



PIETRANTONI MENDEZ & ALVAREZ LLC

Client Alert: Litigation

Puerto Rico Shields Expert Draft Reports and Attorney–Expert Communications

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On August 6, 2026, Governor Jenniffer L. González Colón enacted Act 172-2026, amending Rule 23.1(c)(1) of the Puerto Rico Rules of Civil Procedure. The amendment extends the attorney work-product doctrine to draft reports prepared by testifying experts and to communications between counsel and the retained expert. The law took effect upon enactment.

For any business with disputes in Puerto Rico courts and works with expert witnesses, this changes how expert engagements should be structured and how discovery risk should be assessed.

The amendment reverses the Puerto Rico Supreme Court’s 2021 decision in *McNeil Healthcare, LLC v. Municipio de Las Piedras*, 206 D.P.R. 659 (2021). In *McNeil*, the Puerto Rico Supreme Court considered whether a testifying expert’s draft reports and his communications with the retaining attorney were shielded from discovery. The Court held they were not. It reasoned from Puerto Rico’s policy favoring broad and liberal discovery and found no rule that clearly prohibited disclosure. The Court determined that both the draft reports of a testifying expert and the expert’s communications with counsel about those reports were discoverable under Rule 23.1 of the Puerto Rico Rules of Civil Procedure.

The Court declined to adopt the federal protections as a matter of judicial interpretation. It observed that Rules 26(b)(4)(B) and (C) of the Federal Rules of Civil Procedure expressly prohibit discovery of testifying-expert drafts and communications between the attorney and expert, language that Rule 23.1 of the Puerto Rico Rules of Civil Procedure did not have at the time.

Act 172-2026 rewrites Rule 23.1(c)(1) of the Puerto Rico Rules of Civil Procedure to state that the work-product doctrine protects draft expert reports and communications between attorney and expert, and that these therefore fall outside the scope of discovery in any form or medium in which the draft or communication is created or preserved. The Legislature framed these exchanges as an essential part of litigation strategy, similar to the attorney-client privilege, that must be protected to permit candid collaboration between lawyer and expert.

The protection afforded under the new rule is not absolute. Tracking the federal model, the law preserves three exceptions under which a court may still order discovery of the drafts or communications to the extent they:

- relate to compensation for the expert’s study or testimony;
- identify facts or data the party’s attorney provided that the expert considered in forming opinions;
or
- identify assumptions the party’s attorney provided that the expert relied on in forming opinions.

The Legislature stated it was incorporating the 2010 amendments to Rule 26 of the Federal Rules of Civil Procedure that took effect December 1, 2010. What the Supreme Court held discoverable in 2021, the Legislature has now declared protected, reversing the default from disclosure to protection, subject to the three exceptions above.

Act 172-2026 substantively mirrors Rule 26(b)(4) of the Federal Rules of Civil Procedure. Draft expert reports are protected regardless of the form or medium in which they are recorded. Communications between the attorney and expert are protected subject to the same three exceptions, and those exceptions (compensation, attorney-supplied facts or data considered by the expert, and attorney-supplied assumptions relied upon by the expert) remain discoverable under both rules. The two rules are now substantively the same on these points.

Two practical cautions apply to this alignment. First, the federal rule's protection for communications between an attorney and expert runs only to witnesses required to provide a written report under Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure. Rule 23.1(c)(1) of the Puerto Rico Rules of Civil Procedure, as amended by Act 172-2026, does not use that same report-based test, but its protection is likewise addressed to testifying experts. Rule 23.1(c) separately treats non-testifying consulting experts under Rule 23.1(c)(2), which continues to require a showing of exceptional circumstances before their facts or opinions may be discovered, paralleling the separate and more restrictive federal standard for non-testifying experts under Rule 26(b)(4)(D). Businesses should therefore continue to treat consulting experts who are retained but not expected to testify as subject to that separate, more demanding standard, rather than assuming Act 172-2026's work-product protection for attorney-expert communications extends to them. Second, because Act 172-2026 was recently enacted, there is no Puerto Rico case law construing its scope. Federal decisions applying Rule 26(b)(4) of the Federal Rules of Civil Procedure will be persuasive, but not binding, on Puerto Rico courts.

For litigation strategy in Puerto Rico courts, counsel can now collaborate more candidly with testifying experts. Draft reports, comments on drafts, and strategic exchanges are no longer routinely discoverable, so the prior *McNeil*-era practice of guarding every written exchange, or retaining separate consulting and testifying experts to wall off strategy, is far less necessary. Discovery planning changes for both the party retaining the expert and the party seeking discovery from an opponent's expert. A party retaining the expert should expect materially less exposure of its drafting process. A party seeking discovery from an opponent's expert should expect that requests for draft reports and emails between lawyer and expert will now draw a work-product objection unless they fit one of the three statutory exceptions. Those exceptions remain the productive avenues for probing bias and the foundation of an expert's opinion.

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