

MEMO

To: Supreme Court Advisory Committee
From: Rule 216 – 299a Subcommittee
Date: August 24, 2021
Re: Updating Jury Rules

By letter of March 29, 2021, Chief Justice Hecht requested the Supreme Court Advisory Committee to review Part II, Section 10 of the Texas Rules of Civil Procedure (Rules 216 – 236) because they are outdated and do not reflect common practice. Chief Justice Hecht also requested the Committee to draft amendments for the Court’s consideration and requested consultation with the Remote Proceedings Task Force on removing any barriers to remote jury proceedings.

Our subcommittee believes that only Rule 226a would be impacted by remote jury proceedings. The current rule contemplates a jury being physically present and would need to be substantially rewritten for remote proceedings.

In a separate referral, Chief Justice Hecht also requested consideration of adding an implicit bias instruction to Rule 226a as recommended by the State Bar of Texas Rules Committee. That referral is addressed in a separate memo.

We also call to the Committee’s attention that many of the rules on juries are clearly outdated. The Committee should note that the statutes on juries, Texas Government Code §§ 62.001 and 62.021, are also outdated in many respects. For example, some of the rules as well as

some of the statutes refer to the use of a “jury wheel” with a physical draw of names for jury lists. In the experience of the members of the subcommittees, all counties are now using a computerized system, even counties with populations of less than 1,000 people.

The changes recommended by our subcommittee are reflected in a red-line version of the rules which is attached. While our subcommittee has endeavored to revise some of the archaic language used in the rules, we recommend the Court consider a re-write of the jury rules in “plain English.”

Many of the proposed changes are self-explanatory. We eliminated rules we believe are unnecessary and combined rules where considered appropriate. We submit the following comments on some of the proposed changes:

Rule 223. We have combined Rules 223 and 224. Previously, those rules dealt separately with interchangeable and non-interchangeable juries. The “jury shuffle” was contained only in Rule 223 although the rule has generally been thought applicable to counties not using interchangeable jury panels. We add a comment referencing the statutes on the use of interchangeable jury panels.

Rule 226a. We tried to use updated language regarding internet research by jurors. While the implicit bias instruction is addressed in a separate memo, we believe a proposed instruction could be easily added to this rule with our proposed changes.

Rule 227. We have combined Rules 227, 228, and 229 so that the rules on challenge for cause are included in a single rule. Former Rule 230, regarding certain questions not to be asked of a juror, has been modified and moved to Rule 227. We thought it better for that rule to precede the challenge for cause rules.

Rule 233. We have combined Rules 232 and 233 on peremptory challenges. We added a comment about the statute which addresses additional peremptory challenges if the trial court decides to seat alternate jurors.

TCR/rd
Attachment