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THE ORDINARY PROCEEDINGS IN THE NEW CODE OF CIVIL PROCEDURE
(Law 402 of October 9, 2023)

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The Ordinary Proceedings is regulated in Chapter 1, Title I, Book Four of the Civil Procedural Code, contained in ***Law 402 of October 9th, 2023***.

The rules that, in particular, regulate the Ordinary Proceedings range from Articles 615 to 620. This specific legislation must be combined with the rules that, in general, in the Civil Procedural Code, must be taken into account for the knowledge of civil, commercial matters (see Article 2 of the Civil Procedural Code) and others not regulated by special laws. Our last statement stems from the provision established in Article 615 of the new Code, which expressly states that: *"Any matter of a contentious nature that does not have a special Proceedings shall be subject to the guidelines of the ordinary proceedings."*

Declaratory proceedings, which in doctrine are also called "cognitive proceedings", are found in Titles I and II of Book Four, and their regulation is included from Articles 615 to 684, within which "special declaratory proceedings" are also included. (see objection of Hernán Fabio López Blanco regarding understanding Expropriation Proceedings as declaratory proceedings, page 37 Civil Proceedings Book)

Referring to the Cognitive or Declaratory Proceedings, Professor Hernán Fabio López Blanco points out in his work on Civil Proceedings, the following:

> *"COGNITIVE PROCEEDINGS*
> *Within the proceedings of contentious jurisdiction, the cognitive or cognizance proceedings, also called declaratory, occupies a preponderant place, through which it is sought that the judge, once he/she has analyzed the evidentiary material in each case, passes a judgement pursuant to the claim alleged in the complaint, or acquits the defendant, the dominant characteristic of which is the fact that there is lack of certainty as to the right whose declaration is sought and the judgment is intended to put an end to the uncertainty.*
>
> *The cognitive proceedings can be simply declaratory, constitutive or condemnatory, depending on whether the claim contained in the complaint has any of these characteristics. Thus, the ordinary trial in which the recognition of the status of extramarital child is requested shall be a declaratory cognitive proceedings; the oral proceedings in which the declaration of divorce is requested shall be constitutive, cognitive and the ordinary proceedings in which a judgment for non-contractual civil liability is requested shall be cognitive conviction. These examples show the very wide field of the cognitive proceedings, a circumstance which allowed CARNELUTTI to say that "it has been in the study of the contentious cognitive proceedings where the greatest number of concepts have been elaborated and the greatest number of principles have been discovered, whereby the modern science of procedural law is composed. A large part of these concepts and principles have since been shown to be useful for the knowledge of other types of proceedings: i.e., for the study of the execution proceedings and the voluntary proceedings."*
> *The Procedural Code, in Book Three, Section One, uses the name "declaratory proceedings"; it is worth clarifying that the expression cannot be understood as if only declaratory claims were ventilated by such*

a system, since, without a doubt, this phrase is used as a synonym for the cognitive proceedings; ***therefore, those that the Code calls declaratory proceedings are those that the universal doctrine calls cognitive proceedings****, a term that would have been more technical to designate that part of the Code. However, it should not be ignored that when the phrase declarative process is taken as synonymous with cognitive process, it is borne in mind that every cognitive process (whether condemnatory, pure declarative or constitutive) implies a declaration, even when it entails different consequences."*

Included in declaratory (Civil Procedural Code) or cognitive (accepted Universal Doctrine) proceedings, is the Ordinary Proceedings, which is the one we shall refer to in terms of its new procedural regulation. Professor Ramiro Bejarano Guzmán highlights in his book "DECLARATIVE PROCEEDINGS" the importance of the ordinary proceedings, emphasizing the following:

*"**Without a doubt, the ordinary proceedings, or plenary, as it is called in other legislations, is the most important of all those enshrined in our procedural legislation**. It could be said that all procedural complexities arise in this process, which is why the legislation, on the one hand, has intended it to serve as a vehicle for the processing of the most significant controversies, and on the other, has developed it by enshrining broadly the terms within which the judge and the parties must exhaust and exercise their respective procedural acts."*

I. *DETERMINATION OF JURISDICTION BY REASON OF THE AMOUNT. (Article 615)*

Article 615 of the new Civil Procedural Code expressly establishes the following:

"Article 615. Scope of application and types of proceedings. Any matter of a contentious nature that does not have a special procedure shall be subject to the guidelines of the ordinary proceedings.
Ordinary proceedings are of two types: small claims and large claims.
The small claims proceedings are those with a value which exceeds one thousand balboas (B/.1,000.00) without exceeding the sum of ten thousand balboas (B/.10,000.00), and the large claims are those with a value greater than ten thousand balboas (B/.10,000.00).
Ordinary small claims proceedings shall be within the jurisdiction of the municipal judges in the first instance; and the ordinary large claims proceedings shall be within the jurisdiction of the circuit judges in the first instance.
In the cases where this Code establishes a different proceedings, the plaintiff may choose the ordinary proceedings.

The provision allows the person who sues to resort to the ordinary proceedings, even if there are proceedings specially regulated for the cause being proposed. Of course, within the limits indicated by the amount of what is claimed.

The provision, with regard to the assignment of jurisdiction by amount, does not distinguish between the two types of category of small claims proceedings, but groups them into a single category, without distinguishing as Article 14 of the Civil Procedural Code does. The aforementioned provision states the following:

"Article 14. *Jurisdiction by amount. When jurisdiction is determined by the amount, the proceedings are of large or small claims, according to the estimate set out in the complaint.*

> *There are two types of categories within the small claims proceedings, when they deal* ***with claims which exceed one thousand balboas (B/.1,000.00), and which are not larger than two thousand five hundred balboas (B/.2,500.00)****; and when* ***they deal with claims whose amount exceeds two thousand five hundred balboas (B/.2,500.00), but do not exceed ten thousand balboas (B/.10,000.00).*** *They are within* ***the large claimS category when they deal with claims which exceed ten thousand balboas (B/.10,000.00)".***

We do not see in the Procedural Code the distinction between small and minimum claims proceedings as the aforementioned article seems to propose and exists in other countries.

It is therefore said that the Ordinary Proceedings with large claims shall be those exceeding the amount of B/.10,000.00, i.e., those that have an amount of B/.10,000.01 or more, whose jurisdiction shall be assigned to the Circuit Judges. In the case of small claims proceedings (both small and minimum categories) they shall be assigned to the Municipal Judges, whose amount is from US$1,000.01 to US$10,000.00. To address this assignment of jurisdiction due to their amount, see Articles 50 and 52 of the Civil Procedural Code.

II. *DETERMINATION OF THE AMOUNT. (Article 616)*

Article 616 of the Civil Procedural Code establishes how the amount must be determined in Ordinary Proceedings.

The first paragraph provides that the amount in ordinary proceedings shall be determined through the amount proposed by the plaintiff in the complaint, which shall include the following sum:

> *"The total of the liquid amount and the due interest claimed at the time of the filing of the complaint, without taking into account the fruits, interests, fines or damages claimed as accessories which are incurred subsequent to its filing."*

This provision creates confusion and is not necessary. The amount demanded shall always be that estimated by the plaintiff, being under the obligation to prove his/her statement, and the Judge shall recognize or not, on the basis of the evidence provided, what is claimed. Making distinctions with respect to the non-inclusion of interest, damages, etc., which are caused after the filing of the complaint, gives the impression that the Judge is limited by congruence, by pointing out that these items shall not be taken into account even if they have been agreed (penal clause or legal interest deducted from the same obligation as provided for in Articles 1040 and 993 of the Civil Code). We believe that this wording creates confusion, in that it could be understood that the competent judge by reason of the amount may only rule on the net sum and the interest due up to the date of filing of the complaint, without taking into account the other items which are incurred after its filing, even if they are derived from the same obligation.

As for the rest of the ordinals, we must abide, in terms of the determination of the amount, to the one that in the case of real property is assigned through the cadastral value, and in the case of personal property (chattels) it shall correspond to the specific appraisal which is made through experts. We consider that the presentation of this evidence constitutes a procedural prerequisite with respect to the admission and viability of the claim. In any case, such evidence shall be summary, that is,

provided, in principle, without contradictory.

Article 616 expressly states the following:

> *"**Article 616.** Determination of the claim amount. In those proceedings that are heard before a municipal judge or circuit judge, the claim amount shall be determined as follows:*
> *1. The total of the liquid amount and the interest due which are claimed at the time of the filing of the complaint, without taking into account the fruits, interest, fines or damages claimed as accessories which are incurred subsequent to its filing.*
> *2. In survey and marking of boundaries processes, by the appraisal of the property in the possession of the plaintiff.*
> *3. In proceedings that deal with the ownership or possession of property, for the appraisal thereof.*
> *4. In division proceedings that deal with real property for the value of the appraisal and when they deal with personal property (chattels) for the value of the assets subject to the partition or sale.*
> *5. In easement proceedings, by the appraisal of the servient property.*
> *The amount shall be indeterminate only when it deals with matters of patrimonial nature or that are not provided for in the preceding paragraphs.*
> *The plaintiff shall fix the claim amount in matters of patrimonial nature which do not deal exclusively with the payment of money and in which jurisdiction is determined by the claim amount."*

With regard to the provisions regarding the uncertainty of the claim amount, it is worth quoting Professor Ramiro Bejarano Guzmán who in his analysis points out the following, referring to the Colombian Procedural Code:

> *"The merger in the same procedural channel, of contentious matters of large amount and controversies that do not have patrimonial content, at first glance may suggest the false appearance of being contradictory, if only the patrimonial aspect is taken into account.* ***In effect, when the legislator reserved the same procedural route for matters of large amount and for those that cannot be assessed pecuniarily, it did so on the understanding that both forms of controversies deserve equal treatment, due to their cardinal importance.***
> ***That is to say, the importance of a controversy does not only arise from its economic estimation, since on certain occasions, there are others equally important, despite not allowing its monetary assessment.*** *It is important to specify that, when talking about contentious matters that do not deal with economic rights, we are only mentioning those that do not have a specific procedure. In fact, there are other cases that also have the characteristic of not dealing with economic rights, but they are not ventilated as ordinary of large amount, because the law has set forth another procedural form. Examples of the foregoing are the claims for nullity and divorce of civil marriage, contentious separation of bodies of civil and Catholic marriages, which are processed as verbal of large and small amount and not as ordinary, since the law expressly assigned them a different procedural form."*

III. *ADMISSION OF THE COMPLAINT (Article 617)*

In view of Article 617 of the Civil Procedural Code, we begin with the particularities that must be taken into account with respect to the requirements that must be met in a complaint, in order for it to be admissible and consequently being served to the opposing party.

It is at the time of the examination aimed at admitting or not a complaint, when the Judge must be detailed in the review of the elements that must be present in the libel in order for it to be admissible.

The above is related to the procedural requirements, to which Professor Hernando Davis Echandia refers in his book Compendium of Procedural Law, as follows:

> *"**We have already said that for the valid formation of the procedural legal relationship, it is required, in addition to the complaint, the accusation or the criminal complaint, that certain indispensable requirements be met for them to be addressed by the judge and impose on the latter the obligation to initiate the proceedings. These requirements are known as the rules of procedure.***
> *These rules determine the valid birth of the proceedings, its development and its normal culmination with the judgment, without the latter necessarily having to decide on the merits on the admissibility or fortune of the claim and much less that it must be favorable to that claim, since these two circumstances depend on another type of rule: material or substantial.*
> *Therefore, **these are assumptions prior to the proceedings or requirements without which it cannot be validly initiated, and must, therefore, be present at the time of filing the complaint or accusation or criminal complaint, so that the judge can admit it or initiate the proceedings**; or procedural requirements so that the proceedings can be validly and normally brought forward, once it is initiated."*

The subdivision that Professor Hernando Devis Echandia makes of the rules of procedure is important for the attention of what is established concerning the admissibility and feasibility of the Proceedings. Thus, the rules of procedure of the action are indicated, which relate to the valid exercise of the subjective right by the plaintiff and the rules of procedure of the complaint, which must be met for the judge to admit the complaint.

With respect to the rules of procedure of the action, the following are set forth (See Compendium of Procedural Law by Hernando Davis Echandia):

> *"RULES OF PROCEDURE OF THE ACTION.*
> *Within this class we understand the necessary requirements for the action to be validly exercised, understood as a subjective right to obtain proceedings, as we studied in chapter xi; that is, conditions for the judge to hear the request made to initiate proceedings and decide it by means of a fair judgment.*
> *These requirements are:*
> *1. The legal capacity and procedural capacity or "legitimatio ad processum" of the plaintiff and his/her adequate representation when acting through another person (attorney-in-fact, manager, guardian, curator, father or mother in the exercise of parental authority).*
> *2. The investiture of judge in the person before whom the complaint, the accusation or criminal complaint must be filed , because if it is a particular individual, there would be a non-existent legal act.*
> *3. The status of qualified lawyer of the person who files the complaint, either in his own name or as a representative of another, when the law so requires it (as is the case with us for the vast majority of civil cases, for all contentious-administrative cases and many labor cases) and this because it is a kind of requirement of procedural capacity and due representation, which in case of absence prevents the judge from accepting the complaint. It does not operate in criminal matters.*
> *4. The non-expiration of the action, when the law has indicated a term for its exercise and from the list of facts of the complaint or its annexes it appears that it is already expired (for*

example, because the year granted for the possessory action has passed); then the judge must reject the complaint outright (art. 85, C. de P. C., penultimate paragraph 1001). But if the expiration is declared in the judgment. This is of substance or merit, the same as when the prescription is declared proven, for which res judicata is produced."

In addition to the above rules of procedure of the action, the rules of procedure of the complaint are added, categorized as follows (See Davis Echandia's Compendium of Procedural Law):

"RULES OF PROCEDURE OF THE COMPLAINT, THE ACCUSATION OR THE CRIMINAL COMPLAINT.
These rules can be defined as necessary requirements for the initiation of the proceedings or legal procedural relationship, which must be examined by the judge before admitting the complaint, the accusation or criminal complaint, in addition to the above; let's see what they are:

1. ***That the complaint, the accusation or criminal complaint be filed before a judge of the jurisdiction to which the matter corresponds****, because if it is before a judge, but of another jurisdiction, there shall be an act that is legally ineffective, because the jurisdiction is non-extendable and its absence cannot be remedied (see cap.VI); secondly, that it be filed before a competent judge, because even if the latter has jurisdiction for the case, it may happen that he/she does not have the power to hear that particular matter because it corresponds to another judge of the same jurisdiction, as explained in Chapter IX, and then the judge must dismiss the complaint, and if he does not do so, the proceedings shall be null and void, unless its reparation operates.*
   On the other hand, if the complaint or criminal complaint is filed with an incompetent officer, the latter must refer it for processing to the competent officer.
2. ***The capacity and due representation of the defendant, or "legitimatio ad processum"****; the assistance of the accused and the suspect by a lawyer in criminal matters.*
3. *The due complaint, which includes compliance with the formal requirements and the presentation of the documents required by law, which must be examined and demanded by the judge in order to admit or reject it, the due complaint or criminal complaint.*
4. *In contentious-administrative matters, there is also the requirement of having paid the amount of the fine or tax, or the minimum part required, for the admission of the complaint for the nullity of the act imposing or settling it; and having exhausted the administrative or governmental remedies of claim against the ruling.*
5. *The surety bond for preliminary precautionary measures in civil enforcement proceedings and in some declaratory proceedings."*

As we can see, for the admission of any complaint and consequent service of summons, it is necessary to examine whether the rules of procedure for its viability are met. It is up to the Judge to examine the complaint, for its admission and verify that it complies with each of the rules of procedure, and failing that, the other party, to whom he/she proposes his/her action or defense, may inform the judge about the "*defects or vices in terms of the rules of procedure that are required for a valid procedural relationship to arise" as established in Article 408 of the Civil Procedural Code.* The judge has another opportunity to correct the procedural relationship, if any vice or defect has been incurred, this after the service of summons of the complaint has been completed. Article 409 of the Civil Procedural Code states the following:

"Article 409. Reparation of the proceedings*. Once the term of the service of summons has expired, the judge must verify whether the procedural relationship suffers from any defect or vice that, if not remedied, would produce an inhibitory ruling or the nullity of the proceedings.*
In such a case, the judge shall order the party to correct its brief, clarify the facts, specify his claims or specify the right invoked, as well as to summon ex officio the persons who must make

up the adversarial party in cases of joint litigation, to choose the claim in cases in which procedures of a different nature have to be followed, that the procedural relationship be duly integrated or that the proceedings be submitted to the corresponding formalities in the event that other or any other measure necessary for its reorganization has been chosen, as appropriate."

Let us then return to the admissibility requirements, based on the existence of the rules of procedure. Certainly, the Judge, complying with his duty to properly substantiate the proceedings, must be attentive to ensure that the complaint of the lawsuit to which he will admit, and the procedural relationship are properly combined. Nevertheless, the initial examination as to whether the complaint complies with the legal requirements is in the hands of the plaintiff, under penalty of it not being admitted for processing. The plaintiff must therefore be cautious about complying with the procedural requirements necessary for his complaint to be processed.

- ***FACTORS FOR THE ATTRIBUTION OF JURISDICTION AND COMPETENCE.***

Regarding jurisdiction, which is the power to administer justice in civil and commercial cases (see article 9 of the C.P.C.), it is necessary to be aware that the parties have not established an arbitration clause, which excludes the hearing of the matter to the Ordinary Jurisdiction, leaving the solution of the conflict under the arbitration jurisdiction. In this regard, it is necessary to consider the provisions of Article 17 of Law 131 of 2013, which regulates the general arbitration system in Panama, which expressly states that the procedural effect of the arbitration agreement consists in the declination of jurisdiction by the Court of ordinary jurisdiction, in favor of the Court of the agreed jurisdiction and the immediate referral of the case docket to the arbitration court, and that the judges and courts, which hear any claim related to an agreed arbitration, shall recuse themselves from hearing the case ***rejecting the claim outright***, **immediately sending the parties back to arbitration,** in the manner that has been agreed. The regulation in question expressly states the following:

*"**Art. 17.** Effects of the arbitration agreement. The effects of entering into an arbitration agreement are substantive and procedural.*
***The substantive effect obliges the parties to comply with the agreement and to formalize the constitution of the arbitration court**, collaborating with their best efforts in an expeditious and effective manner, for the development and completion of the arbitration proceedings.*
***The procedural effect consists in the declination of jurisdiction, by the court, in favor of the arbitration court** and the immediate referral of the docket to the arbitration court.*
***The judge or court before whom a complaint, action or claim is filed in relation to a dispute to be resolved by arbitration shall recuse itself from hearing the case, rejecting the claim outright, without further formality, and immediately sending the parties back to arbitration**, in the manner agreed by them and pursuant to the provisions of this Law.*
In any event, if any claim on a matter that is the subject of arbitration has been brought before a court of law, arbitration proceedings may be started or continued and an award may be rendered while the matter is pending before a court of law, without prejudice to the competence of the arbitration court to judge on its own jurisdiction in the manner set forth in this Law and to the remedies against the award established therein.
State, municipal or provincial regulatory bodies or agencies, which must intervene in settling disputes between the parties, must also be inhibited, if there is a prior arbitration agreement."

In this regard, read the final paragraph of Article 395 of the Civil Procedural Code, which expressly states that:

> *"The complaint shall be rejected outright due to the existence of an arbitration clause and the judge must send it to the arbitration court agreed by the parties or the one provided by law."*

This wording does not conform to what technically must happen, which is that the party conventionally submitted to the arbitration jurisdiction files its request for arbitration under the terms set forth by the Law. The referral by the Judge to the "Arbitration Court" does not conform to the rules of procedure established in the Law, which presupposes the occurrence of certain prerequisites before the composition of the arbitration court. On that basis, I consider that once the complaint has been outright rejected, it is up to the plaintiff party to manage its request for arbitration before the corresponding center, and not for the Judge to send it to a non-integrated arbitration court.

With regard to jurisdiction, it is necessary to abide by the system of attribution established in the chapter of Title I of Book One of the Civil Procedural Code. Article 13 expressly states the following:

> ***"Article 13.*** *Competition and its factors. The competence of a judge or justice to hear certain proceedings in the civil jurisdiction is established by reason of:*
> *1. The territory.*
> *2. The nature of the matter.*
> *3. The claim amount.*
> *4. The quality of the parties.*
> *5. The connection, in cases of counterclaim, universal proceedings and third parties.*
> *6. Functionality, that acquired by reason of degrees or instances."*

The factors for attributing jurisdiction must be examined, taking into account the casuistry provided for in articles 12 to 55 of the Civil Procedural Code.

- ***THE CAPACITY AND DUE REPRESENTATION OF THE DEFENDANT, OR "LEGITIMATIO AD PROCESSUM" (ABILITY TO APPEAR IN COURT)***

With respect to the capacity or ability to appear at the proceedings, as rules of procedure, Articles 85 and 86 of the Civil Procedural Code state that:

> "*Article 85. Right to be a party. In order to be able to act validly in civil proceedings, persons must have the capacity to be a party, have legal capacity, be legitimate, and be assisted by a legal professional who represents and defends their substantive rights and procedural guarantees.*
> *The judge or justice must take the necessary corrective measures to promptly correct any deficiency or anomaly, whether due to lack of capacity to be a party or procedural capacity that may occur or concur in any of the parties to act validly and effectively within the proceedings.*
>
> *Article 86. Procedural subjects. A party is defined as the procedural subject with the capacity to bring an action and file a complaint against the one who is summoned, and likewise as the*

party who must satisfy a claim within proceedings. The first is called the Plaintiff or claimant party and the second is called the Defendant or passive subject.
Also intervening in the proceedings, in addition to the parties, are the attorneys-in-fact, their representatives, third parties, assistants of justice and the Public Ministry in the cases provided for in this Code and in the law."

This capacity, as a rule, refers to procedural standing, that is, the ability to be able to sue or be sued, without taking into account substantive standing, related to having the right to what is claimed or as a defendant being detached from a causal link with respect to what is claimed. In this regard, it is important to quote Professor Jairo Parra Quijano, who in his work Civil Procedural Law, specifies the following:

"Procedural Theory. For those who defend this theory, a party is one who, as plaintiff or defendant, has participated or participates in any way in the proceedings initiated.
LEO ROSEMBERG argues in this regard: "Parties to civil proceedings are those persons who request and against whom state legal protection is requested, in their own name, in particular sentencing and forced execution.
"This concept of German procedural law (the only decisive one) is independent of the structure of substantive law and of the extra-procedural legal position of the interested parties. ***Because one is not a party to the civil proceeding as the holder of the disputed legal relationship, but an actor is the one who asserts the substantive right; and the defendant, the one against whom it is asserted****.* ***For the position of the procedural party, it is not important whether the plaintiff is the holder of the right and whether the defendant is the true obligor or affected.*** *Often, according to the substantive law, persons other than the holders of the right or the legal relationship in dispute are entitled to bring proceedings and are parties. For example, a husband who, according to the BGB, paragraph 1380, asserts a right belonging to his wife, is a party; although he manages a proceedings for a foreign right, and it is not the wife even though her right is the object of the litigation".*

Appearance at the Proceedings is reserved for those persons listed in Article 87 of the Procedural Code. In any case, such persons with legal capacity must do so through their representatives, subject to the substantive rules.

In the case of persons who do not have legal capacity (art. 96 of the C.P.C.), it shall be required that they be represented by those who, in accordance with the substantive law, are their legitimate representatives.

The procedural capacity to be a party must be combined with representation through an attorney, with direct appearance being exceptional, when is provided by law. Article 125 of the C.P.C. states that:

"Article 125. Appearance by judicial attorney-in-fact. ***Any person who is to appear in civil proceedings must do so through a judicial attorney-in-fact legally constituted*** *and authorized by means of a power of attorney granted, in accordance with the legal formalities and requirements, except in cases in which the law permits his or her appearance or direct intervention.*
The attorney is a collaborator of the Judicial Branch and in the exercise of the role he/she plays, must be treated with consideration and respect."

It is worth mentioning that, regarding the proof of the existence, legal representation or quality of the parties, it must be provided with the lawsuit. Likewise, the power of attorney granted to the attorney who shall exercise the legal representation in the respective case must be provided as an annex to the complaint, in addition to providing registry certification which certifies the existence and legal capacity of the plaintiff. See Articles 386 and 387 of the Civil Procedural Code.
It is noteworthy that the final paragraph of article 386 reads as follows:

> "The power of attorney to initiate the proceedings shall also be provided with the complaint when acting by means of a judicial attorney-in-fact, **as *well* as *the identity of the natural* person** or the certification of the Public Registry on the existence of the legal entity and of the legal representation of these and the capacity in which they shall intervene in the proceedings."

The certification of the Public Registry with respect to legal persons is clearly understood, we do not understand the scope of the contribution of *"the identity of the natural person"*. It must be understood that the authenticated identity card or a certificate from the Civil Registry must be provided, or it shall only be valid to establish the particular details of the principal in the power of attorney granted. It is worth clarifying this aspect in order to avoid inadmissibility of claims pursuant to this provision.

- ***PROPER COMPLAINT WHICH INCLUDES COMPLIANCE WITH THE FORMAL REQUIREMENTS AND THE PRESENTATION OF THE DOCUMENTS REQUIRED BY LAW.***

In accordance with the distinction made by Professor Hernando Devis Echandia, with respect to the procedural requirements mentioned above, let us look at the one that deals with the requirements of the claim.

Regarding the compliance with the formal requirements of any lawsuit, special attention must be paid to articles 384 and 385 of the Civil Procedural Code.

We recommend reading both articles in order to comply with the proposed catalog of requirements.

Our attention is drawn to the characterization that must be given to the petition or claim and the facts on which it is based in the libel of the lawsuit. Article 384, paragraphs 5 and 6 of the Civil Procedural Code expressly states the following:

> 5. *The petition, claim or claims of the complaint expressed in a clear, precise and individualized manner. When there* are *several claims* or *petitions, these shall be expressed with due separation and numbering. The claims* or *petitions formulated in the alternative, in the event that the main claims* or *petitions* are *rejected, shall be stated in their* order *and separately.*
>
> 6. *An orderly statement of the specific facts on which the claims* are *based, drafted in a clear, precise and chronological manner* as *far* as *possible.*

As can be observed, the transcribed precepts establish that the claims and facts of the

complaint must be filed in an orderly, clear, precise, individualized and chronological manner; failure to comply with this would be worth that the Court orders the correction of the complaint. This requirement was not demanded in the prior Code (see paragraphs 5 and 6 of article 665 of the repealed Judicial Code), which did not say anything about the order, clarity and precision of the claim and the facts on which the proposed complaint was based.

On the other hand, Article 385 of the Civil Procedural Code establishes additional requirements that must be added to the catalog established in Article 384, depending on the nature of the action.

Paragraph b, ordinal 2°, of article 385 of the Civil Procedural Code, which expressly states the following:

> b. The claim amount of the complaint shall be determined by the value of the claims at the time of the complaint, that is to say, the total of the liquid amount claimed and the interest due up to the date of the complaint, but subsequent fruits, interest or damages shall not be taken into account, if they are claimed as accessory things. Legal costs shall also not be computed for the determination of the claim amount.

As we noticed in previous lines, when referring to ordinal 1 of Article 616 of the Civil Procedural Code, this wording creates confusion. The amount demanded shall always be the amount estimated by the plaintiff party, being under the obligation to prove his/her statement, and the Judge shall recognize or not, on the basis of the evidence provided, what is being requested. Making distinctions with respect to the non-inclusion of interest, damages, etc. caused after the filing of the complaint, gives the impression that the Judge is limited to rule exclusively on the amount requested in the complaint, by stating that subsequent fruits, interest or damages shall not be taken into account, even if they have been agreed (penalty clause or legal interest deducted from the same obligation as provided for in articles 1040 and 993 of the Civil Code). We consider that this wording creates confusion, inasmuch as it could be understood that the competent Judge by reason of the amount may only rule on the liquid sum and the interest due up to the date of filing of the complaint, without taking into account the other items that are incurred after its filing, even if they are derived from the same obligation, such as interest, for example.

I. ***NOTIFICATION*** **OF THE COMPLAINT (Article 617)**

Article 617 of the Judicial Code states that, once the plaintiff has complied with the requirements established in the Civil Procedural Code, to which we have referred in the previous section, the complaint shall be admitted, and the defendant shall be notified of it for a period of 10 days in order to answer it.

The aforementioned expressly states the following:

> "**Article 617.** Notification of the complaint. The proceedings begin with the filing of the complaint, which must comply with the legal requirements for its admission. Once the complaint has been admitted, the defendant shall be served with the complaint for a term of ten days for its answer.

> In the admission writ of the complaint, the defendant shall be warned that failure to answer shall be taken as an indication against him and, in such case, the proceedings shall continue in the court's dockets.
> The defendant may, when answering the complaint, consign what he/she believes to be due for immediate delivery to the plaintiff. Consignment releases the defendant from further liability for the amount of the sums or thing consigned.
> If the defendant in his/her answer acknowledges owing any liquid sum of money or other obligation, he/she shall be exempted from the costs and interest corresponding to what has been paid or given, and his/her conduct may be appreciated by the judge as an indication in his/her favor according to the circumstances of the proceedings."

The Civil Procedural Code in its glossary establishes the following definition of "notification":

> ***"Article 8:***
>
> ...
>
> 18. Notification. The act by which the court notifies one of the parties of the action of the other so that the latter may answer, dispose or propose what is convenient regarding one or the others".

With regard to the notification of the complaint in the Ordinary Proceedings, Articles 395 of the Civil Procedural Code must be combined with the aforementioned Article 617.

Additionally, with respect to the admission of the claim and its transfer, the provisions of Article 395 of the Civil Procedural Code must be taken into account. Said article expressly establishes:

> "Article 395. Admission and rejection of the complaint. The complaint shall be admitted if it is filed in accordance with the requirements set forth in this Code, for which the judge shall process it accordingly, even in the event that the plaintiff chooses a different procedural route.
> ***In the writ admitting the complaint, the judge shall inform the parties that they may resort to the conciliation or mediation procedure for the resolution of the conflict originating the complaint,*** *being able to avail themselves of the suspension of the civil proceedings in the* manner *provided in this* Code *while the conflict resolution procedure lasts.*
> **In the same resolution, the judge must integrate the necessary joint litigation and order the defendant to provide, during the notification of the complaint, the documents in his/her possession and that have been requested by the plaintiff.**
> In any case, within thirty days as of the date of the filing of the complaint, the plaintiff or executor must be notified of the admission writ or the payment order, as the case may be, or the writ rejecting the complaint.
> The omission to pronounce on the admission or rejection of the complaint or the notification of the admission writ within the aforementioned period, shall constitute a misdemeanor, which shall be sanctioned pursuant to the Public Career Law.
> The complaint shall be rejected outright in view of the existence of an arbitration clause and the judge shall send it to the arbitration court agreed upon by the parties or the one provided by law."

As can be observed, the resolution admitting the complaint for its respective processing and serving it to the defendant, shall inform the parties about the possibility of resorting to the conciliation or mediation procedure for the resolution of the conflict that arises; in addition, the judge, upon admitting it, must integrate the necessary joint litigation. Finally, this provision

states that the defendant shall be ordered to provide, during the notification of the complaint, the documents in its possession that have been requested by the plaintiff. We deem it necessary for these purposes to examine what is regulated in this respect in articles 434 to 439 of the Civil Procedural Code, which address with the "disclosure of evidence".

In this regard, the dynamic burden of proof, to which the Colombian doctrine has referred in the following terms, should be borne in mind:

> ***"Exceptional nature of the doctrine of the dynamic burden of proof:*** *this thesis* or *doctrine has limits because it is not absolute, its application is not automatic in all* cases, *it should only be applied when with the* Roman *rules of the burden of proof,* rights may be infringed, or *when the judge notices that he/she must give special judicial* protection to *any of the parties; therefore its application is exceptional, only when* the specific case, demands evidentiary difficulties and it is then required to flexibilize *the* burden of proof of the former *article 177 of the* C.P.C. *when the requirements of the* second paragraph of article 167 C.G.P. are complied".

Article 167 of the Colombian Civil Procedural Code expressly states the following:

> "**Article 167. Burden of proof** It is incumbent upon the parties to prove the factual assumption of the rules that embody the legal effect that they pursue.
>
> However, depending on the particularities of the case, the judge may, ex officio or at the request of a party, distribute the burden when ordering evidence, during the examination of evidence or at any time during the proceedings before ruling, requiring proof of a certain fact to the party that is in a more favorable position to provide evidence or clarify the disputed facts. ***The party shall be deemed in a better position to prove by virtue of its proximity to the evidentiary material, by having in its possession the object of proof, by special technical circumstances, by having directly intervened in the facts that gave rise to the litigation, or by the state of defenselessness or incapacity in which the opposing party finds itself,*** **among *other similar circumstances.*** *When the judge adopts this decision, which shall be subject to appeal, he/she shall grant the corresponding party the necessary period* to *provide* or *request the respective evidence, which shall be subject to the rules of contradiction provided* for in *this* code. *Notorious facts and indefinite affirmations* or *denials do not require proof.*

The referred provision of the Colombian Civil Procedural Code is related to what is now regulated by the Panamanian Civil Procedural Code, in Article 411.

- ***ANSWER* TO *THE COMPLAINT (Article 617)***

As a consequence of having received notification of the complaint, the defendant, in his/her right to contradiction, may act in different ways.

Professor Jairo Parra Quijano in his book Civil Procedural Law, referring to the right of contradiction states the following:

"THE RIGHT TO CONTRADICTION

As opposed to the right of action and with the same characteristics and qualities, we find the right to contradiction. In this regard, Ugo Rocco argues:

"The defendant's right of action, which for the sake of clarity we shall call the right to contradiction in court, does not constitute a right distinct from the right of action, but rather a different modality of the right of action, a modality that results precisely from the different position that the active subjects of the procedural relationship assume in the proceedings".

The right to contradiction has the same purpose as the right of action. Just as the right of action seeks to ensure that the proceedings has a fair composition, the right to contradiction complements it in the same sense, emphasizing or placing this right on the defendant.

The right to contradiction has and must have constitutional roots. When speaking of the right of action, the concept is related exclusively to the plaintiff. Perhaps, and as a reflection of the concept, the right to contradiction is related to the defendant. Action and contradiction are equally vigorous rights that strive for social peace with social justice.

The right to contradiction does not necessarily mean that the defendant has to contradict, because, for example, he/she may use this right to accept, which is why it was previously stated that the right to contradiction complements the purposes of the right of action".

This right to contradiction can be exercised in different ways, which Professor Devis Echandia categorizes as follows:

- ***A merely passive* one, as *a spectator of the proceedings, without appearing or answering the* complaint.** *Although this attitude of the defendant, one could almost say that it is* one of abandonment, it can be adopted as a strategy to behave in the proceedings. This omissive conduct can be serious for the defendant, when the plaintiff's claim is called to succeed. Since, in case of doubt by the civil judge, the conduct "as a serious indication" shall allow him to tip the balance (it is clear that he/she can and must decree evidence ex officio), but the behavior may be superfluous when the plaintiff's claim is not called to succeed (it would be desirable to regulate in the future a pecuniary sanction to who, despite having succeeded in the proceedings, did not collaborate with the administration of justice: by answering the complaint).
- ***Another less passive, when* he/she *intervenes in the trial and answers the* complaint, *but without assuming an attitude in favor or against the claims of the plaintiff,*** *as when he/she states* that he/she abides by what is proven in the proceedings and that is determined by law, without raising defenses or submitting evidence.

With the same criteria explained in the previous paragraph, this conduct of the defendant must

be considered, especially when he/she skillfully or not very frankly uses the phrase "I shall abide by what is proven", etc. (see art. 95 of the Civil Procedural Code).

- ***Search and seizure may occur*** *(see number 15 page 61).*
- **He/she *may invoke motives that tend to improve the proceedings or to obtain its termination, which are the so-called preliminary objections*** *(see article* 97 *of the Civil* Procedural Code) or to allege facts that tend to disprove the claim (just as the right of action allows me to involve claims in the complaint, the right to contradiction allows me to enter facts that tend to undermine them).
- ***The defendant may counterclaim*** *(see number 14, page 59). The right to contradiction manifests itself fundamentally in two manners: as preliminary* objections and *as exceptions* on *the merits".*

The different positions that may be adopted by the defendant against the complaint proposed against him are regulated in articles 397 to 403 of the Panamanian Civil Procedural Code. In addition to those indicated by the Echandía Proceedings, our regulations include the reference to the cross claim that can be tried by the defendant within the period of notification of the complaint.

Regarding the answer brief to the complaint, article 397 establishes the following:

"**Article 397**. Contents of the answer to the complaint. The answer to the complaint shall contain:
1. The name and *surname* of *the parties with the expression that it is the answer to the complaint, in the upper part* of *the brief*.
2. *The* name of *the defendant, personal identity* certificate *or passport of both the defendant* and *his*/her *representative or* attorney-in-fact, *if he*/she does *not appear by himself*/herself, *physical address where he*/she can receive personal notifications, with indication of the neighborhood, street, house or apartment number, office or place of business, as well as e-mail or other technological means to receive direct judicial communications from the court. In the case of legal persons, the indication of the particulars and domicile of the entity.
3. The complete identification of *the defendant's attorney-in-fact, detailing his/ her general professional domicile*, *fixed or mobile telephone number, and indication* of *the place where he/she receives notifications, e-mail, electronic judicial mailbox or other technical means which allows him/her to receive direct communications* from *the court.*
4. The acceptance or not of the amount claim of the complaint estimated by the plaintiff when what was claimed was not exclusively the payment of *money.*
5. ***The express and specific pronouncement on the claims and on the facts of the* complaint, indicating those that are admitted, those that are denied and those that are not evidenced. In the last two cases, *it must state precisely and unambiguously the* reasons for his/her answer. If he/she does not do so, *the respective fact that* can *be proven by* confession shall be presumed to be true.**
6. If it considers inadmissible the joinder of claims, alleged by the plaintiff, it shall so state, stating the reasons for the inadmissibility. It may also state in the answer its acceptance of the claim or some of *the claims of the plaintiff.*
7. The exceptions in which it supports his/her defense.
8. The specific facts on *which the defense is based, stated* one *after the other, individualized or specified in numerals, ordinals or figures that allow them to be clearly*

identified.
9. *The evidence that he/she intends to use to prove his/her defense.*
10. The indication of the means to receive judicial communications in the proceedings.
***11. The* annexes *attached to the answer brief*.**
***The answer to the complaint must be accompanied by the power of attorney of the person* signing it on *behalf of the defendant, proof of his/her identity and representation, if* applicable, the documents in his/her possession that have been requested by the plaintiff or the statement that he/she does not have them.**
If the defendant has documentary evidence in his/her possession, he/she may attach it to his/her answer, without prejudice to doing* so *within the procedural opportunity established in this Code and may indicate in his/her brief those documents that the plaintiff has in his/her possession for the plaintiff* to *provide them.

The means of evidence alleged and those furnished with the answer do *not require* confirmation during the course of the proceedings and may be added, withdrawn, substituted or *supplemented up to ten days before the preliminary hearing. Within* this period, means of evidence other than those alleged and submitted with the complaint may also be alleged.
The defendant may, when answering the complaint, consign or pay what he/she agrees to owe. Consignment or payment releases the defendant from further liability for the amount of the sum or thing consigned, which shall be immediately delivered to the plaintiff, unless there is a counterclaim."

With respect to the content of the answer to the complaint, we shall refer specifically to two of them, which are established in paragraphs 5 and 11.

Paragraph 5 states that the defendant, with respect to the claims that he/she denies or does not prove, must "state precisely and unequivocally the reasons for his/her answer. If he/she does not do so, the respective fact that can be proven by means of confession shall be presumed to be true".

What this rule states is that, if the Judge considers that you have not given a precise (Perceptible in a clear and clear way) and univocal (That can only be interpreted in one sense or in one way) answer, he/she shall presume the fact as true if it complies with the requirements of confession (see article 488 and 489 of the Judicial Code).

It is therefore important that the answer does not use the formula currently working in terms of denying the facts or stating that I do not know, otherwise the judge may understand it as a "presumed confession".

Paragraph 11 establishes as an opportunity for the defendant at the time of answering, to request the plaintiff to submit the documents in his/her possession. Likewise, he/she must deliver the documents requested by the plaintiff in his answer brief or state that he/she does not have them.

IV. EVIDENCE (Article 618)

Article 618 of the Civil Procedural Code establishes the following for the ordinary

proceedings regarding evidence:

> "**Article 618.** Evidence. The means of proof may be alleged in the brief of complaint, answer, counterclaim, cross-claim, exceptions, incidents and other pleadings proposed by the parties, or may be brought to the proceedings up to ten days before the preliminary hearing and counter-evidence up to five days before the preliminary hearing."

We recommend reading article 415 of the Civil Procedural Code, which address the submission of evidence in the proceedings, and should be combined with the transcribed article 618. Article 415 expressly states the following:

> "**Article 415. Submission of evidence**. In addition to the evidence submitted or proposed with the complaint, answer, counterclaim, cross-claim, exceptions, incidents and other pleadings alleged by the parties, in order to be reviewed by the judge, evidence must be alleged up to ten days before the preliminary hearing and counter-evidence up to five days before said hearing, in accordance with the following:
> 1. The judge shall expressly rule on the admission of evidence submitted by the parties.
> 2. Only the evidence incorporated by motion of the parties, as well as that required by the court in the specific cases allowed in this Code, shall be considered as evidence in the proceedings.
> 3. There shall be no reservation of evidence. The court shall show to either party, whenever it so requests, the evidence of the other party and also that which has been produced at the request of the petitioner. The evidence of each party shall be contained in a separate notebook. When a notebook of evidence or an incident of any nature is in process, a corresponding annotation shall be made in the main docket.
> 4. The judge or the person in charge of the hearing shall personally receive all evidence. If he/she is unable to do so due to the territory or other causes, he/she may do so through video call, video hearing or any other means of communication that guarantees immediacy, concentration and contradiction in the proceedings. The judge may commission for the reception of evidence that must be produced outside the seat of the court and it is not possible to use the technological means or platforms to adduce evidence. It is forbidden for the judge to commission the examination of evidence that have to be produced in the place of its seat, as well as for inspections within its territorial jurisdiction.
> 5. The examination of evidence by the judge or commissioner, if he/she deems it convenient and with the knowledge of the parties, may be carried out on non-working days and hours, and must do so in urgent cases or when requested by mutual agreement of the interested parties.
> 6. Notwithstanding the provisions of the preceding numeral, the evidentiary proceedings shall be conducted within the judicial hour, but the deponent, appearor, witness or expert shall remain in the court until the hour has elapsed.
> 7. The reports or documents requested from other public or private entities, which arrive before the judgment is rendered, shall be taken into account for the decision, after complying with the legal requirements for their examination and contradiction.
> 8. The judge shall refrain from ordering the production of evidence which, directly or by means of a right of petition or information, could have been obtained by the party requesting it, except when the request has not been complied with, which must be proven before the court.

9. *When the recognition of* a *thing by experts, the comparison of* a *handwritten signature* or *other similar formalities* are *requested as evidence, the party who may be affected by such evidence has the right to be present, and must be previously summoned; but, if he/she* does *not appear, the formality shall not be suspended.*
10. *The omission of stamp paper, tax stamps* or *any other tax requirement in the issuance of* a *document* or *any other evidence* does *not lessen its evidentiary value.*
11. *When evidence is requested to be produced* abroad or *in places distant* from *the seat of the court, the use of technological means shall be preferred, provided that they guarantee the immediacy of the judge* or *commissioner and contradiction, except in cases in which,* for *any circumstance, in the judge's opinion, the use of such means* is *not possible in* a *reliable and secure manner.*
12. *When by electronic means* or *other technologies, a party, witness* or *expert depositions* are received, *in which the source of evidence* is abroad, *the formalities established in this* Code *shall be applied and the evidence shall be* deemed *to have been* received *in the national territory* for *all its effects, without prejudice to the provisions of the international conventions and treaties in* force.
13. *Evidence obtained through the procedure of disclosure of evidence shall be admitted in the proceedings, provided that the judge has confirmed that the parties* were *involved in its production and that the special rules set forth in this* Code for *the disclosure of the means of* evidence in *question were observed. Such* evidence *must* be submitted to the opposing party at the hearing.
14. *The* evidence *incorporated* in *the docket, which has been taken with the intervention of the parties after the procedural opportunity* for *its examination has expired, shall be* considered *in the judicial decision, provided that it has been* ordered *by* means *of* an *enforceable decision. The above* is *applicable* in *the case of documentary evidence that has been requested* and ordered *to be taken outside the hearing, as well as any of the* evidence *taken by* commission, *which shall be* added *to the proceedings as long as the judgment has not been issued; if the above* occurs, *the same shall be* considered *in the case of appeal* or *consultation of the judgment.*
15. *Evidence produced with the intervention of the parties may be* considered in *the* decision in cases in which the nullity of the proceedings is declared without the defect that caused the nullity having occurred in the examination of the evidence. Likewise, evidence produced with the intervention of the parties in annulled proceedings and the examination of which has not influenced the declaration of nullity may be used in the proceedings.
16. *The parties may also request* an *additional period to receive evidence outside the jurisdiction of the Republic, in distant places within the national territory* or *when the quantity* or *complexity of the evidence* so *advises, which shall be authorized by the judge* in *consideration of the distance of the place where it is to be received* or *the volume of the* evidence."

This article collects, with some variations, the articles of the Judicial Code from 780 to 814, referring to evidence in the proceedings.

Among other particularities, we highlight what in practice has been the production of the report as evidence regarding the collection of information or documentation from public entities. The ordinal 8 of article 415 of the Civil Procedural Code now establishes that: *"The*

judge shall refrain from ordering the production of evidence that, directly or *by* means *of the right of petition* or *information, could have been obtained by the party requesting it, except when the petition has not been complied with, which must be accredited before the court".*

V. PRELIMINARY AND FINAL HEARING (ARTICLE 619)

Regarding the Preliminary and Final Hearing, the ordinary proceedings regulated in the Civil Procedural Code considers them in article 619, which expressly reads as follows:

> ***"Article 619.*** *Preliminary* and *final hearing. In ordinary proceedings, the preliminary* and *final hearing shall be subject to the provisions of Articles 255 and 257 of this* Code.

It is not clear whether only the provisions of Articles 255 and 257 of the Civil Procedural Code are applicable to the ordinary proceedings, or all the provisions relating to the general rules of the hearings. For example, what refers to the setting of the hearing in the terms established by article 252, or the effects of the failure to appear at the preliminary hearing (art. 253); the appearance of persons without procedural capacity or with disabilities (art. 254) or the request for written processing of the final hearing (art. 256), among other cases regulated in provisions other than 255 and 257 that article 619 quotes.

VI. MEANS FOR CONTESTING A DECISION AND EVIDENCE IN SECOND INSTANCE (ARTICLE 620)

Article 620 expressly states that the means of contesting a decision in ordinary proceedings are regulated in Article 620:

> **"Article 620.** Means of contesting a decision and evidence in second instance. In matters of legal remedies, consultation and evidence for the second instance, the proceedings of large claims, as well as the proceedings of small claims, shall be governed by the provisions of this Code, as applicable.
> The rulings issued by the Court of Appeals and Consultations are final and do not admit further appeal, except for those that amend, revoke, decide benefits or make new declarations not disputed by the parties, which can only be reconsidered".

This article must be combined with the provisions referring to the means of contesting a decision, which are addressed in articles 563 and following of the Civil Procedural Code.

In this regard, a remedy of appeal is established as a means of contesting against the first instance judgment as provided in Article 573 of the Judicial Code.