waived. Otherwise issue of fact shall be determined by the court without a jury on affidavits or in such other manner as the court shall direct.

NOTE: Section 65.40 continues the substance of Paragraph 4 of former § 997 and former Rule 12. Compare Fed. R. Crim. P. 12(b)(4). See generally 8 Moore, Federal Practice § 12.04(1974).

§ 65.45. Failure to Raise Defenses or Objections; Consequences.

Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to § 65.15, or prior to any extension thereof made by the court, shall constitute a waiver thereof, but the court for cause shown may grant relief from the waiver.

COURT DECISIONS: D.C. Guam App. Div. *People v. Grajo*, DCA 86-00002 (1987) Since there was no good cause shown and since defendant did not raise the issues involving the indictment before trial, he may not bring them up on appeal.

NOTE: Section 65.45 continues the substance of the third sentence of Paragraph 2 of former § 997 and of Subdivision (b) of former Rule 12. See also Fed. R. Crim. P. 12(b)(2) and proposed Subdivision (f) of Rule 12 of the Federal Rules of Criminal Procedure. See generally 8 Moore, Federal Practice ¶12.03(1974).

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§ 65.50. Verbatim Record Required for All Motions.

A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

NOTE: Section 65.50 is new; it is identical to proposed Rule 12(g) of the Federal Rules of Criminal Procedure, and is present practice.

§ 65.55. Defective Indictment or Information: Defendant May be Held Pending Refiling: Statute of Limitations Not Affected.

If the court grants a motion based on a defect in the institution of the prosecution or in the indictment, information or complaint, it may also order that the defendant be held in custody or that prior conditions for his release be continued for a specified time pending the filing of a new indictment, information or complaint. Nothing in this Section shall be deemed to affect the provisions of any act of the Legislature relating to periods of limitations.

NOTE: Section 65.55 supersedes Paragraph 5 of former § 997 and of former Rule 12(b). See also former § 1117; Fed. R. Crim. P. 12(b)(5). It is substantively the same as proposed Rule 12(h) of the Federal Rules of Criminal Procedure. See generally 8 Moore, Federal Practice ¶12.05(1974).
