

FROM THE BAR

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The Federal Bar Association Newsletter

What Can Puerto Rico Do?

by Zack A. Clement

Puerto Rico is insolvent, unable to pay current maturities of debt for itself and its municipal corporations and unable to pay that debt in full. Continued support of its public corporations is placing an ongoing financial strain on Puerto Rico and addressing their solvency would improve Puerto Rico's solvency.¹

Recrimination about what led to this state of affairs is not helpful. Puerto Rico is not alone. Many states and municipalities have the same problem—huge bond debt and pension liability built up over 50 years since World War II. There is \$3.7 trillion of outstanding municipal debt and over \$1.5 trillion of unfunded pension liability in the 50 states; together, these are 1/3 the size of the national debt.²



To Lead or Not

Puerto Rico is at a crossroads. It could choose to take charge of its challenges like a "debtor-in-possession" in a U.S. Chapter 11 case,³ imposing cost-cutting austerity on itself, assessing how to raise more revenue, and proposing a fair and equitable financial restructuring plan that offers to pay what it can feasibly afford. If Puerto Rico does not do so, the capital community will tell it how much austerity and tax increase it must impose in order to receive the next bailout loan. The

proceeds of that loan are likely to be used to repay existing bondholders who currently have a claim against an insolvent borrower and weak remedies to collect that claim. The austerity and tax increases the capital community demands might actually be counter-productive and further depress the Puerto Rican economy; it has happened before.

To lead like a debtor-in-possession, Puerto Rico will need to analyze (i) whether and how much more it can cut expenses and raise revenues without ruining its economy and (ii) how it should deal with its contracts and bonds claiming to be fully secured. It can then formulate a plan to pay its secured creditors the value of their collateral and its unsecured creditors all it can reasonably afford to pay.

Puerto Rico can meet with creditors and present its economic analysis to persuade them to agree to its plan premised on that analysis. If the plan proposes substantial principal reductions, creditors might refuse to believe Puerto Rico's economic analysis or to agree to the restructuring plan, and a payment moratorium might be necessary to finish persuading them that they should accept the bargain offered

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What Can Puerto Rico Do?

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in the plan.⁴ During such a moratorium, Puerto Rico might need to defend against collection lawsuits and live off its tax receipts. Eventually, Puerto Rico might persuade many creditors to go along with its plan because its economic study shows it is all Puerto Rico can reasonably afford to pay, the plan is better than continued non-payment during the moratorium, and it is better than creditors would get if they continued pursuing their remedies.

Chapter 9 Principles

What court procedures are available to Puerto Rico or its municipalities to force a fair and equitable plan on holdout creditors who will not agree to such a plan? Chapter 9 would provide an excellent substantive and procedural law to deal with the insolvency of Puerto Rico's municipalities, including its public corporations. Chapter 9 provides for deference to the sovereignty of a state⁵ and its municipalities.⁶ In *U.S. v. Bekins*, 304 U.S. 27 (1938), the Supreme Court found that, unlike a predecessor statute, the then recently amended municipal bankruptcy act was constitutional because it contained protections for the sovereignty of a state which can choose to waive limited amounts of its sovereignty to permit its municipalities to use federal bankruptcy power to breach contracts to solve their financial problems. States are prohibited from exercising this power because of the U.S. Constitution's prohibition against states impairing contracts.⁷

To protect state sovereignty, chapter 9 provides that a creditor cannot file an involuntary bankruptcy case against a municipality, only the municipal debtor can file a plan, and a chapter 9 case cannot be converted to a chapter 7 liquidation to sell the municipality's assets to pay creditors. A chapter 9 case of an eligible debtor can only be dismissed if the court finds it was not filed in "good faith" or the debtor has not made timely progress toward confirming a plan of debt adjustment.⁸

There are three basic standards for confirming a chapter 9 plan. First, the plan must be feasible. This means that a plan of debt adjustment should leave the government with adequate resources to be able to pay its restructured debts and to provide adequate services to its citizens.⁹

Next, the plan must be in the "best interests of creditors." Congress did not make applicable in a chapter 9 case the chapter 11 test based on the hypothetical liquidation of a debtor's assets.¹⁰ Rather, in chapter 9, best interests of creditors means that creditors will receive at least as much as they would get if the case were dismissed, and they were left to pursue their state law remedies.¹¹

Finally, a plan must be fair and equitable if it is to be enforced against holdout creditors. Fair and equitable treatment of secured claims generally means providing secured creditors with the value of their collateral.¹² By contrast, fair and equitable treatment can be provided to unsecured claims as long as no junior class recovers any value.¹³ Since

a municipality has no equity holders to receive any value, this standard is easy to prove even though unsecured claims are paid less than in full. Since the Great Depression, federal courts have applied a subjective test in municipal bankruptcies that asks whether creditors have been paid all they can reasonably expect under the circumstances.¹⁴ These cases have analyzed whether the debtor has made

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reasonable cuts in expenditures (in the language of modern sovereign debt restructures, had "reasonable austerity") and made reasonable use of taxation to be able to pay all it can reasonably afford.

In Detroit's chapter 9 case, where the Detroit Art Museum is allegedly worth billions of dollars, questions have arisen about whether there is a duty to make reasonable efforts to monetize that asset for the benefit of creditors. Requiring a city to sell assets to confirm a chapter 9 case would be at odds with the required deference to a municipality's decisions about the use of its assets as required under *Bekins* and sections 903 and 904 of the Bankruptcy Code, and at odds with Congress' decision not to apply a hypothetical asset liquidation test in Chapter 9.¹⁵ If the fair and equitable standard requires a municipality to consider monetizing its assets, then, at a minimum, section 904 requires deference to the judgment of the debtor's elected officials.¹⁶

It Will Be Difficult for Puerto Rico to Use Chapter 9

Although Chapter 9 would provide an ideal framework for the resolution of Puerto Rico's economic challenges, the Bankruptcy Code specifically provides that Puerto Rico is not a "State" that can authorize its municipalities to file a chapter 9 case.¹⁷ It is not clear why Congress, empowered by the Bankruptcy Clause of the Constitution to pass uniform bankruptcy laws throughout the United States,¹⁸ chose to so explicitly discriminate against Puerto Rico.

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What Can Puerto Rico Do?

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As Chapter 9 appears unavailable to Puerto Rico's municipalities, can Puerto Rico find other ways to apply central sovereign debt restructuring principles -- that a plan should pay unsecured creditors all the government debtor can reasonably afford, more than they would receive by exercising their remedies, still leaving enough money to feasibly provide services to citizens?

The Limits of a Puerto Rico Restructuring Law

If Puerto Rico tries to pass its own debt restructuring law it will be far less powerful than federal bankruptcy law. *Bekins* described how state law cannot fully resolve municipal insolvency, noting that:

There is no hope for relief through statutes enacted by the States, because the Constitution forbids the passing of State laws impairing the obligations of existing contracts.¹⁹

This is illustrated in a bill currently being considered in the Puerto Rico legislature to establish a bankruptcy style proceeding under Puerto Rico law (the "Bill"). It provides explicitly that there should not be any "significant" impairment of contract.²⁰ Moreover it would permit creditors to pursue an involuntary bankruptcy proceeding against a Puerto Rico municipal corporation and permit liquidation of the corporation if no agreement can be reached on a plan approved by 75% of creditors during such a case, a substantial new remedy.²¹

The only other state law municipal bankruptcy procedure ever approved by the Supreme Court was enacted in New Jersey during the Great Depression at a time when there was no applicable federal municipal bankruptcy statute. It permitted a municipal debtor to propose a restructure plan, did not permit an involuntary bankruptcy filing by creditors and certainly did not provide for the possible liquidation of the municipality.²²

Puerto Rico law currently provides for limited remedies against the Commonwealth.²³ The Bill under consideration in the legislature would give creditors the ability to initiate a state bankruptcy proceeding that could result in a liquidation sale of a public corporation's assets would provide them a substantial new remedy. It would substantially increase creditors' leverage in negotiations with Puerto Rico, permitting them to demand greater austerity, tax increases and asset liquidation as a precondition to any deal restructuring Puerto Rico's finances.

Beyond the will to cut costs and raise revenue reasonably without ruining Puerto Rico's economy, and the tenacity to endure a payment moratorium long enough to persuade creditors to agree to a reasonable debt restructuring plan, what other power does Puerto Rico have to force holdout creditors to accept its plan?

Federal Equity Receivership

Puerto Rico's municipal debt problem bears many similarities to the U.S. railroad industry in the late 1800's. It was in the national interest of the United States to support the creation of a nationwide rail transportation network. Many of these railroad companies became insolvent as they were building their railroad systems and would have been worth very little if they had been liquidated in a series of foreclosure sales concerning different segments of track. The only way to preserve going-concern value and ultimately get the rail network built was to stay foreclosure, keep the rail network together and approve fair and equitable plans of reorganization negotiated with creditor majorities.

Federal courts did this through equity receivership proceedings that preserved going concern value and allocated it fairly. These proceedings developed the concepts of "fair and equitable" and the "best interests of creditors" that Congress later codified in bankruptcy acts and the current Bankruptcy Code concerning railroads, corporations and municipalities.²⁴ Thus, in response to a very substantial economic problem in the growth of the United States, federal equity receiverships developed principles that Congress later repeatedly codified as federal bankruptcy law.

Recently, the Northern Mariana Islands Retirement Fund used a federal equity receivership after unsuccessfully trying to use chapter 9 to address its insolvency. The bankruptcy court praised the Fund for trying to solve its problems but dismissed the bankruptcy case because the Fund was not an "instrumentality" of a state eligible to be a chapter 9 debtor under the Bankruptcy Code.²⁵ The Fund then developed a plan to resolve its insolvency by settling claims against third parties who owed funding to the Fund, by agreeing with certain beneficiaries to reduce benefits owed and filing a federal equity receivership proceeding to implement the restructuring plan contained in the global settlement agreement.²⁶

Following the general analysis of *Bekins* and the example of the Northern Mariana Island Retirement Fund, the federal court system could act again through federal equity receiverships for Puerto Rico and its municipalities to address a substantial public problem – unsustainable public debt that they cannot afford to pay without ruining their economies and their ability to provide services to their citizens.

In *Bekins* the Supreme Court praised cooperation between a state and the federal government where the federal government provided bankruptcy power to solve a specific economic problem that the state lacked the power to solve.

In the instant case we have cooperation to provide a remedy for a serious condition in which the States alone were unable to afford relief. . . . The natural and reasonable remedy through composition of the debts of the district was not available under state law by reason

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of the restriction imposed by the Federal Constitution upon the impairment of contracts by state legislation. The bankruptcy power is competent to give relief to debtors in such a plight and, if there is any obstacle to its exercise in the case of the districts organized under state law it lies in the right of the State to oppose federal interference. [When] the State steps in to remove that obstacle[,] the State acts in aid, and not in derogation, of its sovereign powers. It invites the intervention of the bankruptcy power to save its agency, which the State itself is powerless to rescue. Through its cooperation with the national government the needed relief is given. We see no ground for the conclusion that the Federal Constitution, in the interest of state sovereignty, has reduced both sovereigns to helplessness in such a case.²⁷

What Puerto Rico Can Do

It is not possible to guarantee that the federal courts will exercise their powers to deal with unsustainable public debt in Puerto Rico as they did in the Northern Mariana Islands and the railroad receiverships. However, there are good policy reasons and precedents for the federal courts to do so. If the prospect of the federal court conducting an equity receivership to implement a restructuring plan encourages Puerto Rico to lead like a debtor-in-possession, it will have a much better chance of negotiating an acceptable deal with its creditors.

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Endnotes

¹ This article summarizes a PowerPoint presentation made by the author to the Puerto Rico Federal Bar Association on May 14, 2014, entitled “Modification or Discharge of Debt in a Chapter 9 Case and How this Could be Relevant to Puerto Rico”, and an article published in April 2014 in the *American Bankruptcy Law Journal*, Zack A. Clement and R. Andrew Black, “How City Finances Can Be Restructured: Learning from Both Bankruptcy and Contract Impairment Cases”, 88 *Am. Bankruptcy L.J.*, 41-84 (2014). Both the PRFBA PowerPoint and the ABLJ article are available by request to the author.

² Clement and Black, pp. 42-46.

³ Chapter 11 of the United States Bankruptcy Code permits a debtor corporation’s officers and directors to remain in control of its assets and to lead to its reorganization. 11 U.S.C. § 1107. They only lose control to the appointment of a trustee if they fail to provide proper leadership to reorganization. 11 U.S.C. § 1104.

⁴ According to an attorney who has represented many governments restructuring their sovereign debt over the last 30 years, “[b]y far the most popular—one is often tempted to say ‘ubiquitous’—technique for discouraging holdouts is to threaten them with a prolonged payment default unless they join the restructuring.” R. Lastra and L. Buchheit, *Sovereign Debt Management* (Oxford, 2014), at 17.

In some cases, a payment moratorium has been combined with reducing the remedies available to bondholders. *Id.* at 20. In one case, the United Nations issued a de facto injunction against actions to collect on old bonds against the assets of the debtor country. *Id.*

⁵ “This [chapter 9] does not limit or impair the power of the state to control, by legislation or otherwise, a municipality of or in such state in the exercise of the political or governmental powers of such municipality....” 11 U.S.C. § 903.

⁶ “Notwithstanding any power of the court, unless the debtor consents or the plan [of debt adjustment] so provides, the court may not ... interfere with (1) any of the political or governmental powers of the debtor, (2) any of the property or revenues of the debtor; or (3) the debtor’s use or enjoyment of any income-producing property.” 11 U.S.C. § 904.

⁷ U.S. Const., Article 1, sec. 10.

⁸ 11 U.S.C. §§ 921(c), 930(a)(4), (5), and (6).

⁹ Clement and Black, p. 49.

¹⁰ *Id.*

¹¹ *Id.*, pp. 49-52. Creditor remedies against governments under state law are severely limited. Execution of a judgment against government assets is generally prohibited, see, e.g., Tex. Const. Art. XI, § 9, and judgments may only be enforced for a limited period. For example, in California and Texas, judgments are valid for 10 years, with a possibility of a one-time extension. Cal. Gov. Code § 970.1; Tex. Civ. Prac. and Rem. Code § 34.001. Under most state law, sovereign immunity has been waived no further than to permit a creditor to seek a writ of mandamus from a court. Moreover, mandate orders are limited in at least two respects. For example, in California (i) they can only enforce clear and present duties; and (ii) the duty must be ministerial rather than involve discretion. *People ex rel. Younger v. County of El Dorado*, 5 Cal. 3d 480, 491 (Cal. 1971); *Sklar v. Franchise Tax Bd.*, 185 Cal. App. 3d 616, 624 (Cal. App. 1st Dist. 1986) (the “fundamental constitutional principle [of separation of powers] has given rise to the rule that “[m]andamus will not lie to compel a legislative body to perform legislative acts in a particular manner”). Separation of powers places obvious limits on mandamus, which the U.S. Supreme Court has characterized as an “empty right to litigate.” *Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 U.S. 502 (1942).

¹² This can be done either by (1) allowing secured creditors to retain their liens and to receive cash payments over time equal to the value of their collateral, or (2) selling the collateral at an auction in which secured creditors can credit bid their lien, or (3) by abandoning the collateral to the secured creditor. 11 U.S.C. § 1129(b)(2)(A).

¹³ 11 U.S.C. § 1129(b)(2)(B).

¹⁴ Clement and Black, pp. 52-55

¹⁵ *Id.* at 49-52.

¹⁶ 11 U.S.C. § 1129(a)(3); Clement and Black, pp. 52-55.

¹⁷ 11 U.S.C. § 101(52)

¹⁸ U.S. Const. Article I, § 8(4).

¹⁹ *Bekins*, 304 U.S. at 51 (quoting the report of the Committee on the Judiciary of the House of Representatives, H. Rep. No. 517, 75th Cong., 1st Sess.).

²⁰ Senate Bill 993, presented by Senators Rosa Rodriguez and Power Nadal to create the Restructuring Act Public Corporations.

²¹ *Id.* at Articles 5 and 12.

²² *Faitoute Iron & Steel Co. v. City of Asbury Park*, 216 U.S. at 504-05.

²³ Even if a bond is covered by the “continuous appropriation” contained in 13 L.P.R.A. § 141d, the remedy for non-payment appears to be a mandamus action which might result in a \$500 fine against a public official. 32 L.P.R.A. §§ 3431, 3433. Otherwise, authorization is granted to bring civil actions against Puerto Rico for up to \$75,000 [32 L.P.R.A. § 3077(c)] and the Commonwealth “shall promptly settle any judgment against it up to the maximum set forth in § 3077 of this title.” 32 L.P.R.A. § 3082. Where a judgment is rendered against the Commonwealth in excess of the \$75,000 limit in § 3077(c), the holder of that judgment can seek specific legislative authority that it be paid more. *Valentin v. Commonwealth*, 84 P. R. R. 108 (1961).

²⁴ See Clement and Black, pp. 63-65, fn. 126 and 127.

²⁵ In re: N. Mar. I. Ret. Fund, 2012 U.S. Dist. LEXIS 131709 *8 (2012).

²⁶ Clement and Black, p. 63.

²⁷ *U.S. v. Bekins*, 304 U.S. at 53-54.

Our Chapter at 50



I made an amazing discovery as I was doing my research for this column. The FBA's Puerto Rico Chapter was chartered in 1964, which means that ***Our Chapter Is 50 This Year!*** This milestone deserves ample recognition, and I know that we will all do our part to celebrate and commemorate these pivotal moments in our chapter's history. The reason why this discovery struck me as particularly noteworthy is that our main theme for this year—in the aftermath of our successful convention—is finding new ways to move our chapter forward and improve our service to you.

As many of you know, our first foray into new areas has already produced great results. This year, our chapter launched a groundbreaking partnership with Microjuris, a locally-owned leader in the legal research field, to provide first-rate Continuing Legal Education (CLE) courses. We have named our partnership ***Raising The Bar***, in recognition of our commonly-shared interest in continuously improving the quality of federal practice in Puerto Rico. We will work together to develop federally-themed CLE courses that will

feature both a live component and an online component thereafter, which means that our CLE courses will now be available in your smartphone. It is our earnest hope that through this burgeoning partnership, we will become a trusted resource for you, our members, for the bar, and for the community. Happily, our very first CLE—a standing-room-only success that became the #1 best-attended CLE in Microjuris history—is pointing the way to the future.

Our heartfelt congratulations go to our newest United States District Judge, the Honorable Pedro A. Delgado. Judge Delgado is President Barack Obama's first nominee to the federal bench in Puerto Rico. Unsurprisingly, Judge Delgado's nomination sailed through the United States Senate, which unanimously confirmed him earlier this year. Judge Delgado's remarkable journey is a tribute to our bar and to the federal bench, and we are fortunate to have him as a member of the federal judiciary in Puerto Rico. We are very grateful and humbled that Judge Delgado has chosen the FBA's Puerto Rico Chapter as the forum for his very first public appearance following his investiture. We look forward to hosting him at our June 12 luncheon.

As our Puerto Rico Chapter turns 50, we have very good company. This year, the iconic Civil Rights Act also turns 50. We have a lot of work to do on both counts. I look forward to that.

—Andrés W. Lopez, FBA-PR President

SEMINAR

Puerto Rico in Crisis: Current Topics in Public and Private Sector Restructurings and Bankruptcies

On May 14, 2014, the Federal Bar Association of Puerto Rico, in coordination with Microjuris, hosted the seminar "Puerto Rico in Crisis: Current Topics in Public and Private Sector Restructurings and Bankruptcies". The seminar had a record turnout, with over 100 participants from various private law firms, government agencies, financial institutions, and the federal courts of Puerto Rico.

The seminar had three panels of judges, lawyers and financiers on various insolvency topics—two of the panels focused on important recent decisions on insolvency and bankruptcy related issues that affect the balance among key Chapter 11 constituents such as debtors, secured creditors, unsecured creditors and insiders, and the third panel focused on alternatives for restructuring Puerto Rico's financial obligations. During each panel, attendees had the opportunity to ask questions and participate.

The first panel, "Key Puerto Rico Decisions for Insolvency Professionals", was moderated by the Honorable Judge Brian K. Tester, Bankruptcy Judge for the United States Bankruptcy Court for the District of Puerto Rico, and included Luis C. Marini-Biaggi, of O'Neill & Borges, LLC, Patrick J. Potter, of Pillsbury Winthrop Shaw Pittman LLP, and Charles A. Cuprill, of Charles A. Cuprill law offices. The panel had a lively discussion from the perspective of borrowers and lenders on recent Puerto Rico federal and bankruptcy court decisions on important insolvency and bankruptcy related issues that affect the balance among creditors, individuals and corporate debtors on areas such as perfection of security interests, chapter 11 plans, adequate protection, the automatic stay, and others.

The second panel, "Key Mainland Decisions for Insolvency Professionals", was moderated by the Honorable Enrique S. Lamoutte, Chief Bankruptcy Judge for the United States Bankruptcy Court, District of Puerto Rico, and

included Hermann D. Bauer-Álvarez, of O'Neill & Borges, LLC, Carmen Conde, of C. Conde & Associates, Jerry L. Hall, of Pillsbury Winthrop Shaw Pittman LLP, and Nelson Robles-Díaz, of Nelson Robles-Díaz Law Offices, P.S.C. The panel discussed recent decisions from the mainland on topics such as claims trading, the absolute priority rule, avoidance actions, plan confirmation, financing for debtor-in-possession, and others.

The final panel, "Restructuring Government Debt using Chapter 9 Principles", was headed by Zack A. Clement, of Fulbright & Jaworski LLP and also included Nelson Robles-Díaz. The panel addressed developments in municipality bankruptcy filings in the U.S. and their impact on Puerto Rico. It also analyzed and discussed what Puerto Rico can do to restructure its bond debt and what court procedures are available. The panel provided a practical analysis of alternatives, following recent examples in other cities and countries, available to Puerto Rico.

The Hon. Raymond L. Acosta – Puerto Rico Chapter of the Federal Bar Association has announced a historic partnership agreement with Microjuris.com.

Both organizations are focused on improving federal practice in Puerto Rico.

- During the second quarter of 2014, they expect to produce the first CLE course for both the traditional classroom environment as well as for the Microjuris.com online CLE platform.
- The first *District Court Case Summaries* will be published in the legal news blog <http://aldia.microjuris.com> beginning in April 2014, along with corresponding alerts via Twitter and Facebook.
- Other immediate benefits to all FBA-PR members include: free access to the District Court Opinions Collection via Intellisearch™, the Microjuris.com proprietary search system and to the Microjuris.com SherLAWck email alert service. SherLAWck allows each member to stay up-to-date regarding Puerto Rico laws and regulations as well as Puerto Rico Supreme Court Opinions with a personalized profile feature tailored to practice areas of interest.



“THIS GROUNDBREAKING AGREEMENT WILL ALLOW US TO EXPAND OUR ARRAY OF SERVICES AND TO BRING DIRECT BENEFITS TO ALL ATTORNEYS WHO PRACTICE FEDERAL LAW IN PUERTO RICO.”

—Andrés W. López, Esq.
President of the FBA’s Puerto Rico chapter

“WE ARE COMMITTED TO SUPPORTING THE FBA’S LOCAL CHAPTER IN PUBLISHING CASE SUMMARIES AND IN PRODUCING CLE COURSES. THESE ARE ONLY THE FIRST INITIATIVES AS WE SEE MANY POSSIBILITIES FOR FURTHER COLLABORATION AND ‘RAISING THE BAR’ FOR FEDERAL PRACTITIONERS IN PUERTO RICO.”

—Miguel Marxuach Lausell, CEO of Microjuris.com



INDUCTION CEREMONY HON. PEDRO DELGADO HERNÁNDEZ



Remarks by Pedro A. Delgado Hernández on the Occasion of his Investiture as United States District Judge

Good afternoon.

I am humbled by the presence of so many distinguished persons, family, colleagues, and friends.

In a sense, I feel like a referee in a professional basketball game: surrounded by giants.

Speaking of giants, some years ago, in high school, I had the opportunity to meet Sister Luisa Casellas and Sister Marianita Zabala.

At that time, I was not aware of how important their work was. They were teachers. They have educated generations and generations of students, and selflessly dedicated their life to assist others in the community.

Sister Luisa, Sister Marianita, it is a pleasure to have you with us today. Also here is Mariluz Frontera. Mariluz is partner in life of Efraín Rivera Pérez.

Efraín served as Judge in the District Court of Puerto Rico, the Superior Court of Puerto Rico, the Puerto Rico Court of Appeals, where I had the opportunity to serve with him, and the Puerto Rico Supreme Court. At the Supreme Court he was an Associate Justice from his appointment in 2000 until his retirement from the Bench in 2010.

Justice Rivera Pérez recently passed away and cannot be physically with us, but with Mariluz he surely is well represented.

One of the best kept secrets in Puerto Rico is the Office of the Solicitor General.

The Office of the Solicitor General represents Puerto Rico before courts with appellate jurisdiction over Puerto Rico.

The Office is staffed with first rate professionals.

I served as Solicitor General but am not the first member of our Court to have done so. Judge Gelpi served in that position as did Judge Juan Fernández Badillo and Judge Gilberto Gierbolini.

Former Solicitors General have also been or are members of the Puerto Rico Judiciary such as Myriam Naveira, who retired as Chief Justice of Puerto Rico, Associate Justice Anabelle Rodríguez, Court of Appeals Judge Irene Soroeta, and Retired Appeals Court Judge Rafael Ortiz Carrión.

Other Solicitors such as Jorge Pérez Díaz and Roberto Sánchez Ramos went on to serve as Secretaries of Justice of Puerto Rico.

The Solicitor General, the Hon. Margarita Mercado, was gracious enough to accept my invitation to attend this ceremony. To her I can only say, keep the Good Works.

I wish to express my appreciation to my family for the uncompromising support it has given me not only as part of the nomination and appointment process, but throughout the years; to the Resident Commissioner for having recommended me to the President and for his support and remarks before the Senate Judiciary Committee; to the members of the Judiciary Committee, in particular the Committee's Chairman, Senator Leahy, the Ranking Member, Senator Grassley, and Senator Whitehouse, who presided over my confirmation hearing; and to President Obama, for his faith and trust in nominating and appointing me to this Court.



I only hope that I am equal to the task that is expected of me.

As I commence in this new position and encounter different challenges as a United States District Judge, I want to share some thoughts with you.

My decisions will be based on the facts and the law, and not made to please any one party or attorney in a case.

Decisions will be made without taking into account any type of possible public reaction to them, whether favorable or not.

Sometimes, maybe most of the time, those decisions will not be well received and because of them, I may be the subject of constant and at times strong or even vicious criticism.

That comes with the territory. I would be faint hearted and acting contrary to the oath of office if I were to allow those comments to control my decision making process.

As I analyze and decide cases, my knowledge of the issues put before me may never be complete. To counter this limitation, I will be a tireless and unflagging student of the law.

At the end of the day, though, I am, have been, and continue to be Pedro Delgado Hernández, an attorney lucky enough to be appointed United States District Judge.

I will be the Pedro Delgado Hernández that you have known, complete with imperfections.

But I say, I will wear the robe with humility and respect to the Court, and to the community we serve from this extraordinary position of public trust.

Thank you very much for accompanying me today.

Friday, May 23, 2014

INDUCTION CEREMONY HON. PEDRO DELGADO HERNÁNDEZ

Remarks by Manuel San Juan, Esq.

For the fourth time in this district, I am honored to appear at the induction ceremony of a newly minted U.S. District Court Judge, to speak on behalf of the American Bar Association's Standing Committee on Federal Judiciary.

As you have heard me explain before, the standing committee on federal judiciary consists of one member from each judicial circuit (actually two from the ninth circuit), and it conducts an exhaustive, non-partisan evaluation of the qualifications of each person who is being considered for nomination to serve on the federal courts. The evaluation focuses on three criteria: professional competence, integrity and judicial temperament. Our committee's recommendations are forwarded to the white house in strictest confidence. The committee's rating is released only after the president publicly announces his intention to make the nomination or submits the nomination to the senate.

Since a major portion of the investigation consists of interviews with judges and lawyers, the committee serves as a conduit through which the views of the bench and bar are communicated to the president. In a very real sense, it is the only peer review that is conducted in connection with a judicial nomination.

In the case of Mr. Delgado, who has been both a practicing lawyer and a judge, the investigation consists of interviews with his colleagues on the bench, as well as judges before whom he has appeared as counsel, lawyers who have appeared before him, lawyers he has litigated against, other civil leaders and members of the community. It also includes a thorough review of his written opinions, briefs and other legal papers. The results are independently analyzed by each of the members of the committee, all of whom share the goal of achieving excellence in judicial appointments.

I am very pleased to report that after a thorough investigation, the committee unanimously found Pedro Delgado to be "well qualified" for appointment to this honorable court. This is the A.B.A.'s highest rating for a candidate to judicial office.

To merit such a rating an individual must be at the top of the legal profession in his or her legal community; have outstanding legal ability, breadth of experience and the highest reputation for integrity, as well a demonstrated capacity for judicial temperament.

I'm sure that all of you who know Pedro Delgado will agree that he embodies all of these qualities to the highest degree, and I have no doubt that he will be an outstanding district court judge.

On behalf of the American Bar Association, we congratulate Judge Pedro Delgado Hernandez and his family on his appointment, and extend to him our warmest wishes for a long and distinguished career as a member of this court.

Remarks by Salvador J. Antonetti Stutts

Dear Judge Delgado, Chief Judge Delgado, Judge Torruella, other Active and Senior Judges of the District, Clerk of the Court, and assembled guests and friends:

It was with great pleasure that I accepted the invitation to before you this afternoon to congratulate my dear friend and former partner, now Judge Pedro Delgado, on his investiture as U.S. District Judge for the District of Puerto Rico.

I first heard of Judge Delgado in 1994, when he was the Solicitor General of Puerto Rico—the principal litigant before the Puerto Rico Supreme Court. At that time, I was clerking in that Court and had the pleasure of reading many of the excellent briefs that he submitted before that Court.

I later heard that Judge Delgado had gone on to be appointed to the Puerto Rico Circuit Court of Appeals, but it was not until I started clerking for the Honorable Judge Juan R. Torruella that I really began to get to know more about him as a person. Judge Torruella and his assistant, the essential Nydia Feliciano (whom most of you also know), would at times talk to us about a great former law clerk, Pedro Delgado, who had been present at the start of Judge Torruella's tenure in the Court of Appeals, and who was dearly loved and admired by all who knew him.

A few years later, around 2004, I first met Judge Delgado in person. I saw him in this very courtroom, arguing his client's position with great eloquence, not only clearly and persuasively, but also with the elegance and integrity that characterize him—and also with his unmistakable and inimitable Southern drawl, gained during the time in the Army.

Shortly thereafter, when I became Solicitor General, I turned to Judge Delgado (and to Judge Gelpi) for advice. Both served as a fount of support and wise counsel that was invaluable for me, particularly when I was learning the ropes.

Finally, when I finished in that office and joined O'Neill & Borges, Judge Delgado was there to greet me, and for the following six years, we worked together on many fascinating cases and on developing an active joint appellate practice.

And above all, we became great friends.

I truly miss working with Judge Delgado. Perhaps most of all, I miss our frequent meetings—usually in the mornings—to discuss any of a wide variety of matters that were piquing his intellectual curiosity at that time. We discussed the practice and theory of law, history, you name it. His curiosity—and his knowledge—knew no bounds, and apparently so did the length of our conversations, which my secretary used to tease us about.

Continued on page 10

INDUCTION CEREMONY HON. PEDRO DELGADO HERNÁNDEZ

Remarks by Roberto Cámara Fuertes, President-Elect, FBA PR Chapter

Chief Judge Delgado, District Court Judges, Judge Delgado Hernández, Frances Ríos de Morán, Clerk of the United States District Court, United States Attorney, Chief Justice of the Supreme Court of Puerto Rico and Associate Justices, Distinguished Members of the Executive Branch,

On behalf of the Puerto Rico Chapter of the Federal Bar Association and its Board of Directors, I congratulate Judge Pedro Delgado Hernández on his investiture as a United States District Court Judge. As we know and have heard here today, Judge Delgado Hernández is a fine addition to the distinguished and honorable men and women of the law who have served or are currently serving as District Court Judges in our District.



The Federal Bar Association represents the Federal legal profession. The organization has more than 16,000 federal lawyers across the United States, including 1,200 federal judges. The mission of the Federal Bar Association is to promote the sound administration of justice and integrity, quality and independence of the judiciary. That goal is achieved partly by ensuring the continued existence of a strong, well-funded, appropriately staffed and independent judiciary. Without a doubt, the addition of Judge Delgado Hernández furthers that mission and strengthens our judiciary.

The Puerto Rico Chapter of Federal Bar Association is pleased to be a part of this event and shall continue its quest to support the Federal Judiciary. Of course, we hope not to pester Judge Delgado Hernández *too soon* for assistance in our Brown Bag lunches, luncheons, CLE seminars and other Chapter activities, many of which he participated as a longstanding member of our Chapter.

Congratulations to you, Judge Delgado Hernández and to your close family. And congratulations to the People of Puerto Rico and your new extended federal family on this great and celebrated occasion that advances the federal practice and strengthens the federal judiciary. *Enhorabuena.*

Thank you.

Remarks by David P. Freedman, Esq.

Good afternoon, Judge Delgado-Hernandez,

On behalf of the Inter-American Bar Association, I am most pleased to congratulate you on your investiture. Your experience and preparation in both the Civil Law and common law strengthen further the already substantial capacity and contributions of the federal judiciary in Puerto Rico to the Rule of Law throughout the Americas, and the mutual support and exchange between Civil Law and common law traditions.

The Inter-American Bar Association (“IABA”) represents a permanent forum for the exchange of professional views and information for lawyers to promote the Rule of Law and protect the democratic institutions in the Americas. Founded in 1940 by a group of distinguished lawyers and jurists representing forty-four professional organizations and

seventeen nations of the western hemisphere, it has grown now to include bar associations and individual lawyers from virtually all of the American republics. As Puerto Rico is at the crossroads of the Americas, it is no accident that the Inter-American Bar is holding its 50th Conference here next month at the Puerto Rico Sheraton June 24–28.

Your Honor, we are confident that your scholarship, knowledge and varied experience in areas including commercial and civil litigation, equip you well for your new role of public service. As you preside in your court at the crossroads of the Americas, we look forward to your intellectual contributions to prominence of the federal Puerto Rico judiciary, and to the Rule of Law of Law in the Americas. Heartiest congratulations!

INDUCTION CEREMONY HON. PEDRO DELGADO HERNÁNDEZ

Stutts Remarks...

Continued from page 8

In thinking about Judge Delgado, one indelible image comes to mind. He had a tendency to appropriate entire conference rooms in order to turn them into war rooms in preparation for his cases. I will never forget the sight of walking into Conference Room B and seeing the entire huge table covered in stacks of exhibits and books, and Judge Delgado moving from one stack to another, committing everything to memory. It was an impressive, inspiring, and even intimidating sight. I know that he will bring that kind of thoroughness to his judicial work.

Before I finish, I want to underline two aspects of Judge Delgado's professional life that bear mentioning.

One is that he has handled complicated transitions at least twice before, first when he served as Judge Torruella's law clerk during the year in which Judge Torruella was appointed to the First Circuit, and then a decade later, during his tenure as Solicitor General, when the new intermediate Court of Appeals was created. As a law clerk, he helped Judge Torruella in the transition from the District to the Circuit. And as Solicitor General, it fell to Judge Delgado to expand and adapt his office in order to deal with the torrent of new appeals that began to be filed. Filings in that Court came to represent over 80% of the work of the Office of the Solicitor General, and it is a testament to Judge Delgado's abilities

that the transition was handled so efficiently and effectively—just as he is surely handling this new transition from private law firm practice to serving as a U.S. District Judge.

The other aspect I want to emphasize is that Judge Delgado's career has come full circle. He started in this Court, as a law clerk, over thirty years ago, and now he is back, as a District Judge. Although he spent more than half of his career in private practice, there were strong indications over the years—including his stints in the Commonwealth government as Solicitor General and as Appellate Court judge, and his government clients over the years—that his true calling, his vocation, lay in the Judicial Branch. And if there were any doubts, one only had to hear him speak—he has always sounded like the very model of a modern judicial officer.

In sum, it is with great pleasure that I congratulate Judge Pedro Delgado Hernández on his appointment to the Bench. Judge Delgado's kind spirit, gentle sense of humor, keen intellect, and profound integrity shines forth in everything he says and does. Our firm's loss is the Federal Court's gain. I know that he will render justice fairly, promptly, with generosity of spirit, and with great wisdom.

Congratulations, my friend.

Thank you very much.

Young Lawyers Division Hosts Brown Bag Lunch with National FBA President Hon. Judge Gustavo Gelpí on Do's & Don'ts of Federal Practice

By Joseph Feldstein

On December 13, 2013, the FBA Puerto Rico Chapter's Young Lawyers Division hosted, as part of its Brown Bag Lunch series, the "Do's and Don'ts of Practice before Article III Judges" with the Hon. Judge Gustavo A. Gelpí as speaker. The activity was held at the U.S. District Court for the District of Puerto Rico in Old San Juan.

The event began with a light lunch and an opportunity for those in attendance to meet and network before the event. Afterward, Judge Gelpí lectured on practical advice for young practitioners when appearing in Federal Court followed by a Q & A session between those in attendance and the Hon. Judge. We thank Judge Gelpí for always supporting FBA events and for giving young lawyers in attendance the opportunity to gain practical insight on appearing before Article III Court Judges!

Young Lawyers Division hosts Brown Bag Lunch with National FBA President Hon. Judge Gustavo Gelpí and Attorneys Manuel San Juan & Jose Alfredo Hernandez Mayoral

NITA: Raising The Bar

By Kenneth C. Suria
NITA Faculty Member and Program Co-Director
Member of Estrella, LLC in San Juan, Puerto Rico

Promoting justice through effective and ethical advocacy is an important part of the mission of the National Institute for Trial Advocacy (NITA for short). For those who are unfamiliar with NITA, it is a not-for-profit organization whose focus is to train and mentor lawyers to be competent and ethical advocates in pursuit of justice. With over 40 years of experience teaching trial advocacy skills it's no wonder its Vision is: "... to improve the quality of advocacy in our nation's courts." This vision is accomplished through its renowned learn-by-doing teaching philosophy.

In today's legal world it is not often that an attorney gets to try a case. Nearly 90% of the cases settle and a miniscule percentage of the remaining cases go to trial. It was not always this way. Fifteen years ago, an inexperienced attorney could expect to gain experience through mentoring and watching senior attorneys try cases. Eventually, your turn to try a case would come. In fact, you could just go to the courthouse, walk into a courtroom and sit through trials. In today's world, because of the economy, budget cuts, alternate dispute resolutions, mediations, etc., getting to try a case does not happen that often. Nevertheless, it is a skill that is professionally necessary in order to be able to protect the best interest of your client. This is where NITA comes in.

NITA provides attorneys the tools they need to improve and learn trial skills from the best lawyers in the country. In the program, you get to learn how to try a case by actually trying one. When I first took NITA in Washington, D.C., I did not know what to expect. I mean, I have heard about it because of its highly regarded reputation and the quality of its programs. However, I did not know much about their learning by doing method of teaching. Not that I did not expect to do an opening statement or other parts of a trial; however, I never imagined that in a brief five-day intense program I would actually learn more than in my past years of practice. How is that possible? Well, this is an experience that you have to go through to understand. I can try to explain why I think it is so successful, but there is nothing like actually going through the program. You see, NITA uses role-playing and experiential training to teach lawyers how to conduct various aspects of a trial, from opening statements, to examining witnesses (both direct and cross-examination), to making objections and presenting evidence, to closing arguments. To further enhance the practical aspect of the course, the Program uses outside witnesses and enlists the assistance of local college students, neighbors and other resources to provide jurors for the mini trials. The result, an environment that gives the participant an opportunity to apply newly acquired skills before a jury.

The program would not be possible without the NITA faculty. You would never expect to see so much talent assembled in one room with one purpose in mind: to teach you how to

try a case. Its members present an amazing combination of practicing attorneys in diverse areas of the law. They have both vast trial and teaching experience. For instance, in our group we had federal prosecutors, litigation partners from big firms, public defenders, government attorneys and even solo practitioners, all of whom share a passion for trial work. There is a caveat, however, even though all faculty members have great experiences that they can share with you, they will only share them outside the time allotted for the program. NITA programs are not about its faculty but about its participants.

Mutual respect, collegiality, support, trust and professionalism permeate in the program's atmosphere, and they enhance your learning experience. NITA's high regard for ethics in trial advocacy is unparalleled, creating an environment of collaboration with the objective of improving your skills. Its faculty is of the highest caliber with one purpose in mind: enhancing of your advocacy skills. The faculty critiques your performance in positive ways that improve your presentation, and gives you options for a more effective, more appealing presentation to a jury. To this end, in recent years NITA has expanded to include in its training of lawyers the creative utilization of technology in the courtroom, thus keeping up with the times.



This brings me to the reason that I am writing about NITA: the first NITA Puerto Rico Building Trial Skills Program will take place in June of 2014. For the first time in its over 40-year history NITA, in partnership with Trust of the University of Puerto Rico's School of Law, brings you their Trial Skills Program. The purpose of this course is to improve your trial advocacy skills so that you can become a more persuasive advocate by learning how to handle witnesses and evidence in the courtroom. From jury selection to summation, the course will cover every aspect of the trial. This program will take place at the University of Puerto Rico law school's facilities, during the week of June 16 through June 20, 2014. Register now for next summer's Trial Skills Program for the spaces for this program are limited.

Joining NITA and the Trust of UPR law school is the Puerto Rico Chapter of the Federal Bar Association, which will be sponsoring the Judge's brown bag lunch during the event. This entails lunch with one of our federal district judges who will converse about recurrent trial advocacy problems that need improvement, as they see it from the bench in jury trials.

You are all cordially invited to join our elite faculty where we know you will learn a few things. You can register by accessing the NITA website at <http://www.nita.org/Program/PRTS614#>. We hope to see you there!

Federal Bar Association – Puerto Rico Chapter New Year’s Celebration

On January 30, 2014, the FBA Hon. Raymond L. Acosta Puerto Rico Chapter held its New Year’s celebration at La Jaquita Baya Restaurant in Santurce. The name “La Jaquita Baya” was inspired by one of the most well-known, and colorful poems of Luis Llorens Torres, “Valle de Collores”. Like the poem, the locale offered an authentic and imaginative ambiance which recreated a local market place full of fresh fruits and produce. Attendees were able to explore the secrets of this concept of creative Puerto Rican fusion. Accordingly, the guests enjoyed a tasty, gourmet-style menu prepared with the special touch of executive chef Xavier Pacheco. Some of the tapas which were handed out in a cocktail-style fashion included: fish “ceviche” tacos, “bacalaitos”, smoked meat with caramelized onions, “arepas” filled with chicken stew and crab gazpacho, artisanal “loganiza,” “alcapurrias” and small turnovers, together with a wide selection of spirits and beer. The musical performance was in charge of Vicente Rodríguez who entertained the crowd with live acoustic guitars and a variety of typical musical selections for the season.

The event gathered a representative crowd of FBA members throughout the island, with a special concentration of Judges and members from the Bankruptcy Court, including Judge Brian K. Tester and Judge Edward A. Godoy. Also, present were our National President, Judge Gustavo A. Gelpí, as well as Judges from the Puerto Rico state court. The FBA members had the opportunity to mingle with judges, prominent practicing lawyers, and young attorneys in an event that epitomizes the spirit of camaraderie and social interaction promoted by the FBA. It was the perfect start to a new year promising even better things to come for the FBA and its members.



More photos on page 12

FBA-PR New Year's Celebration



Cocktails with the Bar

Featuring the Solicitor General of Puerto Rico

The Young Lawyers Division of the Hon. Raymond L. Acosta Puerto Rico Chapter of the FBA hosted a series of “Cocktails with the Bar” at La Doña Restaurant, Hato Rey, Puerto Rico on March 27th and April 24th. The events had as special guests the Hon. Margarita Mercado Echegaray, Esq., Solicitor General of Puerto Rico, on March 27th, and Hector Ramos Vega, Esq., Supervisory Assistant Federal Defender, on April 24th. Mercado Echegaray shared stories about her experiences in the private and public sectors, and gave the young lawyers tips on the do’s and don’ts in the courtrooms. Ramos Vega focused on the particulars of working for the public defenders’ office, giving young lawyers insight as to the work performed by him and its significance as a career option for young lawyers. The activities were a success! We thank Miss. Mercado, Mr. Ramos, the members of the chapter and the board for attending.



FBA-PR Annual Midyear Meeting

The Federal Bar Association held its annual Midyear Meeting this March 29, 2014 in Arlington, Virginia. Presided by the current FBA national president, Hon. Gustavo A. Gelpí, the meeting was attended by several representatives from Puerto Rico.

Besides Judge Gelpí, attending from Puerto Rico were the current Chapter President, Andrés W. López, the Chapter National Delegate, Mariano A. Mier Romeu, and the First Circuit Vicepresident and past Puerto Rico Chapter President, Katherine González Valentín.

The Midyear Meeting culminated a series of activities beginning a couple of days earlier.

On Thursday March 27, the FBA's Puerto Rico, District of Columbia, and Hawaii Chapters co-sponsored a conference by Judge Gelpí about "The Constitutional Evolution of Overseas U.S. territories (1898–Present)". This conference was held at the American University Washington College of Law. Present were various attendees from Puerto Rico, among them, Chief Judge Aida M. Delgado Colón, and past Puerto Rico chapter presidents Roberto Santana and Alfredo Castellanos. Also present was the Executive Director of the Puerto Rico Federal Affairs Administration, Juan E. Hernández Mayoral, and his staff.

The next day, Friday, March 28, the FBA's Younger Lawyers Division concluded the final round of the 17th Annual Thurgood A. Marshall Memorial Moot Court Competition. Forty-six teams from law schools around the country competed in this final round, which was held at the the U.S. Court of Appeals for the Armed Forces. At the end of the competition, the winners were announced at a reception for all present.

During the Moot Court Competition, the FBA presented an award to past Puerto Rico Chapter president Alfredo Castellanos "in recognition of [his] outstanding lifetime volunteer service to the Federal Bar Association, support for the Rule of Law, and dedication to the Nation's law students." This year Castellanos had served for the seventh time as judge of the Moot Court Competition.

On Saturday March 29, the main activities of the Midyear Meeting were held. The day started with collaborative meetings and breakout sessions for circuit vicepresidents, chapter leaders, and session chairs. These were followed by a symposium on one of the most significant issues facing the federal bar: the high number of vacancies in the federal bench. The Symposium, titled "Judicial Vacancies: The Path to Filling the Federal Bench", probed the causes and solutions for these vacancies and the means of addressing the delays that are taking place in the judicial nomination and confirmation process.

The Symposium's panelists were Maggie Whitney, Majority Counsel for Nominations of the Senate Judiciary Committee; Ted Lehman, Minority Counsel for Nominations of the Senate Judiciary Committee; and Russell Wheeler, Visiting Fellow on Governance Studies of the Brookings Institution. The FBA's Government Relations Counsel, Bruce Moyer, moderated the symposium.

Continuing with this important theme of judicial vacancies, the invited speaker at the Midyear Meeting's luncheon was Christopher Kang, Senior Counsel to President Obama, who spoke about the process through which someone is considered, nominated, and appointed to the federal judiciary. He also exhorted qualified and interested attorneys to seek judgeships. Mr. Kang is the White House counsel in charge of the selection process for new federal judges. He identifies, interviews, and reviews potential nominees, and further works with lawmakers through the nomination and confirmation process.

After a short break following the luncheon, the National Council Meeting was convoked. Reports were given to the FBA leadership and chapter representatives by the FBA's President, Judge Gelpí; the Treasurer, Mark Vincent; the president-elect, Matthew Moreland; the Chair of the Membership Committee, Jonathan Hafen; the President of the Foundation of the Federal Bar Association, Martha Hardwick Hofmeister; the Chair of the Government Relations Committee, West Allen; the President of the Federal Bar Building Corporation, Robert Mueller; the ABA Delegate, Ashley Belleau; and the FBA's Executive Director, Karen Silberman.

During the meeting, the nominations for the FBA's next board of directors and officers were announced. Among the nominees is our past Puerto Rico Chapter president, Katherine Gonzalez Valentín, who is up for election this June to the FBA's board as director.

A brief reception followed the National Council Meeting, concluding the event. Afterward, the Fellows of the Foundation of the FBA held their Annual Fellows Dinner, at the Hamilton, in Washington DC. Among those present from Puerto Rico were Néstor Méndez, Roberto Santana, and Gustavo Gelpí, Sr.

At the National Council Meeting, several upcoming activities on the FBA's agenda were announced, most prominently the new Women in the Law Conference, to be held on July 11, 2014, in Washington, DC. Other planned activities on the agenda included the 39th Annual Indian Law Conference, on April 10–11, 2014, at Santa Fe, NM; the Chapter, Section & Division Leadership Training Program, April 25–26, 2014, Arlington VA; the 26th Annual Insurance Tax Seminar, May 29–30, 2014, Washington, DC; and the next Annual Meeting and Convention, on September 4-6, 2014, at Providence, RI.

Young Lawyers Division Hosts Brown Bag Lunch with Judge Tester

By María Ligia Giraldez

On March 28, 2014, the FBA Puerto Rico Chapter's Young Lawyers Division hosted, as part of its Brown Bag Lunch series, the "Do's and Don'ts of Practice before Bankruptcy Court Judges" with the Hon. Judge Brian K. Tester as speaker. The activity was held at the U.S. District Court for the District of Puerto Rico in Old San Juan.

The event began with a conference by Judge Tester in which he focused on providing practical advice for young

practitioners when appearing in Bankruptcy Court. Later, Judge Tester answered questions posed by those in attendance. After the conference, Judge Tester joined the group of practitioners for lunch in the balcony of the Courthouse. We thank Judge Tester for always supporting FBA events and for giving young lawyers in attendance the opportunity to gain practical insight on appearing before Bankruptcy Court Judges!



Complex Civil Litigation I: Plaintiff's Perspective

By Joseph Feldstein

On May 16, 2014, the FBA Puerto Rico Chapter's Young Lawyers Division hosted, as part of its Brown Bag Lunch series, the "Complex Civil Litigation I: Plaintiff's Perspective" with the Hon. Judge Gustavo A. Gelpí and Attorneys Manuel San Juan & Jose Alfredo Hernandez Mayoral as speakers. The activity was held at the U.S. District Court for the District of Puerto Rico in Old San Juan.

The Complex Civil Litigation brownbag lunch was given in the context of the case of *Hernandez v. Esso Standard Oil Co.* (Puerto Rico), 599 F.Supp.2d 175 (D.Puerto Rico, 2009), in which property owners and residents of La Vega community of Barranquitas, PR brought action against ESSO, owner of a former service station from which hazardous substance were released and emanating from an underground storage tank.

The speakers chose a practical yet informal approach to the conduct the lecture, each sharing their experiences

and complementing each other with their opinions and points of view from both practicing attorney's and Judge's perspectives. Those in attendance were treated to a wonderful brown-bag lunch that focused on practical advice for young practitioners when they decide to take upon complex civil litigations. It covered aspects such as interviewing hundreds of clients, sifting through those who had a plausible claims and those who did not, dealing with complex topics for the first time such as the Clean Water Act, and the daily stresses and dynamics of taking upon a case of such magnitude. The lecture flowed very naturally as the speakers offered relevant advice and attendees also provided remarkable feedback. Lucky for those attending, Hon. Juan Perez Gimenez, U.S. District Court Judge, unexpectedly dropped by and also shared his thoughts and experiences with the group.

In concluding, all three speakers answered questions posed by those in attendance. After the conference, the speakers

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Brown Bag Lunch...

Continued from page 17

joined the group of practitioners for lunch in the balcony of the Courthouse. We thank Judge Gelpí and attorneys Manuel San Juan & Jose A. Hernández Mayoral for supporting FBA events and for giving young lawyers in attendance the opportunity to gain practical insight on how to prepare for Complex Civil Litigation!



FBA's Federal Bar Review Course

The United States District Court for the District of Puerto Rico offers a Federal Bar Examination twice a year, typically during the first Saturday in April or May and the first Saturday of October or November. For more information, see <http://www.prd.uscourts.gov/?q=federal-bar-examination-information>.

Each year, twice a year, the Puerto Rico Chapter of the Federal Bar Association administers an in-person preparatory course for the Bar Exam. The FBA's course is composed of eight sessions, each dealing with one of the eight topics of inquiry of the exam (Evidence, Federal Civil Procedure, Federal Criminal Procedure, Bankruptcy, Federal Appellate Procedure, Local Rules, Ethics, Federal Jurisdiction). The classes are scheduled twice a week on Mondays to Thursdays (no classes on Fridays or the weekends) and they start at 7 pm and last until 10 p.m. The course is typically held at the Sacred Heart University (USC) in Santurce. Our classes are taught by seasoned federal practitioners, each with abundant hands-on experience in their respective areas of practice.

The Puerto Rico Chapter of the Federal Bar Association (FBA) would like to acknowledge the participation and invaluable assistance of the following persons in the FBA's Federal Bar Review Course.

Raúl Arias, Esq.
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McConnell Valdés LLC

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Hon. Daniel R. Domínguez
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U.S. District Court for the District of Puerto Rico

Jorge Soltero Palés, Esq.
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O'Neill & Borges LLC

The screenshot shows the website for the United States District Court for the District of Puerto Rico. The header includes the court's name and the name of the Chief Judge, Hon. Aldo M. Borgeado-Collón. Below the header is a navigation menu with options like 'Home', 'GENERAL INFORMATION', 'for GENERAL PUBLIC', 'Interpreter Services', 'for ATTORNEYS', 'CHECK', 'eJUDGE and Jury Service', and 'Info'. The main content area is titled 'Federal Bar Examination Information' and features a 'Public Notice' section. The notice states that the FEDERAL BAR EXAMINATION will be offered on Saturday, May 10, 2014, from 8:00 a.m. to 12:00 noon, at the Theater of the Inter-American University of Puerto Rico School of Law. A table lists the subject areas and their respective percentages and question counts. The table is as follows:

| Subject Area | Percentage | Questions |
|--|------------|-----------|
| Federal Civil Procedure | 16% | 8 |
| Federal Evidence | 16% | 8 |
| Federal Jurisdiction and Venue | 16% | 8 |
| Federal Criminal Procedure (includes the subject of Sentencing Guidelines. Applicants must be familiar with the ruling in <i>United States v. Booker</i> , 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005) and progeny from the 1st Circuit Court of Appeals). | 12% | 6 |
| Local Rules | 12% | 6 |
| Federal Appellate Procedure | 10% | 5 |
| Bankruptcy, including the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and the Bankruptcy Rules. | 10% | 5 |
| Ethics | 8% | 4 |
| TOTAL | 86% | 50 |

Below the table, a note states: 'The essay question is mandatory as it is designed to assess the candidate's proficiency in English—ability to read, write and understand the English language—to satisfy the requirement of effective assistance of counsel to their clients under the Sixth Amendment of the Constitution of the United States. Regardless of the result in the multiple choice part of the examination, applicants who do not answer the essay question will receive a grade of "fail".'

For more information or to enroll for the November term,
call Roberto A. Cámara-Fuertes, Esq. or Magdamari Dávila at (787) 759-3220.

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