Toward a more efficient court system

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Volume: 36 | No: 9
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Issued : 03/06/2008

Two weeks ago, the Judicial Conference—all the judges of the Commonwealth—met to consider the third revision to the Rules of Civil Procedure. The original rules, adopted in 1943, were a translation of the Federal Rules, which had been adopted in 1937. The first revision was carried out in 1958 and the second in 1979. The new rules must be reviewed by the Judicial Conference and by the Supreme Court. If they approve them, they will be presented to the Legislative Assembly during the current session.

Puerto Rico has changed a lot, not only since the original rules were adopted but also since the second revision. The dynamics of our economy, of our society, of our politics, have been accelerated and disarticulated. Their proper functioning requires that the laws and regulations that regulate our body politic be duly observed. This, in turn, requires certainty as to what these laws and regulations are so we can function within the accelerated rhythm and conflictive environment of our times. The rule of law must be observed for Puerto Rico to function well.

We have come upon hard times. The executive branch of government does not function as well as it did when the last revisions of the Rules of Civil Procedure were undertaken. Neither does the Legislative branch. We are amid an economic recession, conflicts abound, there is a lack of direction and a problem of governability.

In times like these, the judicial branch is the anchor of republican government under our Constitution. The new rules of Civil Procedure provide a more efficient process for the Judiciary to submit the behavior of the Commonwealth, its departments and agencies and the behavior of our corporate and natural citizens to the rule of law. Enforcement of the laws that integrate our complex body of statutes and judicial precedents depend on the efficiency of our judicial system.

The committee that undertook the revision of the Rules of Civil Procedure was appointed by the Supreme Court of Puerto Rico and is chaired by its former Chief Justice José Andreu García. The vice chairman is Judge Héctor Conti, the administrating judge of the Mayagüez region of trial courts. The committee is integrated by a number of experienced practitioners in the civil side of the law and by the two authors of Puerto Rican treaties on Civil Procedure, José Cuevas Segarra and myself.

The new rules that we presented to the Judicial Conference will provide our trial judges with the powers and mechanisms necessary to upgrade the work of our Judiciary, both as to efficiency and as to quality. The guiding principles are to facilitate access to the courts and to provide, through case management, the just, expeditious and economical handling of litigation.

Justice is not free. Litigation means expense in time and money for the parties and for the Commonwealth. Even those who litigate *in forma pauperis*—without economic resources—incur expense in time, energy and emotion, all that a judicial proceeding implies. Therefore, the most important measures to facilitate access to justice are those that reduce costs and the time that it takes for a plaintiff or a defendant to get a final decision from the court.

The new rules seek to provide this type of access in two ways. The most important is through the trial judge taking control of the case at an early stage so he or she may guide the process toward prompt termination. This procedure is called case management.

Other measures to cut costs or time are also proposed: Widening the jurisdiction of our courts so they may try cases where the defendant does not reside in Puerto Rico, but has had certain basic contacts—minimum—with our jurisdiction. This will allow our courts to hear cases originated in cyberspace, which otherwise would have to be heard in some other jurisdiction such as a state of the union or a foreign nation. In these cases, our citizens will not have to travel beyond the Commonwealth to seek justice.

The new rules shorten the time in which process must be served on the defendant from six months to three months. They eliminate the requirement of providing an oath for certain motions such as the motion to transfer the case for improper venue; they open the door for litigants to appear in court without lawyers, but they require the judge to steer the course so that the lack of knowledge about the law should not be an obstacle to the unfolding procedure; they allow the attorney for a party to issue citations or summons for witnesses to appear at depositions or at trial—now they have to get the citations from the court—they permit depositions to be taken by telephone, or video conference, and they require the lawyers of the parties to attempt resolving their differences on matters of discovery before taking up the court's time to resolve them.

Rule 60, which now allows an expedited procedure for claims of $5,000 or less, is amended to allow claims for liquidated sums up to $25,000. Under this rule, upon presentation of a complaint, a defendant is summoned by the court to appear at a hearing wherein all matters are decided and the judge enters judgment. These matters will be resolved in about three months' time.

Lawyers play a vital role in civil procedure. Their role is to meet the objective of a just, rapid and economic resolution of cases. This is why the Supreme Court deems lawyers officers of the court. Lawyers not only represent clients in litigation, they are an essential part in the workings of the Judicial Branch. Unfortunately, there has developed a culture among our profession that favors postponements of hearings and extensions of time to comply with procedural obligations. The new rules are directed toward doing away with these practices.

Rule Nine, which governs professional conduct, is amended so that when a lawyer signs a pleading or motion he is certifying to the court that he is willing and able to comply with attendance and with orders of the court; that his knowledge of the facts alleged is based on a reasonable investigation, that the

pleading or motion is sustained by applicable law and that it has not been presented to increase the cost of litigation.

The same rule establishes that the court may impose economic sanctions on a lawyer, or even disqualify him from the case, if he engages in conduct that constitutes obstruction to the administration of justice. If a lawyer, as is frequently the case, turns up in court without being prepared for a hearing, this will be deemed as obstruction of the administration of justice.

The expeditious handling of litigation cannot be achieved without the active participation and cooperation of lawyers in implementing the reforms. The Bar Association will play an important part in bringing about the reforms through the association's seminars for continuing education of the bar.

The reform that the new rules will bring about also touches on the behavior of the Commonwealth and its agencies as litigators and the intricacies of case management. I will go into these in my next column.