

# should puerto rico become a state

There is much internal and external debate as to whether Puerto Rico should or should not become a state. The residents of Puerto Rico in the past have either rejected statehood or even more significantly, have chosen to retain Puerto Rico's commonwealth status. Recent legislation in the form of HR 2499 has recently passed in the House of Representative. If passed, HR 2499 would give Puerto Rican voters the options of statehood, independence, or to have an "independent free" association with the U.S. The latter option would basically maintain the status quo commonwealth status Puerto Rico currently enjoys (Portnoy, 2010).

Statistics vary but currently, most Puerto Ricans it appears would select statehood. Statistics posted in the Puerto Rico Herald state the following: 21% would select independence; 58% would select statehood; and would select independence with free association with the U.S. (Hot Button Issues). This paper will discuss the design establishment of Puerto Rico's new judicial system based on the premises that the statehood issue was put to vote, Puerto Ricans chose statehood, and Congress ratified Puerto Rico becoming the 52nd state.

Before we can move forward with a new design, we must first understare Puerto Rico's current judicial structure which is not too unlike many of our current states however, I believe can be improved upon. At the top of the judicial hierarchy is the Supreme Court. It is led by seven justices that are appointed by the Governor. The next lower level is the Court of Appeals in which 39 judges currently sit. Next are the District Courts and Municipal Courts. Puerto Rico has 12 judicial districts and a District Court in which each district is represented by at least one judge. The court system also employs a variety of other court players such as clerks, probation officers, and court reporters. Additionally, there is a United States Attorney, a United States Marshall, United States Magistrates, and bankruptcy judges (Government, 2010).

In choosing how to set up Puerto Rico's new state court system, I borrow court hierarchy concepts from the States of Florida, Tennessee, and South Carolina as shown in Figure 1. I modeled the Supreme Court after the state of Florida. I modeled the Courts of Appeals after the state of Tennessee in that Tennessee has separate Courts for criminal and civil appeals. I modeled the Circuit Court from the state of Florida minus functions of family and juvenile issues. For family and juvenile issues, I modeled the court structure after the state of South Carolina by combining family and juvenile cases under a family court structure. And finally, I modeled the municipal courts after the municipal courts Tennessee combined with elements of the county courts of Florida.

In proposing my plan, I will begin with discussion of the lower courts and work my way up to the Supreme Court. The lowest courts in the new Puerto Rico court structure are the municipal courts. Puerto Rico currently has 78 municipalities. I would structure the municipal courts after a proposal that was presented by Puerto Rico representative penepé Eric Rivera Correa. He proposed reducing the current municipality count from 78 to 20 (Legislator, 2009). Therefore, there would be 20 municipal courts, one for each municipality.

Subject matter jurisdiction of the Municipal Court limited primarily to municipal ordinance violations and misdemeanors and is established by statute. Jurisdiction also includes hearing civil dispute cases such as tort contract, small claims, and real property that involve monetary disputes of \$15,000 or less (Florida's County Courts, n.d). Municipal courts will not have primary jurisdiction over municipal ordinances if the ordinances are the same as state laws. In these instances, the Circuit Court will have jurisdiction over those instances (The Guide to Tennessee Courts, 2010). All Municipal Court trials will be non-jury trials. One judge will preside over these hearings (Florida's County Courts, n.d).

To qualify as a Municipal Court judge, the individual must be an attorney and member of the Puerto Rico Bar for a period of no less than five years. There are no minimum age limits, however, the maximum age is 70. The judicial candidate must also be a resident of the municipality of the judicial seat they are running for (Florida's County Courts, n.d). Judicial selection and retention is by merit and is a non-partisan process. In order to appear on the ballot, the judicial candidate must pay a fee or present a signed petition, sign by at least one percent of the voters in the represented municipality, requesting that the judicial candidate appear on the ballot. Elections are held every six years with the winner being the judge with the majority of the votes. At the completion of their six year term, a sitting judge is required to repeat the process in its entirety. Reelection is required. There are no term limits (Methods of Judicial Selection: Florida, 2010). In the event that there is an interim judicial vacancy, the Puerto Rico Judicial Council will forward a list of three nominees for the municipal council to vote on for interim replacement.

The next courts we will discuss are the Circuit Courts. Geographical jurisdiction will see the island divided into thirds with two Circuit Courts serving seven municipalities and one Circuit Court serving six municipalities. Serving alongside the Circuit Courts are co-located Family Courts. Emphasized is the fact that that there is no over lapping jurisdiction between the two courts. They are only co-located as a matter of jurisdictional caseloads.

Circuit Court subject matter jurisdiction covers all civil and criminal matters that the Municipal Courts do not already have jurisdiction by statute over. The Circuit Court is the highest trial court in Puerto Rico and additionally hears appeals from the Municipal Courts. All trials except for appeals are by jury. Trials will be conducted before one judge. Appeals are heard by three-judge panels sitting en banc. Since Puerto Rico currently does have the death penalty, neither will the newly founded state. The Circuit Courts hear all civil disputes that involve more than \$15,000. Other civil matters heard are: tort contract; tax disputes; estates; mental health adjudication matters; and cases involving disputes of legal rights and responsibilities. The Circuit Court will also hear and issue injunctions as appropriate involving requests to prevent acts that are asserted to unlawful. Circuit Courts will hear and has exclusive jurisdiction on felony cases. Circuit courts will also issue as appropriate extraordinary writs of certiorari and other writs as necessary (Florida's Circuit Courts, n.d.).

To qualify as a Circuit Court judge, an individual must be an attorney and member of the Puerto Rico Bar for a period of no less than five years. The judicial candidate must also be a resident of the circuit of the judicial seat they are running. The process for appearing on the ballot is the same as for a Municipal Court judge. Once on the ballot, voters will elect with the winner being the individual with the majority of the votes. Elections are non-partisan. Circuit Court judges serve for a term of six years with retention and re-election criteria being the same as that of the Municipal Court. Sitting judges will select a chief judge who is responsible for oversight of all Circuit Court administrative manners

(Florida's Circuit Courts, n.d.). Interim judicial vacancies are handled in a different manner than in the Municipal Courts. In the event that there is a judicial vacancy, the Puerto Rico Judicial Council will forward a list of three nominees to the legislature who will then vote on the interim replacement.

Family Courts will be organized along the same lines as the Circuit Courts. Geographical jurisdiction is the same. Subject matter jurisdiction is exclusive in that the court presides over all domestic relations and juvenile cases. The Family Court will also hear all traffic and criminal cases that would otherwise be considered criminal except for the fact that they were committed by a juvenile. Domestic cases heard include: marriage; divorce; legal separation; child custody; custody and visitation; adoption; alimony; support; and marital property. Serious criminal cases may be transferred to the Circuit Court depending on circumstances of the crime and repeat offender status of the juvenile (Family Court, 2010). Judge qualification criteria, elections, term length, and filling of interim judicial vacancies for the Family Courts will be the same as it is for the Circuit Courts.

Puerto Rico will have two appellate courts, the Court of Civil Appeals and the Court of Criminal Appeals with geographical jurisdiction over the entire state. They have the authority to "issue the extraordinary writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus, as well as all other writs necessary to the complete exercise of their jurisdiction" (District Courts, n.d). Appellate court reviews of cases are usually final however, litigants may request a review from the Puerto Rico Supreme Court but the Court is under no obligation to accept the disputed case. Additionally, the Court of Appeals will have the power review all executive branches of government state agency actions.

Court of Appeals hearings do not include witnesses, juries or testimonies. Instead, attorneys present oral and written arguments. The Courts of Appeal hear appeals in three-judge panels. There are no juries, witnesses, or testimony. The three-judge panels review oral and written arguments presented by attorneys (Court of Appeals, n.d.).

To qualify as a judge on the Court of Appeals, one must be an attorney and member of the Puerto Rico Bar for a period of no less than five years. As with the other courts, there are no minimum age limits. The maximum age is 70. The judicial candidate must also be a resident of the state of Puerto Rico. All Court of Appeals judges are appointed by legislative election. Judges serve for a period of six years after which they are eligible for retention. Retention is by legislative reelection.

In order to be elected or retained, those seeking a judgeship must file with the Judicial Merit Selection Commission. Upcoming vacancies will be published in advance. The commission will perform background investigations, conduct personal interviews, and administer court procedure examination with all candidates as part of a thorough screening process. The commission will then prepare a report that summarizes the qualifications of candidates, state whether they feel they are qualified or not, and will nominate three candidates for each vacancy. The nominations are then forwarded to the legislature for election (Methods of Judicial Selection, 2010).

The highest court in the state of Puerto Rico will be the Supreme Court. There will be a total of seven judges of which five must participate in reviewing cases. Four votes in agreement are required for a decision. One of the justices will be selected by a majority vote to serve as the Chief Justice, a position that rotates every two years. The senior Justice will act as the Chief Justice in the Chief Justices' absence (Florida State's Court System, n.d.).

The jurisdiction of the Supreme Court will be identified in the state's Constitution. The Court will be required to review district court decisions that declare either state statutes or any part of the Puerto Rico State Constitution invalid. The Court will review, at its discretion, may review any decision by the Courts of Appeals, Circuit Courts, Family Courts, or Municipal Courts however, most decisions reviewed will be from the Courts of Appeals. The Supreme Court has the constitutional authority to "issue the extraordinary writs of prohibition, mandamus, quo warranto, and habeas corpus and to issue all other writs necessary to the complete exercise of its jurisdiction" (Florida State's Court System, n.d.). The Supreme Court will provide advice on constitutional duties and powers to the Governor upon his or her request. Lastly, the Court has the responsibility of promulgating lower court practice and procedure rules.

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