COUNTRY COMPARATIVE GUIDES 2021

The Legal 500 Country Comparative Guides

Puerto Rico
LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Puerto Rico.

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PUERTO RICO
LITIGATION

1. What are the main methods of resolving commercial disputes?

The main method of resolving disputes in Puerto Rico is by having a court (local or federal / judge or jury / judiciary or administrative) decide the dispute in a trial. The other method is known as alternative dispute resolution (or just dispute resolution). Alternative dispute resolution processes can be used to resolve any type of dispute including family, neighbourhood, employment, business, housing, personal injury, consumer, and environmental disputes. These can include mediation and arbitration.

2. What are the main procedural rules governing commercial litigation?

All litigation in Puerto Rico is governed by two sets of rules depending on where the case is pending. If you are litigating in local courts, the body of rules is called the Puerto Rico Rules of Civil Procedure. However, if you are engaged in federal litigation, the proceedings in the federal district court are governed by the Federal Rules of Civil Procedure. These rules are similar in many ways; however, they do have marked differences, including certain substantive sections of the local Rules that need to be considered during any litigation.

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

Our local court system has one trial level, one intermediate appellate court, and our Supreme Court. The trial level is called the Puerto Rico Courts of First Instance with regional civil, criminal, and specialized courtrooms. The first level of appeal is called the Puerto Rico Court of Appeals. The second, and court of last resort, is the Supreme Court of Puerto Rico. Some matters from the local supreme court may be appealed to the US Supreme Court.

4. How long does it typically take from commencing proceedings to get to trial?

Normally, a case can last between two to three years before it gets to trial. Cases in federal courts are processed quicker than their counterparts in local courts. Nevertheless, this period has been affected by the pandemic because of an intended stay on public gatherings, which include courthouses and trials, which arose from the necessity of protecting the health of our citizens.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

Generally, proceedings and filings are open to the public with some notable exceptions, such as family matters. However, in practice, there are certain barriers to public access worth mentioning. First, due to COVID-19, most hearings are being held via Zoom by court invitation instead of an open courtroom. Second, the courts' electronic dockets (SUMAC or EFC/CM) allow the public to see some case information. However, full access to these dockets requires having an account with the respective government provider, which is reserved for attorneys, judges, and court personnel.

6. What, if any, are the relevant limitation periods?

One (1) year for causes of action sounding in tort and four (4) years for contract claims.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Generally, there are no pre-action requirements in our jurisdiction. Nevertheless, there are a few important

exceptions to that rule, such as matters that must exhaust remedies in administrative agencies before filing a caser seeking remedies in court. Failure to comply with the exhausting of administrative remedies can lead to a dismissal without prejudice of a court cases; and, in some instances, the dismissal can be with prejudice. For instance, some labour and employment cases, tort claims against the local and state governments, etc.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

With the filing of a complaint and the corresponding court fee. A copy of the complaint is then served on the opposing party. With a few exceptions, service of process is the responsibility of the filing party.

9. How does the court determine whether it has jurisdiction over a claim?

Federal courts are courts of limited jurisdiction and can only hear cases where they have subject matter jurisdiction. This power of hearing a case is granted by the United States Congress through the enactment of specific statutes. To determine jurisdiction over a case, federal courts look at the allegations in the complaint and assess whether the statute that the claimant claims to vest the court with jurisdiction over the matter.

At the local level, courts have general jurisdiction and can exert their power over litigants in a broader variety of claims than federal courts. However, courts first assess whether they have personal jurisdiction over the parties before them to exercise that jurisdiction. In other type of cases, courts look to determine whether the litigants have complied with pre-suit notice requirements or pre-suit compliance of exhausting administrative remedies before they exercise their power over a case.

10. How does the court determine what law will apply to the claims?

In both fora, courts look to apply general conflicts of law principles, usually following the Restatement of Conflicts of Law 2nd. First, they look at relevant contractual provisions to determine whether there is a forum selection clause. Second, they look at the public policy of the competing jurisdictions before them to determine which one has the strongest interest in the litigation. Lastly, they look at contacts that each of the parties has with the jurisdiction of the forum.

11. In what circumstances, if any, can claims be disposed of without a full trial?

In Puerto Rico, claims can be disposed via settlement, mediation, arbitration, and dispositive motions, namely, motion to dismiss or motion for summary judgment. Both motions, for summary judgment and to dismiss, are dispositive vehicles that seek to dismiss a case either on the sufficiency of the pleadings (dismissal) at the beginning of the case; or, at the conclusion of discovery, because there are no existing questions of fact that need to be resolved by a fact-finder. Both motions are decided on the issues of law only. If either motion is granted, the result is a judgment dismissing the case on the merits.

12. What, if any, are the main types of interim remedies available?

Parties can seek a temporary restraining order that last for ten (10) days until a hearing on the merits of a preliminary injunction is heard. A preliminary injunction may be granted, and it is valid throughout the duration of the litigation. At the end of the trial, the court may decide to make the preliminary injunction permanent.

There are other interim remedies, such as pre-judgment attachment of property to guarantee that there will be recovery. Similarly, in admiralty cases, a vessel may be arrested (seized) by the court to ensure recovery at the end of the case. These remedies do not preclude a court from devising its own interim remedies provided there is a reasonable opportunity for the parties to be heard.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

Written documents filed with the courts are either pleadings or motions. After a claim is filed through a document called a Complaint, documents such as its Answer must be filed within 30 days in local courts, and 21 days in federal court, after the defendant is served with process. There are other documents that can be filed such as a Counterclaim, Cross claim, or Third-Party Complaint, that can be filed within 14 days after the Answer is filed. Other documents, such as the Initial Case Management Report and the Pretrial Conference Report are filed at different milestones during the case, as established by the court.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

Our local rules follow closely federal (US) disclosure rules. Generally, liberal disclosure is favoured with notable exceptions to protect privileges such as the attorney-client privilege, doctor-physician, and other well recognized privileges. The nature of the protection of confidential and commercial secrets can be requested from courts to protect the parties from abusive and improper use of such information by competitors and third parties. As to the public interest, courts look to protect public policy enforcement and general welfare.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

The identity and addresses of witnesses, as well as written statements, are part of the pretrial discovery under our rules of civil procedure. Taking depositions of witnesses upon oral examination is a part of the pretrial discovery process. During discovery, the parties are obligated to provide documentation relevant to the facts of the case at hand. The evidence does not have to be admissible in court to be produced; however, it must be relevant.

Once discovery concludes and trial ensues, the parties have a right to call witnesses that support their claim or defense. They can call the opposing party in support of their own case. When a party calls a witness to support his case, the attorney must question that witness with open-ended questions; this is called direct examination. No leading questions are allowed in the direct examination of a witness. Conversely, when a party is questioning an adverse witness, the attorney can do so with leading questions; that is, questions that suggest the answer, because that witness is considered hostile. Parties may also call rebuttal witnesses and bring rebuttal evidence to refute the opposing party's contentions. Rebuttal evidence is the one exception in the discovery process where a party need not announce its existence.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

In Puerto Rico, expert testimony is usually a requirement to prove the relationship of damages to the acts of a defendant. Experts are usually retained by the parties to a litigation. They are hired to establish either the relation between the acts of a defendant and the damages complained of; and to establish the extent of the damages suffered by a party. Because both parties retain experts to support their position, this leads to the proverbial battle of the experts. The experts are subject to direct examination and to cross-examination; and the courts may also inquire of the experts.

There are instances when courts may feel that a court appointed expert is the better way to handle certain issues. This usually works by requesting the parties to agree on an expert that they feel comfortable with and submit the name to the judge. If the court is satisfied with the expert's credentials, it can then appoint that expert for the task at hand. The cost is usually split evenly by the parties.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

Interim decisions are generally not appealable with very few exceptions. Generally, appellate courts will not entertain an appeal unless the questions is certified for appeal by the trial judge. The time frame to take these appeals is 30 days, unless you are appealing an administrative decision to the local court of appeals, which is 10 days.

Another exception is when an appeal is taken from a denial or granting class certification, it must be filed within 14 days (U.S. government has 45 days). When dealing with the issuance of an injunction, that order is immediately appealable.

18. What are the rules governing enforcement of foreign judgments?

In Puerto Rico, in local and in federal court, there is a process called *exequatur,* which a person seeking to enforce a foreign judgment must go through. It is similar to filing an *ex parte* complaint but more detailed in its execution.

19. Can the costs of litigation (e.g. court

costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

In both jurisdictions, local and federal, the prevailing party in the litigation has the right to submit a bill of costs within 10 (local) or 14 (federal) days after the trial claiming the costs of litigation, including expert witness fees, transportation, and other costs.

Regarding attorney's fees, they must be requested after the trial and usually must be part of the statute under which the prevailing party sought its remedy. There is an exception to this rule. For instance, when the losing party acted frivolously or with obstinacy and unnecessarily multiplied procedures throughout the litigation, then attorneys' fees may be awarded; however, these awards are left to the discretion of the court.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

The main mechanism in Puerto Rico for a collective redress is called a class action. This mechanist exists in both systems, local and federal, and the Rules of Civil Procedure in both jurisdictions have a specific rule that tells the practitioner the requirements for this type of action. The required elements to establish a class action at a local level (P.R. R. Civ. P. 20) and federal levels (Fed. R. Civ. P. 23) are very similar, and their differences are just a few.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

This procedure of joining third parties into an action is called impleader. A party can bring is a third party into the action within a specified period of time, as of right. If that time passes, then the defendant who wants to bring another into the case, leave of court must be requested.

Consolidation is a separate mechanism where two separate independent cases arise out of the same core of operative facts. The party interested in joining the two cases must make a motion before the court requesting consolidation of both cases. The consolidation is not automatic, and it is addressed to the sole discretion of the court. The cases are usually consolidated into the case that was filed the earlier in time.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

This is a fairly new concept in our jurisdiction. We have not found any caselaw barring this funding. However, it is important to consider that third party funding may bring to light ethical considerations regarding the attorney-client relationship, and who determines the value of the case, time of settlement and other confidential considerations that will affect the case.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

Delays have been inevitable. However, our courts (local and federal) have adopted remote hearing proceedings (via Zoom), allowing for proceedings to move forward, including bench trials and other evidentiary hearings.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

Puerto Rico has the advantage of being a mixed legal system. Judges are well versed in use of both common law and civil law to interpret potential conflict of laws issues and choice of law of both systems. For corporations, Puerto Rico General Corporations Act of 2009 is mirrored after the Delaware General Corporation, which makes it a friendly forum for interpreting said legislation and potential corporate disputes. Being a U.S. territory, it also has the benefit of having the U.S. Bankruptcy Court system, including use of 11 U.S.C. Code Sec. 362, which allows for the application of the worldwide "automatic stay" in cases of reorganization.

Additionally, given that English and Spanish are both official languages, it has the advantage of reducing expenses in translations. Also, judges can understand testimonial and documentary evidence firsthand, which is advantageous for clients from Spanish speaking countries.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

Disaster-related commercial disputes (hurricanes, earthquakes, and pandemic) and those related to the Puerto Rico bankruptcy process (PROMESA).

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

Commercial litigation has been traditionally very costly, due in part to the need to digest large amounts of data. Technology will allow digesting large amount of data in a cost-effective manner helping reduce the cost of these cases. Furthermore, the ability to hold virtual meetings, depositions, mediation, hearings and even trials will also help reduce cost and expedite matters.

27. What, if any, will be the long –term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

Remote proceedings are here to stay.

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