

LAW NO. 21,394: MAIN TEMPORARY RULES FOR HEARINGS BEFORE COURTS WITH CIVIL JURISDICTION, THE COURTS OF APPEALS AND THE SUPREME COURT

The reforms introduced to the justice system by the publication of Law No. 21,394, dated November 30, 2021, has regulated transitory provisions on the procedure before courts with civil jurisdiction, Courts of Appeals and Supreme Court, for civil and commercial matters, with provisory effect, to facilitate the implementation of the permanent provisions of the Law.

To this end, several regulations of the Organic Code of Courts, the Code of Civil Procedure and the Electronic Procedure Law, among others, have been amended.

In addition, on December 13, 2021, the Supreme Court issued Act N°271-2021, enacting a decree (auto acordado) to regulate the remote appearance at pleadings and hearings before courts with civil jurisdiction, the Courts of Appeals and the Supreme Court and the use of court premises in such cases.

Applicability of the regulation:

Ten days after the publication of the Law and **for a period of one year -that is, until December 10, 2022-**, Civil Courts, Family Law Courts, Labor Courts, Labor and Social Security Debt Collection Courts, and exceptional one-member Courts, Courts of Appeals and the Supreme Court **must operate under these exceptional rules and privilege remote means**, according to the regime regulated in the sixteenth transitory provision of the Law.

That means that, during the said period, **pleadings and hearings shall be conducted as a general rule remotely**, both with respect to the court and the parties, reversing the rule of physical appearance, according to the transitory regime set forth below:

Operation of the temporary regime.

• **Initiative and procedural burden of the parties:** The parties have until

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12:00 noon of the day prior to the hearing to provide an expeditious means of contact. If it is not offered in a timely manner or it is not possible to contact the party after three attempts through the means offered, it will be understood that the party has not appeared at the hearing or, in case of an evidentiary hearing, that the party has waived its right to provide the evidence.

•**Communication channels:** In order to facilitate communication with the court, the contact information of each court shall be published on the Judiciary Branch website, indicating at least a telephone number and an e-mail address.

•**Verification of the identity:** The verification of the identity of the party appearing remotely must be made immediately before the beginning of the hearing, remotely and before the minister of faith or the official determined by the respective court, by showing his identity card or passport. A record of this situation shall be made as well.

•**Platform for the reservation of premises:** The Administrative Corporation of the Judiciary will provide a platform to consult and reserve the premises provided by the courts and judicial units throughout the country, which must be requested up to the day before the date of the hearing. Until the platform is not available, each court or judicial unit shall inform those rooms or facilities available for use.

Motion due to improper operation of the remote connection.

The motion due to improper operation of the technological means may be alleged, if it is not attributable to the party claiming it. If the motion is accepted, the court shall set a new day and time for the continuation of the hearing, without losing what was done prior to such malfunction.

Exceptions to remote appearance as a general rule.

•**If it is allowed or ordered by the court for reasonable causes:** In such case, the appearance for hearing or pleading shall take place on its premises.

•**Evidentiary hearings:** Witness statements and parties or expert depositions shall be conducted on the premises of the court with the attending witness or declarant and the intervention of a judicial server, if it is a civil or commercial matter. In such case, the judge must be remotely available to issue the corresponding resolutions during this diligence. **In any case, an evidentiary hearing may be attended remotely in the following cases:**

•**By mutual agreement:** The parties by mutual agreement may request that the court allow the witness or deponent to attend the hearing remotely. The request must be made at least two days prior to the hearing. In such case, the deposition must be made from the office of the judicial server or in a place agreed upon by the parties and authorized by the court.

•**At the request of a party:** Any of the parties may unilaterally request that the witnesses or deponents appear at the hearing remotely by videoconference, and must indicate the characteristics of the place where the evidence is supposed to be rendered.

•**Moment of the request:**

• As a general rule, this request **must be submitted at the procedural opportunity in which the evidence in question is offered, according to the corresponding procedure.**

• The decree of the Supreme Court on remote appearance at hearings, provides that regarding **civil and commercial matters, the unilateral request for remote appearance must be made before the fifth day prior to the date set for the respective hearing.**

• In the event that, prior to the entry into force of the Law, the evidence has already been offered, the request must be made before the fifth day prior to the date of the hearing.

•**Incidental nature of the request:** The court will give the other party a term to submit a response to the request, before its decision.

•**General rules to the deposition of parties and experts and witness statements in the transitory regime:**

•**Special term to submit it:** If, due to court scheduling, the deposition or statement cannot be submitted within the evidentiary term or the respective hearing, a special term of evidence may be opened only for the purpose of its submission, previously hearing the parties.

•**Audiovisual support and minutes:** The hearings shall be performed by means of audio or video with the support of a judicial server, who shall prepare and sign a record of the hearing.

•**Procedural burden of transcription:** The party who has requested the evidence or the judicial server shall prepare a transcript of the content of the statement or deposition, which must be submitted to the court within ten days. Otherwise, it shall be understood that the party waived its right to submit that evidence.

•**Objection to the transcription:**

- The other party may object the transcript within five days from the notification of the resolution that considers it as filed.
- Before its decision, the court shall give the objected party a term to submit a response to the objection. The decision shall be rendered on the sole merit of the audio or video support delivered by the court server.
- The objection shall be decided immediately, and its resolution may not be made in the final judgment.

•**Verification of the conditions of the place where the evidence is given:** The judicial server, in civil or commercial matters, must verify, either by means of questions or by showing the surroundings, prior to the hearing and during it, that the deponent or witness are in a place with suitable conditions and privacy that meets the regulatory requirements for the presentation of the evidence.

Applicability of the transitional provisions:

•**Normal expiration:** One year and 10 days after the publication of the law (December 10, 2022), the transitional regime will end, and the permanent provisions of the Law will enter into force.

•**Anticipated expiration:** However, the Supreme Court may decide to reduce the temporary validity of this transitory regime regarding certain kind of jurisdictions or differentiated jurisdictional territories. In such case, upon expiration of the transitory regime in the respective territory or jurisdiction, the permanent provisions of the Law shall enter into force earlier than they would under the normal expiration scenario.

The permanent modifications to the provisions regarding appearances at pleadings and hearings before courts with civil jurisdiction, the Courts of Appeals and the Supreme Court, can be [reviewed here](#).

The modifications introduced by the Law to the ordinary civil procedure can be [consulted here](#).

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