

Precautionary Measures Regime in the New Civil Procedure Code: Orality as a Guiding Principle

As is well known, precautionary measures are procedural tools used to guarantee adequate judicial protection. By their nature, they are provisional and accessory, as they depend on a main claim. Consequently, they are useful for preserving the outcome of the proceedings, preventing them from becoming illusory for those claiming a right and thereby preventing the generation of irreparable damage at the end of the proceedings, which could render the judgment ineffective.

In our legal system, the Judicial Code has been responsible for regulating this matter; However, with the enactment of Law 402 of October 9, 2023, Panama adopts the new Civil Procedure Code, which will enter into force on October 11, 2025, introducing essential innovations that modernize the regime of precautionary measures, aligning it with international standards.

One of the most significant changes introduced by the Civil Procedure Code is the adoption of oral proceedings as the guiding principle in the processing of precautionary measures. Previously, under the Judicial Code, precautionary measures were processed in writing, with oral proceedings reserved only for opposition at the time of the measure's execution. In this regard, Article 333 of the CPC empowers the judge to convene hearings in accordance with the rules for special hearings regulated in Article 262 of the same body of law, within a period of no more than three days from the time of the request or implementation of the precautionary measure. This parameter indicates that, in a special hearing, the parties may present their arguments orally before the judge, who may question them, clarify facts, and render a decision on the spot.

However, another core aspect of the regime of precautionary measures in the CPC is the requirement to prove the "appearance of good law" (*fumus boni iuris*), whereby the judge is encouraged not only to assess the procedural interest and the configuration of the damage, but also to determine that the claim is plausible in law, the protection of which is sought to be guaranteed through the precautionary measure. In addition, the judge must assess criteria such as necessity, effectiveness, and proportionality, as well as the impact of the precautionary measure on the parties, empowering them to apply less severe measures that equally ensure the applicant's rights.

In the Judicial Code, precautionary measures were executed without a prior hearing of the defendant, as outlined in a separate booklet. They gave the judge broad discretion to decide and substitute measures in the execution order. However, with the CPC, agile execution is maintained, but greater technicality is introduced into the procedure. Article 331 of the CPC recognizes that both the plaintiff and the defendant may request precautionary measures (although, in our opinion, the defendant could only do so in the counterclaim, assuming that there was a clerical error in the rule) either before or during the proceedings. In addition, another significant change established by the CPC is that, in urgent cases, precautionary measures may be requested before the judge of the place of enforcement, with subsequent referral to the competent judge. Article 343 of the CPC also introduces the possibility that orders, especially those involving banking entities, may be communicated by electronic means. The bank must acknowledge receipt of such communications and respond within the established time limits, allowing for greater agility in enforcement.

The figure of the assistant judge is another relevant addition to the CPC, established in Articles 46 and 54, as they assist the trial judge in specific proceedings, such as the issuance and enforcement of precautionary measures, the resolution of objections filed during enforcement, and



the processing of requests for lifting. The inclusion of the assistant judge aims to alleviate congestion in the courts, ensure greater control over the request and application of the measure, and ensure that the measures are carried out promptly and without delaying the process.

All precautionary measures must be accompanied by sufficient security to cover costs and damages, with established deadlines for its deposit; however, according to Article 533 of the Judicial Code, the security was determined at the judge's discretion. However, Article 342 of the new Civil Procedure Code introduces a percentage table that standardizes its calculation, which was already being applied in practice by judges, although without a legal provision to support it. According to this table, the percentage of security is set as follows:

- 20% when it is deposited into bank accounts.
- 25% on salaries or movable property.
- 30% on real estate.
- 35% when it includes movable and immovable property.
- 40% when it involves asset management.

In this context, the CPC provides for the modernization and strengthening of the regime of precautionary measures in Panama, which brings clarity to the law, more agile precautionary processes, and a greater balance in terms of the rights of the parties. Incorporating principles such as the appearance of good law, the effectiveness of the measure, and its proportionality reflects an essential step toward a more protective and efficient justice system in civil matters.



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