

## 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: August 11, 2022

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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, March 25, and May 27, 2022, the SCAC addressed the proposals relating to Texas Rules of Civil Procedure 21, 21d, 500.2(g), and 500.10. The meeting transcripts reflect a robust discussion about whether and when to allow remote participation in court proceedings.<sup>1</sup> During the meeting on May 27, the SCAC voted to modify proposed Rule 500.10(a) to include the following standard for jury trials: “a court may not require lawyers, parties to the lawsuit, or jurors to appear remotely for a jury trial absent the consent of all parties to the lawsuit.” Proposed Rule 500.10(a) has been updated accordingly, as reflected in **Attachment A**. Comparable language in proposed Rule 21d also has been updated, as reflected in **Attachment B**, because SCAC feedback to date indicated a general consensus to have the jury-trial carve-out for all Texas trial courts. Although SCAC members have discussed whether the carve-out should be broadened for district and county courts (e.g., to include contested evidentiary hearings), no vote has been taken about that matter. Accordingly, the carve-out has not been expanded at this juncture.

After the May 27 meeting, Texas Access to Justice Commission (“Commission”) feedback was requested on, among other things, guidance for “good cause” in the comments for proposed Rule 500.10. That request prompted analysis by the Commission’s rules committee and staff members. Recommendations stemming from that analysis will be explained separately during the SCAC meeting on August 19. For purposes of this memo, however, it is important to convey that a Task Force subcommittee reviewed those recommendations and incorporated them into proposed Rule 500.10, Rule 21d, and the comments thereto. In addition, the subcommittee made a few minor edits to proposed Rules 500.10(b) and 21d(b), in an effort to simplify and clarify language therein.

Finally, in light of discussions during the May 27 meeting, the Task Force subcommittee assessed whether additional edits were needed for the open-courts provisions in proposed Rules 500.10(d) and 21d(c). As presented on May 27, these provisions stated as follows: “If a court proceeding is conducted away from the court’s usual location, the court must provide reasonable

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<sup>1</sup> Meeting transcripts and materials are posted online, at <https://www.txcourts.gov/scac/meetings/2021-2030/>.

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."

As presented in Attachments A and B, the open-courts provisions have been simplified and broadened to read as follows: "The court must provide reasonable notice to the public of how to observe court proceedings." The rationale for this change is twofold: (1) the public should be informed of how to observe court proceedings whether they are conducted in-person, remotely, or in a hybrid format; and (2) there is no need for rules to address the location of court proceedings, as this matter is addressed and governed by constitutional and statutory provisions. If SCAC members want to know more about those provisions, an oral report will be provided during the SCAC meeting on August 19, with proper credit given to UT Law student Sofia Burnett, who clerked at Scott Douglass & McConnico LLP this summer and researched this particular matter.

**ATTACHMENT A**  
**Revised Rule Proposals for Justice Courts**  
**(Draft Date: August 4, 2022)**

**Proposed New Rule 500.2(g)**

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

[Drafting 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 to the lawsuit, or jurors to appear remotely for a jury trial absent the consent of all parties to the lawsuit. 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 request that a participant appear at a court proceeding in a manner different from the one allowed or required by the court. The request must be made 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 should grant the request unless it finds there is good cause not to grant. Such good cause must be stated 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.** The court must provide reasonable notice to the public of how to observe court proceedings.

Comment to 2022 Change: New Rule 500.10 clarifies procedures for appearances at court proceedings. When evaluating a request under subpart (b), the court should consider relevant factors such as: (1) the court’s capability to conduct a hybrid hearing; (2) the complexity of the case, including number of witnesses; (3) the financial burden associated with the method of appearance, such as litigation costs or potential risk of loss of employment; (4) representation by a pro bono or legal aid lawyer; (5) scheduling conflicts; (6) the inability to appear remotely due to a lack of technological access or proficiency; (7) the ability to submit or view evidence; (8) health or safety risks; (9) the need for language access services; (10) the need to provide a reasonable accommodation for a person with a disability; (11) the ability to travel to the courthouse; and (12) caretaking responsibilities. 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: August 4, 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.

. . . .

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 to the lawsuit, or jurors to appear remotely for a jury trial absent the consent of all parties to the lawsuit. 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 request that a participant appear at a court proceeding in a manner different from the one allowed or required by the court. The request must be made 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 should grant the request unless it finds there is good cause not to grant. Such good cause must be stated in the ruling denying the request.

(c) **Open Courts Notice.** The court must provide reasonable notice to the public of how to observe court proceedings.

Comment to 2022 Change: Amended Rule 21d clarifies procedures for appearances at court proceedings. When evaluating a request under subpart (b), the court should consider relevant factors such as: (1) the court's capability to conduct a hybrid hearing; (2) the complexity of the case, including number of witnesses; (3) the financial burden associated with the method of appearance, such as litigation costs or potential risk of loss of employment; (4) representation by a pro bono or legal aid lawyer; (5) scheduling conflicts; (6) the inability to appear remotely due to a lack of technological access or proficiency; (7) the ability to submit or view evidence; (8) health or safety risks; (9) the need for language access services; (10) the need to provide a reasonable accommodation for a person with a disability; (11) the ability to travel to the courthouse; and (12) caretaking responsibilities. When a party files a request for participation in a particular manner, the party should explain the reasons for the request.