

New Rules of Civil Procedure

BY RAFAEL HERNÁNDEZ COLÓN

At the closing of its last session the Legislature approved the new Rules of Civil Procedure submitted by the Supreme Court at the beginning of the session. The new rules purport to expand access and accelerate judicial proceedings. Achieving these goals will depend on

the use by our judges and the Bar of the new mechanisms provided by the rules. To the extent that the judiciary accomplishes this objective, Puerto Rico will have taken an important step forward in cementing one of the essentials of a developed country and a modern economy: the effective functioning of the rule of law.

Following tradition and prescribed constitutional procedure, the new rules were prepared by a Permanent Advisory Committee appointed by the Supreme Court. This committee, chaired by the former Chief Justice Antonio Andreu García, was composed of 12 members. Ten of them were practicing attorneys with extensive and varied experience within litigation. These were: Lady Alfonso de Cumpiano, Francisco G. Bruno Rovira, Héctor J. Conty Pérez, José A. Cuevas Segarra, Waleska Delgado Marrero, Rafael Hernández Colón, Luis E. Maldonado Guzmán, Manuel Martínez Umpierre, José E. Otero Matos, Harold D. Vicente González and Sylvia Vilanova Hernández.

Two of these were professors of civil procedure and authors of text books on this matter—Cuevas Segarra and myself—and two Superior Court judges: Conty Pérez and Maldonado Guzmán. Conty Pérez—a lucid, dedicated jurist and first-class administrator—was at the time administrator of the Superior Court for the District of Mayagüez. I was later sorry to see the Judiciary lose him to the Electoral Commission. Maldonado—a competent and public-spirited attorney—was appointed Superior Court judge during the period in which the committee was preparing the new rules. Previously he served with the Corporation of Legal Services, which provides these services to the poor, and was a law professor.

The committee was assisted by the Secretariat of the Judicial Conference, particularly its director, Lilia Oquendo, and legal counselors Thainie Reyes and Maribel Cruz. This team provided the committee with first-class support and materials regarding the development of civil procedure in the U.S. and other advanced democracies, researching particular matters and drafting the new rules.

The Permanent Committee submitted the new rules to Chief Justice Federico Hernández Denton

in December 2007. He then submitted them to the Judicial Conference, which is integrated by all the Superior and Appellate judges of Puerto Rico and the justices of the Supreme Court. The judges of the Federal Court plus the Bar Association also participated in the conference.

After the Judicial Conference reviewed the rules, the Permanent Committee revised some of its recommendations and submitted the rules again to the Supreme Court. The new rules were carefully scrutinized by the Supreme Court. Several of the rules proposed were amended and the new rules were finally submitted to the Legislature last September.



As I said before, the procedure for adopting the new rules is outlined by our Constitution and by tradition. Our Constitution provides that the Supreme Court has the power to present Rules of Civil and Criminal Procedure and Rules of Evidence to the Legislature. If the Legislature does not reject them, they go into effect 60 days after the session in which they are presented ends. The Legislature may amend the rules submitted by the Court in order to approve them. The rules will then go into effect on the date the Legislature provides. The Legislature provided that the rules it has just approved with amendments will go into effect on the 1st of July 2010.

After participating in the procedure to approve the rules and reflecting on it I come away with the notion that our Constitution should be amended to vest the power of making the rules of civil and criminal procedure and the rules of evidence in the Supreme Court. This, of course, as to procedural matters, not as to matters of jurisdiction, court organization, substantive matters related to procedure or special proceedings.

The procedure to be followed by the courts to adjudicate cases or controversies is essentially a matter of the administration of justice and no one is more versed with this matter, no one more competent regarding this highly technical field than the Judicial Branch. How to proceed in order to adjudicate the cases is the bread and butter of

judges. They run into the problems or deficiencies of existing procedures every day. Ultimately they are the final arbiters of the constitutional propriety of the rules, so why not entrust them fully with the power to make the rules without legislative intervention?

When the Constitution of the United States was approved this power was vested in the Congress, which exercised it until 1934 when it delegated it to the Supreme Court with the proviso that the rules prepared by the court had to be submitted to Congress, which had the power to reject or approve them. This was the model followed by our Constitutional Assembly.

I believe the time has come to go a step further and vest the power in the Supreme Court without submitting the rules to the Legislature. The procedures followed by the court to prepare these highly technical rules involve the principal participants in the process—judges and lawyers—and can easily be expanded through the regional centers to provide for the participation of the public. This would make the procedures more agile and flexible, permitting the Supreme Court to frequently update the rules. The last body of rules of Civil Procedure was approved in 1979, the one before that in 1958 and the one before that in 1943.

These thoughts are not intended as a criticism of the way the Legislature acted upon the rules just submitted by the Supreme Court. They are basically directed at providing for a more efficient method for approving the rules: lodging the power solely in the Supreme Court. In future columns I will go into the changes brought about by the new rules. ■

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.