

MEMORANDUM

TO: Supreme Court Advisory Committee

FROM: Judicial Administration Subcommittee

RE: Rule of Judicial Administration 7

DATE: September 1, 2021

I. Matter Referred to Subcommittee

The Court's June 2, 2021 letter and Chairman Babcock's August 17, 2021 letter refer the following matter to the Judicial Administration Subcommittee:

Rule of Judicial Administration 7. The Remote Proceedings Task Force recommends updating Rule of Judicial Administration 7 to include remote proceedings. The Committee should make recommendations.

II. Background

The Remote Proceedings Task Force submitted a status report to the Texas Supreme Court in May 2021 containing a number of recommendations aimed at encouraging the continued use of remote proceedings after the exigencies of the pandemic have subsided. Among the recommendations was one to consider including a reference to remote hearings in Rule of Judicial Administration 7, which currently encourages use of telephone and mail in lieu of personal appearances by attorneys for motion hearings, pretrial conferences, and proceedings for scheduling and setting trial dates.

III. Issues for Discussion

As currently drafted, Rule 7 provides that a district or statutory county court judge shall

to the extent consistent with safeguarding the rights of litigants to the just processing of their causes, utilize methods to expedite the disposition of cases on the docket of the court, including ... the use of telephone or mail in lieu of personal appearances by attorneys for motion hearings, pretrial conferences, scheduling and the setting of trial dates.

Tex. R. Jud. Admin. 7(a)(6)(b).

Like the Remote Proceedings Task Force, the Judicial Administration Subcommittee endorses the continued use of remote proceedings in appropriate circumstances to reduce litigation burdens on attorneys and litigants, and to increase efficiency. The subcommittee also endorses revising Rule 7 to update it and bring it into alignment with current practices involving the use of remote proceedings. With respect to the specific referral issue, the subcommittee believes that

updating language can be adapted from that used by the Texas Supreme Court in its series of pandemic-related emergency orders addressing modified court procedures during 2020 and 2021.

Based on this emergency order language, the subcommittee recommends the following revision to Rule 7(a)(6)(b):

to the extent consistent with safeguarding the rights of litigants to the just processing of their causes, utilize methods to expedite the disposition of cases on the docket of the court, including ... the use of teleconferencing, videoconferencing, or any other means ~~telephone or mail~~ in lieu of personal appearances by attorneys for motion hearings, pretrial conferences, scheduling and the setting of trial dates.

The goal behind this proposed revision is to (1) make it broad and inclusive rather than limiting; and (2) avoid tying the rule to any particular modes of communication, which may change as technology rapidly evolves. With this in mind, the proposed language is intended to be broad enough to encompass telephone use without being limited to that mode. There was some uncertainty among the subcommittee's members about whether an explicit reference to "mail" still serves any useful purpose. It is unclear whether "mail" is intended to reference delivery by the U.S. Postal Service; email; or both. Another consideration is whether the amended rule should reference any other "available" means to address the circumstances of self-represented litigants and others who may not have access to the same technology that most lawyers do.

In the course of discussing this proposed update to Rule 7 based on the referral, the subcommittee identified additional potential areas of inquiry that arguably go beyond the subcommittee referral but may warrant further discussion. These areas of inquiry may overlap with initiatives already being undertaken by the Remote Proceedings Task Force, or by other subcommittees of this body.

- Should Rule 7(a)(6)(b)'s authorization for remote participation be expanded beyond "motion hearings, pretrial conferences, scheduling and the setting of trial dates"? What range of proceedings short of trial on the merits should be captured? For example, should remote proceedings be authorized for a hearing on a plea to the jurisdiction, or for a hearing on temporary orders in family law cases?
- Should Rule 7(a)(6)(b)'s reference to remote participation be expanded beyond "attorneys" to encompass litigants?
- Should Rule 7's authorization of remote participation be incorporated into the Texas Rules of Civil Procedure, as opposed to the Rules of Judicial Administration?