

New rules of civil procedure

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Puerto Rico adopted the Federal Rules of Civil Procedure in 1943. Since then, there have been two comprehensive reviews of the rules by our Supreme Court. The first in 1958 and the second in 1979. Through these reviews, the rules have been updated on the basis of interpretative Supreme Court decisions, by incorporation of amendments to the Federal Rules and through amendments originated by committees appointed by the Supreme Court to review the rules.

The Commonwealth Constitution empowers our Supreme Court to adopt rules of evidence and of civil and criminal procedure for our judicial system. These rules have to be submitted to the Legislative Assembly at the beginning of the next regular session and shall go into effect 60 days after the close of the session, unless disapproved by the legislative assembly. A committee headed by former Chief Justice José A. Andreu García has been appointed by the Supreme Court to undertake the third comprehensive review of the rules. This committee is currently undertaking such a task.

The purpose of the Rules of Civil Procedure is to guarantee a just, rapid and economic solution to the cases coming before our courts. This objective is perfectly in line with the needs of a developed economy as to the certainty of rules and as to the efficiency with which controversies are processed and adjudicated. The rules, however, are just one factor in optimizing the workings of a legal system.

The quality of the judges and attorneys; the habits and culture in processing cases by judges and attorneys; the administration of the courts, particularly the *secretarias* or clerk offices; the implementation of information technologies for filing and processing of cases; the facilities—court rooms, offices, equipment—available, the support personnel such as district attorneys and social workers and, of course, the budget of the judiciary play an important role in achieving the objective of just, rapid and economic solutions to the increasing case load that confronts the system.

The procedural rules are no doubt very important but, to make a significant improvement in the system, all the relevant factors must be brought to bear. Chief Justice Hernández Denton is making strong efforts to improve the administration of the courts and to convert the system to information technology. But the cooperation of the executive and legislative branches is necessary as to judicial appointments and budgetary requirements. The Puerto Rican Bar also has a fundamental responsibility in reforming the system.

That said, there are meaningful changes that can be brought about through the rules. The most important contribution the new rules can make to the efficient disposition of cases through the Commonwealth courts is in the area of case management by the judges. Traditionally, the movement of cases has been the

responsibility of the parties to the litigation, principally the plaintiff. In our times of congested calendars, this has led to protracted and costly litigation.

The modern trend in civil procedure is for the prompt intervention of the judge to whom the case is assigned to dispose of the case if possible at an early stage or to schedule the events in the procedure so as to bring the case to a prompt resolution either by settlement or decision of the court. This is case management.

Our Courts Administration, which operates under the chief justice, has been bent on introducing case management into the system for quite some time. Basically, it has set about this through training seminars for judges. This has had limited success because since the present rules do not require a prompt intervention by the judges, some of them take it seriously, some don't.

For a modern economy to function well it must have a reliable and efficient judicial system. Litigation is costly. Lawyers, expert witnesses, investigations, depositions, discovery, all cost considerable amounts. And, then there are the indirect costs of litigation. To businesses sometimes, the indirect costs are much more than the direct costs. Take a case where a developer has to litigate with environmentalists for a building permit while he has to pay interest to a bank on his financing. If the case goes on for a long time, he may end up in Bankruptcy Court.

Proper case management by the courts will considerably reduce the costs and the uncertainties as to the duration of litigation. The new rules of Civil Procedure should provide for this. They should structure procedures for cases according to the monetary amount, or the interest involved. Cases for \$15,000 or less should be given an expedited procedure such as the one that exists under present Rule 60 of Civil Procedure. These cases should go through notice and summons from the court to the defendant to present his or her defense at a hearing where all the evidence should be presented and the matter decided in open court. If the defendant properly justifies to the court that he or she needs discovery or that justice requires it, the court should provide for the case to follow normal procedure. In most cases, the summary procedure along the lines of Rule 60 will result in an adjudication fewer than 90 days after the filing of the complaint.

In all other contested cases, the new rules should provide for an initial conference to be held by the judge promptly after the defendant has filed his or her answer to the complaint. At this conference, the parties should disclose all their evidence, stipulate the facts they can agree upon, indicate their discovery needs and attempt settlement. If settlement is not reached, and most of the times it will not be at such an early stage, the court must enter a scheduling order that will cover all procedural events until final deposition.

To take into account the costs of litigation, the scheduling order should provide different time frames for the procedural events to unfold: cases involving the amount of more than \$15,000 but not more than \$100,000 or involving fundamental interests without monetary claims should be set for trial within one year after the scheduling order is issued. Cases in excess of \$100,000 should be set for trial according to

their complexity. Motions discovery and pretrial conferences would be set in the scheduling order backward from the trial date.

The judge must then make sure the parties stick to the scheduling order. He or she must follow up through status conferences and prompt intervention to settle procedural disputes so the process can move forward.

The new rules can make an important contribution to the economic and efficient dispatch of litigation by structuring case management in a compulsory way for all contested civil cases. This will go a long way toward providing Puerto Rico with a more efficient court system.

