Expediting the judicial process

BY RAFAEL HERNÁNDEZ COLÓN

The principal complaint regarding our judicial system has been, for years, the time it takes to get final decisions from our courts. Congested court calendars have contributed significantly to this travail. Our society has become a litigious society requiring the intervention of the courts to adjudicate an ever-growing number of disputes. In order for the rule of law to prevail, judicial procedures must be expedited. The new Rules of Civil Procedure just approved by the Legislature address this problem squarely by providing for case management by our trial judges.

Traditionally, the initiative for moving cases along the judicial process rested with the plaintiff. That is, with the party that presented the complaint to the court. This was so under Spanish Civil Procedure which we had up to 1898, and continued to be so under the Code of Civil Procedure imported from California during the first half of the last century. The Federal Rules, which we adopted in 1943, brought no change in this regard. And neither did the Rules of 1958 nor the Rules of 1979. The Rules of 2010, which will go into effect on July 1, 2011, have changed this proposition. They structure a procedure whereby the trial judge will take control of the case at an early stage in order to program the sequence of events necessary to bring the case to trial or settlement.

The procedure is outlined in the new Rule 37, which is devoted entirely to case management. The manager of the case will be the trial judge. To get things started the attorneys for the parties must first meet informally to exchange evidence and information in order to prepare a report for the management of the case which they will present to the judge.

In this report the lawyers for the parties will identify all the documents and their contents which they intend to present at the trial in order to sustain their allegations; all the witnesses —including expert witnesses—they intend to call and the matters about which they will testify; the evidence that still needs to be discovered, and a proposed itinerary for the discovery of this evidence.

This new requirement imposed by Rule 37.1 will bring about a major change in the processing of cases before our courts. Under the current procedure, no such meeting occurs between the attorneys for the plaintiff and the defendant. There is no exchange of documents or information about witnesses. Each party has to pursue these matters on its own initiative. They do so by sending interrogatories to be answered under oath by the other party, or requesting the inspection of documents, or by taking depositions. This takes a long time and often presents procedural disputes the judge has to settle. Sometimes, discovery takes years depending on the complexity of the case.

Under the new Rule 37, through this exchange of information that must take place as soon as the complaint by the plaintiff and the answer by the defendant are in, the attorneys will get a good grasp of the merits and issues of the case and will be able to determine quickly what additional evidence they need, if any. Further they must program the use of the methods of discovery—interrogatories, depositions, etc.—to prepare the case for trial. The report to the judge must include the dates when the needed discovery is to take place.

Once the trial judge receives the report the judge will do one of four things with it: (1) set the case down for an initial conference between the parties presided by the judge; (2) set the case down for a pretrial conference; (3) set the case down for a settlement conference; (4) set the case down for trial.

In the initial conference the trial judge will take the parties through an item list of procedural matters outlined in Rule 37.2; the steps necessary to bring the case to trial. This intervention by the trial judge has considerable weight upon litigators and generally produces good results in obtaining stipulations from the parties as to the facts of the case to avert discovery procedures, or taking up the court's time in presenting evidence at the trial; in determining the real issues of the case to focus procedure; in a timely presentation of motions such as those for summary judgment, etc. The pre-trial conference is provided for more mature cases where motions have been disposed of and discovery completed. The settlement conference depends on an evaluation of the disposition to bargain and the starting positions of the parties regarding a settlement.

Which of these actions the judge will take depends on the complexity of the case, the need for further discovery, the maturity of the case or the probabilities of settlement. A trial judge with some experience can easily make these determinations provided that the attorneys present him will a well-fleshed-out report. Whatever action the court takes it must issue an order calendarizing the procedural events necessary for the case to be brought to trial on a certain date.

Through this procedure cases will be disposed of much faster than under the present system. This, of course, depends on the efforts put forth by the attorneys and judges to implement the new Rule 37. To bring this about the Office of Courts Administration, the law schools and the Bar Association must undertake the educational effort necessary to change a mindset in lawyers and judges implanted by a centenary tradition. It will require strong leadership from the chief justice and the Supreme Court. But it must be done. Business as usual cannot be permitted in our institutions if Puerto Rico is going to find its place in the competitive, globalized and recessionized world in which we are now living. ■

Rafael Hernández Colón is a three-term (12-year) former governor of Puerto Rico (1973-'76 and 1985-'92). He served as Justice secretary (1965-'67) and Senate president (1969-'72). He was president of the Popular Democratic Party for 19 years. Comments on this article are welcome at **caribbeanbusinesspr.com**. *Go to* **Sign in** *link on the homepage. Emails also may be sent to* **column@caribbeanbusinesspr.com.**