

M E M O R A N D U M

TO: Supreme Court Advisory Committee (SCAC)
FROM: Kennon L. Wooten
IN RE: Remote Proceedings – Revised Rule Proposals
DATE: May 23, 2022

In a letter dated December 14, 2021, Chief Justice Nathan L. Hecht asked the SCAC to study and make recommendations regarding proposed rules set forth in a report from the Remote Proceedings Task Force (“the Task Force”). The Task Force’s report, dated November 17, 2021, contains proposals for new Texas Rules of Civil Procedure 21d, 500.2(g), and 500.10; amendments to Texas Rules of Civil Procedure 18c, 21, 176, and 500.8; amendments to Texas Rules of Appellate Procedure 14, 39, and 59; and amendments to Texas Rule of Judicial Administration 12.

During meetings on February 4, 2022 and March 25, 2022, the SCAC addressed the Task Force’s proposals relating to Texas Rules of Civil Procedure 21, 21d, 500.2(g), and 500.10.¹ The meeting transcripts reflect a robust discussion about whether and when to allow remote participation in court proceedings.² Although the SCAC did not vote on the circumstances under which remote participation in civil jury trials will be allowed, there appeared to be unanimous support to allow such participation only with the consent of all parties involved. Feedback also suggested that many SCAC members felt the initial rule proposals gave trial courts too much discretion in deciding whether to allow or require remote participation in court proceedings. Many members expressed concerns about potential detrimental impacts of remote participation. There was also an acknowledgment that remote participation can be effective in certain circumstances, can reduce costs associated with attending court proceedings, and can increase access to justice.

The March 25 meeting included a vote on whether the SCAC, at its next meeting, should focus on proposed justice-court rules as a preliminary matter, before revisiting proposed rules for district and county courts. Participating SCAC members voted, 21-to-5, to focus on proposed justice-court rules as a preliminary matter. The March 25 meeting also included additional discussion about the perceived unanimity to allow remote jury trials only with all parties’ consent. In light of that perceived unanimity, it was decided that there was no need to vote on the matter.

Considering the collective input obtained over the past few months, after the SCAC meeting on March 25, discussion ensued at the Task Force level about whether there may be a better way to balance all of the competing considerations pertaining to remote participation in court proceedings. Based on that discussion, the proposed amendments to Rule of Civil Procedure

¹ These proposals are appended to the November 8, 2021 memorandum from Subcommittee 2 of the Task Force and members of the Justice Court Working Group (“the Working Group”). That memorandum is a component of the Task Force’s report contained in the meeting materials posted at <https://www.txcourts.gov/scac/meetings/2021-2030/>.

² The transcripts of both of these meetings are posted at <https://www.txcourts.gov/scac/meetings/2021-2030/>.

500.10 (for justice courts) were revised to give a party the right to request participation in a manner other than the manner directed by the court and, generally speaking, for the court to grant that request unless there is good cause not to do so. This approach varies from the initial proposal, which gives a party the right to object to the manner of participation directed by the court and, generally speaking, allows the court to grant the objection if it is supported by good cause. The comments for the revised rule proposal were also modified to reflect the new request mechanism. Also new to the revised rule proposal is a provision about open courts, which is derived from remote-proceedings legislation offered during the last Regular Session of the Texas Legislature.

In light of the new request mechanism in the revised rule proposal for justice courts, additional discussion ensued at the Task Force level about (1) whether the same edits made to the justice-court rules should be made now to the comparable rules for district and county courts, and (2) whether the SCAC will still want to carve out remote jury trials, considering the new request mechanism. With hopes of increasing the efficiency of the SCAC's consideration of remote-proceedings proposals, this memorandum encloses revised rule proposals not only for the justice courts (**Attachment A**), but also for the district and county courts (**Attachment B**). The exception for remote jury trials is bracketed and italicized, so that the SCAC can easily and clearly vote on the rule proposals with and without that exception. Finally, it should be noted that Attachments A and B reflect proposals of a majority of Subcommittee 2 of the Task Force,³ with input and oversight of the Chair of the Task Force, Chief Justice Tracy Christopher. If the SCAC wants the complete Task Force to weigh in on the revised rule proposals (as it had an opportunity to do with the initial rule proposals), this additional input will be requested and reported back to the SCAC.

³ Every subcommittee member who voted on revised proposals voted to approve them. Two subcommittee members did not participate in the voting process. In other words, there are no known dissenting opinions on these matters.

ATTACHMENT A
Revised Rule Proposals for Justice Courts
(Draft Date: May 22, 2022)

Proposed New Rule 500.2(g)

(g) “Court proceeding” is an appearance before the court, such as a hearing or a trial.

[Note: Subsequent subparts or Rule 500.2 will be relettered, starting with subpart (h).]

Proposed New Rule 500.10 Appearances at Court Proceedings

(a) **Manner of Appearance.** A court may allow or require a participant to appear at a court proceeding in person—by being physically present in the courtroom—or remotely by audio, video, or other technological means, *[except that a court may not require lawyers, parties, or jurors to appear remotely for a jury trial absent the consent of all parties involved in the jury trial]*. A remote appearance satisfies any statutory requirement to appear in person unless the statute expressly prohibits remote appearances.

(b) **Request to Appear by Alternate Means.** A party may file a request for a participant to appear at a court proceeding in a manner other than the manner allowed or required by the court. The request must be filed within a reasonable time after a party identifies the need for the request. The court must rule on the request and timely communicate the ruling to the parties, but it is not required to hold a hearing before ruling. The court must grant the request unless it finds there is good cause not to grant. Such good cause must be documented in the ruling denying the request.

(c) **Notice.** Any notice for a court proceeding must contain all information needed to participate in the proceeding, including the location of the proceeding or instructions for joining the proceeding remotely, the court’s designated contact information, and instructions for submitting evidence to be considered in the proceeding.

(d) **Open Courts Notice.** If a court proceeding is conducted away from the court’s usual location, the court must provide reasonable notice to the public that the proceeding will be conducted away from the court’s usual location and an opportunity for the public to observe the proceeding.

Comment to 2022 Change: New Rule 500.10 clarifies procedures for appearances at court proceedings. Subpart (b) references good cause not to grant a request to appear by alternate means. When evaluating the request, the court should consider factors including, but not limited to, the following: (1) whether a person who is the subject of the request may be unable to appear remotely due to a lack of access to the needed technology or a lack of proficiency in technology that would prevent meaningful participation in the proceeding; (2) whether in-person participation could compromise one’s health or safety; (3) whether the court can provide language access services for a person with limited English proficiency through the manner of appearance requested; and (4) whether the court can provide a reasonable accommodation for a person with a disability to participate in the proceeding, in the particular manner requested. When a party files a request for

participation in a particular manner, the party should explain the reasons for the request. Subpart (c) requires the court's contact information to be in a notice of a court proceeding. A participant in a court proceeding should be able to use that information to receive a reasonably timely response to any issues concerning participating remotely or by being physically present in the courtroom.

ATTACHMENT B
Revised Rule Proposals for District and County Courts
(Draft Date: May 22, 2022)

Proposed Amended Rule 21. Filing and Serving Pleadings and Motions

(a) **Filing and Service Required.** Every pleading, plea, motion, or application to the court for an order, whether in the form of a motion, plea, or other form of request, unless presented during a hearing or trial, must be filed with the clerk of the court in writing, must state the grounds therefor, must set forth the relief or order sought, and at the same time a true copy must be served on all other parties, and must be noted on the docket.

(b) **Service of Notice of Court ProceedingHearing.** An application to the court for an order and notice of any court proceedinghearing thereon, not presented during a hearing or trialproceeding, must be served upon all other parties not less than three days before the time specified for the hearingproceeding, unless otherwise provided by these rules or shortened by the court. A notice must contain all information needed to participate in the proceeding, including the location of the proceeding or instructions for joining the proceeding remotely, the court’s designated contact information, and instructions for submitting evidence to be considered in the proceeding.

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Comment to 2022 Change: The Rule 21(b) amendments clarify requirements for notices. A court should post or otherwise provide the information needed for notices of its proceedings.

Proposed New Rule 21d. Appearances at Court Proceedings

(a) **Manner of Appearance.** A court may allow or require a participant to appear at a court proceeding in person—by being physically present in the courtroom—or remotely by audio, video, or other technological means, *[except that a court may not require lawyers, parties, or jurors to appear remotely for a jury trial absent the consent of all parties involved in the jury trial]*. A remote appearance satisfies any statutory requirement to appear in person unless the statute expressly prohibits remote appearances.

(b) **Request to Appear by Alternate Means.** A party may file a request for a participant to appear at a court proceeding in a manner other than the manner allowed or required by the court. The request must be filed within a reasonable time after a party identifies the need for the request. The court must rule on the request and timely communicate the ruling to the parties, but it is not required to hold a hearing before ruling. The court must grant the request unless it finds there is good cause not to grant. Such good cause must be documented in the ruling denying the request.

(c) **Open Courts Notice.** If a court proceeding is conducted away from the court’s usual location, the court must provide reasonable notice to the public that the proceeding will be conducted away from the court’s usual location and an opportunity for the public to observe the proceeding.

Comment to 2022 Change: Amended Rule 21d clarifies procedures for appearances at court proceedings. Subpart (b) references good cause not to grant a request to appear by alternate means. When evaluating the request, the court should consider factors including, but not limited to, the following: (1) whether a person who is the subject of the request may be unable to appear remotely due to a lack of access to the needed technology or a lack of proficiency in technology that would prevent meaningful participation in the proceeding; (2) whether in-person participation could compromise one's health or safety; (3) whether the court can provide language access services for a person with limited English proficiency through the manner of appearance requested; and (4) whether the court can provide a reasonable accommodation for a person with a disability to participate in the proceeding, in the particular manner requested. When a party files a request for participation in a particular manner, the party should explain the reasons for the request.