

Toward a more efficient court system (II)

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Volume: 36 | No: 11

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Issued : 03/20/2008

In my past column, I began to analyze the Rules of Civil Procedure proposed by the Permanent Committee appointed by the Supreme Court, which presented its report to the Judicial Conference—a meeting of all judges of the Commonwealth—last February. The purpose of this revision of the existing rules is to expedite litigation and lower its costs. The most important feature of the proposed rules is case management, contained in Rule 37.

All authorities on the administration of justice agree on the fact that control of a case by a judge at an early stage is the most effective way to achieve a more expeditious and economic resolution of litigation. This is the purpose of Rule 37.

The first draft for a new Rule 37 was prepared in my seminar on Civil Procedure at Catholic University's Law School in Ponce. It drew upon the federal Rules of Civil Procedure and the British provisions for case management. The proposal was presented two years ago to Chief Justice Hernández Denton at a conference covered by CARIBBEAN BUSINESS. Hernández Denton sympathized with the initiative and turned it over to the permanent committee, which is reviewing the rules.

The committee examined the proposal with great care. It became apparent through its discussions that case management is practiced very successfully in the U.S. District Court for the District of Puerto Rico—Senior Judge Jaime Pieras is a master at it—but that most Commonwealth judges do not engage in it. This is so in spite of exhortations from the Puerto Rico Supreme Court through several opinions, an administration rule that provides for initial conferences and case management training provided for judges by the Administration of the Commonwealth courts.

So, the committee decided to form a subcommittee composed of four judges from the Superior Court who do practice case management in their courtrooms. The idea was to draw upon their experience to fashion the rule on case management in such a way as to make it work in the Commonwealth courts. The subcommittee produced a new draft, which the full committee again discussed in great detail and finally adopted with amendments. This is the new Rule 37 that the permanent committee proposed to the Judicial Conference.

The new Rule 37 will require lawyers to evaluate their claims more thoroughly before presenting them to the court because soon after filing—when the defendant answers—they will be required to hold a meeting with the opposing lawyer to disclose their evidence, discuss certain matters and draft a report telling the court what the case is all about.

This is in sharp contrast with current practice where investigation into the facts and research in the law is not thoroughly done before filing. After filing, each lawyer—the one for the plaintiff and the one for the defendant—determines on his or her own the motions they are going to file and the discovery-depositions, etc. that they are going to engage in, and the timing of such motions and discovery. Under the new Rule 37, after the pleadings are in, the lawyers must meet, sort things out and jointly prepare the report for the judge so the judge may take control of the case.

At their meeting, required by Rule 37, the lawyers must exchange their documentary evidence and expert testimony, inform the names of their witnesses and the names of persons who might have information relevant to the case, evaluate the convenience of submitting the case to a master or arbitrator or to some alternative method of dispute settlement, determine the dates in which discovery is to be accomplished, stipulate the facts which both parties esteem to be true to avoid unnecessary presentation of evidence in court and consider settlement of the case.

The mere fact of having this meeting will result in determinations being made between both parties at an early stage, enabling them to evaluate their case and determine how or if they want to proceed further or settle. It will also advance the process much more than the current system of individual determinations as to the proceedings by the parties.

After holding the meeting, the lawyers will prepare the report for the court. In the report, they will inform the court what they have done in the meeting and what they have agreed upon. After studying the report, the judge will know what the case is all about and what the strengths and weaknesses of each party are. On that basis, the court will decide to do one of three things:

1. Set the case for an initial conference.
2. Set the case for a pretrial conference.
3. Set the case for trial.

If the judge sets the case for an initial conference, this will be held no later than 60 days after the report is presented. The initial conference will be presided by the judge with the participation of both parties to the case.

In the conference, the judge will adjudicate amendments to the pleadings, stipulations of fact, the extent and time limits on discovery, the issuance of protective orders against unwarranted discovery, the certification of the case as complex for it to be managed under special rules, the convenience of submitting certain matters to a commissioner and any other matters to expedite processing the case.

The judge will also determine the facts that are in controversy and that have to be decided upon by presentation of evidence at trial, explore transactions between the parties and set a date for trial.

After the conference, the court will issue an order which will contain all determinations made at the conference and will set the date for all discovery and other procedural events in the case. The order will also set the date for trial.

In those cases in which the court finds an initial conference is not necessary, it will set either a date for a pre-trial conference or for trial. Therefore, in all cases, the trial date will be known at a much earlier stage than it is known now.

New Rule 37 presents a challenge to our lawyers and to our courts. They are called upon to produce change within our court system. Strong leadership will be required by the Supreme Court for this challenge to be met. For Puerto Rico to function adequately in the 21st century, it is imperative they succeed.

