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Litigation Update

Puerto Rico draws a new line around expert discovery

You retained a testifying expert. How much of the back-and-forth can the other side see?

Suppose your counsel retains an expert who will testify in a Puerto Rico case. The expert sends a draft. Counsel flags a weakness, tests an assumption, or asks the expert to consider additional information. The expert revises the report. Until this month, counsel had to proceed on the assumption that much of that process could later become available to the opposing side.

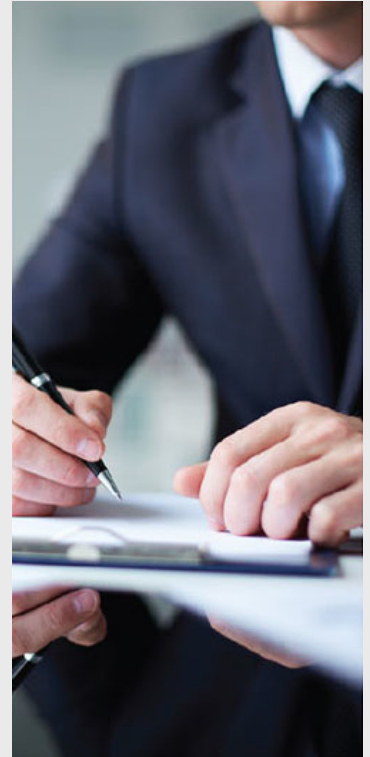
That has changed.

BEFORE: In *McNeil Healthcare, LLC v. Municipio de Las Piedras*, 206 D.P.R. 659 (2021), the Puerto Rico Supreme Court held that draft reports of a testifying expert—and communications between the expert and retaining counsel concerning those reports—were discoverable. Puerto Rico's rule, unlike its federal counterpart, simply contained no language expressly protecting them.

NOW: Act 172-2026 amends Puerto Rico Rule of Civil Procedure 23.1(c)(1) and supplies that protection. Draft expert reports and communications between counsel and the expert are now expressly protected as attorney work product and fall outside the scope of discovery, regardless of the form or medium in which they are created or preserved. In practical terms, the new rule gives counsel and experts substantially greater room to exchange ideas, test theories, and refine an expert's analysis without turning every iteration of that process into potential discovery.

THE LIMITS: The amended rule permits a court to order discovery of draft reports or attorney-expert communications to the extent they:

- (a) relate to the expert's compensation;
- (b) identify facts or data supplied by counsel that the expert considered in forming an opinion; or
- (c) identify assumptions supplied by counsel on which the expert relied in forming an opinion.



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WHAT ABOUT CONSULTING EXPERTS?

Puerto Rico continues to treat experts retained only for consultation separately. Under Rule 23.1(c)(2), their facts and opinions generally remain protected unless exceptional circumstances make it impracticable to obtain equivalent information by other means.

WHAT COMES NEXT

Act 172-2026 largely aligns Puerto Rico with federal practice, although the two rules are not identical. Federal case law should offer useful guidance as Puerto Rico courts begin to define the new protection's scope. For companies litigating in Puerto Rico, the immediate takeaway is straightforward: **the rules governing how counsel works with retained experts have materially changed—and existing expert protocols should change with them.**

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