

(H. B. 2851)

(No. 40)

(Approved January 3, 2003)

### AN ACT

To add a new subsection 6 to Section 12 of Act No. 2 of February 23, 1988, as amended, to set forth that the Special Independent Prosecutor must have the approval of the Panel On the Special Independent Prosecutor to be able to accept or offer prearranged pleadings; and to renumber the existing subsections 6 and 7 as 7 and 8, respectively.

### STATEMENT OF MOTIVES

Rule 72 of the Rules of Criminal Procedure of Puerto Rico regulates the mechanism of prearranged pleadings. Said Rule sets forth that a defendant may plead guilty of the imputed crime, or of a lesser included crime. The prearranged pleading is an agreement between the defendant and the Public Ministry that requires final approval from the court. As long as said approval is lacking, the prosecutor or the defense may withdraw their offer. See Malavet-Vega, P., *El Procedimiento Penal en Derecho de Puerto Rico*, Ediciones Lorena, Ponce, Puerto Rico, 2000, page 309. This Rule also applies to procedures pressed by the Panel On the Special Independent Prosecutor.

The Special Independent Prosecutor system, under the supervision of a Panel appointed by the Governor of the Commonwealth of Puerto Rico and comprised by former members of the judicial branch, guarantees the absolute objectivity of investigations against high government officials. See Statement of Motives, Act No. 2, *supra*. Among the duties of said Panel is the exercise of “due supervision of the Special Prosecutor to ensure the

investigative work is performed with the required diligence, promptness, and agility for complete compliance with the purpose of this Act, and with any requirement or term applicable to the Special Prosecutor.” Section 11 (5) of Act No. 2, *supra*.

At present, penal procedures pressed by the Panel do not have a system for the regulation of the decision of the Special Prosecutor to accept or offer a prearranged pleading. Regulation in this regard consists of the discernment of the litigating parties, and in most cases, the Special Prosecutor in the courtroom makes such decisions without the approval of a superior, or of a collegiate organism. The aforementioned disregards the purpose of Act No. 2, *supra*, which is to provide a neutral and independent forum for the consideration of inappropriate acts ascribed to public officials before the public eye. The Panel is the neutral forum that names, supervises, and limits the duties and jurisdiction of the Special Prosecutor. See Section 11 (2) (5), *supra*.

Interest in the criminal proceedings of public officials cannot be gentle. This Legislature understands that, due to high public interest, and to the public policy of the Commonwealth regarding the elimination of corruption from the government, any decision to be made by a Special Independent Prosecutor regarding a prearranged pleading must have the approval of the majority of the Panel of former judges that presides same.

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.-Subsection 6 is hereby added to Section 12 of Act No. 2 of February 23, 1988, as amended, and existing Sections 6 and 7 are renumbered as 7 and 8, respectively:

“Section 12.-Provisions Regarding the Special Prosecutor

(1) ...

- (2) ...
- (3) In the exercise of the authority granted by this Act, every Special Prosecutor shall have, with respect to the matters concerning his commission and jurisdiction, all the powers and faculties of the Department of Justice, the Director of the Bureau of Special Investigations and any other official to whom the Act grants authority to investigate and prosecute violations to the Penal Act.
- (4) ...
- (5) ...
- (6) Regardless of the disposition set forth in subsection 3 of this Section, the Special Independent Prosecutor must have the approval of the Panel to accept or offer any prearranged pleadings. The Special Prosecutor shall request the approval of the Panel in writing, stating the scope and effects of the proposed prearranged pleading. The Panel shall have five (5) calendar days to reply to the request. If not answered within the required term, the request shall be understood as denied. In those cases in which pleadings have been bargained, said Panel certified authorization must appear in the case records at the time of issuing the judgment.
- (7) The appointment of a Special Prosecutor shall have the effect of depriving the Secretary of any jurisdiction regarding the investigation.
- (8) The Special Prosecutor shall be considered for all purposes of law as a public official with respect to his conduct in the

exercise of his duties, responsibilities, and prerogatives pursuant to this Act.”

Section 2.- This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 40 (H.B. 2851) of the 4<sup>th</sup> Session of the 14<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to add a new subsection 6 to Section 12 of Act No. 2 of February 23, 1988, as amended, to set forth that the Special Independent Prosecutor must have the approval of the Panel On the Special Independent Prosecutor to be able to accept or offer prearranged pleadings; and to renumber the existing subsections 6 and 7 as 7 and 8, respectively,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 31<sup>st</sup> of January of 2004.

Elba Rosa Rodríguez-Fuentes  
Director