SCAC MEETING AGENDA
Friday, August 19, 2022
In Person at Texas A&M University School of Law – Ft. Worth

I. WELCOME FROM DEAN BOBBY AHDIEH & C. BABCOCK

II. STATUS REPORT FROM CHIEF JUSTICE HECHT

Chief Justice Hecht will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the May 27, 2022 meeting.

III. COMMENTS FROM JUSTICE BLAND

IV. PARENTAL NOTIFICATION RULES AND FORMS

Legislative Mandate Sub-Committee Members:

Jim Purdue – Chair
Pete Schenkkan – Vice Chair
Prof. Elaine Carlson
Hon. David Evans
Robert Levy
Richard Orsinger

A. August 1, 2022 Referral Letter
B. August 16, 2022 Memo from Legislative Sub-Committee with attachments

V. PROCEDURES RELATED TO MENTAL HEALTH

Judicial Administration Sub-Committee Members:

Bill Boyce – Chair
Kennon Wooten – Vice Chair
Hon. Tom Gray
Michael Hatchell
Prof. Lonny Hoffman
Hon. David Peeples
Hon. Maria Salas-Mendoza
Kristi Taylor – ***Texas Judicial Commission on Mental Health***
Molly Davis – ***Texas Judicial Commission on Mental Health***

C. May 19, 2019 Referral Letter with attachments
D. August 16, 2022 Memo from Sub-Committee

1. Attachment A - August 2022 JCMH Report on SB 362, 86th Legislature
2. Attachment B – Redlines to revision forms

VI. REMOTE PROCEEDINGS RULES – PROPOSED CHANGES TO TRCP 21, 21d, 500.2(g); TRCP 18c, 21, 176, 500.8; TRAP 14, 39, 59; RJA 12

Remote Proceedings Task Force to present to committee for comment:

Kennon Wooten
Lisa Hobbs
Hon. Tracy Christopher

Trish McAllister – ***Texas Access to Justice Commission*** **Harriet Miers -** ***Texas Access to Justice Commission***

E. December 14, 2021 Referral Letter

F. August 11, 2022 Memo from Task Force

1. Supportive Materials

G. August 15, 2022 Report from TAJC

1. Attachment A – Draft of remote hearing role
2. Attachment B – Red-lined versoin of committee's draft of remote hearing rule (SCAC May 27, 2022)
3. Attachment C – Best practices and its appendices
4. Attachment D – Memo from Judge Ferguson

VII. TEXAS RULE OF CIVIL PROCEDURE 76a

15-165a Sub-Committee:

Richard Orsinger – Chair
Hon. Ana Estevez – Vice Chair
Prof. Alexandra Albright
Prof. Elaine Carlson
Nina Cortell
Prof. William Dorsaneo
John Kim
Hon. Emily Miskel
Pete Schenkkan
John Warren

H. October 25, 2021 Referral Letter

I. August 16, 2022 Memo from Sub-Committee

1. Attachment A – Proposed Revision of Rule 76a
2. Attachment B – Redline Proposed Changes to 76a
3. Attachment C – Side by Side Comparison of 76a

Tab A

The Supreme Court of Texas

CHIEF JUSTICE
NATHAN L. HECHT

JUSTICES
DEBRA H. LEHRMANN
JEFFREY S. BOYD
JOHN P. DEVINE
JAMES D. BLACKLOCK
J. BRETT BUSBY
JANE N. BLAND
REBECA A. HUDDLE
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CLERK
BLAKE A. HAWTHORNE

GENERAL COUNSEL
NINA HESS HSU

EXECUTIVE ASSISTANT
NADINE SCHNEIDER

DIRECTOR OF PUBLIC AFFAIRS
AMY STARNES

August 1, 2022

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

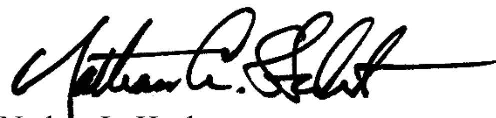
Parental Notification Rules and Forms. HB 1280, passed by the 87th Legislature, prohibits abortions, except in certain circumstances. HB 1280 does not expressly repeal or amend Chapter 33 of the Family Code, which governs parental notice of an abortion for an unemancipated minor. In 1999, following the enactment of Chapter 33, the Court promulgated rules governing proceedings to obtain a court order and forms for use in these proceedings. Those rules and forms were amended in 2015 to reflect amendments to Chapter 33. The Court ask the Committee to consider whether to repeal or amend the rules and forms in response to HB 1290 and to draft any recommended amendments. The Committee should conclude its work on this matter at the August 19, 2022 meeting.

Texas Rule of Civil Procedure 7. On May 18, 2020, in response to statutory probate court policies that prohibit executors from proceeding pro se, the Court asked the Committee to consider whether an executor has a right to proceed pro se and whether those policies impermissibly restrict that right. The Committee discussed this matter at its November 6, 2020 meeting and voted 18-3 in favor of the 1-14c subcommittee's assessment that executors have the right to proceed pro se. The Court now asks the Committee to draft amendments or a comment to Rule of Civil Procedure 7 in light of that vote. In drafting the amendments or comment, the Committee should also consider other types of pro se appearances those policies restrict, like pro se appearances by guardians and administrators.

Texas Rule of Civil Procedure 42. At least eleven states have rules or statutes that expressly address distribution of residual class action funds to legal aid. Five of those states (Indiana, Kentucky, North Carolina, Pennsylvania, and South Dakota) require a minimum distribution to legal aid. Massachusetts requires notice to legal aid before the court enters judgment or approves a settlement—similar to a 2002 proposal from the Texas Access to Justice Commission. The Court now asks the Committee to consider whether to amend Rule of Civil Procedure 42 in line with other states and to draft any recommended amendments. The Committee's discussion at its September 21-22, 2002 meeting and *Highland Homes, Ltd. v. State*, 448 S.W.3d 403 (Tex. 2014) may inform its work.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,



Nathan L. Hecht
Chief Justice

Attachments

1 AN ACT

2 relating to prohibition of abortion; providing a civil penalty;
3 creating a criminal offense.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. This Act may be cited as the Human Life
6 Protection Act of 2021.

7 SECTION 2. Subtitle H, Title 2, Health and Safety Code, is
8 amended by adding Chapter 170A to read as follows:

9 CHAPTER 170A. PERFORMANCE OF ABORTION

10 Sec. 170A.001. DEFINITIONS. In this chapter:

11 (1) "Abortion" has the meaning assigned by Section
12 245.002.

13 (2) "Fertilization" means the point in time when a
14 male human sperm penetrates the zona pellucida of a female human
15 ovum.

16 (3) "Pregnant" means the female human reproductive
17 condition of having a living unborn child within the female's body
18 during the entire embryonic and fetal stages of the unborn child's
19 development from fertilization until birth.

20 (4) "Reasonable medical judgment" means a medical
21 judgment made by a reasonably prudent physician, knowledgeable
22 about a case and the treatment possibilities for the medical
23 conditions involved.

24 (5) "Unborn child" means an individual living member

1 of the homo sapiens species from fertilization until birth,
2 including the entire embryonic and fetal stages of development.
3 Sec. 170A.002. PROHIBITED ABORTION; EXCEPTIONS. (a) A
4 person may not knowingly perform, induce, or attempt an abortion.
5 (b) The prohibition under Subsection (a) does not apply if:
6 (1) the person performing, inducing, or attempting the
7 abortion is a licensed physician;
8 (2) in the exercise of reasonable medical judgment,
9 the pregnant female on whom the abortion is performed, induced, or
10 attempted has a life-threatening physical condition aggravated by,
11 caused by, or arising from a pregnancy that places the female at
12 risk of death or poses a serious risk of substantial impairment of a
13 major bodily function unless the abortion is performed or induced;
14 and
15 (3) the person performs, induces, or attempts the
16 abortion in a manner that, in the exercise of reasonable medical
17 judgment, provides the best opportunity for the unborn child to
18 survive unless, in the reasonable medical judgment, that manner
19 would create:
20 (A) a greater risk of the pregnant female's
21 death; or
22 (B) a serious risk of substantial impairment of a
23 major bodily function of the pregnant female.
24 (c) A physician may not take an action authorized under
25 Subsection (b) if, at the time the abortion was performed, induced,
26 or attempted, the person knew the risk of death or a substantial
27 impairment of a major bodily function described by Subsection

1 (b)(2) arose from a claim or diagnosis that the female would engage
2 in conduct that might result in the female's death or in substantial
3 impairment of a major bodily function.
4 (d) Medical treatment provided to the pregnant female by a
5 licensed physician that results in the accidental or unintentional
6 injury or death of the unborn child does not constitute a violation
7 of this section.
8 Sec. 170A.003. CONSTRUCTION OF CHAPTER. This chapter may
9 not be construed to authorize the imposition of criminal, civil, or
10 administrative liability or penalties on a pregnant female on whom
11 an abortion is performed, induced, or attempted.
12 Sec. 170A.004. CRIMINAL OFFENSE. (a) A person who
13 violates Section 170A.002 commits an offense.
14 (b) An offense under this section is a felony of the second
15 degree, except that the offense is a felony of the first degree if
16 an unborn child dies as a result of the offense.
17 Sec. 170A.005. CIVIL PENALTY. A person who violates
18 Section 170A.002 is subject to a civil penalty of not less than
19 $100,000 for each violation. The attorney general shall file an
20 action to recover a civil penalty assessed under this section and
21 may recover attorney's fees and costs incurred in bringing the
22 action.
23 Sec. 170A.006. CIVIL REMEDIES UNAFFECTED. The fact that
24 conduct is subject to a civil or criminal penalty under this chapter
25 does not abolish or impair any remedy for the conduct that is
26 available in a civil suit.
27 Sec. 170A.007. DISCIPLINARY ACTION. In addition to any

1 other penalty that may be imposed under this chapter, the
2 appropriate licensing authority shall revoke the license, permit,
3 registration, certificate, or other authority of a physician or
4 other health care professional who performs, induces, or attempts
5 an abortion in violation of Section 170A.002.

6 SECTION 3. Section 2 of this Act takes effect, to the extent
7 permitted, on the 30th day after:

8 (1) the issuance of a United States Supreme Court
9 judgment in a decision overruling, wholly or partly, *Roe v. Wade*,
10 410 U.S. 113 (1973), as modified by *Planned Parenthood v. Casey*, 505
11 U.S. 833 (1992), thereby allowing the states of the United States to
12 prohibit abortion;

13 (2) the issuance of any other United States Supreme
14 Court judgment in a decision that recognizes, wholly or partly, the
15 authority of the states to prohibit abortion; or

16 (3) adoption of an amendment to the United States
17 Constitution that, wholly or partly, restores to the states the
18 authority to prohibit abortion.

19 SECTION 4. The legislature finds that the State of Texas
20 never repealed, either expressly or by implication, the state
21 statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113
22 (1973), that prohibit and criminalize abortion unless the mother's
23 life is in danger.

24 SECTION 5. The provisions of this Act are hereby declared
25 severable, and if any provision of this Act or the application of
26 such provision to any person or circumstance is declared invalid
27 for any reason, such declaration shall not affect the validity of

1 the remaining portions of this Act.

2 SECTION 6. This Act takes effect September 1, 2021.

______________________________ ______________________________

President of the Senate Speaker of the House

I certify that H.B. No. 1280 was passed by the House on May 6, 2021, by the following vote: Yeas 81, Nays 61, 2 present, not voting.

____

Chief Clerk of the House

I certify that H.B. No. 1280 was passed by the Senate on May 25, 2021, by the following vote: Yeas 19, Nays 12.

____

Secretary of the Senate

APPROVED: _____________________

Date

____

Governor

Tab B

Texas Supreme Court Advisory Committee

Memo

To: Texas Supreme Court Advisory Committee

From: Legislative Mandates Subcommittee

cc: Chip Babcock, Jacqueline Daumerie, Shiva Zamen

Date: 8/16/2022

Re: Review of Judicial Bypass of Parental Notification and Consent Rules

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I. Introduction

The U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022) triggered the implementation of HB 1280, (also known as the Human Life Protection Act of 2021) that will prohibit all abortions in Texas with limited exceptions (as described below). The Texas Supreme Court has charged the Advisory Committee to evaluate and advise whether its previously enacted Rules governing Judicial Bypass of Parental Notification and Consent in the event of an abortion for unemacipated minors should be repealed or amended in light of HB 1280.

As discussed below, although the implementation of HB 1280[1] (codified in The Texas Health and Safety Code Chapter 170A[2]) will limit the circumstances when an abortion could be obtained, Texas law allows abortions when the mother's life is at risk or there is a serious risk of impairment of a major bodily function unless the abortion is performed.

For example, this could include a minor with a significant dilation of the aorta due to Marfan Syndrome (a genetic disorder) who would be at serious risk of rupture and death as a result of becoming pregnant and carrying an unborn child. Another example would be a minor with Pregnancy Induced Hypertension (PIH) who will be at risk of pre-eclampsia, a life-threatening condition that can occur without prior notice. This person with PIH could decide to initiate the judicial bypass process early in the pregnancy so that she will have the authority to give consent

[1] The enrolled version of HB 1280 is attached as Exhibit 1.
[2] Texas Health and Safety Code Section 170A is attached as Exhibit 2.

if her condition later causes a life threatening condition or condition that could require loss of her reproductive organs if an abortion is not performed.

An additional consideration impacting the future use of the Judicial Bypass process is the contention of the Federal Government that even if otherwise prohibited by state law, Federal Law could permit abortions if they meet a broader definition of medical emergency as defined by the Federal Emergency Medical Treatment and Labor Act (EMTALA).

Consequently, the Subcommittee has concluded that Chapter 33 of the Texas Family Code (the Parental Notification Act[3]) will continue to have effect following implementation of HB 1280 and the judicial bypass provisions of the Family Code conceivably will be invoked by unemancipated minors seeking court orders consenting to the minor's consent to the performance of an abortion without notification to or consent of a parent, managing conservator, or guardian.

Therefore, the Subcommittee proposes that the Advisory Committee recommend that the Rules Governing Judicial Bypass should not be repealed. As discussed below, the Subcommittee proposes that the Advisory recommend retaining the Judicial Bypass Rules with one addition/amendment to the Rules and one addition/amendment to the Instructions for Apply to the Court for a Waiver.

II. Parental Notification Rules and Judicial Bypass

In 2015, the Texas Legislature passed HB 3994 that amended Chapter 33 of the Texas Family Code[4] to require both parental notice and consent for abortions on a pregnant unemancipated minor unless specific exceptions occur. Under this statute, an unemancipated minor is a minor who is unmarried or one who has not had the disabilities of minority removed under Chapter 31 of the Family Code.

A. Judicial Bypass Process

One of the statutory exceptions to this notice and consent requirement is codified in Section 33.003 of the Family Code, authorizing a court to permit a minor to consent to an abortion without notification and consent of a parent, managing conservator or guardian. The statute describes the standard the court must apply to determine whether the court may enter an order authorizing the minor to consent to the performance of the abortion without notification to and consent of a parent, managing conservator, or guardian:

> (i) The court shall determine by clear and convincing evidence, as described by Section 101.007 [of the Family Code], whether:
>
> > (1) the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent, managing conservator, or guardian; or

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[3] Texas Family Code Chapter 33 is attached as Exhibit 3.

[4] Additional amendments were added to Chapter 33 in the 2017 and 2019 Legislative sessions but the amendments did not impact the Judicial Bypass process.

> (2) the notification and attempt to obtain consent would not be in the best interest of the minor.

Section 33.003 further details the procedural requirements for a court to follow to make this determination as well as the requirements and timing of an order and findings of fact and conclusions of law. The statute anticipates that a court's determination to enter an order permitting a minor to give notice either when the court determines that the minor is sufficiently mature or when the court decides that attempting to obtain consent would not be in the interests of a minor. These situations could include cases when the parents are not reasonably available. The court's determination under this second prong could involve a younger child who has suffered trauma at the hands of a parent. In all cases, the law requires appointment of a guardian ad litem to represent the best interests of the child and a separate attorney ad litem to represent the child's desires.

To implement the judicial bypass process, the Texas Supreme Court adopted Rules for a Judicial Bypass of Parental Notice and Consent under Chapter 33 of the Family Code[5] and the Instructions and Forms for Apply to the Court for a Waiver of Parental Notification and Consent[6]. These Rules and the Forms implementing these rules are very narrowly tailored to track the specific language of the Legislative Mandate codified in Chapter 33. The Rules track verbatim the requirements of the minor's application described in Section 33.003(c) and the Rules that describe the factors the court should consider in determining whether the minor meets the requirements necessary for the court to authorize a minor to consent

B. Delayed Notice and Consent Under the Medical Emergency Exception

Distinct from the Judicial Bypass provisions of Section 33.003, Section 33.022 of the Family Code permits a physician to perform an abortion on a minor without obtaining prior parental notification and consent in the event of a medical emergency. Section 22.001(3-a) incorporates the definition of Medical Emergency set out in Chapter 171 of the Health and Safety Code:

> "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

The physician making this determination is required to make a reasonable effort to inform the parent, managing conservator or guardian within 24 hours after the medical emergency abortion is performed. This notice must be by telephone or in person. This notification must notify the parent of the performance of the abortion and the basis for the physician's determination that a medical emergency existed that required the performance of the abortion without advance notice. Further, within 48 hours after the abortion the physician must send a written notice to the parent, conservator or guardian to the last known address by certified mail, restricted delivery, return receipt requested. The physician further must include an affidavit that explains

[5] The Rules for a Judicial Bypass of Parental Notice and Consent are attached at Exhibit 4.
[6] The Instructions and Forms for Applying for Judicial Bypass are attached at Exhibit 5.

the specific medical emergency that necessitate the immediate abortion into the minor's medical record.

III. The Texas Trigger Act

In 2021, the Texas Legislature passed legislation that contemplated a U.S. Supreme Court decision that overturned the Court's prior precedent in *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey* 505 U.S. 833 (1992). This statute, the Human Life Protection Act of 2021 (House Bill 1280) (also known as the Texas Trigger Law) codified at Texas Health and Safety Code Chapter 170A, takes effect by its terms 30 days after judgment is issued by the Supreme Court in any decision overturning, in whole or in part the *Roe* precedent.

1. Effective Date

The judgment in *Dobbs v. Jackson Women's Health Organization* was issued on July 26, 2022. Absent court intervention, the Human Life Protection Act becomes law 30 days after the date the final judgment was issued – resulting in the effective date of August 25, 2022.

2. Key provisions of the Trigger Act

Under this law, all abortions are prohibited unless, "in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced.

3. Key definitions:

'Unborn child' means an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development.

'Fertilization' means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

"Pregnant" means the female human reproductive condition of having a living unborn child within the female's body during the entire embryonic and fetal stages of the unborn child's development from fertilization until birth.

The Trigger act also incorporates Section 245.002 of the Texas Health and Safety Code to define abortion:

"Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy.

4. The Sole Exception

The statute includes the following exception (that requires the existence of all three subparts):

170A.002(b) The prohibition [of abortion] under Subsection (a) does not apply if:

(1) the person performing, inducing, or attempting the abortion is a licensed physician;

(2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced; and

(3) the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create:

(A) a greater risk of the pregnant female's death; or

(B) a serious risk of substantial impairment of a major bodily function of the pregnant female.

Section 170A.001(4) defines "Reasonable medical judgment" as ". . . a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved." The provision also states that medical treatment provided to the pregnant female that results in the accidental or unintentional injury or death of the unborn child does not constitute a violation. (Section 170A.002(d)).

IV. Interplay of HB 1280 and Parental Notice – Judicial Bypass Remains as a Potential Option for Unemancipated Minors Facing a Risk of Death

HB 1280 does not reference Chapter 33 of the Family Code but the prohibition on almost all abortions will likely have a significant practical impact on the need for parental notice or bypass process. However, even with the limited circumstances where an abortion would be permissible under Texas, law, those circumstances could involve an unemancipated minor who, based on the exercise of reasonable medical judgment, faces the risk of death or serious risk of substantial impairment of a major bodily function unless the abortion is performed.

Therefore, the parental notification provisions of the Family Code would apply, requiring either advanced notification and consent from the minor's parent (or managing conservator or guardian) - unless there is a medical emergency with insufficient time for a prior notification or consent or the minor's application to the court for a waiver of parental notification and consent.

V. Federal EMTALA and Potential for Court Intervention

The Federal Government has alerted hospitals throughout the country that any state law provisions limiting the availability of abortion inconsistent with the provisions of the Federal EMTALA are preempted by the Federal Law.

A. EMTALA

The Emergency Medical Treatment and Labor Act, "EMTALA," was enacted in 1986 by Congress for the purpose of ensuring public access to emergency services, regardless of ability to pay[7]. Under the Act's requirements, Medicare-participating hospitals that offer emergency services (and dedicated emergency facilities) must provide a medical screening examination when a request is made for examination or treatment for an emergency medical condition ("EMCs"), including active labor. Upon examination, a hospital is then required to provide stabilizing treatment for patients with EMCs and is prohibited from transferring such patients (unless unable to do so within its capability), absent patient request, prior to doing so.

1. DHH Secretary's Letter on the *Dobbs* Decision

On July 11, 2022, the Secretary of Health and Human Services issued a letter to health care providers regarding application of EMTALA in light of the *Dobbs* decision[8]. The Secretary's letter reiterates that it is the requirement of EMTALA for qualified medical personnel to provide stabilizing treatment, and clarifies that where, in the medical provider's clinical judgment, abortion is the necessary stabilizing treatment for a patient presenting with an emergency medical condition, the physician must provide

[7] The law is codified at 42 U.S.C. §1395dd.

[8] The DHHS Secretary's letter is attached at Exhibit 6.

that treatment, and cannot be held liable on the basis of any conflicting state law or mandate for doing so. The Secretary's letter provides a non-exhaustive list of qualifying pregnancy-related medical conditions, stating:

> "Emergency medical conditions involving pregnant patients may include, but are not limited to, ectopic pregnancy, complications of pregnancy loss, or emergent hypertensive disorders, such as preeclampsia with severe features,"

The letter further specifically provides that:

> "Thus, if a physician believes that a pregnant patient presenting at an emergency department, including certain labor and delivery departments, is experiencing an emergency medical condition as defined by EMTALA, and that abortion is the stabilizing treatment necessary to resolve that condition, the physician must provide that treatment. And when a state law prohibits abortion and does not include an exception for the life and health of the pregnant person — or draws the exception more narrowly than EMTALA's emergency medical condition definition — that state law is preempted.[9]"

2. Emergency Medical Conditions under EMTALA

Under EMTALA, "emergency medical condition" is defined, in relevant part, as follows:

> "[A] medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that *the absence of immediate medical attention could reasonably be expected to result in*—
>
> (i) *placing the health of the individual* (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
> (ii) serious impairment to bodily functions, or
> (iii) serious dysfunction of any bodily organ or part; …"

B. Potential for Federal Court Intervention

Arguably, an emergency medical condition under EMTALA pertaining to a pregnant woman would include situations permitting (or as suggested by the DHH, requiring) an abortion even if those medical conditions were not sufficient to warrant an abortion under HB 1280[10]. According to the Department of

[9] The Subcommittee offers no opinion whether the EMTALA preempts Texas law.

[10] The Texas Attorney General Ken Paxton has filed a lawsuit seeking to enjoin the Department of Health and Human Services regarding the application of EMTALA to require hospitals to perform abortions.

Health and Human Services, EMTALA would require a hospital to perform an abortion if those medical conditions exist notwithstanding contrary provisions in Texas law.

Without commenting on whether the EMTALA interpretation would preempt Texas Law, it is possible that a federal court could enjoin enforcement of aspects of Texas Law that are found to conflict. Notwithstanding the provisions of EMTALA however, the Texas requirements of notice and consent arguably continue to apply to any medical procedure undertaken pursuant to EMTALA. Therefore, if an unemancipated minor was pregnant and has an emergency medical condition under EMTALA, the minor could seek to engage the judicial bypass procedure in the Parental Notice Act.

VI. The Continued Applicability of the Judicial Bypass Rules

As described above, the Subcommittee concludes that the Parental Notice provisions of Chapter 33 will continue to apply in cases involving an unemancipated minor when an abortion procedure is permitted under Chapter 170A of the Texas Health and Safety Code and arguably according to the DHHS guidance when "a physician believes that a pregnant patient presenting at an emergency department is experiencing an [Emergency Medical Condition] as defined by EMTALA, and that abortion is the stabilizing treatment necessary to resolve that condition". Therefore, it is possible that an unemancipated minor will want to invoke the judicial bypass procedure in Chapter 33. As a result, the Rules and Forms for A Judicial Bypass continue to be used in cases involving minors who face the risk of death or serious risk of substantial impairment of a major bodily function unless an abortion is performed.

Because the rules largely track the statutory language set out in Section 33.003 of Chapter 33 of the Family Code, no changes in the procedural rules are recommended, including the Rules detailing the requirements of applications for Judicial Approval and the factors the court should consider in making its determination whether to enter an order authorizing the [unemancipated] minor to give consent. The Subcommittee does recommend consideration of a new paragraph in the General Provisions of the Rules to confirm the continued applicability of the rules in light of the applicability of HB 1280.

The Subcommittee also recommends the inclusion of an additional bullet point in the introduction explanation of the instructions to assist minors who are considering whether to apply for a waiver of parental notification.

A. Proposed Amendments to the Judicial Bypass Rules

Under Rule 1, General Provisions, we recommend a new paragraph be added the provisions of Rule 1.1 - Applicability[11]:

> <u>These rules continue to apply and are not inconsistent with Texas Health and Safety Code Chapter 170A which defines the circumstances when an abortion may take place. The</u>

[11] The proposed amendment to the Judicial Bypass Rules are attached as Exhibit 7.

proceedings under these rules are not intended to create a judicial determination that any exception to the provisions of Chapter 170A have been satisfied and an order under these rules should not be construed as a judicial determination that in the exercise of reasonable medical judgment, the pregnant unemancipated minor on whom the abortion might be performed has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed.

B. Proposed Amendments to the Instructions for Applying to the Court for a Waiver of Parental Notification and Consent

In addition to the proposed amendment to the Rules, the Subcommittee also proposes that the Committee recommend an additional provision be added to the introductory comments to Court's Instructions and Forms as follows:[12].

Your Situation and the law

If you are younger than 18 and have not been legally "emancipated," you are "unemancipated," which means that you are legally under the custody or control of your parents (or one of your parents), a managing conservator, or a guardian. (A "managing conservator" is an adult or agency appointed by a court to have custody or control of you.)

An abortion in Texas is only available if a physician, in the exercise of reasonable medical judgment, states that you have a life-threatening physical condition aggravated by, caused by, or arising from our pregnancy that places you at risk of death or poses a serious risk of substantial impairment of one of your major bodily functions unless the abortion is performed. or induced.

If you are pregnant unemancipated, and younger than 18 you cannot get an abortion in Texas unless:

- Your doctor informs one of your parents or your managing conservator or guardian at least 48 hours before the abortion and obtains the consent of your parent, managing conservator, or guardian; *or*

- A judge issue an order that "waives" or removes the requirement that you must let a parent or your managing conservator or guardian know about your planned abortion and obtain his or her consent to it.

[12] The proposed amendment to the Instructions for Applying to the Court for a Waiver of Parental Notification and Consent are attached as Exhibit 8.

VII. Applicability of Other Abortion Related Provisions of Texas Law

The Subcommittee does not offer any opinion on the applicability of other provisions of Texas law that could govern abortion procedures, including requirements involving informed consent requirements, written documentation requirements for abortions performed due to medical emergencies, requirements for information that must be provided to pregnant mothers prior to an abortion taking place. See e.g. Texas Health and Safety Code Sec. 171.001, et. seq.

AN ACT

relating to prohibition of abortion; providing a civil penalty; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Human Life Protection Act of 2021.

SECTION 2. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 170A to read as follows:

CHAPTER 170A. PERFORMANCE OF ABORTION

Sec. 170A.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Fertilization" means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

(3) "Pregnant" means the female human reproductive condition of having a living unborn child within the female's body during the entire embryonic and fetal stages of the unborn child's development from fertilization until birth.

(4) "Reasonable medical judgment" means a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved.

(5) "Unborn child" means an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development.

Sec. 170A.002. PROHIBITED ABORTION; EXCEPTIONS. (a) A person may not knowingly perform, induce, or attempt an abortion.

(b) The prohibition under Subsection (a) does not apply if:

(1) the person performing, inducing, or attempting the abortion is a licensed physician;

(2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced; and

(3) the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create:

(A) a greater risk of the pregnant female's death; or

(B) a serious risk of substantial impairment of a major bodily function of the pregnant female.

(c) A physician may not take an action authorized under Subsection (b) if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function described by Subsection (b)(2) arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function.

(d) Medical treatment provided to the pregnant female by a licensed physician that results in the accidental or unintentional injury or death of the unborn child does not constitute a violation of this section.

Sec. 170A.003. CONSTRUCTION OF CHAPTER. This chapter may not be construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a pregnant female on whom an abortion is performed, induced, or attempted.

Sec. 170A.004. CRIMINAL OFFENSE. (a) A person who violates Section 170A.002 commits an offense.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if an unborn child dies as a result of the offense.

Sec. 170A.005. CIVIL PENALTY. A person who violates Section 170A.002 is subject to a civil penalty of not less than $100,000 for each violation. The attorney general shall file an action to recover a civil penalty assessed under this section and may recover attorney's fees and costs incurred in bringing the action.

Sec. 170A.006. CIVIL REMEDIES UNAFFECTED. The fact that conduct is subject to a civil or criminal penalty under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

Sec. 170A.007. DISCIPLINARY ACTION. In addition to any other penalty that may be imposed under this chapter, the appropriate licensing authority shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of Section 170A.002.

SECTION 3. Section 2 of this Act takes effect, to the extent permitted, on the 30th day after:

(1) the issuance of a United States Supreme Court judgment in a decision overruling, wholly or partly, *Roe v. Wade*, 410 U.S. 113 (1973), as modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), thereby allowing the states of the United States to prohibit abortion;

(2) the issuance of any other United States Supreme Court judgment in a decision that recognizes, wholly or partly, the authority of the states to prohibit abortion; or

(3) adoption of an amendment to the United States Constitution that, wholly or partly, restores to the states the authority to prohibit abortion.

SECTION 4. The legislature finds that the State of Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger.

SECTION 5. The provisions of this Act are hereby declared severable, and if any provision of this Act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this Act.

SECTION 6. This Act takes effect September 1, 2021.

______________________________ President of the Senate

______________________________ Speaker of the House

I certify that H.B. No. 1280 was passed by the House on May 6, 2021, by the following vote: Yeas 81, Nays 61, 2 present, not voting.

______________________________ Chief Clerk of the House

I certify that H.B. No. 1280 was passed by the Senate on May 25, 2021, by the following vote: Yeas 19, Nays 12.

____
Secretary of the Senate

APPROVED: ______________________
Date

____
Governor

HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE H. PUBLIC HEALTH PROVISIONS

CHAPTER 170A. PERFORMANCE OF ABORTION

Sec. 170A.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Fertilization" means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

(3) "Pregnant" means the female human reproductive condition of having a living unborn child within the female's body during the entire embryonic and fetal stages of the unborn child's development from fertilization until birth.

(4) "Reasonable medical judgment" means a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved.

(5) "Unborn child" means an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.002. PROHIBITED ABORTION; EXCEPTIONS. (a) A person may not knowingly perform, induce, or attempt an abortion.

(b) The prohibition under Subsection (a) does not apply if:

(1) the person performing, inducing, or attempting the abortion is a licensed physician;

(2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced; and

(3) the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the

best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create:

(A) a greater risk of the pregnant female's death; or

(B) a serious risk of substantial impairment of a major bodily function of the pregnant female.

(c) A physician may not take an action authorized under Subsection (b) if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function described by Subsection (b)(2) arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function.

(d) Medical treatment provided to the pregnant female by a licensed physician that results in the accidental or unintentional injury or death of the unborn child does not constitute a violation of this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.003. CONSTRUCTION OF CHAPTER. This chapter may not be construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a pregnant female on whom an abortion is performed, induced, or attempted.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.004. CRIMINAL OFFENSE. (a) A person who violates Section 170A.002 commits an offense.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if an unborn child dies as a result of the offense.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.005. CIVIL PENALTY. A person who violates Section 170A.002 is subject to a civil penalty of not less than $100,000 for each violation. The attorney general shall file an action to recover a civil penalty assessed under this section and may recover attorney's fees and costs incurred in bringing the action.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.006. CIVIL REMEDIES UNAFFECTED. The fact that conduct is subject to a civil or criminal penalty under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.007. DISCIPLINARY ACTION. In addition to any other penalty that may be imposed under this chapter, the appropriate licensing authority shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of Section 170A.002.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

FAMILY CODE

TITLE 2. CHILD IN RELATION TO THE FAMILY

SUBTITLE A. LIMITATIONS OF MINORITY

CHAPTER 33. NOTICE OF AND CONSENT TO ABORTION

Sec. 33.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002, Health and Safety Code. This definition, as applied in this chapter, may not be construed to limit a minor's access to contraceptives.

(2) "Fetus" means an individual human organism from fertilization until birth.

(3) "Guardian" means a court-appointed guardian of the person of the minor.

(3-a) "Medical emergency" has the meaning assigned by Section 171.002, Health and Safety Code.

(4) "Physician" means an individual licensed to practice medicine in this state.

(5) "Unemancipated minor" includes a minor who:

(A) is unmarried; and

(B) has not had the disabilities of minority removed under Chapter 31.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 2, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 1, eff. September 1, 2017.

Sec. 33.002. PARENTAL NOTICE.

(a) A physician may not perform an abortion on a pregnant unemancipated minor unless:

(1) the physician performing the abortion gives at least 48 hours actual notice, in person or by telephone, of the physician's intent to perform the abortion to:

(A) a parent of the minor, if the minor has no managing conservator or guardian; or

(B) a court-appointed managing conservator or guardian;

(2) the physician who is to perform the abortion receives an order issued by a court under Section 33.003 or 33.004 authorizing the minor to consent to the abortion as provided by Section 33.003 or 33.004; or

(3) the physician who is to perform the abortion:

(A) concludes that a medical emergency exists;

(B) certifies in writing to the Department of State Health Services and in the patient's medical record the medical indications supporting the physician's judgment that a medical emergency exists; and

(C) provides the notice required by Section 33.0022.

(b) If a person to whom notice may be given under Subsection (a)(1) cannot be notified after a reasonable effort, a physician may perform an abortion if the physician gives 48 hours constructive notice, by certified mail, restricted delivery, sent to the last known address, to the person to whom notice may be given under Subsection (a)(1). The period under this subsection begins when the notice is mailed. If the person required to be notified is not notified within the 48-hour period, the abortion may proceed even if the notice by mail is not received.

(c) The requirement that 48 hours actual notice be provided under this section may be waived by an affidavit of:

(1) a parent of the minor, if the minor has no managing conservator or guardian; or

(2) a court-appointed managing conservator or guardian.

(d) A physician may execute for inclusion in the minor's medical record an affidavit stating that, according to the best information and belief of the physician, notice or constructive notice has been provided as required by this section. Execution of an affidavit under this subsection creates a presumption that the requirements of this section have been satisfied.

(e) The Department of State Health Services shall prepare a form to be used for making the certification required by Subsection (a)(3)(B).

(f) A certification required by Subsection (a)(3)(B) is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. Personal or identifying information about the minor, including her name, address, or social security number, may not be included in a certification under Subsection (a)(3)(B). The physician must keep the medical records on the minor in compliance with the rules adopted by the Texas Medical Board under Section 153.003, Occupations Code.

(g) A physician who intentionally performs an abortion on a pregnant unemancipated minor in violation of this section commits an offense. An offense under this subsection is punishable by a fine not to exceed $10,000. In this subsection, "intentionally" has the meaning assigned by Section 6.03(a), Penal Code.

(h) It is a defense to prosecution under this section that the minor falsely represented her age or identity to the physician to be at least 18 years of age by displaying an apparently valid proof of identity and age described by Subsection (k) such that a reasonable person under similar circumstances would have relied on the representation. The defense does not apply if the physician is shown to have had independent knowledge of the minor's actual age or identity or failed to use due diligence in determining the minor's age or identity. In this subsection, "defense" has the meaning and application assigned by Section 2.03, Penal Code.

(i) In relation to the trial of an offense under this section in which the conduct charged involves a conclusion made by the physician under Subsection (a)(3)(A), the defendant may seek a hearing before the Texas Medical Board on whether the physician's conduct was necessary because of a medical emergency. The findings of the Texas Medical Board under this subsection are admissible on that issue in the trial of the defendant. Notwithstanding any other reason for a continuance provided under the Code of Criminal Procedure or other law, on motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit a hearing under this subsection to take place.

(j) A physician shall use due diligence to determine that any woman on which the physician performs an abortion who claims to have reached the age of majority or to have had the disabilities of minority removed has, in fact, reached the age of majority or has had the disabilities of minority removed.

(k) For the purposes of this section, "due diligence" includes requesting proof of identity and age described by Section 2.005(b) or a copy of the court order removing disabilities of minority.

(l) If proof of identity and age cannot be provided, the physician shall provide information on how to obtain proof of identity and age. If the woman is subsequently unable to obtain proof of identity and age and the physician chooses to perform the abortion, the physician shall document that proof of identity and age was not obtained and report to the Department of State Health Services that proof of identity and age was not obtained for the woman on whom the abortion was performed. The department

shall report annually to the legislature regarding the number of abortions performed without proof of identity and age.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.741, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 3, eff. January 1, 2016.

Sec. 33.0021. CONSENT REQUIRED. A physician may not perform an abortion in violation of Section 164.052(a)(19), Occupations Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 4, eff. January 1, 2016.

Sec. 33.0022. MEDICAL EMERGENCY NOTIFICATION; AFFIDAVIT FOR MEDICAL RECORD. (a) If the physician who is to perform the abortion concludes under Section 33.002(a)(3)(A) that a medical emergency exists and that there is insufficient time to provide the notice required by Section 33.002 or obtain the consent required by Section 33.0021, the physician shall make a reasonable effort to inform, in person or by telephone, the parent, managing conservator, or guardian of the unemancipated minor within 24 hours after the time a medical emergency abortion is performed on the minor of:

(1) the performance of the abortion; and

(2) the basis for the physician's determination that a medical emergency existed that required the performance of a medical emergency abortion without fulfilling the requirements of Section 33.002 or 33.0021.

(b) A physician who performs an abortion as described by Subsection (a), not later than 48 hours after the abortion is performed, shall send a written notice that a medical emergency occurred and the ability of the parent, managing conservator, or guardian to contact the physician for more information and medical records, to the last known address of the parent, managing conservator, or guardian by certified mail, restricted delivery, return receipt requested. The physician may rely on last known address information if a reasonable and prudent person, under similar circumstances, would rely on the information as sufficient evidence that the parent, managing conservator, or guardian resides at that address. The physician shall keep in the minor's medical record:

(1) the return receipt from the written notice; or

(2) if the notice was returned as undeliverable, the notice.

(c) A physician who performs an abortion on an unemancipated minor during a medical emergency as described by Subsection (a) shall execute for inclusion in the medical record of the minor an affidavit that explains the specific medical emergency that necessitated the immediate abortion.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 4, eff. January 1, 2016.

Sec. 33.003. JUDICIAL APPROVAL. (a) A pregnant minor may file an application for a court order authorizing the minor to consent to the performance of an abortion without notification to and consent of a parent, managing conservator, or guardian.

(b) The application must be filed in:

(1) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the minor's county of residence;

(2) if the minor's parent, managing conservator, or guardian is a presiding judge of a court described by Subdivision (1):

(A) a county court at law, court having probate jurisdiction, or district court, including a family district court, in a contiguous county; or

(B) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county where the minor intends to obtain the abortion;

(3) if the minor's county of residence has a population of less than 10,000:

(A) a court described by Subdivision (1);

(B) a county court at law, court having probate jurisdiction, or district court, including a family district court, in a contiguous county; or

(C) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the facility at which the minor intends to obtain the abortion is located; or

(4) a county court at law, court having probate jurisdiction, or district court, including a family district court, in the county in which the facility at which the minor intends to obtain the abortion is located, if the minor is not a resident of this state.

(c) The application must:

(1) be made under oath;

(2) include:

(A) a statement that the minor is pregnant;

(B) a statement that the minor is unmarried, is under 18 years of age, and has not had her disabilities removed under Chapter 31;

(C) a statement that the minor wishes to have an abortion without the notification to and consent of a parent, managing conservator, or guardian;

(D) a statement as to whether the minor has retained an attorney and, if she has retained an attorney, the name, address, and telephone number of her attorney; and

(E) a statement about the minor's current residence, including the minor's physical address, mailing address, and telephone number; and

(3) be accompanied by the sworn statement of the minor's attorney under Subsection (r), if the minor has retained an attorney to assist the minor with filing the application under this section.

(d) The clerk of the court shall deliver a courtesy copy of the application made under this section to the judge who is to hear the application.

(e) The court shall appoint a guardian ad litem for the minor who shall represent the best interest of the minor. If the minor has not retained an attorney, the court shall appoint an attorney to represent the minor. The guardian ad litem may not also serve as the minor's attorney ad litem.

(f) The court may appoint to serve as guardian ad litem:

(1) a person who may consent to treatment for the minor under Sections 32.001(a)(1)-(3);

(2) a psychiatrist or an individual licensed or certified as a psychologist under Chapter 501, Occupations Code;

(3) an appropriate employee of the Department of Family and Protective Services;

(4) a member of the clergy; or

(5) another appropriate person selected by the court.

(g) The court shall fix a time for a hearing on an application filed under Subsection (a) and shall keep a record of all testimony and other oral proceedings in the action.

(g-1) The pregnant minor must appear before the court in person and may not appear using videoconferencing, telephone conferencing, or other remote electronic means.

(h) The court shall rule on an application submitted under this section and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the fifth business day after the date the application is filed with the court. On request by the minor, the court shall grant an extension of the period specified by this subsection. If a request for an extension is made, the court shall rule on an application and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the fifth business day after the date the minor states she is ready to proceed to hearing. Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly, regardless of whether the minor is granted an extension under this subsection.

(i) The court shall determine by clear and convincing evidence, as described by Section 101.007, whether:

(1) the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent, managing conservator, or guardian; or

(2) the notification and attempt to obtain consent would not be in the best interest of the minor.

(i-1) In determining whether the minor meets the requirements of Subsection (i)(1), the court shall consider the experience, perspective, and judgment of the minor. The court may:

(1) consider all relevant factors, including:

(A) the minor's age;

(B) the minor's life experiences, such as working, traveling independently, or managing her own financial affairs; and

(C) steps taken by the minor to explore her options and the consequences of those options;

(2) inquire as to the minor's reasons for seeking an abortion;

(3) consider the degree to which the minor is informed about the state-published informational materials described by Chapter 171, Health and Safety Code; and

(4) require the minor to be evaluated by a licensed mental health counselor, who shall return the evaluation to the court for review within three business days.

(i-2) In determining whether the notification and the attempt to obtain consent would not be in the best interest of the minor, the court may inquire as to:

(1) the minor's reasons for not wanting to notify and obtain consent from a parent, managing conservator, or guardian;

(2) whether notification or the attempt to obtain consent may lead to physical or sexual abuse;

(3) whether the pregnancy was the result of sexual abuse by a parent, managing conservator, or guardian; and

(4) any history of physical or sexual abuse from a parent, managing conservator, or guardian.

(i-3) The court shall enter an order authorizing the minor to consent to the performance of the abortion without notification to and consent of a parent, managing conservator, or guardian and shall execute the required forms if the court finds by clear and convincing evidence, as defined by Section 101.007, that:

(1) the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent, managing conservator, or guardian; or

(2) the notification and attempt to obtain consent would not be in the best interest of the minor.

(j) If the court finds that the minor does not meet the requirements of Subsection (i-3), the court may not authorize the minor to consent to an abortion without the notification authorized under Section 33.002(a)(1) and consent under Section 33.0021.

(k) The court may not notify a parent, managing conservator, or guardian that the minor is pregnant or that the minor wants to have an abortion. The court proceedings shall be conducted in a manner that protects the confidentiality of the identity of the minor. The application and all other court documents pertaining to the proceedings are confidential and privileged and are not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. Confidential records pertaining to a minor under this subsection may be disclosed to the minor.

(l) An order of the court issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The order may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, the physician who is to perform the abortion, another person designated to receive the order by the minor, or a governmental agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor. The supreme court may adopt rules to permit confidential docketing of an application under this section.

(l-1) The clerk of the court, at intervals prescribed by the Office of Court Administration of the Texas Judicial System, shall submit a report to the office that includes, for each case filed under this section:

(1) the case number and style;

(2) the applicant's county of residence;

(3) the court of appeals district in which the proceeding occurred;

(4) the date of filing;

(5) the date of disposition; and

(6) the disposition of the case.

(l-2) The Office of Court Administration of the Texas Judicial System shall annually compile and publish a report aggregating the data received under Subsections (l-1)(3) and (6). A report submitted under Subsection (l-1) is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. A report under this subsection must protect the confidentiality of:

(1) the identity of all minors and judges who are the subject of the report; and

(2) the information described by Subsection (l-1)(1).

(m) The clerk of the supreme court shall prescribe the application form to be used by the minor filing an application under this section.

(n) A filing fee is not required of and court costs may not be assessed against a minor filing an application under this section.

(o) A minor who has filed an application under this section may not withdraw or otherwise non-suit her application without the permission of the court.

(p) Except as otherwise provided by Subsection (q), a minor who has filed an application and has obtained a determination by the court as described by Subsection (i) may not initiate a new application proceeding and the prior proceeding is res judicata of the issue relating to the determination of whether the minor may or may not be authorized to consent to the performance of an abortion without notification to and consent of a parent, managing conservator, or guardian.

(q) A minor whose application is denied may subsequently submit an application to the court that denied the application if the minor shows that there has been a material change in circumstances since the time the court denied the application.

(r) An attorney retained by the minor to assist her in filing an application under this section shall fully inform himself or herself of the

minor's prior application history, including the representations made by the minor in the application regarding her address, proper venue in the county in which the application is filed, and whether a prior application has been filed and initiated. If an attorney assists the minor in the application process in any way, with or without payment, the attorney representing the minor must attest to the truth of the minor's claims regarding the venue and prior applications in a sworn statement.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.742, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 1, eff. May 21, 2011.

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 5, eff. January 1, 2016.

Sec. 33.004. APPEAL. (a) A minor whose application under Section 33.003 is denied may appeal to the court of appeals having jurisdiction over civil matters in the county in which the application was filed. On receipt of a notice of appeal, the clerk of the court that denied the application shall deliver a copy of the notice of appeal and record on appeal to the clerk of the court of appeals. On receipt of the notice and record, the clerk of the court of appeals shall place the appeal on the docket of the court.

(b) The court of appeals shall rule on an appeal under this section not later than 5 p.m. on the fifth business day after the date the notice of appeal is filed with the court that denied the application. On request by the minor, the court shall grant an extension of the period specified by this subsection. If a request for an extension is made, the court shall rule on the appeal not later than 5 p.m. on the fifth business day after the date the minor states she is ready to proceed. Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly, regardless of whether the minor is granted an extension under this subsection.

(c) A ruling of the court of appeals issued under this section is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other legal process. The ruling may not be released to any person but the pregnant minor, the pregnant minor's guardian ad litem, the pregnant minor's attorney, another person designated to receive the ruling by the minor, or a governmental

agency or attorney in a criminal or administrative action seeking to assert or protect the interest of the minor. The supreme court may adopt rules to permit confidential docketing of an appeal under this section.

(c-1) Notwithstanding Subsection (c), the court of appeals may publish an opinion relating to a ruling under this section if the opinion is written in a way to preserve the confidentiality of the identity of the pregnant minor.

(d) The clerk of the supreme court shall prescribe the notice of appeal form to be used by the minor appealing a judgment under this section.

(e) A filing fee is not required of and court costs may not be assessed against a minor filing an appeal under this section.

(f) An expedited confidential appeal shall be available to any pregnant minor to whom a court of appeals denies an application to authorize the minor to consent to the performance of an abortion without notification to or consent of a parent, managing conservator, or guardian.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 6, eff. January 1, 2016.

Sec. 33.005. AFFIDAVIT OF PHYSICIAN. (a) A physician may execute for inclusion in the minor's medical record an affidavit stating that, after reasonable inquiry, it is the belief of the physician that:

(1) the minor has made an application or filed a notice of an appeal with a court under this chapter;

(2) the deadline for court action imposed by this chapter has passed; and

(3) the physician has been notified that the court has not denied the application or appeal.

(b) A physician who in good faith has executed an affidavit under Subsection (a) may rely on the affidavit and may perform the abortion as if the court had issued an order granting the application or appeal.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.006. GUARDIAN AD LITEM IMMUNITY. A guardian ad litem appointed under this chapter and acting in the course and scope of the appointment is not liable for damages arising from an act or omission of the guardian ad litem committed in good faith. The immunity granted by

this section does not apply if the conduct of the guardian ad litem is committed in a manner described by Sections 107.009(b)(1)-(3).

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 7.001, eff. September 1, 2021.

Sec. 33.0065. RECORDS. The clerk of the court shall retain the records for each case before the court under this chapter in accordance with rules for civil cases and grant access to the records to the minor who is the subject of the proceeding.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 7, eff. January 1, 2016.

Sec. 33.007. COSTS PAID BY STATE. (a) A court acting under Section 33.003 or 33.004 may issue an order requiring the state to pay:

(1) the cost of any attorney ad litem and any guardian ad litem appointed for the minor;

(2) notwithstanding Sections 33.003(n) and 33.004(e), the costs of court associated with the application or appeal; and

(3) any court reporter's fees incurred.

(b) An order issued under Subsection (a) must be directed to the comptroller, who shall pay the amount ordered from funds appropriated to the Texas Department of Health.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR; INVESTIGATION AND ASSISTANCE. (a) If a minor claims to have been physically or sexually abused or a physician or physician's agent has reason to believe that a minor has been physically or sexually abused, the physician or physician's agent shall immediately report the suspected abuse and the name of the abuser to the Department of Family and Protective Services and to a local law enforcement agency and shall refer the minor to the department for services or intervention that may be in the best interest of the minor. The local law enforcement agency shall respond and shall write a report within 24 hours of being notified of the alleged abuse. A report shall be made regardless of whether the local law

enforcement agency knows or suspects that a report about the abuse may have previously been made.

(b) The appropriate local law enforcement agency and the Department of Family and Protective Services shall investigate suspected abuse reported under this section and, if warranted, shall refer the case to the appropriate prosecuting authority.

(c) When the local law enforcement agency responds to the report of physical or sexual abuse as required by Subsection (a), a law enforcement officer or appropriate agent from the Department of Family and Protective Services may take emergency possession of the minor without a court order to protect the health and safety of the minor as described by Chapter 262.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 110 (H.B. 841), Sec. 2, eff. May 21, 2011.

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 8, eff. January 1, 2016.

Sec. 33.0085. DUTY OF JUDGE OR JUSTICE TO REPORT ABUSE OF MINOR. (a) Notwithstanding any other law, a judge or justice who, as a result of court proceedings conducted under Section 33.003 or 33.004, has reason to believe that a minor has been or may be physically or sexually abused shall:

(1) immediately report the suspected abuse and the name of the abuser to the Department of Family and Protective Services and to a local law enforcement agency; and

(2) refer the minor to the department for services or intervention that may be in the best interest of the minor.

(b) The appropriate local law enforcement agency and the Department of Family and Protective Services shall investigate suspected abuse reported under this section and, if warranted, shall refer the case to the appropriate prosecuting authority.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 9, eff. January 1, 2016.

Sec. 33.009. OTHER REPORTS OF SEXUAL ABUSE OF A MINOR. A court or the guardian ad litem or attorney ad litem for the minor shall report conduct reasonably believed to violate Section 21.02, 22.011, 22.021, or 25.02, Penal Code, based on information obtained during a confidential court proceeding held under this chapter to:

(1) any local or state law enforcement agency;

(2) the Department of Family and Protective Services, if the alleged conduct involves a person responsible for the care, custody, or welfare of the child;

(3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged conduct occurred, if the alleged conduct occurred in a facility operated, licensed, certified, or registered by a state agency; or

(4) an appropriate agency designated by the court.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.27, eff. September 1, 2007.

Sec. 33.010. CONFIDENTIALITY. Notwithstanding any other law, information obtained by the Department of Family and Protective Services or another entity under Section 33.008, 33.0085, or 33.009 is confidential except to the extent necessary to prove a violation of Section 21.02, 22.011, 22.021, or 25.02, Penal Code.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.28, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 10, eff. January 1, 2016.

Sec. 33.011. INFORMATION RELATING TO JUDICIAL BYPASS. The Texas Department of Health shall produce and distribute informational materials that explain the rights of a minor under this chapter. The materials must explain the procedures established by Sections 33.003 and 33.004 and must be made available in English and in Spanish. The material provided by the department shall also provide information relating to alternatives to abortion and health risks associated with abortion.

Added by Acts 1999, 76th Leg., ch. 395, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.012. CIVIL PENALTY. (a) A person who is found to have intentionally, knowingly, recklessly, or with gross negligence violated

this chapter is liable to this state for a civil penalty of not less than $2,500 and not more than $10,000.

(b) Each performance or attempted performance of an abortion in violation of this chapter is a separate violation.

(c) A civil penalty may not be assessed against:

(1) a minor on whom an abortion is performed or attempted; or

(2) a judge or justice hearing a court proceeding conducted under Section 33.003 or 33.004.

(d) It is not a defense to an action brought under this section that the minor gave informed and voluntary consent.

(e) The attorney general shall bring an action to collect a penalty under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 11, eff. January 1, 2016.

Sec. 33.013. CAPACITY TO CONSENT. An unemancipated minor does not have the capacity to consent to any action that violates this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 11, eff. January 1, 2016.

Sec. 33.014. ATTORNEY GENERAL TO ENFORCE. The attorney general shall enforce this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 11, eff. January 1, 2016.

Rules and Forms for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code

Explanatory Statement

Chapter 33 of the Texas Family Code provides for judicial authorization of an unemancipated minor to consent to an abortion in Texas without notice to, or the consent of, a parent, managing conservator, or guardian. Sections 33.003 and 33.004, which govern proceedings in the trial and appellate courts, authorize the Court to make rules to ensure that judicial bypass applications are decided confidentially and promptly. *See* TEX. FAM. CODE §§ 33.003(l), 33.004(c). The statute also directs the Court to make forms for use in judicial bypass proceedings. *Id.* §§ 33.003(m), 33.004(d).

The Court approved the first set of rules and forms in 1999, following the enactment of Chapter 33. *See* Misc. Docket No. 99-9247 (Dec. 22, 1999); Act of May 25, 1999, 76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466 (S.B. 30) (codified at TEX. FAM. CODE § 33.001 *et seq.*). The rules and forms have been amended to reflect the 2015 amendments to Chapter 33. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 436 (H.B. 3994). The rules and forms track the statutory requirements. They do not reflect any judgment by the Court that Chapter 33, or any part of it, is constitutional. Constitutional questions should be resolved in an adversarial proceeding with full briefing and argument. Nor do the rules imply that abortion is—or is not—permitted in any specific situation. *See, e.g.*, *Roe v. Wade*, 410 U.S. 113 (1973); TEX. HEALTH & SAFETY CODE § 170.002 (restrictions on third trimester abortions of viable fetuses).

The notes and comments appended to the rules are intended to inform their construction and application by courts and practitioners.

Rule 1. General Provisions

1.1 Applicability of These Rules. These rules govern proceedings for obtaining a court order authorizing a minor to consent to an abortion without notice to, or the consent of, a parent, managing conservator, or guardian under Chapter 33, Family Code. All references in these rules to "minor" refer to the minor applicant. Other Texas court rules—including the Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, Rules of Judicial Administration, and local rules approved by the Supreme Court—also apply, but when the application of another rule would be inconsistent with the general framework or policy of Chapter 33, Family Code, or these rules, these rules control.

1.2 Expedition Required.

(a) ***Proceedings.*** A court must give proceedings under these rules precedence over all other pending matters to the extent necessary to ensure that applications and appeals are adjudicated as soon as possible and within the time required by Chapter 33, Family Code, and these rules.

(b) ***Prompt actual notice required.*** Without compromising the confidentiality required by statute and these rules, courts and clerks must serve orders, decisions, findings, and notices required under these rules in a manner designed to give prompt actual notice in order that the deadlines imposed by Chapter 33, Family Code, can be met.

1.3 Identity of Minor Protected.

(a) ***Generally.*** Proceedings under these rules must be conducted in a way that protects the confidentiality of the identity of the minor.

(b) ***No reference to minor's identity in proceeding.*** With the exception of the verification page required under Rule 2.1(c)(2) and the communications required under Rule 2.2(e), no reference may be made in any order, decision, finding, or notice, or on the record, to the name of the minor, her address, or other information by which she might be identified by persons not participating in the proceedings. Instead, the minor must be referred to as "Jane Doe" in a numbered cause.

(c) ***Notice.*** With the exception of orders and rulings released under Rule 1.4(b), all notices and communications from the court to the minor must be directed to the minor's attorney with a copy to the guardian ad litem. The minor's attorney must immediately serve on the guardian ad litem a copy of any document filed with the court. These requirements take effect when an attorney appears for the minor or when the clerk has notified the minor of the appointment of an attorney or a guardian ad litem.

1.4 Confidentiality of Proceedings Required; Exceptions.

(a) ***Generally.*** All officials and court personnel involved in the proceedings must ensure that the minor's contact with the clerk and the court is confidential and expeditious. Except as permitted by law, officials and court personnel must never disclose to anyone outside the proceeding—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion.

(b) ***Documents and information pertaining to the proceeding.***

(1) *General rule; disclosure prohibited.* As required by Chapter 33, Family Code, the application and all other court documents and information pertaining to the proceedings are confidential and privileged and are not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process.

(2) *Exception; disclosure to minor permitted.* The application and any other document in the court file may be disclosed to the minor.

(3) *Exception; disclosure of order to certain persons.* An order, ruling, opinion, or clerk's certificate may be released to:

- the minor;
- the minor's guardian ad litem;
- the minor's attorney;
- the physician who is to perform the abortion;
- a person designated in writing by the minor to receive the order, ruling, opinion, or certificate;
- a governmental agency or governmental attorney, in connection with a criminal or administrative action seeking to assert or protect the minor's interests; or
- another court, judge, or clerk in the same or related proceedings.

(c) ***Filing of court reporter's notes required.*** To ensure confidentiality, the court reporter's notes, in whatever form, must be filed with other court documents in the proceeding.

(d) ***Duty to report possible abuse.***

(1) *Duty of the court.* A judge or justice who, as a result of a court proceeding governed by these rules, has reason to believe that a minor has been or may be physically or sexually abused must report the suspected abuse in accordance with Sections 33.0085 and 33.009, Family Code, and other law.

(2) *Duty of an attorney or guardian ad litem.* An attorney or a guardian ad litem who, as a result of a court proceeding governed by these rules, has reason to believe that a minor has been or may be physically or sexually abused must report the suspected abuse in accordance with Section 33.009, Family Code, and other law.

(e) ***Department of Family and Protective Services or local law enforcement agency to disclose certain information in proceeding.*** The Department of Family and Protective Services or a local law enforcement agency may disclose to the court, the minor's attorney, and the guardian ad litem any information obtained under Sections 33.008, 33.0085, and 33.009, Family Code, without being ordered to do so. The court may order the Department or a local law enforcement agency to disclose the information to the court, the minor's attorney, and the guardian ad litem, and the Department or agency must comply.

1.5 Methods of Transmitting Documents; Hearings Conducted By Remote Electronic Means; Electronic Record Allowed When Necessary.

(a) ***Electronic filing through statewide portal prohibited.*** Documents must not be filed through the electronic filing manager established by the Office of Court Administration.

(b) ***Paper, fax, or email filing permitted.*** Documents may be filed in paper form, by fax, or by email. The clerk of a court must designate an email address or a fax number for the filing of documents in proceedings governed by these rules and must take all reasonable steps to maintain the confidentiality of the filings. An attorney must notify the clerk by telephone before filing a document by email or fax.

(c) ***Fax and email transmission by court and clerk.*** The court and clerk may transmit orders, rulings, notices, and other documents by fax or email. But before the transmission is initiated, the sender must take all reasonable steps to maintain the confidentiality of the transmission. The time and date of a transmission by the court is the time and date when it was initiated.

(d) ***Participation in hearings by electronic means.*** Consistent with the confidentiality requirements of these rules, with the court's permission, a witness may participate in a hearing under these rules by video conferencing, telephone, or other remote electronic means. But the minor must appear before the court in person.

(e) ***Record of hearing made by electronic means if necessary.*** If the court determines that a court reporter is unavailable for a hearing, the court may have a record of the hearing made by audio recording or other electronic means. If a notice of appeal is filed, the court must have the recording transcribed if possible. The person transcribing the recording must certify to the accuracy of the transcription. The court must transmit both the recording and the transcription to the court of appeals.

1.6 Disqualification, Recusal, or Objection to a Judge.

(a) ***Time for filing and ruling.*** A motion to recuse or disqualify a trial judge or an objection to a trial judge under Section 74.053, Government Code, must be filed before 10 a.m. of the first business day after an application is filed or promptly after the assignment of a judge to hear the case is made known to the minor's attorney, whichever is later. A motion to recuse or disqualify an appellate judge or an objection to an appellate judge under Section 75.551, Government Code, must be filed before 10 a.m. of the first business day after a notice of appeal is filed or promptly after the assignment of a judge is made known to the minor's attorney, whichever is later. A judge who chooses to withdraw voluntarily must do so immediately. A motion to disqualify or recuse or an objection to an assigned judge does not extend the deadline for ruling on the minor's application.

(b) ***Voluntary disqualification or recusal; objection.*** A judge who removes himself or herself voluntarily—whether in response to a motion or on the judge's own initiative—or to whom objection is made under Sections 74.053 or 75.551, Government Code, must immediately notify the appropriate authority under rule or statute for assigning another judge. That authority must immediately assign a judge or justice to the proceeding.

(c) ***Involuntary disqualification or recusal.*** A judge who refuses to remove himself or herself voluntarily from a proceeding in response to a motion must immediately refer the motion to the appropriate judge under rule or statute for determination. The judge to whom the motion is referred must rule on it as soon as possible and may do so with or without a hearing. If the motion is granted, the judge to whom the motion was referred must immediately assign another judge to the proceeding.

(d) ***Restrictions on the number of motions and objections.*** A minor who objects under Section 74.053 or Section 75.551, Government Code, to a judge assigned to the proceeding may not thereafter file a motion to recuse the judge assigned to replace the judge to whom the objection was made. A minor who files a motion to recuse or disqualify a judge may not thereafter

object under Section 74.053 or Section 75.551, Government Code, to another judge assigned to the proceeding.

(e) ***Issues on appeal.*** Any error in the denial of a motion to recuse or disqualify, any error in the disallowance of an objection, or any challenge to a judge that a minor is precluded from making by subsections (a) or (d), may be raised only on appeal from the court's denial of the application.

1.7 Rules and Forms to be Made Available.

(a) ***Online.*** A complete set of these rules and forms must be posted on the Texas Judiciary website at www.txcourts.gov. Forms 1A, 2A, and 2B must be translated into Spanish.

(b) ***In clerks' offices.*** The clerk of a court in which an application or appeal may be filed must make the rules and forms—including the Spanish version of Form 1A, 2A, and 2B—and any applicable local rules available to a minor without charge.

1.8 Duties of Attorneys Ad Litem. An attorney ad litem must represent the minor in the trial court in the proceeding in which the attorney is assigned and in any appeal under these rules to the court of appeals or the Supreme Court. But an attorney ad litem is not required to represent the minor in any other court or any other proceeding.

1.9 Fees and Costs.

(a) ***No fees or costs charged to minor.*** No filing fee or court cost may be assessed against a minor for any proceeding in a trial or appellate court.

(b) ***State ordered to pay fees and costs.***

(1) *Fees and costs that may be paid.* The State may be ordered to pay the reasonable and necessary fees and expenses of the attorney ad litem, the reasonable and necessary fees and expenses of the guardian ad litem, the court reporter's fee as certified by the court reporter, and trial court filing fees and costs as certified by the clerk. Court costs include the expenses of an interpreter (Form 2H) and an evaluation by a licensed mental health counselor but do not include the fees or expenses of a witness. Court costs do not include fees that must be remitted to the state treasury.

(2) *To whom order directed and sent.* The order must be directed to the Comptroller of Public Accounts and sent to the Director, Fiscal Division, of the Texas Department of Health.

(3) *Form and contents of the order.* The order must state the amounts to be awarded the attorney ad litem and the guardian ad litem. The order must be separate from any other order in the proceeding and must not address any subject other than the assessment of fees, expenses, and costs. A trial court may use Forms 2F and 2G, but it is not required to do so.

(4) *Time for signing and sending order.* The order must be signed by the judge and sent by the clerk to the Department of Health not later than the ninetieth day after the date of the final ruling in a proceeding.

(c) ***Motion to reconsider; time for filing.*** Within thirty days of actual receipt of the order, the Comptroller or any other person adversely affected by the order may file a motion in the trial court to reconsider the assessment of fees, expenses, or costs. The trial court retains jurisdiction of the case to hear and determine any timely filed motion to reconsider.

(d) ***Appeal.*** The Comptroller or any other person adversely affected by the order may appeal from the trial court's ruling on the motion to reconsider as from any other final judgment of the court.

(e) ***Report to the Office of Court Administration.*** The Department of Health must transmit to the Office of Court Administration a copy of every order assessing fees, expenses, or costs in a proceeding under Chapter 33, Family Code. Orders assessing fees, expenses, or costs are not subject to any order of the Supreme Court of Texas requiring mandatory reports of judicial appointments and fees or to the reporting requirements of Chapter 36, Government Code.

(f) ***Confidentiality.*** When transmitting an order awarding costs to the Department of Health, the clerk must take reasonable steps to preserve its confidentiality. The confidentiality of an order awarding costs—as prescribed by Chapter 33, Family Code—is not affected by its transmission to the Comptroller, Texas Department of Health, or the Office of Court Administration, nor is the order subject to public disclosure in response to a request under any statute, rule, or other law. But these rules do not preclude the Comptroller, the Texas Department of Health, or the Office of Court

Administration from disclosing summary information from orders assessing costs for statistical or other such purposes.

1.10 Amicus Briefs. Amicus briefs may be submitted and received by a court—but not filed—under either of the following procedures.

(a) ***Confidential, case-specific briefs.*** A non-party who is authorized to attend or participate in a particular proceeding under Chapter 33, Family Code, may submit an amicus brief addressing matters, including confidential matters, specific to the proceeding. The brief and the manner in which it is submitted must comply with Rules 1.3 and 1.4 and be directed to the court in which the proceeding is pending. If the brief is filed in paper form, the person must submit the original brief and the same number of copies required for other paper submissions to the court. The person must serve a copy of the brief on the minor's attorney and guardian ad litem. The court to which the brief is submitted must maintain the brief as part of the confidential case file in accordance with Rule 1.4.

(b) ***Public or general briefs.*** Any person may submit a brief addressing any matter relating to proceedings under Chapter 33, Family Code. The brief must not contain any information in violation of Rules 1.3 and 1.4. If the brief is filed in paper form, the person must submit the original brief and the same number of copies required for other paper submissions to the court. If the brief is submitted to a court of appeals, one copy of the brief must also be submitted to the Supreme Court of Texas. Upon receipt of an amicus brief submitted under this subsection, the Clerk of the Supreme Court must, as soon as practicable, have the brief posted on the Texas Judiciary website.

Notes and Comments

1. Rule 1.1 contemplates that other court rules of procedure and administration remain as a "default" governing matters not addressed in these rules. Thus, for example, these rules do not state a deadline for filing notices of appeal, so the ordinary 30-day deadline controls, *see* Tex. R. App. P. 26.1, but these rules control over inconsistent provisions in the appellate rules governing the docketing statement, the record, and briefing.

2. Rule 1.1 also contemplates that individual jurisdictions may enact local rules pursuant to Tex. R. Civ. P. 3a, Tex. R. App. P. 1.2, or Tex. R. Jud. Admin. 10, to the extent consistent with Chapter 33, Family Code, and with these rules, to tailor the implementation of the statute and these rules to local needs and preferences. Local rules may address, for example, the specific location or office where

applications are to be filed, how applications are to be assigned for hearing, and whether an appellate court will permit or require briefing or oral argument. *See also* Rule 2, Comment 1.

3. Any judge involved in a proceeding—whether as the judge assigned to hear and decide the application; the judge assigned to hear and decide any disqualification, recusal, or objection; a judge authorized to transfer the application or assign another judge to it; or an appellate judge—may have access to all information (including the verification page) in the proceeding or any related proceeding, such as a prior filing by the minor. Similarly, a minor's attorney and guardian ad litem must, of course, have access to the case file to the extent necessary to perform their respective duties.

4. Sections 33.008, 33.0085, and 33.009, Family Code, require physicians, judges, attorneys, and guardians ad litem to report suspected physical or sexual abuse to the Texas Department of Family and Protective Services and to a local law enforcement agency. Section 33.010 makes confidential—"[n]otwithstanding any other law"—all information obtained by the Department or a law enforcement agency under Sections 33.008, 33.0085, and 33.009 except to the extent necessary to prove certain criminal conduct. Rule 1.4(e) construes Section 33.010 in harmony with Section 33.003(i-2), which makes past or potential future abuse relevant to a claim that notifying or attempting to obtain the consent of a parent, managing conservator, or guardian would not be in the minor's best interest.

5. Rule 1.6 controls to the extent that it conflicts with other provisions regarding the disqualification or recusal of judges, such as Tex. R. Civ. P. 18a, Tex. R. App. P. 16, and Tex. Gov't Code 25.00255.

6. The archival requirements relating to proceedings under Chapter 33, Family Code, and these rules is governed by Sections 441.158 and 441.185, Government Code, and the schedules promulgated by the Texas State Library and Archives Commission pursuant to those authorities.

7. Orders awarding fees, expenses, and costs contain information that is made confidential by Chapter 33, Family Code. The confidentiality of the information should not be affected by the transmission of the order to the Texas Department of Health and to the Comptroller, which is necessary to effectuate payment, or to the Office of Court Administration, which is necessary to oversee the costs associated with the proceedings. Rule 1.9(f) does not preclude either the Comptroller, the Texas Department of Health, or the Office of Court Administration from disclosing total amounts paid for all proceedings, the average amount awarded per proceeding, or other statistical summaries or analyses that do not impair the confidentiality of the proceedings.

8. Rule 1.10 adds a procedure for filing amicus curiae briefs uniquely designed for the expedited and confidential nature of judicial bypass cases.

RULE 2. PROCEEDINGS IN THE TRIAL COURT

2.1 Where to File an Application; Court Assignment and Transfer; Application Form; Effect of a Nonsuit or Prior Determination.

(a) ***Counties in which an application may be filed.*** An application for an order under Section 33.003, Family Code, must be filed in the minor's county of residence, unless one of the following exceptions applies.

(1) *Minor's parent is a presiding judge.* If the minor's parent, managing conservator, or guardian is a presiding judge of a court described in (b)(1) in the county of the minor's residence, the application must be filed in:

(A) a contiguous county; or

(B) the county where the minor intends to obtain the abortion.

(2) *Residence in a county with a population of less than 10,000.* If the minor's county of residence has a population of less than 10,000, the application must be filed in:

(A) the minor's county of residence;

(B) a contiguous county; or

(C) the county where the minor intends to obtain the abortion.

(3) *Nonresident minor.* If the minor is not a Texas resident, the application must be filed in the county where the minor intends to obtain the abortion.

(b) ***Courts in which an application may be filed; assignment and transfer.***

(1) *Courts with jurisdiction.* An application may be filed in a district court (including a family district court), a county court at law, or a court having probate jurisdiction.

(2) *Application filed with district or county clerk.* An application must be filed with either the district clerk or the county clerk, who will assign the application to a court as provided by local rule or these rules. The clerk to whom the application is tendered cannot refuse to accept it because of any local rule or other rule or law that governs the filing and assignment of applications or cases. The clerk must accept the application and transfer it immediately to the proper clerk, advising the person tendering the application where it is being transferred.

(3) *Court assignment and transfer by local rule.* The courts in a county that have jurisdiction to hear applications may determine by local rule how applications will be assigned between or among them. A local rule must be approved by the Supreme Court under Rule 3a, Texas Rules of Civil Procedure.

(4) *Initial court assignment if no local rule.* Absent a local rule, the clerk who files an application—whether the district clerk or the county clerk—must assign it as follows:

(A) to a district court, if the active judge of the court, or a judge assigned to it, is available;

(B) if the application cannot be assigned under (A), then to a statutory county or probate court, if the active judge of the court, or a judge assigned to it, is available;

(C) if the application cannot be assigned under (A) or (B), then to the constitutional county court, if it has probate jurisdiction, and if the active judge of the court, or a judge assigned to it, is available;

(D) if the application cannot be assigned under (A), (B), or (C), then to the district court.

(5) *Judges who may hear and determine applications.* An application may be heard and determined by the active judge of the court to which the application is assigned, by any judge authorized to sit for the active judge, or by any judge who may be assigned to the court in which the application is pending. An application may not be heard or determined, or any proceedings under these rules conducted, by a master or magistrate.

(c) ***Application form.*** An application consists of two pages—a cover page and a separate verification page—if the minor is not represented by an attorney at the time of filing. If the minor is represented by an attorney at the time of filing, the application must include a third page, the attorney's sworn statement or declaration made under penalty of perjury.

(1) *Cover page.* The cover page may be submitted on Form 2A, but use of the form is not required. The cover page must be styled "In re Jane Doe" and must not disclose the name of the minor or any information from which the minor's identity could be derived. The cover page must state:

(A) that the minor is pregnant;

(B) that the minor is unmarried, is under 18 years of age, and has not had her disabilities removed under Chapter 31, Family Code;

(C) that the minor wishes to have an abortion without notifying or obtaining consent from either of her parents or a managing conservator or guardian, and the statutory ground or grounds on which she relies;

(D) that venue is proper in the county in which the application has been filed;

(E) whether the minor has retained an attorney, and if so, the attorney's name, email address, mailing address, and telephone number;

(F) whether the minor requests the court to appoint a particular person as her guardian ad litem; and

(G) that, concerning her current pregnancy, the minor has not previously filed an application that was denied; or

(H) if the minor has filed a previous application with respect to the current pregnancy that was denied, that this application is being filed in the same court that denied the previous application and that there has been a material change in circumstances since the time the previous application was denied.

(2) *Verification page.* The verification page may be submitted on Form 2B, but use of the form is not required. The verification page must be separate from the cover page, must be signed by the minor under oath or under penalty of perjury, and must state:

(A) the minor's full name, date of birth, physical address, mailing address, and telephone number;

(B) the name, address, telephone number, and relationship to the minor of any person the minor requests the court to appoint as her guardian ad litem;

(C) if the minor has not retained an attorney, a telephone number—whether that of the minor or someone else (such as a physician, friend, or relative)—at which the minor may be contacted immediately and confidentially until an attorney is appointed to represent her; and

(D) that all information contained in the application, including both the cover page and the verification page, is true.

(3) *Attorney's statement.* The minor's attorney must file with the application a sworn statement or unsworn declaration made under penalty of perjury that attests to the truth of the minor's claims regarding venue and prior applications.

(d) ***Time of filing.*** An application is filed when it is actually received by the district or county clerk.

(e) ***Nonsuit requires permission.*** A minor may not withdraw or nonsuit an application without permission of the court.

(f) ***Res judicata effect of prior determination.***

(1) *General rule.* A minor who has filed an application and obtained a determination by the court under Rule 2.5 may not initiate a new application proceeding with respect to the same pregnancy, and the prior determination is res judicata on the issue whether the minor may consent to an abortion without notification to, or consent of, a parent, managing conservator, or guardian.

(2) *Exception for material change in circumstances.* A minor whose application is denied may submit a new application to the court that

denied the application if the minor shows that there has been a material change in circumstances since the prior application was denied.

2.2 Clerk's Duties.

(a) ***Assistance in filing.*** The clerk must give prompt assistance—in a manner designed to protect the minor's confidentiality—to persons seeking to file an application. If requested, the clerk must administer the oath for the verification page or provide a person authorized to do so. The clerk must also redact from the cover page any information identifying the minor. The clerk must ensure that both the cover page and the separate verification page are completed in full.

(b) ***Filing procedure.*** The clerk must assign the application a cause number that does not identify the assigned judge and affix it to both the cover page and the verification page. The clerk must then provide a certified copy of the verification page to the person filing the application. The clerk must file the verification page under seal in a secure place where access is limited to essential court personnel.

(c) ***Distribution.*** When an application is filed, the clerk must distribute the cover page and verification page, or a copy of them, to the appropriate court immediately. If appointment of a specific person as guardian ad litem has been requested, the clerk must also communicate the information to the appropriate court immediately.

(d) ***If judge of assigned court not available.*** The clerk must determine immediately whether the judge of the court to which the application is assigned is available to hear the application within the prescribed time period. If that judge is not available, the clerk must immediately notify the local administrative judge or judges and the presiding judge of the administrative judicial region and must send them any information requested, including the cover page and verification page.

(e) ***Notice of hearing and appointments.*** When the clerk is advised by the court of a time for the hearing or of the appointment of a guardian ad litem or an attorney ad litem, the clerk must immediately give notice—as directed in the verification page and to each appointee—of the hearing time or appointment. A court coordinator or other court personnel may give notice instead of the clerk.

(f) ***Orders.*** The clerk must provide the minor's attorney and the guardian ad litem with copies of all court orders, including findings of fact and conclusions of law.

(g) ***Certificate of court's failure to rule within time prescribed by statute.*** If the court fails to rule on an application within the time required by Section 33.003(h), Family Code, then, upon the minor's request, the clerk must immediately issue a certificate to that effect, stating that the application is deemed to be denied. The clerk may use Form 2E but is not required to do so.

2.3 Court's Duties. Upon receipt of an application from the clerk, the court must promptly:

(a) appoint a qualified person to serve as guardian ad litem for the minor applicant;

(b) unless the minor has a retained attorney, appoint an attorney ad litem for the minor, who must not be the same person appointed as guardian ad litem;

(c) set a hearing on the application; and

(d) advise the clerk of the appointments and the hearing time.

2.4 Hearing.

(a) ***Time.***

(1) *General rule.* The court must conduct a hearing in time to rule on the application by the deadline stated in Rule 2.5(f).

(2) *Minor may request postponement.* The minor may postpone the hearing by written request to the clerk. The request may be submitted on Form 2C, but use of the form is not required. The request must either specify a date on which the minor will be ready for the hearing or state that the minor will later provide a date on which she will be ready for the hearing. Once the minor determines when she will be ready for the hearing, she must notify the clerk of that time in writing. The postponed hearing must be conducted in time for the court to rule on the application by the deadline stated in Rule 2.5(f).

(b) ***Place.*** The hearing should be held in a location, such as a judge's chambers, that will ensure confidentiality. The hearing may be held away from the courthouse.

(c) ***Persons attending.*** The hearing must be closed to the public. Only the judge, the court reporter, other essential court personnel, the minor, her attorney, her guardian ad litem, and witnesses on the minor's behalf may be present.

(d) ***Record.*** The court, the minor, the minor's attorney, or the guardian ad litem may request that the record—the clerk's record and reporter's record—be prepared. A request by the minor, the minor's attorney, or the guardian ad litem must be in writing and may be, but is not required to be, on Form 2I (if an appeal will be taken) or 2J (if an appeal will not be taken). The court reporter must provide an original and two copies of the reporter's record to the clerk. When the record has been prepared, the clerk must contact the minor, if she has requested the record; the minor's attorney; and the guardian ad litem at the telephone numbers shown on Form 2I or 2J and make it available to them. The record must be prepared and made available immediately if it has been requested for appeal or to demonstrate the past or potential abuse of the minor. When a notice of appeal is filed, the clerk must forward the record to the court of appeals in accordance with Rule 3.2(b).

(e) ***Hearing to be informal.*** The court should attempt to rule on the application without regard to technical defects in the application or the evidence. Affidavits of persons other than the minor are admissible. Statements in the application cannot be offered as evidence to support the application. If necessary, the court may assist the minor in remedying technical defects in the application and in presenting relevant and material facts.

2.5 Ruling.

(a) ***Form of ruling.*** The court's ruling on the application must include a signed order and written findings of fact and conclusions of law. The findings and conclusions may be included in the order. The court may use Form 2D, but it is not required to do so.

(b) ***Grounds for granting application.*** The court must grant the application if the minor establishes, by clear and convincing evidence:

(1) that the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notice to, or consent of, a parent, managing conservator, or guardian; or

(2) that the notification or attempt to obtain consent would not be in the minor's best interest.

(c) ***The mature-and-informed inquiry.*** In determining whether the minor meets the requirements of (b)(1), the court must consider the experience, perspective, and judgment of the minor. The court may:

(1) consider all relevant factors, including:

(A) the minor's age;

(B) the minor's life experiences, such as working, traveling independently, or managing her own financial affairs; and

(C) steps taken by the minor to explore her options and the consequences of those options;

(2) inquire as to the minor's reasons for seeking an abortion;

(3) consider the degree to which the minor is informed about the state-published informational materials described by Chapter 171, Health and Safety Code; and

(4) require the minor to be evaluated by a licensed mental health counselor, who must return the evaluation to the court for review within three business days.

(d) ***The best-interest inquiry.*** In determining whether the minor meets the requirements of (b)(2), the court may inquire as to:

(1) the minor's reasons for not wanting to notify and obtain consent from a parent, managing conservator, or guardian;

(2) whether notification or the attempt to obtain consent may lead to physical or sexual abuse;

(3) whether the pregnancy was the result of sexual abuse by a parent, managing conservator, or guardian; and

(4) any history of physical or sexual abuse from a parent, managing conservator, or guardian.

(e) ***Grounds for denying the application.*** The court must deny the application if:

(1) the minor does not establish either ground in (b) by clear and convincing evidence; or

(2) the minor does not attend the hearing; and

(A) the minor had actual knowledge of the setting; or

(B) diligent attempts were made to notify the minor of the setting.

(f) ***Time for ruling.*** The court must rule on an application as soon as possible after it is filed, subject to any postponement requested by the minor, and immediately after the hearing is concluded. Section 33.003(h), Family Code, states that a court must rule on an application by 5 p.m. on the fifth business day after the day the application is filed, or if the minor requests a postponement, by 5 p.m. on the fifth business day after the date the minor states she is ready for the hearing.

(g) ***Failure to timely rule.*** If the court fails to timely rule on an application, the application is deemed to be denied.

(h) ***Notification of the right to appeal.*** If the court denies the application, it must inform the minor of her right to appeal under Rule 3 and furnish her with the notice of appeal form, Form 3A.

Notes and Comments

1. Section 33.003(b), Family Code, permits an application to be filed in “a county court at law, court having probate jurisdiction, or district court, including a family district court, in the minor’s county of residence” or, if an exception applies, in a contiguous county or the county where the abortion would be performed. The initial assignment of an application to a specific court in a county is made by the clerk with whom the application is filed (not by the minor). Given the diversity of needs and circumstances among Texas courts, these rules allow the courts in each county to tailor the procedures for filing, handling, and assigning applications prescribed by these rules to best meet those needs and circumstances. Chapter 74, Subchapter C, Government Code, affords the presiding judge of an administrative judicial region broad discretion to assign active judges within the region, as well

as visiting judges, to hear matters pending in courts within the region. *See* Tex. Govt. Code §§ 74.054, 74.056; *see also id.* § 74.056(b) (presiding judges may request judges from other judicial regions for assignment); § 74.057 (Chief Justice may assign judges from one judicial region to another). Section 25.0022, Government Code, provides for assignment of probate judges. Furthermore, Chapter 74, Subchapter D, Government Code, authorizes district and statutory county court judges within a county to hear matters pending in any district or statutory county court in the county. *Id.* § 74.094(a). Finally, Section 74.121, Government Code, permits courts within a county to transfer cases among courts having jurisdiction over the case. If no local rule governs assignments, then Rule 2.1(b)(4) controls.

2. Because an application is considered filed when it is actually received by the clerk, the timing provisions relating to filing by mail of Tex. R. Civ. P. 21a are inapplicable.

3. Section 33.003(f), Family Code, provides that a guardian ad litem may be (1) a person who may consent to treatment for the minor under Sections 32.001(a)(1)-(3), Family Code; (2) a psychiatrist or an individual licensed or certified as a psychologist under Chapter 501, Occupations Code; (3) an appropriate employee of the Department of Family and Protective Services; (4) a member of the clergy; or (5) another appropriate person selected by the court. The trial court may also consider appointing a qualified person requested by the minor. Although not directly applicable to these proceedings, the standards embodied in Chapter 107, Family Code, reflect legislative intent that competent and qualified persons be appointed to serve as ad litems and may provide general guidance concerning the nature of those qualifications. Appointment of an employee of the Department of Family and Protective Services to serve as guardian ad litem may give rise to a conflict of interest not immediately apparent at the time since the Department may be involved with the minor's family due to an abuse or neglect investigation, or may be party to a suit affecting the parent-child relationship, or may already be serving as the child's managing conservator.

4. The duties of guardians ad litem are not susceptible of precise definition. Generally, a guardian ad litem should interview the minor and conduct any investigation the guardian believes to be appropriate, without violating Rules 1.3 and 1.4, to assist the court in arriving at an opinion whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to, or consent of, either of her parents or a managing conservator or guardian or whether notification or the attempt to obtain consent would not be in the best interest of the minor. Rule 2.5(c) and (d) list some nonexclusive factors outlined in Section 33.003(i-1)-(i-2), Family Code, that a court may consider in deciding whether the statutory criteria for a bypass have

been met. Factors that have been considered in other jurisdictions with similar parental notification and consent statutes include:

- whether the minor has been examined by a doctor of medicine, doctor of osteopathy, or registered nurse—who is licensed to practice in Texas—and has given that health care provider an accurate and complete statement of her medical history;
- whether the minor has been provided with information or counseling bearing on her decision to have an abortion;
- whether the minor desires further counseling;
- whether, based on the information or counseling provided to the minor, she is able to give informed consent;
- whether the minor is attending school, or is or has been employed;
- whether the minor has previously filed an application that was denied;
- whether the minor lives with her parents;
- whether the minor desires an abortion or has been threatened, intimidated, or coerced into having an abortion;
- whether the pregnancy resulted from sexual assault, sexual abuse, or incest;
- whether there is a history or pattern of family violence; and
- whether the minor fears for her safety.

These considerations may not be relevant in every case, are not exclusive, and may not be sufficient to discharge the guardian ad litem's responsibilities in every case. Use of these factors as a basis for civil liability or as a statement of the standard of care is contrary to their intended purpose. Nothing in this comment alters existing standards of conduct under the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Disciplinary Procedure, or the Code of Judicial Conduct.

In addition to these general guidelines, Chapter 107, Family Code, sets forth duties of guardians and attorneys ad litem appointed in suits affecting the parent-child relationship. These duties are not directly applicable to proceedings under Chapter

33, Family Code, and may be incompatible with the confidential and expeditious nature of such proceedings, but they reflect general legislative intent concerning the responsibilities of ad litems.

5. Under Rule 2.5(b), once a court concludes that an application should be granted on a single ground, it need not address other grounds. But in addressing any ground, the court should attempt to ascertain, among other factors, whether the pregnancy resulted from sexual assault, sexual abuse, or incest. The legislative history of Chapter 33, Family Code, indicates that one of the principal purposes of the statute was to screen for sexual crimes and abuse of minors so as to protect them against further victimization.

RULE 3. APPEAL FROM DENIAL OF APPLICATION

3.1 How to Appeal. To appeal the denial of an application, the minor must file a notice of appeal with the clerk of the court that denied the application, file a copy of the notice of appeal with the clerk of the court of appeals to which an appeal is to be taken, and advise the clerk of the court of appeals by telephone that an appeal is being taken under Chapter 33, Family Code. The minor may use Form 3A but is not required to do so. The notice of appeal must:

(a) be styled "In re Jane Doe";

(b) state the number of the cause in the trial court;

(c) be addressed to a court of appeals with jurisdiction in the county in which the application was filed;

(d) state an intention to appeal; and

(e) be signed by the minor's attorney.

3.2 Clerk's Duties.

(a) ***Assistance in filing.*** The trial court clerk must give prompt assistance—in a manner designed to protect the minor's confidentiality—to persons seeking to file an appeal. The clerk must ensure that the notice of appeal is addressed to the proper court of appeals and that the minor's name and identifying information are not disclosed.

(b) ***Forwarding record to court of appeals.*** Upon receipt of a notice of appeal, the trial court clerk must immediately forward to the clerk of the court of appeals the notice of appeal, the clerk's record excluding the verification

page, and the reporter's record. The trial court clerk must deliver the record to the clerk of the court of appeals by hand or send it by fax or email. The clerk must not send the record by mail.

(c) ***Certificate of court's failure to rule within time prescribed by statute.*** If the court of appeals fails to rule on an application within the time required by Section 33.004(b), Family Code, then, upon the minor's request, the clerk of the court of appeals must immediately issue a certificate to that effect, stating that the trial court's order is affirmed. The clerk may use Form 3D but is not required to do so.

3.3 Proceedings in the Court of Appeals.

(a) ***Briefing and argument.*** A minor may request to be allowed to submit a brief and to present oral argument, but the court may decide to rule without a brief or oral argument.

(b) ***Ruling.*** The court of appeals—sitting in a three-judge panel—must issue a judgment affirming or reversing the trial court's order denying the application. The court may use Form 3C but is not required to do so.

(c) ***Time for ruling.*** The court of appeals must rule on an appeal as soon as possible, subject to any postponement requested by the minor. Section 33.004(b), Family Code, states that a court must rule on an appeal by 5 p.m. on the fifth business day after the notice of appeal is filed with the court that denied the application, or if the minor requests a postponement, by 5 p.m. on the fifth business day after the date the minor states she is ready to proceed.

(d) ***Postponement by minor.*** The minor may postpone the time of ruling by written request filed either with the trial court clerk at the time she files the notice of appeal or thereafter with the court of appeals clerk. The request may be submitted on Form 3B, but use of the form is not required. The request must either specify a date on which the minor will be ready to proceed to ruling, or state that the minor will later provide a date on which she will be ready to proceed to ruling. Once the minor determines when she will be ready to proceed to ruling, she must notify the court of appeals clerk of that date in writing.

(e) ***Opinion.***

(1) *Opinion optional; must preserve confidentiality.* A court of appeals may issue an opinion explaining its ruling, but it is not required to do

so. An opinion that is designated for publication or public release must be written in a way to preserve the confidentiality of the identity of the minor.

(2) *Time.* Any opinion must issue not later than:

(A) ten business days after the day on which a notice of appeal is filed in the Supreme Court, if an appeal is taken to the Supreme Court; or

(B) sixty days after the day on which the court of appeals issued its judgment, if no appeal is taken to the Supreme Court.

(3) *Transmission to Supreme Court and trial court.* When the court of appeals issues an opinion, the clerk must transmit it immediately to the Supreme Court and to the trial court. If the opinion is not designated for publication or public release, the transmission must be confidential.

(f) ***Failure to timely rule.*** If the court of appeals fails to timely rule on the appeal, the trial court's judgment is deemed to be affirmed.

Notes and Comments

1. Chapter 33, Family Code, provides for no appeal from an order granting an application.

2. A request to postpone the ruling of the court of appeals may be used in conjunction with a request for oral argument or to submit briefing.

3. Neither Chapter 33, Family Code, nor these rules prescribe the appellate standard of review.

4. The 2015 amendments to Chapter 33, Family Code, permit the court of appeals to publish an opinion "if the opinion is written in a way to preserve the confidentiality of the identity of the pregnant minor." TEX. FAM. CODE § 33.004(c-1). Any opinion that is released to the public must not only omit the minor's name and other directly identifying information but it must also describe the facts in a way that those who know the minor would not be able to recognize her.

RULE 4. APPEAL TO THE SUPREME COURT

4.1 How to Appeal to the Supreme Court. To appeal from the court of appeals to the Supreme Court, the minor must file a notice of appeal with the clerk of the Supreme Court, file a copy of the notice of appeal with the clerk of the court of appeals, and advise the clerk of each court by telephone that an appeal is being taken under Chapter 33, Family Code. The minor may use Form 4A but is not required to do so. The notice of appeal must:

(a) be styled "In re Jane Doe";

(b) state the number of the cause in the court of appeals;

(c) state an intention to appeal; and

(d) be signed by the minor's attorney.

4.2 Clerk's Duties.

(a) ***Assistance in filing.*** The clerk of the Supreme Court must give prompt assistance—in a manner designed to protect the minor's confidentiality—to any person seeking to file an appeal. The clerk must ensure that the notice of appeal is addressed to the Supreme Court and that the minor's name and identifying information are not disclosed.

(b) ***Forwarding record to Supreme Court.*** Upon receipt of a notice of appeal to the Supreme Court, the clerks of the court of appeals and Supreme Court must immediately forward to the Supreme Court the record that was before the court of appeals.

4.3 Proceedings in the Supreme Court. A minor may request to be allowed to submit a brief and to present oral argument, but the Court may decide to rule without a brief or oral argument. The Court must rule as soon as possible.

Instructions for Applying to the Court for a Waiver of Parental Notification and Consent (Form 1A)

Your situation and the law

If you are younger than 18 and have not been legally "emancipated," you are "unemancipated," which means that you are legally under the custody or control of your parents (or one of your parents), a managing conservator, or a guardian. (A "managing conservator" is an adult or agency appointed by a court to have custody or control of you.)

If you are pregnant, unemancipated, and younger than 18, you cannot get an abortion in Texas unless:

- your doctor informs one of your parents or your managing conservator or guardian at least 48 hours before the abortion and obtains the consent of your parent, managing conservator, or guardian; *or*

- a judge issues an order that "waives" or removes the requirement that you must let a parent or your managing conservator or guardian know about your planned abortion and obtain his or her consent to it.

How to get a waiver of parental notification and consent

Fill out the application

To get a court order waiving the requirements that you tell a parent or your managing conservator or guardian about your planned abortion and obtain his or her consent, you must complete Forms 2A and 2B, ***Confidential Application for Waiver of Parental Notification***. Form 2A is the "Cover Page" for the Application; it requests basic information about why you are seeking the order. Form 2B is the "Verification Page," which requests information about you.

On the Verification Page, you will be asked to tell the court how you may be contacted quickly and confidentially. It is very important that you provide this information because the court may later need to contact you about your application. If you cannot be contacted, your application will be denied. You may list a phone number, email address, or any other way that you can be contacted. You can but need not give your own number—instead, you can ask the court to contact you through someone who is helping you or acting on your behalf. You may also list a second person who may be contacted on your behalf.

You or someone acting on your behalf must deliver the forms to the clerk in the district court, county court at law, county court, or probate court to be filed. The court clerk can help you complete and file the application, and can help you get a hearing on your request. However, the clerk cannot give you legal advice or counsel you about abortion.

All of the information you put on the application is confidential. You do not have to pay a fee to file this application.

Your hearing

The court will tell you when to come to the courthouse for your "hearing." In your hearing, you will meet with a judge to discuss your request. The court will hold your hearing within five days (not counting weekends and holidays) after you file your application.

After you file your application, the court will appoint a person to meet with you before the hearing and help the judge decide your application. The person is called a "guardian ad litem." In your application you may ask the court to appoint someone you want to be your guardian ad litem (who can be a relative, clergy, counselor, psychiatrist or psychologist, or other adult), but the court is not required to appoint this person.

You must also have a lawyer with you at your hearing. You may hire your own lawyer, or you may ask the court to appoint one to represent you for free.

Keeping it confidential

Your hearing will be confidential and private. The only persons allowed to be there are you, your guardian ad litem, your lawyer, court staff, and any person whom you request to be there.

You already know that your application stays confidential. So will everything from your hearing: all testimony, documents and other evidence presented to the court, and any order given by the judge. The court will keep everything sealed. No one else can inspect the evidence.

The court's decision

The court must "rule"—issue a decision on your application—before 5 p.m. on the fifth day after the day you filed your application, not counting weekends and holidays.

If the court fails to rule within that time, then your request is automatically denied. You can get a certificate from the court clerk that says that your request is "deemed denied." If you choose to appeal, the certificate will be sent to the appellate court to explain what happened in your case.

If the court *does* rule within the required time, the court issues an order that does one of the following three things:

(1) approves your request because the court finds that you are mature enough and know enough to choose on your own to have an abortion;

(2) approves your request because it is in your best interests *not* to notify or to attempt to obtain the consent of your parent or your managing conservator or guardian before getting the abortion; or

(3) denies your request because the court does not find (1) or (2).

If you say, or if there is evidence, that you have been or may be sexually abused, the court must treat your claim as a very serious matter and may be required to refer it to the police or other authorities for investigation.

Appealing the court's decision

If the court denies your request, you may ask another court to hear your case. This request is called an "appeal," and the new court will be the court of appeals.

To appeal the first court's decision, have your lawyer fill out Form 3A, ***Notice of Appeal in Parental Notification Proceeding.*** The lawyer must file it with the clerk of the court that denied your request for a waiver of parental notification.

You will *not* have to go to the court of appeals in person. Instead, the court of appeals will review the written record and will issue a written ruling on your appeal no later than 5 p.m. on the fifth day after the day you file the *Notice of Appeal*, not counting weekends and holidays.

The court of appeals will provide its ruling to you, your lawyer, your guardian ad litem, or any other person designated by you to receive the ruling.

The same guardian ad litem and lawyer who helped you with your first hearing can help with your appeal.

Getting the forms you need

Forms 2A and 2B, the Cover Page and Verification Page to the *Confidential Application for Waiver of Parental Notification*, and Form 3A, *Notice of Appeal in Parental Notification Proceeding*, should all be attached to these instructions.

If these forms are not attached to these instructions, you can get them from the clerk of the district, county court at law, county, or probate court or from the clerk of the court of appeals. These forms are also available on the Texas Judiciary website at www.txcourts.gov.

Attention Clerk: Please Expedite

Confidential Application for Waiver of Parental Notification and Consent: Cover Page (Form 2A)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.003(m).

(Do not complete this section. Court staff will complete this section.)

CAUSE NO. _________________

IN RE JANE DOE

IN THE ____________________

____

_________________COUNTY, TEXAS

Important: Your Application has two parts: (1) this cover sheet (Form 2A), which asks for basic information about your application; and (2) a separate verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You must complete both of these forms.

---

1. I ask the court for an order that allows me to have an abortion without first telling and obtaining the consent of my parent, managing conservator, or guardian. I swear or affirm that **(place a check mark in all the blanks for which you answer "yes")**:

   _ I am pregnant.

   _ I am unmarried and younger than 18 years of age.

   _ I do not have an order from a Texas court that gives me the same legal rights and responsibilities as an adult.

2. I request this order for one of the following reasons **(place a check mark beside any that apply)**:

_ I am mature enough to decide to have an abortion without telling and obtaining the consent of my parent, managing conservator, or guardian. I also know enough about abortion to make this decision.

_ Telling my parent, managing conservator, or guardian that I want an abortion and attempting to obtain his or her consent is not in my best interest.

_ Telling my parent, managing conservator, or guardian that I want an abortion may lead to physical or emotional abuse of me.

_ Telling my parent, managing conservator, or guardian that I want an abortion may lead to sexual abuse of me.

3. Please check all that apply:

_ I live in the county where this application is being filed.

_ My parent, managing conservator, or guardian is a presiding judge of a district court, a county court at law, or a court having probate jurisdiction in the county where I live, and **(check any that apply)**:

  _ The county where I live is contiguous to (shares a border with) this one.

  _ I intend to obtain the abortion in this county.

_ The population of the county where I live has a population of less than 10,000, and **(check any that apply)**:

  _ The county where I live is contiguous to (shares a border with) this one.

  _ I intend to obtain the abortion in this county.

_ I am not a Texas resident, but I intend to obtain the abortion in this county.

4. Please check one of the following statements:

_ I do **not** have a lawyer. (The court will appoint one for you).

_ I have a lawyer, who is:

Lawyer's name: ____

Lawyer's email address: ____________________________________

Lawyer's address: ____

Lawyer's phone: ____

5. The court must appoint a "guardian ad litem" for you. A guardian ad litem meets with you before the hearing and helps the judge decide your application. Please state whether you want the court to appoint someone you know as your guardian ad litem. This person could be a relative, a member of the clergy, a counselor, a psychiatrist or psychologist, or another adult. You do not have to ask the court to appoint someone you know. Keep in mind that the court may appoint the person you request, but it does not have to.

   _ I am requesting that the court appoint someone I know as my guardian ad litem. (You will identify this person on your verification page.)

   _ I am not requesting the court to appoint someone I know as my guardian ad litem. (The court will appoint someone it chooses.)

6. Please state whether you have filed a Confidential Application for Waiver of Parental Notification and Consent other than this one with respect to your current pregnancy.

   _ I have filed another Confidential Application for Waiver of Parental Notification and Consent with respect to my current pregnancy.

   _ I have **not** filed another Confidential Application for Waiver of Parental Notification and Consent with respect to my current pregnancy.

7. If you have filed another Confidential Application for Waiver of Parental Notification and Consent with respect to your current pregnancy, please answer the following questions. If you have not filed another Application with respect to your current pregnancy, do not answer these questions.

   What court ruled on your previous application? ____________________________

   Has there been a material change in circumstances since the time your previous application was denied? (Write "yes" or "no.") ____________________________

CAUSE NO. ____________________
(Do not fill in the blank above. Court staff will fill in the blank.)

Confidential Application for Waiver of Parental Notification and Consent: Verification Page (Form 2B)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.003(m)

Important: Your Application has two parts: (1) the cover sheet (Form 2A), which asks for basic information about your application; and (2) this verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You must complete both of these forms.

---

1. Please provide the following information.

   Your full name: ____

   Your date of birth: ____

   Your address (if the place you receive mail is different than the place you actually live, list both addresses): ____

   Your telephone number: ____

2. If you are requesting the court to appoint someone you know as your guardian ad litem (*see* Question 5 on the Cover Sheet, Form 2A), please identify them:

   Name: ____

   Relationship: ____

   Address: ____

   Phone: ____

3. If you do not have a lawyer, please complete the two blanks below. Tell us how the court, the lawyer appointed by the court, and the guardian ad litem appointed by the court can quickly contact you. If you cannot be contacted, your application will be denied. You can choose to be contacted by telephone or any other method by which you can be contacted immediately and confidentially. If you share a telephone number with another person, or there is another reason why you do not

want to be contacted at the telephone number you provided above, you can have us contact someone else who helps you.

Person to be contacted (you or another person): ______________________

Phone number or other contact information: _________________________

Another person to be contacted (optional): ___________________________

Phone number or other contact information: _________________________

<u>Important</u>: Please complete either Option 1 or Option 2 below. You do not have to complete both. If you complete Option 1, you must sign your name before a notary public, court clerk, or another person authorized to give oaths. If you complete Option 2, you do not have to sign your name before a notary public or any other person, but you must swear that the information in your Application is true "under penalty of perjury." "Perjury" means lying to a judge, and it is a crime. If you swear that a statement is true "under penalty of perjury," and you make the statement knowing that it is false, you could be prosecuted in criminal court.

Option 1

I swear or affirm that the information in my Application (both the Cover Sheet and this Verification Page) is true and correct.

____
Signature of minor

__________________________________ __________________________________
Name of minor printed or typed Minor's date of birth

Sworn to or affirmed in my presence this _______ day of ________, 20____.

____
Signature of notary public, clerk, or other person authorized to give oaths

(Option 2 is on the next page)

Option 2

My name is ________ (*First*) ______________ (*Middle*) ____________ (*Last*), my date of birth is _________________, and my address is _______________ (*Street*), ________________ (*City*), _____________ (*State*), ____________ (*Zip Code*), and _____________ (*Country*). I declare under penalty of perjury that the information in my Application (both the Cover Sheet and the Verification Page) is true and correct.

Executed in ____________ (*County*), State of ________, on the ________ day of _______ (*Month*), ________ (*Year*).

____
Signature of minor

Request to Postpone Trial Court Hearing in Proceeding to Waive Parental Notification and Consent; Designation of Alternate Time for Hearing (Form 2C)

CAUSE NO. ______________________

IN RE JANE DOE | IN THE ____________________

____

________________COUNTY, TEXAS

Please check and complete any questions below that apply:

_ I request that the court postpone its hearing on my application. The hearing currently is due to be held on or by ___________ at __________ a.m./p.m.

_ Please rule on my application by 5 p.m. on the fifth business day after (please state a date after which you will be ready to have a hearing) _______________. The clerk will notify you concerning the specific time of the hearing.

_ I will contact you at a later time to determine a time for the hearing.

Attorney's Signature: ___________________________

Attorney's Name, Printed: _______________________

Attorney's State Bar No.: _______________________

Attorney's Address: ____________________________

Attorney's Telephone: __________________________

Attorney's Email Address:_______________________

Attorney's Fax No.: ____________________________

Judgment and Findings of Fact and Conclusions of Law on Application in Proceeding to Waive Parental Notification and Consent (Form 2D)

CAUSE NO. __________________

IN RE JANE DOE

IN THE _______________________

____

______________COUNTY, TEXAS

This matter was heard on this ____ day of __________, 20___. Based on the testimony and evidence presented, this court finds:

1. The applicant is pregnant.

2. The applicant is unmarried and under 18 years of age.

3. The applicant has not had her disabilities as a minor removed under Chapter 31 of the Texas Family Code.

4. The applicant wishes to have an abortion without her doctor notifying and obtaining the consent of either of her parents, her managing conservator, or her guardian.

5. Clear and convincing evidence supports the following: [State "yes" beside an issue for which the court finds in favor of the applicant by clear and convincing evidence. If any one issue is decided in favor of the applicant, the court need not consider the other issues.]

   _ The applicant is mature and sufficiently well informed to make the decision to have an abortion performed without notification to, or the consent of, either of her parents, her managing conservator, or her guardian.

   Finding of Facts and Conclusions of Law:

   ____

   ____

____

____

____

____

_ Notifying and attempting to obtain the consent of either of the applicant's parents, her managing conservator, or her guardian would not be in her best interest.

Findings of Facts and Conclusions of Law:

____

____

____

____

____

____

THEREFORE, IT IS ORDERED:

_ The application is GRANTED and the applicant is authorized to consent to the performance of an abortion without notifying and obtaining the consent of either of her parents or a managing conservator or guardian.

_ The application is DENIED. The applicant is advised of her right to appeal under Rule 3 of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code and will be furnished a Notice of Appeal form, Form 3A.

All costs shall be paid by the State of Texas pursuant to Family Code Chapter 33.

____
Judge Presiding

Certificate of Deemed Denial of Application in Proceeding to Waive Parental Notification and Consent (Form 2E)

CAUSE NO. _______________

IN RE JANE DOE

IN THE ____________________

____

________________COUNTY, TEXAS

This will certify that on the _______ day of ______________, 20___, Jane Doe filed an application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code. The court did not rule on the application by 5 p.m. on the fifth business day after the day the application was filed. Accordingly, under Rule 2.5(g) of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33, Family Code, the application is deemed to be DENIED.

Signed this _____ day of __________________, _____.

____

Judge Presiding or Clerk

Order that Costs in Proceeding to Waive Parental Notification and Consent Be Paid by the State Pursuant to Texas Family Code § 33.007 (Form 2F)

Notice: To guarantee reimbursement, this Order must be served on the Director, Fiscal Division, Texas Department of Health, within the deadlines imposed by Rule 1.9(b) of the Rules for a Judicial Bypass of Notice and Consent Under Chapter 33 of the Family Code.

CAUSE NO. ________________

IN RE JANE DOE

IN THE ______________________

____

____________ COUNTY, TEXAS

ORDER

In this proceeding filed under Texas Family Code § 33.003, the court heard evidence on the _______ day of _________, 20___, concerning court costs. Based on the evidence presented, pursuant to Texas Family Code § 33.007, the State of Texas is ordered to pay:

1. Reasonable and necessary attorney ad litem fees and expenses of $________ to:

   Name:

   State Bar No.

   Address:

   Telephone:

   Federal Tax ID:

2. Reasonable and necessary guardian ad litem fees and expenses of $_______to:

   Name:

   Address:

Telephone:

Federal Tax ID:

3. Court reporter's fees certified by the court reporter to:

   Name:

   Address:

   Telephone:

   Federal Tax ID:

4. All court costs certified by the clerk.

____
Judge Presiding

Clerk's Certification of Court Costs and Fees and Transmission of Order for Payment in Proceeding to Waive Parental Notification and Consent (Form 2G)

Director, Fiscal Division
Texas Department of Health
1100 West 49th Street
Austin TX 78756

Re: *In re Jane Doe*

Cause No. _________________________

Court: ____________________________

County: ___________________________

Dear Sir or Madam:

Please find enclosed a certified copy of an Order issued on __________, 20___, in the referenced case. Please pay the amounts to the payees as stated in the Order.

In accordance with the Order, I certify the following fees and costs for payment as follows:

Amount: $___________________

Name of the Clerk: ___________________________________

Address : ____

Tax Identification No.: _______________ Thank you.

Sincerely,

____

[seal]

Name: ____________________________

Position: _____________________

Encl.: Certified copy of Order

Order Appointing Interpreter for Proceeding to Waive Parental Notification and Consent Under Chapter 33, Family Code (Form 2H)

CAUSE NO. _________________

IN RE JANE DOE

IN THE _____________________

____

____________ COUNTY, TEXAS

ORDER

ORDERED that for good cause, the following person is appointed an interpreter to assist the applicant in applying for relief under Chapter 33, Family Code:

Name: __________________________________ State Bar No. ___________

Address: ____

Telephone: _________________________ Federal Tax ID: _______________

Signed: this ________ day of ________________, 20___.

____
Judge

OATH FOR INTERPRETER

I, __________, do swear or affirm that I am competent and well versed in the ____________ language and will: (1) make a true interpretation of all the proceedings to the applicant; and (2) repeat verbatim all statements, questions, and answers of all persons who are a part of the proceeding to the applicant, counsel, the court, and others in the English language and in the _______________ language, using my best skill and judgment.

I will not: (1) participate in any manner other than as an interpreter in the decision making or adjudicative process; (2) communicate with any other person regarding the proceedings except a literal translation of questions, answers, or remarks made during the proceeding; or (3) disclose or discuss any of the proceedings with any person following entry of judgment.

____
Signature

____
Printed Name

____
Address

____
Telephone Number

SWORN TO AND SUBSCRIBED before me on ________________, 20__.

[Seal]

____

Notice to Clerk and Court Reporter to Prepare Records (Form 2I)

CAUSE NO. ___________________________

IN RE JANE DOE:

This matter was heard on the _______ day of _______________, ________. The Court has issued a final judgment. **Jane Doe may desire to appeal.** Jane Doe request the court reporter and appropriate clerk to immediately prepare a record of the trial proceedings and make it available to:

________________________	__________________________
________________________	__________________________
________________________	__________________________
(Name and address of guardian ad litem)	**(Name and address of minor's attorney)**

Immediately upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

________________________	__________________________
(Telephone number for guardian ad litem)	**(Telephone number for minor's attorney)**

A copy of this notice has been given to both the appropriate clerk and court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the ____ day of ___________, _______ at _________ [time] a.m./p.m. [circle one]

____
ATTORNEY

____
GUARDIAN AD LITEM

Caution: no official or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.

Notice to Clerk and Court Reporter to Prepare Records (Form 2J)

CAUSE NO. ____________________________

IN RE JANE DOE:

This matter was heard on the _____ day of ____________, _______. The Court has issued a final judgment and **no appeal will be taken.** Jane Doe's attorney or guardian ad litem requests the court reporter and the appropriate clerk to prepare a record of the trial proceedings and make it available to:

_________________________ _________________________

_________________________ _________________________

_________________________ _________________________

(Name and address of guardian ad litem) (Name and address of minor's attorney)

Upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

_________________________ _________________________

(Telephone number for guardian ad litem) (Telephone number for minor's attorney)

A copy of this notice has been given to both the appropriate clerk and the court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the ____ day of ___________, _______ at _________ [time] a.m./p.m. [circle one]

____
ATTORNEY

____
GUARDIAN AD LITEM

Caution: no official or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.

Attention Clerk: Please Expedite

Notice of Appeal in Proceeding to Waive Parental Notification and Consent (Form 3A)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.004(d).

CAUSE NO. _________________

IN RE JANE DOE

IN THE ___________________________

____

_________________ COUNTY, TEXAS

Important: Your lawyer should fill out the information below.

On this ___ day of ______________, 20___, notice is hereby given that Jane Doe appeals to the _____________ Court of Appeals from the final order entered in the above-referenced cause denying her application for a court order authorizing her to consent to an abortion without the parental notification and consent required by Sections 33.002 and 33.0021, Family Code.

Attorney's Signature _________________________

Attorney's Name, Printed _____________________

State Bar No. _______________________________

Attorney's Address __________________________

Attorney's Telephone ________________________

Attorney's Email Address _____________________

Attorney's Fax No. __________________________

Request to Postpone Court of Appeals' Ruling in Proceeding to Waive Parental Notification and Consent; Designation of Alternative Time for Ruling (Form 3B)

CAUSE NO. ________________________

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

________________ DISTRICT OF TEXAS

AT ________________________, TEXAS

Please check and complete any questions below that apply:

_ I request that the court postpone its ruling on my appeal. The appeal currently is due to be ruled on by 5 p.m. on ________________.

_ Please rule on my appeal by 5 p.m. on the fifth business day after (state a date after which you will be ready to proceed) __________________. If the court holds oral argument, the clerk will notify you of its date and time.

_ I will contact you at a later time to determine a time for ruling on my appeal.

Attorney's Signature ____________________________

Attorney's Name, Printed _______________________

Attorney's State Bar No. ________________________

Attorney's Address ____________________________

Attorney's Telephone __________________________

Attorney's Email Address _______________________

Attorney's Fax No. ____________________________

Judgment on Appeal in Proceeding to Waive Parental Notification and Consent (Form 3C)

CAUSE NO. _______________

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

__________________ DISTRICT, TEXAS

AT __________________________, TEXAS

It is ORDERED that the trial court's final order in this cause denying the minor's application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 32.002 and 33.0021, Family Code, is:

_ Affirmed. The minor will be advised of her right to appeal under Rule 4 of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code and furnished a notice of appeal form, Form 4A.

_ Reversed and the application is GRANTED.

_ Opinion to follow.

_ No opinion to follow.

____
Justice

Other members of the panel:

Justice __________________

Justice ___________________

Date: _____________________

Certification of Deemed Affirmance of Order On Appeal in Proceeding to Waive Parental Notification and Consent (Form 3D)

CAUSE NO. __________________

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

________________DISTRICT OF TEXAS

AT _________________________, TEXAS

This will certify that on the _______ day of __________, 20___, Jane Doe filed her notice of appeal from an order denying her application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code. The court of appeals did not rule on her appeal by 5 p.m. on the fifth business day after the day the notice of appeals was filed. Accordingly, the order is deemed to be AFFIRMED.

Signed this __________ day of _______________, 20____.

____
Judge Presiding or Clerk

ATTENTION CLERK: PLEASE EXPEDITE

Notice of Appeal to the Texas Supreme Court in Proceeding to Waive Parental Notification and Consent (Form 4A)

CAUSE NO. _________________

IN THE SUPREME COURT OF TEXAS

IN RE JANE DOE

On this ________ day of _____________, 20___, notice is hereby given that Jane Doe petitions the Supreme Court of Texas for review of the order entered in Cause No. __________, in the _________ Court of Appeals affirming the denial of her application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code.

Attorney's Signature ________________________

Attorney's Name, Printed ______________________

Attorney's State Bar No. ______________________

Attorney's Address __________________________

Attorney's Telephone ________________________

Attorney's Email Address _____________________

Attorney's Fax No. __________________________

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

July 11, 2022

VIA ELECTRONIC MAIL

Dear Health Care Providers:

In light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization,* I am writing regarding the Department of Health and Human Services (HHS) enforcement of the Emergency Medical Treatment and Active Labor Act (EMTALA). As frontline health care providers, the federal EMTALA statute protects your clinical judgment and the action that you take to provide stabilizing medical treatment to your pregnant patients, regardless of the restrictions in the state where you practice.

The EMTALA statute requires that all patients receive an appropriate medical screening examination, stabilizing treatment, and transfer, if necessary, irrespective of any state laws or mandates that apply to specific procedures. It is critical that providers know that a physician or other qualified medical personnel's professional and legal duty to provide stabilizing medical treatment to a patient who presents to the emergency department and is found to have an emergency medical condition preempts any directly conflicting state law or mandate that might otherwise prohibit such treatment.

As indicated above and in our guidance[1], the determination of an emergency medical condition is the responsibility of the examining physician or other qualified medical personnel. Emergency medical conditions involving pregnant patients may include, but are not limited to, ectopic pregnancy, complications of pregnancy loss, or emergent hypertensive disorders, such as preeclampsia with severe features. Any state laws or mandates that employ a more restrictive definition of an emergency medical condition are preempted by the EMTALA statute.

The course of treatment necessary to stabilize such emergency medical conditions is also under the purview of the physician or other qualified medical personnel. Stabilizing treatment could include medical and/or surgical interventions (e.g., abortion, removal of one or both fallopian tubes, anti-hypertensive therapy, methotrexate therapy etc.), irrespective of any state laws or mandates that apply to specific procedures.

Thus, if a physician believes that a pregnant patient presenting at an emergency department, including certain labor and delivery departments, is experiencing an emergency medical condition as defined by EMTALA, and that abortion is the stabilizing treatment necessary to resolve that condition, the physician must provide that treatment. And when a state law prohibits

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[1] *Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss* (QSO-21-22-Hospitals- UPDATED JULY 2022), available at https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and-memos-states-and/reinforcement-emtala-obligations-specific-patients-who-are-pregnant-or-are-experiencing-pregnancy-0

abortion and does not include an exception for the life and health of the pregnant person — or draws the exception more narrowly than EMTALA's emergency medical condition definition — that state law is preempted.

The enforcement of EMTALA is a complaint driven process. The investigation of a hospital's policies/procedures and processes, or the actions of medical personnel, and any subsequent sanctions are initiated by a complaint. If the results of a complaint investigation indicate that a hospital violated one or more of the provisions of EMTALA, a hospital may be subject to termination of its Medicare provider agreement and/or the imposition of civil monetary penalties. Civil monetary penalties may also be imposed against individual physicians for EMTALA violations. Additionally, physicians may also be subject to exclusion from the Medicare and State health care programs. To file an EMTALA complaint, please contact the appropriate state survey agency[2].

EMTALA's preemption of state law could also be enforced by individual physicians in a variety of ways, potentially including as a defense to a state enforcement action, in a federal suit seeking to enjoin threatened enforcement, or, when a physician has been disciplined for refusing to transfer an individual who had not received the stabilizing care the physician determined was appropriate, under the statute's retaliation provision

As providers caring for pregnant patients across the country, thank you for all that you do. The Department of Health and Human Services will take every action within our authority to protect the critical care that you provide to patients every day.

Sincerely,

/s/

Xavier Becerra

[2] https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/ContactInformation

Proposed Amendment to Rules and Forms for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code

Explanatory Statement

Chapter 33 of the Texas Family Code provides for judicial authorization of an unemancipated minor to consent to an abortion in Texas without notice to, or the consent of, a parent, managing conservator, or guardian. Sections 33.003 and 33.004, which govern proceedings in the trial and appellate courts, authorize the Court to make rules to ensure that judicial bypass applications are decided confidentially and promptly. *See* TEX. FAM. CODE §§ 33.003(l), 33.004(c). The statute also directs the Court to make forms for use in judicial bypass proceedings. *Id.* §§ 33.003(m), 33.004(d).

The Court approved the first set of rules and forms in 1999, following the enactment of Chapter 33. *See* Misc. Docket No. 99-9247 (Dec. 22, 1999); Act of May 25, 1999, 76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466 (S.B. 30) (codified at TEX. FAM. CODE § 33.001 *et seq.*). The rules and forms have been amended to reflect the 2015 amendments to Chapter 33. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 436 (H.B. 3994). The rules and forms track the statutory requirements. They do not reflect any judgment by the Court that Chapter 33, or any part of it, is constitutional. Constitutional questions should be resolved in an adversarial proceeding with full briefing and argument. Nor do the rules imply that abortion is—or is not—permitted in any specific situation. *See, e.g.*, *Roe v. Wade*, 410 U.S. 113 (1973); TEX. HEALTH & SAFETY CODE § 170.002 (restrictions on third trimester abortions of viable fetuses).

The notes and comments appended to the rules are intended to inform their construction and application by courts and practitioners.

Rule 1. General Provisions

1.1 Applicability of These Rules. These rules govern proceedings for obtaining a court order authorizing a minor to consent to an abortion without notice to, or the consent of, a parent, managing conservator, or guardian under Chapter 33,

Family Code. All references in these rules to "minor" refer to the minor applicant. Other Texas court rules—including the Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, Rules of Judicial Administration, and local rules approved by the Supreme Court—also apply, but when the application of another rule would be inconsistent with the general framework or policy of Chapter 33, Family Code, or these rules, these rules control.

These rules continue to apply and are not inconsistent with Texas Health and Safety Code Chapter 170A which defines the circumstances when an abortion may take place. The proceedings under these rules are not intended to create a judicial determination that any exception to the provisions of Chapter 170A have been satisfied and an order under these rules should not be construed as a judicial determination that in the exercise of reasonable medical judgment, the pregnant unemancipated minor on whom the abortion might be performed has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed.

1.2 Expedition Required.

(a) ***Proceedings.*** A court must give proceedings under these rules precedence over all other pending matters to the extent necessary to ensure that applications and appeals are adjudicated as soon as possible and within the time required by Chapter 33, Family Code, and these rules.

(b) ***Prompt actual notice required.*** Without compromising the confidentiality required by statute and these rules, courts and clerks must serve orders, decisions, findings, and notices required under these rules in a manner designed to give prompt actual notice in order that the deadlines imposed by Chapter 33, Family Code, can be met.

1.3 Identity of Minor Protected.

(a) ***Generally.*** Proceedings under these rules must be conducted in a way that protects the confidentiality of the identity of the minor.

(b) ***No reference to minor's identity in proceeding.*** With the exception of the verification page required under Rule 2.1(c)(2) and the communications required under Rule 2.2(e), no reference may be made in any order, decision, finding, or notice, or on the record, to the name of the minor, her address, or other information by which she might

be identified by persons not participating in the proceedings. Instead, the minor must be referred to as "Jane Doe" in a numbered cause.

(c) ***Notice.*** With the exception of orders and rulings released under Rule 1.4(b), all notices and communications from the court to the minor must be directed to the minor's attorney with a copy to the guardian ad litem. The minor's attorney must immediately serve on the guardian ad litem a copy of any document filed with the court. These requirements take effect when an attorney appears for the minor or when the clerk has notified the minor of the appointment of an attorney or a guardian ad litem.

1.4 Confidentiality of Proceedings Required; Exceptions.

(a) ***Generally.*** All officials and court personnel involved in the proceedings must ensure that the minor's contact with the clerk and the court is confidential and expeditious. Except as permitted by law, officials and court personnel must never disclose to anyone outside the proceeding— including the minor's parent, managing conservator, or legal guardian— that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion.

(b) ***Documents and information pertaining to the proceeding.***

(1) *General rule; disclosure prohibited.* As required by Chapter 33, Family Code, the application and all other court documents and information pertaining to the proceedings are confidential and privileged and are not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process.

(2) *Exception; disclosure to minor permitted.* The application and any other document in the court file may be disclosed to the minor.

(3) *Exception; disclosure of order to certain persons.* An order, ruling, opinion, or clerk's certificate may be released to:

- the minor;
- the minor's guardian ad litem;
- the minor's attorney;

- the physician who is to perform the abortion;
- a person designated in writing by the minor to receive the order, ruling, opinion, or certificate;
- a governmental agency or governmental attorney, in connection with a criminal or administrative action seeking to assert or protect the minor's interests; or
- another court, judge, or clerk in the same or related proceedings.

(c) ***Filing of court reporter's notes required.*** To ensure confidentiality, the court reporter's notes, in whatever form, must be filed with other court documents in the proceeding.

(d) ***Duty to report possible abuse.***

(1) *Duty of the court.* A judge or justice who, as a result of a court proceeding governed by these rules, has reason to believe that a minor has been or may be physically or sexually abused must report the suspected abuse in accordance with Sections 33.0085 and 33.009, Family Code, and other law.

(2) *Duty of an attorney or guardian ad litem.* An attorney or a guardian ad litem who, as a result of a court proceeding governed by these rules, has reason to believe that a minor has been or may be physically or sexually abused must report the suspected abuse in accordance with Section 33.009, Family Code, and other law.

(e) ***Department of Family and Protective Services or local law enforcement agency to disclose certain information in proceeding.*** The Department of Family and Protective Services or a local law enforcement agency may disclose to the court, the minor's attorney, and the guardian ad litem any information obtained under Sections 33.008, 33.0085, and 33.009, Family Code, without being ordered to do so. The court may order the Department or a local law enforcement agency to disclose the information to the court, the minor's attorney, and the guardian ad litem, and the Department or agency must comply.

1.5 Methods of Transmitting Documents; Hearings Conducted By Remote Electronic Means; Electronic Record Allowed When Necessary.

(a) ***Electronic filing through statewide portal prohibited.*** Documents must not be filed through the electronic filing manager established by the Office of Court Administration.

(b) ***Paper, fax, or email filing permitted.*** Documents may be filed in paper form, by fax, or by email. The clerk of a court must designate an email address or a fax number for the filing of documents in proceedings governed by these rules and must take all reasonable steps to maintain the confidentiality of the filings. An attorney must notify the clerk by telephone before filing a document by email or fax.

(c) ***Fax and email transmission by court and clerk.*** The court and clerk may transmit orders, rulings, notices, and other documents by fax or email. But before the transmission is initiated, the sender must take all reasonable steps to maintain the confidentiality of the transmission. The time and date of a transmission by the court is the time and date when it was initiated.

(d) ***Participation in hearings by electronic means.*** Consistent with the confidentiality requirements of these rules, with the court's permission, a witness may participate in a hearing under these rules by video conferencing, telephone, or other remote electronic means. But the minor must appear before the court in person.

(e) ***Record of hearing made by electronic means if necessary.*** If the court determines that a court reporter is unavailable for a hearing, the court may have a record of the hearing made by audio recording or other electronic means. If a notice of appeal is filed, the court must have the recording transcribed if possible. The person transcribing the recording must certify to the accuracy of the transcription. The court must transmit both the recording and the transcription to the court of appeals.

1.6 Disqualification, Recusal, or Objection to a Judge.

(a) ***Time for filing and ruling.*** A motion to recuse or disqualify a trial judge or an objection to a trial judge under Section 74.053, Government Code, must be filed before 10 a.m. of the first business day after an application is filed or promptly after the assignment of a judge to hear the case is made known to the minor's attorney, whichever is later. A motion to recuse or disqualify an appellate judge or an objection to an appellate judge under Section 75.551, Government Code, must be filed before 10 a.m. of the first business day after a notice of appeal is filed or promptly after the assignment of a judge is made known to the minor's attorney, whichever is later. A judge who chooses to withdraw voluntarily must do so immediately. A motion to disqualify or recuse or an objection to an assigned judge does not extend the deadline for ruling on the minor's application.

(b) ***Voluntary disqualification or recusal; objection.*** A judge who removes himself or herself voluntarily—whether in response to a motion or on the judge's own initiative—or to whom objection is made under Sections 74.053 or 75.551, Government Code, must immediately notify the appropriate authority under rule or statute for assigning another judge. That authority must immediately assign a judge or justice to the proceeding.

(c) ***Involuntary disqualification or recusal.*** A judge who refuses to remove himself or herself voluntarily from a proceeding in response to a motion must immediately refer the motion to the appropriate judge under rule or statute for determination. The judge to whom the motion is referred must rule on it as soon as possible and may do so with or without a hearing. If the motion is granted, the judge to whom the motion was referred must immediately assign another judge to the proceeding.

(d) ***Restrictions on the number of motions and objections.*** A minor who objects under Section 74.053 or Section 75.551, Government Code, to a judge assigned to the proceeding may not thereafter file a motion to recuse the judge assigned to replace the judge to whom the objection was made. A minor who files a motion to recuse or disqualify a judge may not thereafter

object under Section 74.053 or Section 75.551, Government Code, to another judge assigned to the proceeding.

(e) ***Issues on appeal.*** Any error in the denial of a motion to recuse or disqualify, any error in the disallowance of an objection, or any challenge to a judge that a minor is precluded from making by subsections (a) or (d), may be raised only on appeal from the court's denial of the application.

1.7 Rules and Forms to be Made Available.

(a) ***Online.*** A complete set of these rules and forms must be posted on the Texas Judiciary website at www.txcourts.gov. Forms 1A, 2A, and 2B must be translated into Spanish.

(b) ***In clerks' offices.*** The clerk of a court in which an application or appeal may be filed must make the rules and forms—including the Spanish version of Form 1A, 2A, and 2B—and any applicable local rules available to a minor without charge.

1.8 Duties of Attorneys Ad Litem. An attorney ad litem must represent the minor in the trial court in the proceeding in which the attorney is assigned and in any appeal under these rules to the court of appeals or the Supreme Court. But an attorney ad litem is not required to represent the minor in any other court or any other proceeding.

1.9 Fees and Costs.

(a) ***No fees or costs charged to minor.*** No filing fee or court cost may be assessed against a minor for any proceeding in a trial or appellate court.

(b) ***State ordered to pay fees and costs.***

(1) *Fees and costs that may be paid.* The State may be ordered to pay the reasonable and necessary fees and expenses of the attorney ad litem, the reasonable and necessary fees and expenses of the guardian ad litem, the court reporter's fee as certified by the court reporter, and trial court filing fees and costs as certified by the clerk. Court costs include the expenses of an interpreter (Form 2H) and an evaluation by a licensed mental health counselor but do not include the fees or expenses of a witness. Court costs do not include fees that must be remitted to the state treasury.

(2) *To whom order directed and sent.* The order must be directed to the Comptroller of Public Accounts and sent to the Director, Fiscal Division, of the Texas Department of Health.

(3) *Form and contents of the order.* The order must state the amounts to be awarded the attorney ad litem and the guardian ad litem. The order must be separate from any other order in the proceeding and must not address any subject other than the assessment of fees, expenses, and costs. A trial court may use Forms 2F and 2G, but it is not required to do so.

(4) *Time for signing and sending order.* The order must be signed by the judge and sent by the clerk to the Department of Health not later than the ninetieth day after the date of the final ruling in a proceeding.

(c) ***Motion to reconsider; time for filing.*** Within thirty days of actual receipt of the order, the Comptroller or any other person adversely affected by the order may file a motion in the trial court to reconsider the assessment of fees, expenses, or costs. The trial court retains jurisdiction of the case to hear and determine any timely filed motion to reconsider.

(d) ***Appeal.*** The Comptroller or any other person adversely affected by the order may appeal from the trial court's ruling on the motion to reconsider as from any other final judgment of the court.

(e) ***Report to the Office of Court Administration.*** The Department of Health must transmit to the Office of Court Administration a copy of every order assessing fees, expenses, or costs in a proceeding under Chapter 33, Family Code. Orders assessing fees, expenses, or costs are not subject to any order of the Supreme Court of Texas requiring mandatory reports of judicial appointments and fees or to the reporting requirements of Chapter 36, Government Code.

(f) ***Confidentiality.*** When transmitting an order awarding costs to the Department of Health, the clerk must take reasonable steps to preserve its confidentiality. The confidentiality of an order awarding costs—as prescribed by Chapter 33, Family Code—is not affected by its transmission to the Comptroller, Texas Department of Health, or the Office of Court Administration, nor is the order subject to public disclosure in response to a request under any statute, rule, or other law. But these rules do not preclude the Comptroller, the Texas Department of Health, or the Office of Court

Administration from disclosing summary information from orders assessing costs for statistical or other such purposes.

1.10 Amicus Briefs. Amicus briefs may be submitted and received by a court—but not filed—under either of the following procedures.

(a) ***Confidential, case-specific briefs.*** A non-party who is authorized to attend or participate in a particular proceeding under Chapter 33, Family Code, may submit an amicus brief addressing matters, including confidential matters, specific to the proceeding. The brief and the manner in which it is submitted must comply with Rules 1.3 and 1.4 and be directed to the court in which the proceeding is pending. If the brief is filed in paper form, the person must submit the original brief and the same number of copies required for other paper submissions to the court. The person must serve a copy of the brief on the minor's attorney and guardian ad litem. The court to which the brief is submitted must maintain the brief as part of the confidential case file in accordance with Rule 1.4.

(b) ***Public or general briefs.*** Any person may submit a brief addressing any matter relating to proceedings under Chapter 33, Family Code. The brief must not contain any information in violation of Rules 1.3 and 1.4. If the brief is filed in paper form, the person must submit the original brief and the same number of copies required for other paper submissions to the court. If the brief is submitted to a court of appeals, one copy of the brief must also be submitted to the Supreme Court of Texas. Upon receipt of an amicus brief submitted under this subsection, the Clerk of the Supreme Court must, as soon as practicable, have the brief posted on the Texas Judiciary website.

Notes and Comments

1. Rule 1.1 contemplates that other court rules of procedure and administration remain as a "default" governing matters not addressed in these rules. Thus, for example, these rules do not state a deadline for filing notices of appeal, so the ordinary 30-day deadline controls, *see* Tex. R. App. P. 26.1, but these rules control over inconsistent provisions in the appellate rules governing the docketing statement, the record, and briefing.

2. Rule 1.1 also contemplates that individual jurisdictions may enact local rules pursuant to Tex. R. Civ. P. 3a, Tex. R. App. P. 1.2, or Tex. R. Jud. Admin. 10, to the extent consistent with Chapter 33, Family Code, and with these rules, to tailor the implementation of the statute and these rules to local needs and preferences. Local rules may address, for example, the specific location or office where

applications are to be filed, how applications are to be assigned for hearing, and whether an appellate court will permit or require briefing or oral argument. *See also* Rule 2, Comment 1.

3. Any judge involved in a proceeding—whether as the judge assigned to hear and decide the application; the judge assigned to hear and decide any disqualification, recusal, or objection; a judge authorized to transfer the application or assign another judge to it; or an appellate judge—may have access to all information (including the verification page) in the proceeding or any related proceeding, such as a prior filing by the minor. Similarly, a minor's attorney and guardian ad litem must, of course, have access to the case file to the extent necessary to perform their respective duties.

4. Sections 33.008, 33.0085, and 33.009, Family Code, require physicians, judges, attorneys, and guardians ad litem to report suspected physical or sexual abuse to the Texas Department of Family and Protective Services and to a local law enforcement agency. Section 33.010 makes confidential—"[n]otwithstanding any other law"—all information obtained by the Department or a law enforcement agency under Sections 33.008, 33.0085, and 33.009 except to the extent necessary to prove certain criminal conduct. Rule 1.4(e) construes Section 33.010 in harmony with Section 33.003(i-2), which makes past or potential future abuse relevant to a claim that notifying or attempting to obtain the consent of a parent, managing conservator, or guardian would not be in the minor's best interest.

5. Rule 1.6 controls to the extent that it conflicts with other provisions regarding the disqualification or recusal of judges, such as Tex. R. Civ. P. 18a, Tex. R. App. P. 16, and Tex. Gov't Code 25.00255.

6. The archival requirements relating to proceedings under Chapter 33, Family Code, and these rules is governed by Sections 441.158 and 441.185, Government Code, and the schedules promulgated by the Texas State Library and Archives Commission pursuant to those authorities.

7. Orders awarding fees, expenses, and costs contain information that is made confidential by Chapter 33, Family Code. The confidentiality of the information should not be affected by the transmission of the order to the Texas Department of Health and to the Comptroller, which is necessary to effectuate payment, or to the Office of Court Administration, which is necessary to oversee the costs associated with the proceedings. Rule 1.9(f) does not preclude either the Comptroller, the Texas Department of Health, or the Office of Court Administration from disclosing total amounts paid for all proceedings, the average amount awarded per proceeding, or other statistical summaries or analyses that do not impair the confidentiality of the proceedings.

8. Rule 1.10 adds a procedure for filing amicus curiae briefs uniquely designed for the expedited and confidential nature of judicial bypass cases.

RULE 2. PROCEEDINGS IN THE TRIAL COURT

2.1 Where to File an Application; Court Assignment and Transfer; Application Form; Effect of a Nonsuit or Prior Determination.

(a) ***Counties in which an application may be filed.*** An application for an order under Section 33.003, Family Code, must be filed in the minor's county of residence, unless one of the following exceptions applies.

(1) *Minor's parent is a presiding judge.* If the minor's parent, managing conservator, or guardian is a presiding judge of a court described in (b)(1) in the county of the minor's residence, the application must be filed in:

(A) a contiguous county; or

(B) the county where the minor intends to obtain the abortion.

(2) *Residence in a county with a population of less than 10,000.* If the minor's county of residence has a population of less than 10,000, the application must be filed in:

(A) the minor's county of residence;

(B) a contiguous county; or

(C) the county where the minor intends to obtain the abortion.

(3) *Nonresident minor.* If the minor is not a Texas resident, the application must be filed in the county where the minor intends to obtain the abortion.

(b) ***Courts in which an application may be filed; assignment and transfer.***

(1) *Courts with jurisdiction.* An application may be filed in a district court (including a family district court), a county court at law, or a court having probate jurisdiction.

(2) *Application filed with district or county clerk.* An application must be filed with either the district clerk or the county clerk, who will assign the application to a court as provided by local rule or these rules. The clerk to whom the application is tendered cannot refuse to accept it because of any local rule or other rule or law that governs the filing and assignment of applications or cases. The clerk must accept the application and transfer it immediately to the proper clerk, advising the person tendering the application where it is being transferred.

(3) *Court assignment and transfer by local rule.* The courts in a county that have jurisdiction to hear applications may determine by local rule how applications will be assigned between or among them. A local rule must be approved by the Supreme Court under Rule 3a, Texas Rules of Civil Procedure.

(4) *Initial court assignment if no local rule.* Absent a local rule, the clerk who files an application—whether the district clerk or the county clerk—must assign it as follows:

(A) to a district court, if the active judge of the court, or a judge assigned to it, is available;

(B) if the application cannot be assigned under (A), then to a statutory county or probate court, if the active judge of the court, or a judge assigned to it, is available;

(C) if the application cannot be assigned under (A) or (B), then to the constitutional county court, if it has probate jurisdiction, and if the active judge of the court, or a judge assigned to it, is available;

(D) if the application cannot be assigned under (A), (B), or (C), then to the district court.

(5) *Judges who may hear and determine applications.* An application may be heard and determined by the active judge of the court to which the application is assigned, by any judge authorized to sit for the active judge, or by any judge who may be assigned to the court in which the application is pending. An application may not be heard or determined, or any proceedings under these rules conducted, by a master or magistrate.

(c) ***Application form.*** An application consists of two pages—a cover page and a separate verification page—if the minor is not represented by an attorney at the time of filing. If the minor is represented by an attorney at the time of filing, the application must include a third page, the attorney's sworn statement or declaration made under penalty of perjury.

(1) *Cover page.* The cover page may be submitted on Form 2A, but use of the form is not required. The cover page must be styled "In re Jane Doe" and must not disclose the name of the minor or any information from which the minor's identity could be derived. The cover page must state:

(A) that the minor is pregnant;

(B) that the minor is unmarried, is under 18 years of age, and has not had her disabilities removed under Chapter 31, Family Code;

(C) that the minor wishes to have an abortion without notifying or obtaining consent from either of her parents or a managing conservator or guardian, and the statutory ground or grounds on which she relies;

(D) that venue is proper in the county in which the application has been filed;

(E) whether the minor has retained an attorney, and if so, the attorney's name, email address, mailing address, and telephone number;

(F) whether the minor requests the court to appoint a particular person as her guardian ad litem; and

(G) that, concerning her current pregnancy, the minor has not previously filed an application that was denied; or

(H) if the minor has filed a previous application with respect to the current pregnancy that was denied, that this application is being filed in the same court that denied the previous application and that there has been a material change in circumstances since the time the previous application was denied.

(2) *Verification page.* The verification page may be submitted on Form 2B, but use of the form is not required. The verification page must be separate from the cover page, must be signed by the minor under oath or under penalty of perjury, and must state:

(A) the minor's full name, date of birth, physical address, mailing address, and telephone number;

(B) the name, address, telephone number, and relationship to the minor of any person the minor requests the court to appoint as her guardian ad litem;

(C) if the minor has not retained an attorney, a telephone number—whether that of the minor or someone else (such as a physician, friend, or relative)—at which the minor may be contacted immediately and confidentially until an attorney is appointed to represent her; and

(D) that all information contained in the application, including both the cover page and the verification page, is true.

(3) *Attorney's statement.* The minor's attorney must file with the application a sworn statement or unsworn declaration made under penalty of perjury that attests to the truth of the minor's claims regarding venue and prior applications.

(d) ***Time of filing.*** An application is filed when it is actually received by the district or county clerk.

(e) ***Nonsuit requires permission.*** A minor may not withdraw or nonsuit an application without permission of the court.

(f) ***Res judicata effect of prior determination.***

(1) *General rule.* A minor who has filed an application and obtained a determination by the court under Rule 2.5 may not initiate a new application proceeding with respect to the same pregnancy, and the prior determination is res judicata on the issue whether the minor may consent to an abortion without notification to, or consent of, a parent, managing conservator, or guardian.

(2) *Exception for material change in circumstances.* A minor whose application is denied may submit a new application to the court that

denied the application if the minor shows that there has been a material change in circumstances since the prior application was denied.

2.2 Clerk's Duties.

(a) ***Assistance in filing.*** The clerk must give prompt assistance—in a manner designed to protect the minor's confidentiality—to persons seeking to file an application. If requested, the clerk must administer the oath for the verification page or provide a person authorized to do so. The clerk must also redact from the cover page any information identifying the minor. The clerk must ensure that both the cover page and the separate verification page are completed in full.

(b) ***Filing procedure.*** The clerk must assign the application a cause number that does not identify the assigned judge and affix it to both the cover page and the verification page. The clerk must then provide a certified copy of the verification page to the person filing the application. The clerk must file the verification page under seal in a secure place where access is limited to essential court personnel.

(c) ***Distribution.*** When an application is filed, the clerk must distribute the cover page and verification page, or a copy of them, to the appropriate court immediately. If appointment of a specific person as guardian ad litem has been requested, the clerk must also communicate the information to the appropriate court immediately.

(d) ***If judge of assigned court not available.*** The clerk must determine immediately whether the judge of the court to which the application is assigned is available to hear the application within the prescribed time period. If that judge is not available, the clerk must immediately notify the local administrative judge or judges and the presiding judge of the administrative judicial region and must send them any information requested, including the cover page and verification page.

(e) ***Notice of hearing and appointments.*** When the clerk is advised by the court of a time for the hearing or of the appointment of a guardian ad litem or an attorney ad litem, the clerk must immediately give notice—as directed in the verification page and to each appointee—of the hearing time or appointment. A court coordinator or other court personnel may give notice instead of the clerk.

(f) ***Orders.*** The clerk must provide the minor's attorney and the guardian ad litem with copies of all court orders, including findings of fact and conclusions of law.

(g) ***Certificate of court's failure to rule within time prescribed by statute.*** If the court fails to rule on an application within the time required by Section 33.003(h), Family Code, then, upon the minor's request, the clerk must immediately issue a certificate to that effect, stating that the application is deemed to be denied. The clerk may use Form 2E but is not required to do so.

2.3 Court's Duties. Upon receipt of an application from the clerk, the court must promptly:

(a) appoint a qualified person to serve as guardian ad litem for the minor applicant;

(b) unless the minor has a retained attorney, appoint an attorney ad litem for the minor, who must not be the same person appointed as guardian ad litem;

(c) set a hearing on the application; and

(d) advise the clerk of the appointments and the hearing time.

2.4 Hearing.

(a) ***Time.***

(1) *General rule.* The court must conduct a hearing in time to rule on the application by the deadline stated in Rule 2.5(f).

(2) *Minor may request postponement.* The minor may postpone the hearing by written request to the clerk. The request may be submitted on Form 2C, but use of the form is not required. The request must either specify a date on which the minor will be ready for the hearing or state that the minor will later provide a date on which she will be ready for the hearing. Once the minor determines when she will be ready for the hearing, she must notify the clerk of that time in writing. The postponed hearing must be conducted in time for the court to rule on the application by the deadline stated in Rule 2.5(f).

(b) ***Place.*** The hearing should be held in a location, such as a judge's chambers, that will ensure confidentiality. The hearing may be held away from the courthouse.

(c) ***Persons attending.*** The hearing must be closed to the public. Only the judge, the court reporter, other essential court personnel, the minor, her attorney, her guardian ad litem, and witnesses on the minor's behalf may be present.

(d) ***Record.*** The court, the minor, the minor's attorney, or the guardian ad litem may request that the record—the clerk's record and reporter's record—be prepared. A request by the minor, the minor's attorney, or the guardian ad litem must be in writing and may be, but is not required to be, on Form 2I (if an appeal will be taken) or 2J (if an appeal will not be taken). The court reporter must provide an original and two copies of the reporter's record to the clerk. When the record has been prepared, the clerk must contact the minor, if she has requested the record; the minor's attorney; and the guardian ad litem at the telephone numbers shown on Form 2I or 2J and make it available to them. The record must be prepared and made available immediately if it has been requested for appeal or to demonstrate the past or potential abuse of the minor. When a notice of appeal is filed, the clerk must forward the record to the court of appeals in accordance with Rule 3.2(b).

(e) ***Hearing to be informal.*** The court should attempt to rule on the application without regard to technical defects in the application or the evidence. Affidavits of persons other than the minor are admissible. Statements in the application cannot be offered as evidence to support the application. If necessary, the court may assist the minor in remedying technical defects in the application and in presenting relevant and material facts.

2.5 Ruling.

(a) ***Form of ruling.*** The court's ruling on the application must include a signed order and written findings of fact and conclusions of law. The findings and conclusions may be included in the order. The court may use Form 2D, but it is not required to do so.

(b) ***Grounds for granting application.*** The court must grant the application if the minor establishes, by clear and convincing evidence:

(1) that the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notice to, or consent of, a parent, managing conservator, or guardian; or

(2) that the notification or attempt to obtain consent would not be in the minor's best interest.

(c) ***The mature-and-informed inquiry.*** In determining whether the minor meets the requirements of (b)(1), the court must consider the experience, perspective, and judgment of the minor. The court may:

(1) consider all relevant factors, including:

(A) the minor's age;

(B) the minor's life experiences, such as working, traveling independently, or managing her own financial affairs; and

(C) steps taken by the minor to explore her options and the consequences of those options;

(2) inquire as to the minor's reasons for seeking an abortion;

(3) consider the degree to which the minor is informed about the state-published informational materials described by Chapter 171, Health and Safety Code; and

(4) require the minor to be evaluated by a licensed mental health counselor, who must return the evaluation to the court for review within three business days.

(d) ***The best-interest inquiry.*** In determining whether the minor meets the requirements of (b)(2), the court may inquire as to:

(1) the minor's reasons for not wanting to notify and obtain consent from a parent, managing conservator, or guardian;

(2) whether notification or the attempt to obtain consent may lead to physical or sexual abuse;

(3) whether the pregnancy was the result of sexual abuse by a parent, managing conservator, or guardian; and

(4) any history of physical or sexual abuse from a parent, managing conservator, or guardian.

(e) ***Grounds for denying the application.*** The court must deny the application if:

(1) the minor does not establish either ground in (b) by clear and convincing evidence; or

(2) the minor does not attend the hearing; and

(A) the minor had actual knowledge of the setting; or

(B) diligent attempts were made to notify the minor of the setting.

(f) ***Time for ruling.*** The court must rule on an application as soon as possible after it is filed, subject to any postponement requested by the minor, and immediately after the hearing is concluded. Section 33.003(h), Family Code, states that a court must rule on an application by 5 p.m. on the fifth business day after the day the application is filed, or if the minor requests a postponement, by 5 p.m. on the fifth business day after the date the minor states she is ready for the hearing.

(g) ***Failure to timely rule.*** If the court fails to timely rule on an application, the application is deemed to be denied.

(h) ***Notification of the right to appeal.*** If the court denies the application, it must inform the minor of her right to appeal under Rule 3 and furnish her with the notice of appeal form, Form 3A.

Notes and Comments

1. Section 33.003(b), Family Code, permits an application to be filed in "a county court at law, court having probate jurisdiction, or district court, including a family district court, in the minor's county of residence" or, if an exception applies, in a contiguous county or the county where the abortion would be performed. The initial assignment of an application to a specific court in a county is made by the clerk with whom the application is filed (not by the minor). Given the diversity of needs and circumstances among Texas courts, these rules allow the courts in each county to tailor the procedures for filing, handling, and assigning applications prescribed by these rules to best meet those needs and circumstances. Chapter 74, Subchapter C, Government Code, affords the presiding judge of an administrative judicial region broad discretion to assign active judges within the region, as well

as visiting judges, to hear matters pending in courts within the region. *See* Tex. Govt. Code §§ 74.054, 74.056; *see also id.* § 74.056(b) (presiding judges may request judges from other judicial regions for assignment); § 74.057 (Chief Justice may assign judges from one judicial region to another). Section 25.0022, Government Code, provides for assignment of probate judges. Furthermore, Chapter 74, Subchapter D, Government Code, authorizes district and statutory county court judges within a county to hear matters pending in any district or statutory county court in the county. *Id.* § 74.094(a). Finally, Section 74.121, Government Code, permits courts within a county to transfer cases among courts having jurisdiction over the case. If no local rule governs assignments, then Rule 2.1(b)(4) controls.

2. Because an application is considered filed when it is actually received by the clerk, the timing provisions relating to filing by mail of Tex. R. Civ. P. 21a are inapplicable.

3. Section 33.003(f), Family Code, provides that a guardian ad litem may be (1) a person who may consent to treatment for the minor under Sections 32.001(a)(1)-(3), Family Code; (2) a psychiatrist or an individual licensed or certified as a psychologist under Chapter 501, Occupations Code; (3) an appropriate employee of the Department of Family and Protective Services; (4) a member of the clergy; or (5) another appropriate person selected by the court. The trial court may also consider appointing a qualified person requested by the minor. Although not directly applicable to these proceedings, the standards embodied in Chapter 107, Family Code, reflect legislative intent that competent and qualified persons be appointed to serve as ad litems and may provide general guidance concerning the nature of those qualifications. Appointment of an employee of the Department of Family and Protective Services to serve as guardian ad litem may give rise to a conflict of interest not immediately apparent at the time since the Department may be involved with the minor's family due to an abuse or neglect investigation, or may be party to a suit affecting the parent-child relationship, or may already be serving as the child's managing conservator.

4. The duties of guardians ad litem are not susceptible of precise definition. Generally, a guardian ad litem should interview the minor and conduct any investigation the guardian believes to be appropriate, without violating Rules 1.3 and 1.4, to assist the court in arriving at an opinion whether the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to, or consent of, either of her parents or a managing conservator or guardian or whether notification or the attempt to obtain consent would not be in the best interest of the minor. Rule 2.5(c) and (d) list some nonexclusive factors outlined in Section 33.003(i-1)-(i-2), Family Code, that a court may consider in deciding whether the statutory criteria for a bypass have

been met. Factors that have been considered in other jurisdictions with similar parental notification and consent statutes include:

- whether the minor has been examined by a doctor of medicine, doctor of osteopathy, or registered nurse—who is licensed to practice in Texas—and has given that health care provider an accurate and complete statement of her medical history;
- whether the minor's physician has indicated that, in the exercise of reasonable medical judgment, the minor has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the minor at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced;
- whether the minor has been provided with information or counseling bearing on her decision to have an abortion;
- whether the minor desires further counseling;
- whether, based on the information or counseling provided to the minor, she is able to give informed consent;
- whether the minor is attending school, or is or has been employed;
- whether the minor has previously filed an application that was denied;
- whether the minor lives with her parents;
-
- whether the minor desires an abortion or has been threatened, intimidated, or coerced into having an abortion;
-
- whether the pregnancy resulted from sexual assault, sexual abuse, or incest;
-
- whether there is a history or pattern of family violence; and
-
- whether the minor fears for her safety.

These considerations may not be relevant in every case, are not exclusive, and may not be sufficient to discharge the guardian ad litem's responsibilities in every case. Use of these factors as a basis for civil liability or as a statement of the standard of care is contrary to their intended purpose. Nothing in this comment alters existing standards of conduct under the Texas Disciplinary Rules of

Professional Conduct, the Texas Rules of Disciplinary Procedure, or the Code of Judicial Conduct.

In addition to these general guidelines, Chapter 107, Family Code, sets forth duties of guardians and attorneys ad litem appointed in suits affecting the parent-child relationship. These duties are not directly applicable to proceedings under Chapter

33, Family Code, and may be incompatible with the confidential and expeditious nature of such proceedings, but they reflect general legislative intent concerning the responsibilities of ad litems.

5. Under Rule 2.5(b), once a court concludes that an application should be granted on a single ground, it need not address other grounds. But in addressing any ground, the court should attempt to ascertain, among other factors, whether the pregnancy resulted from sexual assault, sexual abuse, or incest. The legislative history of Chapter 33, Family Code, indicates that one of the principal purposes of the statute was to screen for sexual crimes and abuse of minors so as to protect them against further victimization.

RULE 3. APPEAL FROM DENIAL OF APPLICATION

3.1 How to Appeal. To appeal the denial of an application, the minor must file a notice of appeal with the clerk of the court that denied the application, file a copy of the notice of appeal with the clerk of the court of appeals to which an appeal is to be taken, and advise the clerk of the court of appeals by telephone that an appeal is being taken under Chapter 33, Family Code. The minor may use Form 3A but is not required to do so. The notice of appeal must:

(a) be styled "In re Jane Doe";

(b) state the number of the cause in the trial court;

(c) be addressed to a court of appeals with jurisdiction in the county in which the application was filed;

(d) state an intention to appeal; and

(e) be signed by the minor's attorney.

3.2 Clerk's Duties.

(a) ***Assistance in filing.*** The trial court clerk must give prompt assistance—in a manner designed to protect the minor's confidentiality—to persons seeking to file an appeal. The clerk must ensure that the notice of appeal is addressed to the proper court of appeals and that the minor's name and identifying information are not disclosed.

(b) ***Forwarding record to court of appeals.*** Upon receipt of a notice of appeal, the trial court clerk must immediately forward to the clerk of the court of appeals the notice of appeal, the clerk's record excluding the verification

page, and the reporter's record. The trial court clerk must deliver the record to the clerk of the court of appeals by hand or send it by fax or email. The clerk must not send the record by mail.

(c) ***Certificate of court's failure to rule within time prescribed by statute.*** If the court of appeals fails to rule on an application within the time required by Section 33.004(b), Family Code, then, upon the minor's request, the clerk of the court of appeals must immediately issue a certificate to that effect, stating that the trial court's order is affirmed. The clerk may use Form 3D but is not required to do so.

3.3 Proceedings in the Court of Appeals.

(a) ***Briefing and argument.*** A minor may request to be allowed to submit a brief and to present oral argument, but the court may decide to rule without a brief or oral argument.

(b) ***Ruling.*** The court of appeals—sitting in a three-judge panel—must issue a judgment affirming or reversing the trial court's order denying the application. The court may use Form 3C but is not required to do so.

(c) ***Time for ruling.*** The court of appeals must rule on an appeal as soon as possible, subject to any postponement requested by the minor. Section 33.004(b), Family Code, states that a court must rule on an appeal by 5 p.m. on the fifth business day after the notice of appeal is filed with the court that denied the application, or if the minor requests a postponement, by 5 p.m. on the fifth business day after the date the minor states she is ready to proceed.

(d) ***Postponement by minor.*** The minor may postpone the time of ruling by written request filed either with the trial court clerk at the time she files the notice of appeal or thereafter with the court of appeals clerk. The request may be submitted on Form 3B, but use of the form is not required. The request must either specify a date on which the minor will be ready to proceed to ruling, or state that the minor will later provide a date on which she will be ready to proceed to ruling. Once the minor determines when she will be ready to proceed to ruling, she must notify the court of appeals clerk of that date in writing.

(e) ***Opinion.***

(1) *Opinion optional; must preserve confidentiality.* A court of appeals may issue an opinion explaining its ruling, but it is not required to do

so. An opinion that is designated for publication or public release must be written in a way to preserve the confidentiality of the identity of the minor.

(2) *Time.* Any opinion must issue not later than:

(A) ten business days after the day on which a notice of appeal is filed in the Supreme Court, if an appeal is taken to the Supreme Court; or

(B) sixty days after the day on which the court of appeals issued its judgment, if no appeal is taken to the Supreme Court.

(3) *Transmission to Supreme Court and trial court.* When the court of appeals issues an opinion, the clerk must transmit it immediately to the Supreme Court and to the trial court. If the opinion is not designated for publication or public release, the transmission must be confidential.

(f) ***Failure to timely rule.*** If the court of appeals fails to timely rule on the appeal, the trial court's judgment is deemed to be affirmed.

Notes and Comments

1. Chapter 33, Family Code, provides for no appeal from an order granting an application.

2. A request to postpone the ruling of the court of appeals may be used in conjunction with a request for oral argument or to submit briefing.

3. Neither Chapter 33, Family Code, nor these rules prescribe the appellate standard of review.

4. The 2015 amendments to Chapter 33, Family Code, permit the court of appeals to publish an opinion "if the opinion is written in a way to preserve the confidentiality of the identity of the pregnant minor." TEX. FAM. CODE § 33.004(c-1). Any opinion that is released to the public must not only omit the minor's name and other directly identifying information but it must also describe the facts in a way that those who know the minor would not be able to recognize her.

RULE 4. APPEAL TO THE SUPREME COURT

4.1 How to Appeal to the Supreme Court. To appeal from the court of appeals to the Supreme Court, the minor must file a notice of appeal with the clerk of the Supreme Court, file a copy of the notice of appeal with the clerk of the court of appeals, and advise the clerk of each court by telephone that an appeal is being taken under Chapter 33, Family Code. The minor may use Form 4A but is not required to do so. The notice of appeal must:

(a) be styled "In re Jane Doe";

(b) state the number of the cause in the court of appeals;

(c) state an intention to appeal; and

(d) be signed by the minor's attorney.

4.2 Clerk's Duties.

(a) ***Assistance in filing.*** The clerk of the Supreme Court must give prompt assistance—in a manner designed to protect the minor's confidentiality—to any person seeking to file an appeal. The clerk must ensure that the notice of appeal is addressed to the Supreme Court and that the minor's name and identifying information are not disclosed.

(b) ***Forwarding record to Supreme Court.*** Upon receipt of a notice of appeal to the Supreme Court, the clerks of the court of appeals and Supreme Court must immediately forward to the Supreme Court the record that was before the court of appeals.

4.3 Proceedings in the Supreme Court. A minor may request to be allowed to submit a brief and to present oral argument, but the Court may decide to rule without a brief or oral argument. The Court must rule as soon as possible.

Proposed Amendment to
Instructions for Applying to the Court for a Waiver of Parental Notification and Consent (Form 1A)

Your situation and the law

If you are younger than 18 and have not been legally "emancipated," you are "unemancipated," which means that you are legally under the custody or control of your parents (or one of your parents), a managing conservator, or a guardian. (A "managing conservator" is an adult or agency appointed by a court to have custody or control of you.)

An abortion in Texas is only available if a physician, in the exercise of reasonable medical judgment, states that you have a life-threatening physical condition aggravated by, caused by, or arising from our pregnancy that places you at risk of death or poses a serious risk of substantial impairment of one of your major bodily functions unless the abortion is performed. or induced.

If you are pregnant, unemancipated, and younger than 18, you cannot get an abortion in Texas unless:

- your doctor informs one of your parents or your managing conservator or guardian at least 48 hours before the abortion and obtains the consent of your parent, managing conservator, or guardian; *or*
- a judge issues an order that "waives" or removes the requirement that you must let a parent or your managing conservator or guardian know about your planned abortion and obtain his or her consent to it.

How to get a waiver of parental notification and consent

Fill out the application

To get a court order waiving the requirements that you tell a parent or your managing conservator or guardian about your planned abortion and obtain his or her consent, you must complete Forms 2A and 2B, ***Confidential Application for Waiver of Parental Notification***. Form 2A is the "Cover Page" for the Application; it requests basic information about why you are seeking the order. Form 2B is the "Verification Page," which requests information about you.

On the Verification Page, you will be asked to tell the court how you may be contacted quickly and confidentially. It is very important that you provide this information because the court may later need to contact you about your application. If you cannot be contacted, your application will be denied. You may list a phone number, email address, or any other way that you can be contacted. You can but need not give your own number—instead, you can ask the court to contact you through someone who is helping

you or acting on your behalf. You may also list a second person who may be contacted on your behalf.

You or someone acting on your behalf must deliver the forms to the clerk in the district court, county court at law, county court, or probate court to be filed. The court clerk can help you complete and file the application, and can help you get a hearing on your request. However, the clerk cannot give you legal advice or counsel you about abortion.

All of the information you put on the application is confidential. You do not have to pay a fee to file this application.

Your hearing

The court will tell you when to come to the courthouse for your "hearing." In your hearing, you will meet with a judge to discuss your request. The court will hold your hearing within five days (not counting weekends and holidays) after you file your application.

After you file your application, the court will appoint a person to meet with you before the hearing and help the judge decide your application. The person is called a "guardian ad litem." In your application you may ask the court to appoint someone you want to be your guardian ad litem (who can be a relative, clergy, counselor, psychiatrist or psychologist, or other adult), but the court is not required to appoint this person.

You must also have a lawyer with you at your hearing. You may hire your own lawyer, or you may ask the court to appoint one to represent you for free.

Keeping it confidential

Your hearing will be confidential and private. The only persons allowed to be there are you, your guardian ad litem, your lawyer, court staff, and any person whom you request to be there.

You already know that your application stays confidential. So will everything from your hearing: all testimony, documents and other evidence presented to the court, and any order given by the judge. The court will keep everything sealed. No one else can inspect the evidence.

The court's decision

The court must "rule"—issue a decision on your application—before 5 p.m. on the fifth day after the day you filed your application, not counting weekends and holidays.

If the court fails to rule within that time, then your request is automatically denied. You can get a certificate from the court clerk that says that your request is "deemed denied." If you choose to appeal, the certificate will be sent to the appellate court to explain what happened in your case.

If the court *does* rule within the required time, the court issues an order that does one of the following three things:

(1) approves your request because the court finds that you are mature enough and know enough to choose on your own to have an abortion;

(2) approves your request because it is in your best interests *not* to notify or to attempt to obtain the consent of your parent or your managing conservator or guardian before getting the abortion; or

(3) denies your request because the court does not find (1) or (2).

If you say, or if there is evidence, that you have been or may be sexually abused, the court must treat your claim as a very serious matter and may be required to refer it to the police or other authorities for investigation.

Appealing the court's decision

If the court denies your request, you may ask another court to hear your case. This request is called an "appeal," and the new court will be the court of appeals.

To appeal the first court's decision, have your lawyer fill out Form 3A, ***Notice of Appeal in Parental Notification Proceeding.*** The lawyer must file it with the clerk of the court that denied your request for a waiver of parental notification.

You will *not* have to go to the court of appeals in person. Instead, the court of appeals will review the written record and will issue a written ruling on your appeal no later than 5 p.m. on the fifth day after the day you file the *Notice of Appeal*, not counting weekends and holidays.

The court of appeals will provide its ruling to you, your lawyer, your guardian ad litem, or any other person designated by you to receive the ruling.

The same guardian ad litem and lawyer who helped you with your first hearing can help with your appeal.

Getting the forms you need

Forms 2A and 2B, the Cover Page and Verification Page to the *Confidential Application for Waiver of Parental Notification*, and Form 3A, *Notice of Appeal in Parental Notification Proceeding*, should all be attached to these instructions.

If these forms are not attached to these instructions, you can get them from the clerk of the district, county court at law, county, or probate court or from the clerk of the court of appeals. These forms are also available on the Texas Judiciary website at www.txcourts.gov.

Attention Clerk: Please Expedite

Confidential Application for Waiver of Parental Notification and Consent: Cover Page (Form 2A)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.003(m).

(Do not complete this section. Court staff will complete this section.)

CAUSE NO. ________________

IN RE JANE DOE

IN THE ____________________

____

________________COUNTY, TEXAS

Important: Your Application has two parts: (1) this cover sheet (Form 2A), which asks for basic information about your application; and (2) a separate verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You must complete both of these forms.

---

1. I ask the court for an order that allows me to have an abortion without first telling and obtaining the consent of my parent, managing conservator, or guardian. I swear or affirm that **(place a check mark in all the blanks for which you answer "yes")**:

   _ I am pregnant.

   _ I am unmarried and younger than 18 years of age.

   _ I do not have an order from a Texas court that gives me the same legal rights and responsibilities as an adult.

2. I request this order for one of the following reasons **(place a check mark beside any that apply)**:

_ I am mature enough to decide to have an abortion without telling and obtaining the consent of my parent, managing conservator, or guardian. I also know enough about abortion to make this decision.

_ Telling my parent, managing conservator, or guardian that I want an abortion and attempting to obtain his or her consent is not in my best interest.

_ Telling my parent, managing conservator, or guardian that I want an abortion may lead to physical or emotional abuse of me.

_ Telling my parent, managing conservator, or guardian that I want an abortion may lead to sexual abuse of me.

3. Please check all that apply:

_ I live in the county where this application is being filed.

_ My parent, managing conservator, or guardian is a presiding judge of a district court, a county court at law, or a court having probate jurisdiction in the county where I live, and **(check any that apply)**:

  _ The county where I live is contiguous to (shares a border with) this one.

  _ I intend to obtain the abortion in this county.

_ The population of the county where I live has a population of less than 10,000, and **(check any that apply)**:

  _ The county where I live is contiguous to (shares a border with) this one.

  _ I intend to obtain the abortion in this county.

_ I am not a Texas resident, but I intend to obtain the abortion in this county.

4. Please check one of the following statements:

_ I do **not** have a lawyer. (The court will appoint one for you).

_ I have a lawyer, who is:

Lawyer's name: ____

Lawyer's email address: ______________________________________

Lawyer's address: ____

Lawyer's phone: ____

5. The court must appoint a "guardian ad litem" for you. A guardian ad litem meets with you before the hearing and helps the judge decide your application. Please state whether you want the court to appoint someone you know as your guardian ad litem. This person could be a relative, a member of the clergy, a counselor, a psychiatrist or psychologist, or another adult. You do not have to ask the court to appoint someone you know. Keep in mind that the court may appoint the person you request, but it does not have to.

   _ I am requesting that the court appoint someone I know as my guardian ad litem. (You will identify this person on your verification page.)

   _ I am not requesting the court to appoint someone I know as my guardian ad litem. (The court will appoint someone it chooses.)

6. Please state whether you have filed a Confidential Application for Waiver of Parental Notification and Consent other than this one with respect to your current pregnancy.

   _ I have filed another Confidential Application for Waiver of Parental Notification and Consent with respect to my current pregnancy.

   _ I have **not** filed another Confidential Application for Waiver of Parental Notification and Consent with respect to my current pregnancy.

7. If you have filed another Confidential Application for Waiver of Parental Notification and Consent with respect to your current pregnancy, please answer the following questions. If you have not filed another Application with respect to your current pregnancy, do not answer these questions.

   What court ruled on your previous application? ____________________________

   Has there been a material change in circumstances since the time your previous

   application was denied? (Write "yes" or "no.") ____________________________

CAUSE NO. ____________________
(Do not fill in the blank above. Court staff will fill in the blank.)

Confidential Application for Waiver of Parental Notification and Consent: Verification Page (Form 2B)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.003(m)

Important: Your Application has two parts: (1) the cover sheet (Form 2A), which asks for basic information about your application; and (2) this verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You must complete both of these forms.

---

1. Please provide the following information.

   Your full name: ____

   Your date of birth: ____

   Your address (if the place you receive mail is different than the place you actually live, list both addresses): ____

   Your telephone number: ____

2. If you are requesting the court to appoint someone you know as your guardian ad litem (*see* Question 5 on the Cover Sheet, Form 2A), please identify them:

   Name: ____

   Relationship: ____

   Address: ____

   Phone: ____

3. If you do not have a lawyer, please complete the two blanks below. Tell us how the court, the lawyer appointed by the court, and the guardian ad litem appointed by the court can quickly contact you. If you cannot be contacted, your application will be denied. You can choose to be contacted by telephone or any other method by which you can be contacted immediately and confidentially. If you share a telephone number with another person, or there is another reason why you do not

want to be contacted at the telephone number you provided above, you can have us contact someone else who helps you.

Person to be contacted (you or another person): ______________________

Phone number or other contact information: _________________________

Another person to be contacted (optional): __________________________

Phone number or other contact information: _________________________

Important: Please complete either Option 1 or Option 2 below. You do not have to complete both. If you complete Option 1, you must sign your name before a notary public, court clerk, or another person authorized to give oaths. If you complete Option 2, you do not have to sign your name before a notary public or any other person, but you must swear that the information in your Application is true "under penalty of perjury." "Perjury" means lying to a judge, and it is a crime. If you swear that a statement is true "under penalty of perjury," and you make the statement knowing that it is false, you could be prosecuted in criminal court.

Option 1

I swear or affirm that the information in my Application (both the Cover Sheet and this Verification Page) is true and correct.

____
Signature of minor

____
Name of minor printed or typed

____
Minor's date of birth

Sworn to or affirmed in my presence this _______ day of ________, 20____.

____
Signature of notary public, clerk, or other person authorized to give oaths

(Option 2 is on the next page)

Option 2

My name is _________ (*First*) _____________ (*Middle*) __________ (*Last*), my date of birth is ________________, and my address is ______________ (*Street*), ______________ (*City*), ______________ (*State*), ______________ (*Zip Code*), and ____________ (*Country*). I declare under penalty of perjury that the information in my Application (both the Cover Sheet and the Verification Page) is true and correct.
Executed in ___________ (*County*), State of ________, on the ________ day of _______ (*Month*), ________ (*Year*).

____
Signature of minor

Request to Postpone Trial Court Hearing in Proceeding to Waive Parental Notification and Consent; Designation of Alternate Time for Hearing (Form 2C)

CAUSE NO. _____________________

IN RE JANE DOE	IN THE _____________________
	_____________________
	_________________COUNTY, TEXAS

Please check and complete any questions below that apply:

_ I request that the court postpone its hearing on my application. The hearing currently is due to be held on or by ___________ at __________ a.m./p.m.

_ Please rule on my application by 5 p.m. on the fifth business day after (please state a date after which you will be ready to have a hearing) _______________. The clerk will notify you concerning the specific time of the hearing.

_ I will contact you at a later time to determine a time for the hearing.

Attorney's Signature: ___________________________

Attorney's Name, Printed: ________________________

Attorney's State Bar No.: ________________________

Attorney's Address: _____________________________

Attorney's Telephone: ___________________________

Attorney's Email Address:________________________

Attorney's Fax No.: _____________________________

Judgment and Findings of Fact and Conclusions of Law on Application in Proceeding to Waive Parental Notification and Consent (Form 2D)

CAUSE NO. ________________

IN RE JANE DOE

IN THE ______________________

____

______________COUNTY, TEXAS

This matter was heard on this ____ day of ___________, 20___. Based on the testimony and evidence presented, this court finds:

1. The applicant is pregnant.

2. The applicant is unmarried and under 18 years of age.

3. The applicant has not had her disabilities as a minor removed under Chapter 31 of the Texas Family Code.

4. The applicant wishes to have an abortion without her doctor notifying and obtaining the consent of either of her parents, her managing conservator, or her guardian.

5. Clear and convincing evidence supports the following: [State "yes" beside an issue for which the court finds in favor of the applicant by clear and convincing evidence. If any one issue is decided in favor of the applicant, the court need not consider the other issues.]

   _ The applicant is mature and sufficiently well informed to make the decision to have an abortion performed without notification to, or the consent of, either of her parents, her managing conservator, or her guardian.

   Finding of Facts and Conclusions of Law:

   ____

   ____

____

____

____

____

_ Notifying and attempting to obtain the consent of either of the applicant's parents, her managing conservator, or her guardian would not be in her best interest.

Findings of Facts and Conclusions of Law:

____

____

____

____

____

____

THEREFORE, IT IS ORDERED:

_ The application is GRANTED and the applicant is authorized to consent to the performance of an abortion without notifying and obtaining the consent of either of her parents or a managing conservator or guardian.

_ The application is DENIED. The applicant is advised of her right to appeal under Rule 3 of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code and will be furnished a Notice of Appeal form, Form 3A.

All costs shall be paid by the State of Texas pursuant to Family Code Chapter 33.

____

Judge Presiding

Certificate of Deemed Denial of Application in Proceeding to Waive Parental Notification and Consent (Form 2E)

CAUSE NO. _______________

IN RE JANE DOE

IN THE ____________________

____

________________COUNTY, TEXAS

This will certify that on the ______ day of ______________, 20__, Jane Doe filed an application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code. The court did not rule on the application by 5 p.m. on the fifth business day after the day the application was filed. Accordingly, under Rule 2.5(g) of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33, Family Code, the application is deemed to be DENIED.

Signed this _____ day of __________________, _____.

Judge Presiding or Clerk

Order that Costs in Proceeding to Waive Parental Notification and Consent Be Paid by the State Pursuant to Texas Family Code § 33.007 (Form 2F)

Notice: To guarantee reimbursement, this Order must be served on the Director, Fiscal Division, Texas Department of Health, within the deadlines imposed by Rule 1.9(b) of the Rules for a Judicial Bypass of Notice and Consent Under Chapter 33 of the Family Code.

CAUSE NO. ________________

IN RE JANE DOE

IN THE ______________________

____

____________ COUNTY, TEXAS

ORDER

In this proceeding filed under Texas Family Code § 33.003, the court heard evidence on the _______ day of _________, 20___, concerning court costs. Based on the evidence presented, pursuant to Texas Family Code § 33.007, the State of Texas is ordered to pay:

1. Reasonable and necessary attorney ad litem fees and expenses of $________ to:

   Name:

   State Bar No.

   Address:

   Telephone:

   Federal Tax ID:

2. Reasonable and necessary guardian ad litem fees and expenses of $_______to:

   Name:

   Address:

Telephone:

Federal Tax ID:

3. Court reporter's fees certified by the court reporter to:

Name:

Address:

Telephone:

Federal Tax ID:

4. All court costs certified by the clerk.

____
Judge Presiding

Clerk's Certification of Court Costs and Fees and Transmission of Order for Payment in Proceeding to Waive Parental Notification and Consent (Form 2G)

Director, Fiscal Division
Texas Department of Health
1100 West 49th Street
Austin TX 78756

Re: *In re Jane Doe*

Cause No. ____________________

Court: ______________________

County: _____________________

Dear Sir or Madam:

Please find enclosed a certified copy of an Order issued on __________, 20___,

in the referenced case. Please pay the amounts to the payees as stated in the Order.

In accordance with the Order, I certify the following fees and costs for payment as follows:

Amount: $__________________

Name of the Clerk: ____________________________

Address : ____

Tax Identification No.: ______________ Thank you.

Sincerely,

____

[seal]

Name: ___________________________

Position: _____________________

Encl.: Certified copy of Order

Order Appointing Interpreter for Proceeding to Waive Parental Notification and Consent Under Chapter 33, Family Code (Form 2H)

CAUSE NO. _________________

IN RE JANE DOE

IN THE _____________________

____

____________ COUNTY, TEXAS

ORDER

ORDERED that for good cause, the following person is appointed an interpreter to assist the applicant in applying for relief under Chapter 33, Family Code:

Name: __________________________________ State Bar No. ___________

Address: ____

Telephone: _________________________ Federal Tax ID: _______________

Signed: this ________ day of _________________, 20___.

____
Judge

OATH FOR INTERPRETER

I, __________, do swear or affirm that I am competent and well versed in the ____________ language and will: (1) make a true interpretation of all the proceedings to the applicant; and (2) repeat verbatim all statements, questions, and answers of all persons who are a part of the proceeding to the applicant, counsel, the court, and others in the English language and in the _______________ language, using my best skill and judgment.

I will not: (1) participate in any manner other than as an interpreter in the decision making or adjudicative process; (2) communicate with any other person regarding the proceedings except a literal translation of questions, answers, or remarks made during the proceeding; or (3) disclose or discuss any of the proceedings with any person following entry of judgment.

____
Signature

____
Printed Name

____
Address

____
Telephone Number

SWORN TO AND SUBSCRIBED before me on ________________, 20__.

[Seal]

____

Notice to Clerk and Court Reporter to Prepare Records (Form 2I)

CAUSE NO. ___________________________

IN RE JANE DOE:

This matter was heard on the _______ day of ______________, ________. The Court has issued a final judgment. **Jane Doe may desire to appeal.** Jane Doe request the court reporter and appropriate clerk to immediately prepare a record of the trial proceedings and make it available to:

_________________________	___________________________
_________________________	___________________________
_________________________	___________________________
(Name and address of guardian ad litem)	**(Name and address of minor's attorney)**

Immediately upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

_________________________	___________________________
(Telephone number for guardian ad litem)	**(Telephone number for minor's attorney)**

A copy of this notice has been given to both the appropriate clerk and court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the ____ day of ___________, _______ at ________ [time] a.m./p.m. [circle one]

____
ATTORNEY

____
GUARDIAN AD LITEM

Caution: no official or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.

Notice to Clerk and Court Reporter to Prepare Records (Form 2J)

CAUSE NO. ______________________________

IN RE JANE DOE:

This matter was heard on the _____ day of ____________, ______. The Court has issued

a final judgment and **no appeal will be taken.** Jane Doe's attorney or guardian ad litem requests the court reporter and the appropriate clerk to prepare a record of the trial proceedings and make it available to:

__________________________ ____________________________

__________________________ ____________________________

__________________________ ____________________________

(Name and address of guardian ad litem) (Name and address of minor's attorney)

Upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

__________________________ ____________________________

(Telephone number for guardian ad litem) (Telephone number for minor's attorney)

A copy of this notice has been given to both the appropriate clerk and the court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the ____ day of ___________, _______ at ________ [time] a.m./p.m. [circle one]

____
ATTORNEY

____
GUARDIAN AD LITEM

Caution: no official or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.

Attention Clerk: Please Expedite

Notice of Appeal in Proceeding to Waive Parental Notification and Consent (Form 3A)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.004(d).

CAUSE NO. _________________

IN RE JANE DOE

IN THE ___________________________

____

_________________ COUNTY, TEXAS

Important: Your lawyer should fill out the information below.

On this ___ day of ______________, 20   , notice is hereby given that Jane Doe appeals to the _____________ Court of Appeals from the final order entered in the above-referenced cause denying her application for a court order authorizing her to consent to an abortion without the parental notification and consent required by Sections 33.002 and 33.0021, Family Code.

Attorney's Signature _________________________

Attorney's Name, Printed _____________________

State Bar No. _______________________________

Attorney's Address ___________________________

Attorney's Telephone _________________________

Attorney's Email Address _____________________

Attorney's Fax No. ___________________________

Request to Postpone Court of Appeals' Ruling in Proceeding to Waive Parental Notification and Consent; Designation of Alternative Time for Ruling (Form 3B)

CAUSE NO. ______________________

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

______________ DISTRICT OF TEXAS

AT _______________________, TEXAS

Please check and complete any questions below that apply:

_ I request that the court postpone its ruling on my appeal. The appeal currently is due to be ruled on by 5 p.m. on ________________.

_ Please rule on my appeal by 5 p.m. on the fifth business day after (state a date after which you will be ready to proceed) _________________. If the court holds oral argument, the clerk will notify you of its date and time.

_ I will contact you at a later time to determine a time for ruling on my appeal.

Attorney's Signature ___________________________

Attorney's Name, Printed ______________________

Attorney's State Bar No. _______________________

Attorney's Address ___________________________

Attorney's Telephone _________________________

Attorney's Email Address ______________________

Attorney's Fax No. ___________________________

Judgment on Appeal in Proceeding to Waive Parental Notification and Consent (Form 3C)

CAUSE NO. ______________

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

__________________ DISTRICT, TEXAS

AT _________________________, TEXAS

It is ORDERED that the trial court's final order in this cause denying the minor's application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 32.002 and 33.0021, Family Code, is:

_ Affirmed. The minor will be advised of her right to appeal under Rule 4 of the Rules for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code and furnished a notice of appeal form, Form 4A.

_ Reversed and the application is GRANTED.

_ Opinion to follow.

_ No opinion to follow.

____
Justice

Other members of the panel:

Justice _________________

Justice __________________

Date: _____________________

Certification of Deemed Affirmance of Order On Appeal in Proceeding to Waive Parental Notification and Consent (Form 3D)

CAUSE NO. ___________________

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

_________________DISTRICT OF TEXAS

AT _________________________, TEXAS

This will certify that on the ________ day of ___________, 20___, Jane Doe filed her notice of appeal from an order denying her application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code. The court of appeals did not rule on her appeal by 5 p.m. on the fifth business day after the day the notice of appeals was filed. Accordingly, the order is deemed to be AFFIRMED.

Signed this __________ day of _______________, 20____.

____
Judge Presiding or Clerk

ATTENTION CLERK: PLEASE EXPEDITE

Notice of Appeal to the Texas Supreme Court in Proceeding to Waive Parental Notification and Consent (Form 4A)

CAUSE NO. ________________

IN THE SUPREME COURT OF TEXAS

IN RE JANE DOE

On this ________ day of _____________, 20___, notice is hereby given that Jane Doe petitions the Supreme Court of Texas for review of the order entered in Cause No. __________, in the _________ Court of Appeals affirming the denial of her application for a court order authorizing her to consent to an abortion without the parental notice and consent required by Sections 33.002 and 33.0021, Family Code.

Attorney's Signature _________________________

Attorney's Name, Printed _____________________

Attorney's State Bar No. _____________________

Attorney's Address __________________________

Attorney's Telephone ________________________

Attorney's Email Address _____________________

Attorney's Fax No. __________________________

Tab C

The Supreme Court of Texas

CHIEF JUSTICE
NATHAN L. HECHT

JUSTICES
PAUL W. GREEN
EVA M. GUZMAN
DEBRA H. LEHRMANN
JEFFREY S. BOYD
JOHN P. DEVINE
JEFFREY V. BROWN
JAMES D. BLACKLOCK
J. BRETT BUSBY

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

CLERK
BLAKE A. HAWTHORNE

GENERAL COUNSEL
NINA HESS HSU

EXECUTIVE ASSISTANT
NADINE SCHNEIDER

PUBLIC INFORMATION OFFICER
OSLER McCARTHY

May 31, 2019

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters. Some require immediate attention, while others are longer-range initiatives. I have provided a complete list for the Committee's information.

Several matters arise from legislation passed by the 86th Legislature, which, if signed by the Governor, takes effect immediately or on September 1, 2019. The Committee should conclude its work on them by its June 21, 2019 meeting. Many of the changes may be simple and straightforward. They are:

Joint Judicial Campaign Activity. The State Commission on Judicial Conduct has disciplined judges for joint campaign activities based on Canons 2B and 5(2) of the Code of Judicial Conduct. Canon 2B states in part: "A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." Canon 5(2) states in part: "A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party." HB 3233, passed by the 86th Legislature, adds Election Code § 253.1612, which states that the "Code of Judicial Conduct may not prohibit, and a judicial candidate may not be penalized for, a joint campaign activity conducted by two or more judicial candidates." The Committee should consider whether the text of the rules should be changed or a comment added to reference or restate the statute.

MDL Applicability. Government Code §§ 74.161-.201 create the Judicial Panel on Multidistrict Litigation, and Rule of Judicial Administration 13 governs its operation. SB 827, § 2 adds § 74.1625 to prohibit the MDL panel from transferring two types of actions: (1) DTPA actions (unless specifically allowed under the DTPA) and (2) Texas Medicaid Fraud Prevention Act actions. The amendment does not direct that Rule 13 be changed, but the Committee should consider whether the text of Rule 13.1 should be changed and a comment added to reference or restate the statute.

Expedited Actions. Rule of Civil Procedure 169 implements Government Code § 22.004(h). SB 2342 adds § 22.004(h-1), which calls for rules, "[i]n addition to the rules adopted under [s]ubsection (h), . . . to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed $250,000 . . . balanc[ing] the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions." Rules necessary to implement this change must be adopted by January 1, 2021. But the statute makes various other changes that take effect September 1, 2019. The Committee should consider whether other rules should be changed, such as Rules of Civil Procedure 47, 224, and 500.3, or comments added to reference or restate the statute by that date.

Dismissal. Rule of Civil Procedure 91a provides for the dismissal of baseless causes of action, implementing Government Code § 22.004(g). Civil Practice and Remedies Code § 30.021 mandates an award of costs and attorney fees to the prevailing party. HB 3300 amends § 30.021 to make an award discretionary and applies to cases commenced on or after September 1, 2019. The Committee should consider whether other rules should be changed or comments added to reference or restate the statute by that date.

Notice of Appeal. SB 891, § 7.02, adds Civil Practice and Remedies Code § 51.017 to require service of notice of appeal on court reporters. The Committee has already considered this change. The statute is effective September 1, 2019.

One other matter arising from legislation passed by the 86th Legislature requires rule-making by January 1, 2020:

Public Guardians. Section 24 of SB 667, passed by the 86th Legislature, adds Subchapter G-1 to Chapter 1104 of the Estates Code, which governs public guardians and directs the Court "in consultation with the Office of Court Administration . . . and the presiding judge of the statutory probate courts . . . [to] adopt rules necessary to implement this subchapter." Section 67 of the bill provides that the Court "shall adopt rules necessary to implement Subchapter G-1, . . . including rules governing the transfer of the guardianship of the person or of the estate of a ward, or both, if appropriate, to an office of public guardian established under that subchapter or a public guardian contracted under that subchapter." OCA and Judge Guy Herman will draft these rules, and the Committee should review them.

Other matters arising from legislation passed this Session set extended deadlines for rule-making:

Citation. SB 891, passed by the 86th Legislature, amends several state statutes to address citation. The bill adds Government Code § 72.034 directing the Court "by rule [to] establish procedures for the submission of public information to the public information Internet website by a person who is required to publish the information" by June 1, 2020. The bill also adds Civil Practice and Remedies Code § 17.033 requiring the Court to "adopt rules to provide for the substituted service of citation by an electronic communication sent to a defendant through a social media presence" by December 31, 2020. The Committee should make recommendations.

Protective Order Registry Forms. SB 325 requires the Office of Court Administration to create an online registry for family violence protective orders and applications and to permit public access to certain information about the protective orders by June 1, 2020. The bill also adds Government Code § 72.158 directing the Court to "prescribe a form for use by a person requesting a grant or removal of public access" to the information and permits the Court to prescribe related procedures. The bill does not specify a deadline for the forms. The Committee should recommend appropriate forms.

Criminal Forms. HB 51 adds Government Code § 72.0245 requiring the Office of Court Administration to create a number of forms for use in criminal actions, such as forms to waive a jury trial and enter a plea of guilty or nolo contendere, and forms for a trial court to admonish a defendant before accepting a guilty or nolo contendere plea. It also requires the Supreme Court to "by rule . . . set the date by which all courts with jurisdiction over criminal actions must adopt and use the forms created . . . ." OCA will work with Holly Taylor, the Court of Criminal Appeals' Rules Attorney, to formulate a plan to develop the forms. The Committee should review the forms when drafted. The statutory deadline is September 1, 2020.

Procedures Related to Mental Health. SB 362 directs the Supreme Court to "adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code" and "adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues." The Judicial Commission on Mental Health will draft these rules, and the Committee should review them.

CPS and Juvenile Cases. HB 2737 requires the Court and its Children's Commission to "annually . . . provide guidance to judges who preside over child protective services cases or juvenile cases," and requires the Court to "adopt the rules necessary to accomplish the purpose of this section." The statute sets no deadline. The Children's Commission is developing an implementation plan. The Committee should review any rules proposed by the Commission.

Transfer on Death Deed Forms. SB 874 requires the Court to promulgate "a form for use to create a transfer on death deed and a form for use to create an instrument for revocation of a transfer on death deed." The statute sets no deadline. The Probate Forms Task Force will develop these and other forms for the Committee's review.

Finally, there are several matters unrelated to recent legislation on which the Court requests the Committee's recommendations.

Suits Affecting the Parent-Child Relationship. In response to HB 7, passed by the 85th Legislature, the Court appointed the HB 7 Task Force to draft the rules required by the statute and to make any other recommendations for expediting and improving the trial and appeal of cases governed by Family Code Chapter 264. On November 27, 2017, the HB 7 Task Force submitted a report and recommendations to the Court ("Phase I Report"). The Committee studied the Phase I Report and made recommendations to the Court. Subsequently, on December 31, 2018, the Task Force submitted a second report and recommendations to the Court ("Phase II Report"). The Phase II Report is attached to this letter. The Committee should review the Phase II Report and make recommendations.

Out-of-Time Appeals in Parental Rights Termination Cases. A parent whose appeal from a judgment terminating his rights in a child is untimely may contend that the delay is not his fault and may blame ineffective assistance of counsel. This can complicate and extend the appellate process. The Committee should consider rules to address this situation, including:

- a narrow late-appeal procedure;
- an abate-and-remand procedure like the one proposed in the Phase II Report;
- a habeas- or bill-of-review-style procedure; and
- prophylactic procedures not considered in the Phase I or Phase II Reports, such as a requirement that trial counsel stay on until the notice of appeal has been filed.

Registration of In-House Counsel. A majority of states require that an attorney employed as in-house counsel and residing in one state but licensed in another either register, obtain a limited license, or be fully licensed to practice in the state of residence. The Board of Law Examiners has approved new Rule 23 of the Rules Governing Admission to the Bar, requiring only registration of in-house counsel. The proposed rule is attached. The Committee should review the rule and make recommendations.

Civil Rules in Municipal Courts. Municipal Court Judge Ryan Henry has proposed that procedural rules be adopted for civil cases in municipal courts. The Committee should set up a process for considering Judge Henry's proposals and making recommendations.

Motions for Rehearing in the Courts of Appeals. Justice Christopher and the State Bar Court Rules Committee have each proposed amendments to Rule of Appellate Procedure 49.3, which are attached. The Committee should consider both and make recommendations.

Parental Leave Continuance Rule. In the attached memorandum, the State Bar Court Rules Committee proposes a parental leave continuance rule. The State of Florida has studied such a procedure in depth. The Committee should consider that work and the proposal and make recommendations.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

Nathan L. Hecht
Chief Justice

Attachments

AN ACT

relating to court-ordered mental health services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 137.008(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A physician or other health care provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(1) if the principal is under an order for temporary or extended mental health services under Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355, Health and Safety Code, and treatment is authorized in compliance with Section 574.106, Health and Safety Code; or

(2) in case of an emergency when the principal's instructions have not been effective in reducing the severity of the behavior that has caused the emergency.

SECTION 2. Article 16.22, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(c) After the trial court receives the applicable expert's written assessment relating to the defendant under Subsection (b-1) or elects to use the results of a previous determination as described by Subsection (a)(2), the trial court may, as applicable:

(1) resume criminal proceedings against the defendant, including any appropriate proceedings related to the defendant's release on personal bond under Article 17.032 if the defendant is being held in custody;

(2) resume or initiate competency proceedings, if required, as provided by Chapter 46B [~~or other proceedings affecting the defendant's receipt of appropriate court-ordered mental health or intellectual disability services, including proceedings related to the defendant's receipt of outpatient mental health services under Section 574.034, Health and Safety Code~~];

(3) consider the written assessment during the punishment phase after a conviction of the offense for which the defendant was arrested, as part of a presentence investigation report, or in connection with the impositions of conditions following placement on community supervision, including deferred adjudication community supervision; [~~or~~]

(4) refer the defendant to an appropriate specialty court established or operated under Subtitle K, Title 2, Government Code; or

(5) if the offense charged does not involve an act, attempt, or threat of serious bodily injury to another person, release the defendant on bail while charges against the defendant remain pending and enter an order transferring the defendant to the appropriate court for court-ordered outpatient mental health services under Chapter 574, Health and Safety Code.

(c-1) If an order is entered under Subsection (c)(5), an attorney representing the state shall file the application for

1 court-ordered outpatient services under Chapter 574, Health and
2 Safety Code.
3 (c-2) On the motion of an attorney representing the state,
4 if the court determines the defendant has complied with appropriate
5 court-ordered outpatient treatment, the court may dismiss the
6 charges pending against the defendant and discharge the defendant.
7 (c-3) On the motion of an attorney representing the state,
8 if the court determines the defendant has failed to comply with
9 appropriate court-ordered outpatient treatment, the court shall
10 proceed under this chapter or with the trial of the offense.
11 SECTION 3. Section 55.13(d), Family Code, is amended to
12 read as follows:
13 (d) After conducting a hearing on an application under this
14 section, the juvenile court shall:
15 (1) if the criteria under Section 574.034 or 574.0345,
16 Health and Safety Code, are satisfied, order temporary mental
17 health services for the child; or
18 (2) if the criteria under Section 574.035 or 574.0355,
19 Health and Safety Code, are satisfied, order extended mental health
20 services for the child.
21 SECTION 4. Section 55.38(b), Family Code, is amended to
22 read as follows:
23 (b) After conducting a hearing under Subsection (a)(2), the
24 juvenile court shall:
25 (1) if the criteria under Section 574.034 or 574.0345,
26 Health and Safety Code, are satisfied, order temporary mental
27 health services; or

1 (2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.

SECTION 5. Section 55.57(b), Family Code, is amended to read as follows:

(b) After conducting a hearing under Subsection (a)(2), the juvenile court shall:

(1) if the criteria under Section 574.034 or 574.0345, Health and Safety Code, are satisfied, order temporary mental health services; or

(2) if the criteria under Section 574.035 or 574.0355, Health and Safety Code, are satisfied, order extended mental health services.

SECTION 6. Subchapter B, Chapter 22, Government Code, is amended by adding Section 22.1106 to read as follows:

Sec. 22.1106. JUDICIAL INSTRUCTION RELATED TO COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES. The court of criminal appeals shall ensure that judicial training related to court-ordered outpatient mental health services is provided at least once every year. The instruction may be provided at the annual Judicial Education Conference.

SECTION 7. Section 501.057(b), Government Code, is amended to read as follows:

(b) Not later than the 30th day before the initial parole eligibility date of an inmate identified as mentally ill, an institutional division psychiatrist shall examine the inmate. The psychiatrist shall file a sworn application for court-ordered

temporary mental health services under Chapter 574, Health and Safety Code, if the psychiatrist determines that the inmate is mentally ill and as a result of the illness the inmate meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

SECTION 8. Section 574.002(c), Health and Safety Code, is amended to read as follows:

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address;

(2) the proposed patient's county of residence in this state;

(3) a statement that the proposed patient is a person with mental illness and meets the criteria in Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355 for court-ordered mental health services; and

(4) whether the proposed patient is charged with a criminal offense.

SECTION 9. Section 574.031, Health and Safety Code, is amended by adding Subsections (d-1) and (d-2) to read as follows:

(d-1) In a hearing for temporary inpatient or outpatient mental health services under Section 574.034 or 574.0345, the proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection

1 constitute competent medical or psychiatric testimony, and the
2 court may make its findings solely from the certificates. If the
3 proposed patient or the proposed patient's attorney does not waive
4 in writing the right to cross-examine witnesses, the court shall
5 proceed to hear testimony. The testimony must include competent
6 medical or psychiatric testimony.
7 (d-2) In a hearing for extended inpatient or outpatient
8 mental health services under Section 574.035 or 574.0355, the court
9 may not make its findings solely from the certificates of medical
10 examination for mental illness but shall hear testimony. The court
11 may not enter an order for extended mental health services unless
12 appropriate findings are made and are supported by testimony taken
13 at the hearing. The testimony must include competent medical or
14 psychiatric testimony.
15 SECTION 10. The heading to Section 574.034, Health and
16 Safety Code, is amended to read as follows:
17 Sec. 574.034. ORDER FOR TEMPORARY INPATIENT MENTAL HEALTH
18 SERVICES.
19 SECTION 11. Sections 574.034(g) and (h), Health and Safety
20 Code, are amended to read as follows:
21 (g) An order for temporary inpatient [~~or outpatient~~] mental
22 health services shall provide for a period of treatment not to
23 exceed [~~state that treatment is authorized for not longer than~~] 45
24 days, except that the order may specify a period not to exceed 90
25 days if the judge finds that the longer period is necessary.
26 (h) A judge may not issue an order for temporary inpatient
27 [~~or outpatient~~] mental health services for a proposed patient who

1 is charged with a criminal offense that involves an act, attempt, or
2 threat of serious bodily injury to another person.
3 SECTION 12. Subchapter C, Chapter 574, Health and Safety
4 Code, is amended by adding Section 574.0345 to read as follows:
5 Sec. 574.0345. ORDER FOR TEMPORARY OUTPATIENT MENTAL HEALTH
6 SERVICES. (a) The judge may order a proposed patient to receive
7 court-ordered temporary outpatient mental health services only if:
8 (1) the judge finds that appropriate mental health
9 services are available to the proposed patient; and
10 (2) the judge or jury finds, from clear and convincing
11 evidence, that:
12 (A) the proposed patient is a person with severe
13 and persistent mental illness;
14 (B) as a result of the mental illness, the
15 proposed patient will, if not treated, experience deterioration of
16 the ability to function independently to the extent that the
17 proposed patient will be unable to live safely in the community
18 without court-ordered outpatient mental health services;
19 (C) outpatient mental health services are needed
20 to prevent a relapse that would likely result in serious harm to the
21 proposed patient or others; and
22 (D) the proposed patient has an inability to
23 participate in outpatient treatment services effectively and
24 voluntarily, demonstrated by:
25 (i) any of the proposed patient's actions
26 occurring within the two-year period that immediately precedes the
27 hearing; or

1 (ii) specific characteristics of the
2 proposed patient's clinical condition that significantly impair
3 the proposed patient's ability to make a rational and informed
4 decision whether to submit to voluntary outpatient treatment.
5 (b) To be clear and convincing under Subsection (a)(2), the
6 evidence must include expert testimony and evidence of a recent
7 overt act or a continuing pattern of behavior that tends to confirm:
8 (1) the deterioration of ability to function
9 independently to the extent that the proposed patient will be
10 unable to live safely in the community;
11 (2) the need for outpatient mental health services to
12 prevent a relapse that would likely result in serious harm to the
13 proposed patient or others; and
14 (3) the proposed patient's inability to participate in
15 outpatient treatment services effectively and voluntarily.
16 (c) An order for temporary outpatient mental health
17 services shall state that treatment is authorized for not longer
18 than 45 days, except that the order may specify a period not to
19 exceed 90 days if the judge finds that the longer period is
20 necessary.
21 (d) A judge may not issue an order for temporary outpatient
22 mental health services for a proposed patient who is charged with a
23 criminal offense that involves an act, attempt, or threat of
24 serious bodily injury to another person.
25 SECTION 13. The heading to Section 574.035, Health and
26 Safety Code, is amended to read as follows:
27 Sec. 574.035. ORDER FOR EXTENDED INPATIENT MENTAL HEALTH

SERVICES.

SECTION 14. Sections 574.035(d), (h), and (i), Health and Safety Code, are amended to read as follows:

(d) The jury or judge is not required to make the finding under Subsection (a)(4) [~~or (b)(2)(F)~~] if the proposed patient has already been subject to an order for extended mental health services.

(h) An order for extended inpatient [~~or outpatient~~] mental health services must provide for a period of treatment not to exceed [~~shall state that treatment is authorized for not longer than~~] 12 months. [~~The order may not specify a shorter period.~~]

(i) A judge may not issue an order for extended inpatient [~~or outpatient~~] mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

SECTION 15. Subchapter C, Chapter 574, Health and Safety Code, is amended by adding Section 574.0355 to read as follows:

Sec. 574.0355. ORDER FOR EXTENDED OUTPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is a person with severe and persistent mental illness;

(B) as a result of the mental illness, the

1 proposed patient will, if not treated, experience deterioration of
2 the ability to function independently to the extent that the
3 proposed patient will be unable to live safely in the community
4 without court-ordered outpatient mental health services;
5 (C) outpatient mental health services are needed
6 to prevent a relapse that would likely result in serious harm to the
7 proposed patient or others;
8 (D) the proposed patient has an inability to
9 participate in outpatient treatment services effectively and
10 voluntarily, demonstrated by:
11 (i) any of the proposed patient's actions
12 occurring within the two-year period that immediately precedes the
13 hearing; or
14 (ii) specific characteristics of the
15 proposed patient's clinical condition that significantly impair
16 the proposed patient's ability to make a rational and informed
17 decision whether to submit to voluntary outpatient treatment;
18 (E) the proposed patient's condition is expected
19 to continue for more than 90 days; and
20 (F) the proposed patient has received:
21 (i) court-ordered inpatient mental health
22 services under this subtitle or under Subchapter D or E, Chapter
23 46B, Code of Criminal Procedure, for a total of at least 60 days
24 during the preceding 12 months; or
25 (ii) court-ordered outpatient mental
26 health services under this subtitle or under Subchapter D or E,
27 Chapter 46B, Code of Criminal Procedure, during the preceding 60

1 days.

2 (b) The jury or judge is not required to make the finding
3 under Subsection (a)(2)(F) if the proposed patient has already been
4 subject to an order for extended mental health services.

5 (c) To be clear and convincing under Subsection (a)(2), the
6 evidence must include expert testimony and evidence of a recent
7 overt act or a continuing pattern of behavior that tends to confirm:

8 (1) the deterioration of the ability to function
9 independently to the extent that the proposed patient will be
10 unable to live safely in the community;

11 (2) the need for outpatient mental health services to
12 prevent a relapse that would likely result in serious harm to the
13 proposed patient or others; and

14 (3) the proposed patient's inability to participate in
15 outpatient treatment services effectively and voluntarily.

16 (d) An order for extended outpatient mental health services
17 must provide for a period of treatment not to exceed 12 months.

18 (e) A judge may not issue an order for extended outpatient
19 mental health services for a proposed patient who is charged with a
20 criminal offense that involves an act, attempt, or threat of
21 serious bodily injury to another person.

22 SECTION 16. Section 574.036(e), Health and Safety Code, is
23 amended to read as follows:

24 (e) The judge may enter an order:

25 (1) committing the person to a mental health facility
26 for inpatient care if the trier of fact finds that the person meets
27 the commitment criteria prescribed by Section 574.034(a) or

1 574.035(a); or
2 (2) committing the person to outpatient mental health
3 services if the trier of fact finds that the person meets the
4 commitment criteria prescribed by Section 574.0345(a) [574.034(b)]
5 or 574.0355(a) [574.035(b)].
6 SECTION 17. Sections 574.037(a), (b-2), and (c-2), Health
7 and Safety Code, are amended to read as follows:
8 (a) The court, in an order that directs a patient to
9 participate in outpatient mental health services, shall designate
10 the person identified under Section 574.0125 as responsible for
11 those services or may designate a different person if necessary.
12 The person designated must be the facility administrator or an
13 individual involved in providing court-ordered outpatient
14 services. A person may not be designated as responsible for the
15 ordered services without the person's consent unless the person is
16 the facility administrator of a department facility or the facility
17 administrator of a community center that provides mental health
18 services:
19 (1) in the region in which the committing court is
20 located; or
21 (2) in a county where a patient has previously
22 received mental health services.
23 (b-2) The person responsible for the services shall submit
24 the program to the court before the hearing under Section 574.0345
25 or 574.0355 [574.034 or 574.035] or before the court modifies an
26 order under Section 574.061, as appropriate.
27 (c-2) A court may[, on its own motion,] set a status

1 conference in accordance with Section 574.0665 [with the person
2 responsible for the services, the patient, and the patient's
3 attorney].
4 SECTION 18. Sections 574.061(a), (b), (c), (d), (e), and
5 (h), Health and Safety Code, are amended to read as follows:
6 (a) The facility administrator of a facility to which a
7 patient is committed for inpatient mental health services, not
8 later than the 30th day after the date the patient is committed to
9 the facility, shall assess the appropriateness of transferring the
10 patient to outpatient mental health services. The facility
11 administrator may recommend that [may request] the court that
12 entered the commitment order [to] modify the order to require the
13 patient to participate in outpatient mental health services.
14 (b) A [The] facility administrator's recommendation under
15 Subsection (a) [request] must explain in detail the reason for the
16 recommendation [request]. The recommendation [request] must be
17 accompanied by a supporting certificate of medical examination for
18 mental illness signed by a physician who examined the patient
19 during the seven days preceding the recommendation [request].
20 (c) The patient shall be given notice of a facility
21 administrator's recommendation under Subsection (a) [the request].
22 (d) On request of the patient or any other interested
23 person, the court shall hold a hearing on a facility
24 administrator's recommendation that the court modify the
25 commitment order [the request]. The court shall appoint an
26 attorney to represent the patient at the hearing and shall consult
27 with the local mental health authority before issuing a decision.

1 The hearing shall be held before the court without a jury and as
2 prescribed by Section 574.031. The patient shall be represented by
3 an attorney and receive proper notice.
4 (e) If a hearing is not requested, the court may make a [the]
5 decision regarding a facility administrator's recommendation based
6 on:
7 (1) [solely from] the recommendation;
8 (2) [request and] the supporting certificate; and
9 (3) consultation with the local mental health
10 authority concerning available resources to treat the patient.
11 (h) A modified order may [not] extend beyond the term of the
12 original order, but may not exceed the term of the original order by
13 more than 60 days.
14 SECTION 19. Subchapter E, Chapter 574, Health and Safety
15 Code, is amended by adding Section 574.0665 to read as follows:
16 Sec. 574.0665. STATUS CONFERENCE. A court on its own motion
17 may set a status conference with the patient, the patient's
18 attorney, and the person designated to be responsible for the
19 patient's court-ordered outpatient services under Section 574.037.
20 SECTION 20. Section 574.069(e), Health and Safety Code, is
21 amended to read as follows:
22 (e) The court shall dismiss the request if the court finds
23 from clear and convincing evidence that the patient continues to
24 meet the criteria for court-ordered extended mental health services
25 prescribed by Section 574.035 or 574.0355.
26 SECTION 21. Section 574.081, Health and Safety Code, is
27 amended by amending Subsections (b) and (c) and adding Subsections

(a-1), (c-1), and (c-2) to read as follows:

(a-1) Subject to available resources, Subsections (a), (b), (c), (c-1), and (c-2) apply to a patient scheduled to be furloughed or discharged from:

(1) a state hospital; or

(2) any psychiatric inpatient bed funded under a contract with the Health and Human Services Commission or operated by or funded under a contract with a local mental health authority or a behavioral mental health authority.

(b) The physician shall prepare the plan as prescribed by Health and Human Services Commission [~~department~~] rules and shall consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. The local mental health authority shall be informed of and must participate in planning the discharge of a patient [~~is not required to participate in preparing a plan for a patient furloughed or discharged from a private mental health facility~~].

(c) The plan must address the patient's mental health and physical needs, including, if appropriate:

(1) the need for outpatient mental health services following furlough or discharge; and

(2) the need for sufficient psychoactive medication on furlough or discharge to last until the patient can see a physician[~~; and~~

[~~(2) the person or entity that is responsible for providing and paying for the medication~~].

(c-1) Except as otherwise specified in the plan and subject

1 to available funding provided to the Health and Human Services
2 Commission and paid to a private mental health facility for this
3 purpose, a private mental health facility is responsible for
4 providing or paying for psychoactive medication and any other
5 medication prescribed to the patient to counteract adverse side
6 effects of psychoactive medication on furlough or discharge
7 sufficient to last until the patient can see a physician.
8 (c-2) The Health and Human Services Commission shall adopt
9 rules to determine the quantity and manner of providing
10 psychoactive medication, as required by this section. The
11 executive commissioner may not adopt rules requiring a mental
12 health facility to provide or pay for psychoactive medication for
13 more than seven days after furlough or discharge.
14 SECTION 22. Sections 574.104(a), (b), and (d), Health and
15 Safety Code, are amended to read as follows:
16 (a) A physician who is treating a patient may, on behalf of
17 the state, file an application in a probate court or a court with
18 probate jurisdiction for an order to authorize the administration
19 of a psychoactive medication regardless of the patient's refusal
20 if:
21 (1) the physician believes that the patient lacks the
22 capacity to make a decision regarding the administration of the
23 psychoactive medication;
24 (2) the physician determines that the medication is
25 the proper course of treatment for the patient;
26 (3) the patient is under an order for inpatient mental
27 health services under this chapter or other law or an application

1 for court-ordered mental health services under Section 574.034, 2 574.0345, [~~or~~] 574.035, or 574.0355 has been filed for the patient; 3 and

4 (4) the patient, verbally or by other indication, 5 refuses to take the medication voluntarily.

6 (b) An application filed under this section must state:

7 (1) that the physician believes that the patient lacks 8 the capacity to make a decision regarding administration of the 9 psychoactive medication and the reasons for that belief;

10 (2) each medication the physician wants the court to 11 compel the patient to take;

12 (3) whether an application for court-ordered mental 13 health services under Section 574.034, 574.0345, [~~or~~] 574.035, or 14 574.0355 has been filed;

15 (4) whether a court order for inpatient mental health 16 services for the patient has been issued and, if so, under what 17 authority it was issued;

18 (5) the physician's diagnosis of the patient; and

19 (6) the proposed method for administering the 20 medication and, if the method is not customary, an explanation 21 justifying the departure from the customary methods.

22 (d) The hearing on the application may be held on the date of 23 a hearing on an application for court-ordered mental health 24 services under Section 574.034, 574.0345, [~~or~~] 574.035, or 574.0355 25 but shall be held not later than 30 days after the filing of the 26 application for the order to authorize psychoactive medication. If 27 the hearing is not held on the same day as the application for

1 court-ordered mental health services under those sections [~~Section~~
2 ~~574.034 or 574.035~~] and the patient is transferred to a mental
3 health facility in another county, the court may transfer the
4 application for an order to authorize psychoactive medication to
5 the county where the patient has been transferred.

6 SECTION 23. Section 574.151, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 574.151. APPLICABILITY. This subchapter applies only
9 to a person for whom a motion for court-ordered mental health
10 services is filed under Section 574.001, for whom a final order on
11 that motion has not been entered under Section 574.034, 574.0345,
12 [~~or~~] 574.035, or 574.0355 and who requests voluntary admission to
13 an inpatient mental health facility:

14 (1) while the person is receiving at that facility
15 involuntary inpatient services under Subchapter B or under Chapter
16 573; or

17 (2) before the 31st day after the date the person was
18 released from that facility under Section 573.023 or 574.028.

19 SECTION 24. Section 152.00164(b), Human Resources Code, is
20 amended to read as follows:

21 (b) Before a child who is identified as having a mental
22 illness is discharged from the custody of the juvenile board or
23 local juvenile probation department under Section 152.00163(b),
24 the juvenile board or local juvenile probation department shall
25 arrange for a psychiatrist to examine the child. The juvenile board
26 or local juvenile probation department shall refer a child
27 requiring outpatient psychiatric treatment to the appropriate

1 mental health authority. For a child requiring inpatient
2 psychiatric treatment, the juvenile board or local juvenile
3 probation department shall file a sworn application for
4 court-ordered mental health services, as provided in Subchapter C,
5 Chapter 574, Health and Safety Code, if:
6 (1) the child is not receiving court-ordered mental
7 health services; and
8 (2) the psychiatrist who examined the child determines
9 that the child has a mental illness and the child meets at least one
10 of the criteria listed in Section 574.034 or 574.0345, Health and
11 Safety Code.
12 SECTION 25. Section 244.012(b), Human Resources Code, is
13 amended to read as follows:
14 (b) Before a child who is identified as mentally ill is
15 discharged from the department's custody under Section 244.011(b),
16 a department psychiatrist shall examine the child. The department
17 shall refer a child requiring outpatient psychiatric treatment to
18 the appropriate mental health authority. For a child requiring
19 inpatient psychiatric treatment, the department shall file a sworn
20 application for court-ordered mental health services, as provided
21 in Subchapter C, Chapter 574, Health and Safety Code, if:
22 (1) the child is not receiving court-ordered mental
23 health services; and
24 (2) the psychiatrist who examined the child determines
25 that the child is mentally ill and the child meets at least one of
26 the criteria listed in Section 574.034 or 574.0345, Health and
27 Safety Code.

1 SECTION 26. The Supreme Court shall:
2 (1) adopt rules to streamline and promote the
3 efficiency of court processes under Chapter 573, Health and Safety
4 Code; and
5 (2) adopt rules or implement other measures to create
6 consistency and increase access to the judicial branch for mental
7 health issues.
8 SECTION 27. The following provisions of the Health and
9 Safety Code are repealed:
10 (1) Sections 574.034(b), (e), and (f); and
11 (2) Sections 574.035(b), (f), and (g).
12 SECTION 28. The Health and Human Services Commission is
13 required to implement a provision of this Act only if the
14 legislature appropriates money specifically for that purpose. If
15 the legislature does not appropriate money specifically for that
16 purpose, the Health and Human Services Commission may, but is not
17 required to, implement a provision of this Act using other
18 appropriations available for that purpose.
19 SECTION 29. The changes in law made by this Act to Chapter
20 574, Health and Safety Code, apply to a commitment proceeding under
21 that chapter that occurs on or after the effective date of this Act,
22 regardless of whether conduct of a proposed patient being evaluated
23 for that purpose occurred before, on, or after the effective date of
24 this Act.
25 SECTION 30. The changes in law made by this Act to Article
26 16.22, Code of Criminal Procedure, and Chapter 574, Health and
27 Safety Code, apply to a proceeding for court-ordered mental health

1 services that occurs on or after the effective date of this Act,
2 regardless of when an offense with which the defendant is charged
3 was committed.
4 SECTION 31. This Act takes effect September 1, 2019.

______________________________ ______________________________
President of the Senate Speaker of the House

I hereby certify that S.B. No. 362 passed the Senate on April 11, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 21, 2019, by the following vote: Yeas 31, Nays 0.

____
Secretary of the Senate

I hereby certify that S.B. No. 362 passed the House, with amendment, on May 15, 2019, by the following vote: Yeas 141, Nays 4, three present not voting.

____
Chief Clerk of the House

Approved:

____
Date

____
Governor

Tab D

Memorandum

To: Supreme Court Advisory Committee

From: Judicial Administration Subcommittee

Date: August 16, 2022

Re: Referral relating to SB 362

I. Matter referred to subcommittee

The Texas Supreme Court has requested recommendations regarding (1) a proposed addition to the Rules of Judicial Administration addressing forms to be used for emergency mental health proceedings under Chapters 573 and 574 of the Texas Health and Safety Code; and (2) a review of the proposed forms.

The referral stems from Senate Bill 362 enacted by the 86th Legislature in 2019 directing the Supreme Court of Texas to (1) "adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code" and (2) "adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues."[1] Chapter 573 of the Health and Safety Code governs emergency detention. In response, the Supreme Court created the Task Force for Procedures Related to Mental Health ("Task Force") to make recommendations consistent with Senate Bill 362's directives.

The Task Force first met on December 2, 2019, and began its work by focusing on Senate Bill 362's directive to adopt rules or implement measures to create consistency and increase access to the judicial branch for mental health issues. The work was divided into three subcommittees: (A) Legislative Recommendations; (B) Technology Solutions for Emergency Detention Warrants; and (C) Forms. These subcommittees continued to meet and work throughout 2020, 2021, and 2022 to develop legislative proposals, reports, and forms.

This work is described in greater detail in **Exhibit A** to this memo, an August 2022 report by the Judicial Commission on Mental Health ("JCMH") on SB 362.

The referral to the Supreme Court Advisory Committee encompasses only the forms aspect of the Task Force's work with respect to emergency detention. The Committee is not being asked to make recommendations with respect to legislative proposals or technology solutions.

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[1] *See* Act of May 15, 2019, 86th Leg., R.S. ch. 582 §26 (S.B. 362).

Here is an overview of the Task Force's discussions regarding the use of forms in relation to SB 362's directive to streamline processes governing emergency detention.

> . . . Members of the Task Force advised that this directive stemmed from several stakeholders represented on the Task Force: the Texas Medical Association, the Texas Hospital Association, and the Federation of Texas Psychiatry (collectively, "Medical and Hospital Associations"). Specifically, the Medical and Hospital Associations raised concerns that the emergency detention and civil commitment processes are inefficient because they are too localized and lack uniformity, even in a single hospital region, and that this inefficiency is particularly problematic in these time-sensitive, crisis situations. For example, a hospital physician may be required to complete twenty different versions of the same form to initiate the emergency detention process because each judge in the hospital's region requires a different form.
>
> To address these concerns, the Medical and Hospital Associations requested that the Supreme Court require the use of the Task Force-approved forms *related to emergency detention* to promote efficiency in the emergency detention process. Alternatively, the Medical and Hospital Associations requested that the Supreme Court adopt a rule prohibiting courts from rejecting these forms. The Task-Force approved forms related to emergency detention include:
>
> - Application for Emergency Detention
> - Advisement to Patient Under Emergency Detention
> - Motion for Protective Custody
> - Order for Protective Custody
> - Motion to Modify Court-Ordered Inpatient Mental Health Services to Outpatient Mental Health Services
> - Application for Order to Administer Psychoactive Medication (Forensic)
> - Application for Order to Administer Psychoactive Medication (Non-Forensic)
>
> The Forms subcommittee ultimately did not recommend a rule, primarily based on feedback from the Honorable Guy Herman. The Honorable Guy Herman, Presiding Statutory Probate Judge of Texas, stated that he requested feedback on this matter from the Texas probate judges and that they were opposed to both rules suggested by the

Medical and Hospital Associations because they preferred to allow each county to use or require any form according to local needs and practices.

However, JCMH staff recommend that the Supreme Court adopt a rule that prohibits courts from rejecting the Task-Force approved forms on emergency detention. Such an approach would ensure that court users can rely on the acceptability of a Task-Force approved form, while allowing judges and court users the flexibility to continue using locally-preferred forms. It would also streamline and promote efficiencies in the emergency detention process, consistent with Senate Bill 362's directive.

JCMH staff recommend that such a rule be placed in the Rules of Judicial Administration, which are written for judges and court staff. Specifically, JCMH staff suggest placement in Rule 10 of the Rules of Judicial Administration, governing local rules, because the Supreme Court and Texas Court of Criminal Appeals have proposed amendments to Rule 10 that would, among other things, expand its application to local forms.[2] These proposed amendments are expected to take effect on January 1, 2023.

Such a rule is not unprecedented, and language previously approved by the Court may prove helpful in drafting a rule. For example, Texas Rule of Civil Procedure 145, titled "Payment of Costs Not Required," provides: "The clerk . . . may return [a form] for correction only if it is not sworn—not for failure to attach evidence of any other reason." In several form-related administrative orders, the Court has also used similar language: "Use of the approved [form] is not required. However, a trial court must not refuse to accept the [form] simply because [the person filing the form] used a form or is not represented by counsel. If the [form] is used, the court should attempt to rule on the claim without regard to non-substantive defects."[3]

---

[2] Preliminary Approval of Amendments to Rule 3a of the Texas Rules of Civil Procedure, Rule 1.2 of the Texas Rules of Appellate Procedure, and Rule 10 of the Texas Rules of Judicial Administration (Misc. Docket No. 22-9026).

[3] *See, e.g.*, Order Approving Revised Protective Order Forms (Misc. Docket No. 22-9053); Final Approval of Amendments to Texas Rules of Civil Procedure 306a, 503, 505, 508, 509, 510, 663a, and 664a; of Texas Rules of Civil Procedure 679a and 679b; and of a Form Notice of Protected Property Rights, Instructions for Protected Property Claim Form, Protected Property Claim Form, and a Form Order Appointing Receiver (Misc. Docket No. 22-9031); Order Approving Revised Uniform Forms – Divorce Set One (Misc. Docket No. 13-9085).

> JCMH staff have made plain-language and stylistic revisions to the Task-Force approved forms on emergency detention to make the emergency detention forms more user-friendly and promote consistency. Additionally, JCMH staff have expanded the information given to the patient in the Advisement to Patient under Emergency Detention form to include information that would be helpful to patient under emergency detention, but not required by Section 573.025 of the Texas Health and Safety Code, governing the rights of such patients.

The Judicial Administration Subcommittee used these JCMH recommendations as the starting point for the discussion below.

III. Subcommittee discussion and recommendation

Based on the referral's limited scope, the subcommittee addressed two points: (1) a proposed addition to Rule of Judicial Administration 10 regarding use of forms in this mental health context; and (2) review of proposed forms attached as Appendix B to the JCMH's August 2022 report with an eye towards readability and understandability.

A. Proposed addition to Rule of Judicial Administration 10

Rule 10 ___

[With respect to procedures under Chapters 573 and 574 of the Texas Health and Safety Code,] use of approved forms is not required. **[If a form is used,]** the court should attempt to rule on the requested relief without regard to non-substantive defects in the filing **[or whether the filing party is represented by counsel]**.

Discussion regarding the bracketed language focused on the following considerations.

- The Texas Supreme Court has given preliminary approval to amendments to Texas Rule of Civil Procedure 3a, Texas Rule of Appellate Procedure 1.2, and Texas Rule of Judicial Administration 10; among other changes, these amendments address the use of local forms. This specific referral was limited to forms pertaining to procedures in mental health matters under Chapters 573 and 574. The full Supreme Court Advisory Committee may wish to consider whether a broader rule governing use of forms generally is warranted.
- The full Committee also may wish to consider whether a directive to rule on the merits of requested relief without regard to non-substantive defects in a filing should have broader application beyond this specific mental health context.

- There was some sentiment among the subcommittee members for stronger rule language requiring the use of the JCMH-approved forms unless use of an alternative form is approved by the presiding judge of an administrative judicial region.
- The bracketed reference to representation by counsel echoes discussions around other topics involving the use of forms by pro se filers in the family law context. This is another context in which pro se filing may be more prevalent.
- The subcommittee also raised a question as to whether redaction may be required for portions of the approved forms under Texas Rule of Civil Procedure 21c governing privacy protection for filed documents.

B. Proposed revisions to forms

The subcommittee's proposed revisions are attached as **Exhibit B** to this memo.

Tab D1

Report to the Supreme Court Advisory Committee on Senate Bill 362, 86th Legislature

August 2022

Judicial Commission on Mental Health

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I.
Introduction

In 2019, the 86th Legislature enacted Senate Bill 362 directing the Supreme Court of Texas to (1) "adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code" and (2) "adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues." [1] Chapter 573 of the Health and Safety Code governs emergency detention. In response, the Supreme Court created the Task Force for Procedures Related to Mental Health ("Task Force") to make recommendations consistent with Senate Bill 362's directives. Task Force members include: the Honorable Brent Carr (Chair), Monique Allen, the Honorable Bill Boyce, the Honorable Danny Dominguez, Dr. Melissa Eshelman, Dr. Robert Greenberg, the Honorable Clay Harrison, Dr. Courtney Harvey, the Honorable Barbara Hervey, the Honorable Guy Herman, the Honorable David Jahn, Lee Johnson, Major Mike Lee, Beth Mitchell, the Honorable Roxanne Nelson, Denise Oncken, the Honorable Robin Ramsey, Professor Brian Shannon, David Slayton, the Honorable John Specia, the Honorable Ralph Swearingin, and Steve Wohleb.[2]

II.
Consistency and Access Measures

The Task Force first met on December 2, 2019, and began its work by focusing on Senate Bill 362's second directive: adopting rules or implementing measures to create consistency and increase access to the judicial branch for mental health issues. The work was divided into three subcommittees: (A) Legislative Recommendations; (B) Technology Solutions for Emergency Detention Warrants; and (C) Forms. These subcommittees continued to meet and work throughout 2020, 2021, and 2022 to develop legislative proposals, reports, and forms.

A. Legislative Recommendations

Based on the work of the Legislative Recommendations subcommittee, the Task Force recommended five legislative proposals that were ultimately submitted to the Texas Judicial Council, in August 2020, as part of the JCMH's Legislative Recommendations and Reports. These proposals are discussed in more detail below and shown in **Appendix A**. Although three of the proposals were included in both House and Senate bills by the 87th Legislature, none of the bills advanced past the committee stage.

(1) Clarification of Officer's Duties Upon Presenting a Person for Emergency Mental Health Services

First, the Task Force proposed amending section 573.012 of the Texas Health and Safety Code to clarify that a peace officer has no duty to remain at a facility or emergency room after the officer has delivered a person for emergency mental health services with the proper completed documentation.

[1] *See* Act of May 15, 2019, 86th Leg., R.S. ch. 582 §26 (S.B. 362).

[2] Order Creating Task Force for Procedures Related to Mental Health (Misc. Docket No. 19-9094); Amended Appointments to Task Force for Procedures Related to Mental Health (Misc. Docket No. 19-9111).

(2) Expansion of the Types of Professionals Who May Make an Electronic Application for Emergency Detention Warrant

Second, the Task Force proposed expanding section 573.012 of the Texas Health and Safety Code to allow, in addition to physicians, other licensed or credentialed professionals (like physician's assistants, nurse practitioners, phycologists, and certain master's-level mental health professionals or social workers) to make an electronic application for an emergency detention warrant. This proposal was made in response to feedback that there are circumstances, particularly in less populated areas, where a physician is not available to make an electronic request at the time an emergency detention warrant is needed. Under the Task Force's proposal, an application for an emergency detention warrant by those other than physicians would be limited to situations where the subject of the application is currently receiving care at a hospital or facility operated by a local mental health authority.

(3) Seizure of Firearms in Possession of Person Taken into Custody by Warrant for Emergency Detention

Third, the Task Force proposed amending to section 573.012 of the Texas Health and Safety Code, Issuance of Warrant, to authorize a peace officer to seize a firearm found in possession of a person who is apprehended under the authority of a warrant for an emergency detention issued by a magistrate. The Task Force's proposed amendment would grant the peace officer the same authority the peace officer already has under section 573.001(h) of the Texas Health and Safety Code, Apprehension by Peace Officer Without Warrant. Additionally, the amendment would allow for an orderly disposition of a seized firearm under article 18.191 of the Texas Code of Criminal Procedure, Disposition of a Firearm from Certain Persons with Mental Illness.

(4) Authorization for Blood Draws to Monitor Blood Levels of Psychoactive Medications Involuntarily Administered to Patients in Accordance with Lawful Orders

Fourth, the Task Force proposed amending section 574.106 of the Texas Health and Safety Code to allow mandatory blood draws for patients admitted to the state hospitals for involuntary psychoactive medication administration purposes. This practice is medically necessary to ensure treating physicians have the ability to monitor medication levels in an effort to determine whether the medications are having their desired effect or need adjustment.

(5) Authorization to Delay the Arrest of a Mental Health Patient, Detained under an Emergency Detention or Order of Protective Custody, Who Engages in Conduct that May Subject the Patient to Arrest for an Assault or Other Low-level Offense, until the Patient's Mental Health Condition has been Stabilized

Fifth, the Task Force proposed amending chapter 15 of the Texas Code of Criminal Procedure to delay the arrest of a mental health patient, who has been detained under an emergency detention or order of protective custody and then harms another person or property, until the patient's mental health condition has stabilized. Other alternative statutory amendments and solutions were also proposed.

B. Technology Solutions for Emergency Detention Warrants

Texas hospitals, like other hospital emergency rooms throughout the nation, are seeing increasing numbers of psychiatric patients seeking emergency mental health evaluations.[3] Most hospitals, however, are not well-equipped to handle mental health crises. The Emergency Medical Treatment and Labor Act requires hospitals to stabilize patients in need of care before discharging them. In Texas, hospitals lack the authority to initiate emergency detentions without a warrant or to hold patients for further treatment and observation. This lack of authority to hold patients creates potential liability and regulatory risks for hospitals and inhibits the delivery of the best care for patients.

In response to these issues, the Technology Solutions for Emergency Detention Warrants subcommittee discussed how to improve the process of obtaining emergency detention warrants for individuals in hospital emergency rooms and identified a model system—the DWI Reporting System ("LEADRS")—that could be used to develop a similar system for hospitals to obtain warrants for emergency detention. LEADRS was created in 2003 with funding from the Texas Department of Transportation and is as an internet-based system that allows law enforcement to more quickly seek warrants for blood draws in DWI cases. LEADRS works by having officers answer a series of questions in text boxes, drop menus, and check boxes. Once completed, all information is used to complete a DWI case report and all forms associated with a DWI arrest, which are then electronically sent to the judge with the warrant. The average time to get a DWI warrant with this technology is 15-20 minutes. All transmissions are encrypted, and no information is stored on personal devices.

Ultimately, the Task Force, by a vote of ten to two, endorsed the concept of further exploring the possibility of adding technology solutions for physician-requested emergency detention warrants to augment existing statutory authority. The two dissenting members opposed a technology solution because they would prefer to see any problems resolved by education, collaboration, and enforcement of existing law that allows for warrantless emergency detentions in one of three ways: (i) a peace officer conducts a warrantless emergency detention by bringing a person into a hospital emergency department under an emergency detention and filing a notice of detention with the facility; (ii) a peace officer providing security at the hospital does a warrantless emergency detention when the person attempts to leave against medical advice; or (iii) a peace officer is contacted by the facility to effectuate a warrantless emergency detentions. The Office of Court Administration has agreed to continue exploring technology solutions in light of the Task Force's recommendation.

C. Forms

The Forms subcommittee identified six categories of forms to review:

(1) Emergency Detention Forms

- Notification of Emergency Detention
- Application for Emergency Detention
- Magistrate's Order and Warrant for Emergency Detention
- Advisement to Patient Under Emergency Detention

(2) Order of Protective Custody Forms

[3] ACEP EMERGENCY MED. PRACTICE COMM., CARE OF THE PSYCHIATRIC PATIENT IN THE EMERGENCY DEPARTMENT – A REVIEW OF THE LITERATURE (2014), https://www.acep.org/globalassets/uploads/uploaded-files/acep/clinical-and-practice-management/resources/mental-health-and-substance-abuse/psychiatric-patient-care-in-the-ed-2014.pdf.

- Duties of Attorney
- Motion for Protective Custody
- Order for Protective Custody
- Notification of Probable Cause Hearing
- Probable Cause Hearing Elections/Motions/Orders

(3) Court-Ordered Mental Health and IDD Services Forms

- Mental Health General Information Form
- Application for Court-Ordered Mental Health Services
- Certificate of Examination for Mental Illness
- Order Transferring Venue
- Motion to Have Patient Examined/Order to Submit
- Order Setting Hearing on Application for Extended Commitment
- Notice to Patient of Extended Commitment Hearing
- Patient's Elections & Attorney's Certification to Court for Ext./Temp. Commitment Hearings
- Motion for Continuance
- Judgment and Orders for Court-Ordered Mental Health Services
- Writs of Commitment
- Motion/Orders for Modification/Transfer
- Motion to Dismiss
- Application/Order for Inspection of Records
- Application for Placement/IDD & Residential Commitment Order

(4) Jail and Magistration Forms

- Screening Forms
- 16.22 Interview Orders

(5) Incompetency to Stand Trial Forms

- Certificate of Medical Examination for Mental Illness
- Certification of Competency Evaluator Credentials (TCOOMMI Form)
- Order to Determine Eligibility for Outpatient Competency Restoration
- Order of Commitment for Restoration to Competency
- 60-Day Extension of Commitment for Restoration to Competency
- Temporary Order of Civil Commitment: Charges Pending
- Extended Order of Civil Commitment: Charges Pending

(6) Court-Ordered Administration of Psychoactive Medication Forms

- **Criminal Court:**
    - Order on State's Motion to Compel Involuntary Administration of Court-Ordered Medication
- **Probate Court:**
    - Non-Forensic:
        - Application for Court-Ordered Psychoactive Medication
        - Order Setting Hearing on Application for Court-Ordered Psychoactive Medication
        - Notice to Patient of Hearing on Court-Ordered Psychoactive Medication

        - Patient's Elections & Attorney's Certification to Court
        - Result of Hearing on Court-Ordered Psychoactive Medication
        - Order to Administer Psychoactive Medication
        - Motion for Writ of Attachment
        - Order Denying Application to Administer Psychoactive Medication
    - Forensic:
        - Application to Authorize Administration of Psychoactive Medication
        - Certification of Medical Examination
        - Order Authorizing Administration of Forced Medication
        - Writ of Attachment

The Forms subcommittee met many times in 2020 and 2021 to review, discuss, and compile a collection of the above forms for judges and court users to encourage consistency and streamline court processes. Ultimately, the Task Force approved 68 model forms that are posted on the JCMH website. These forms have been converted to a consistent format and standardized for use across the state, and, on the JCMH website, users are warned that the forms do not constitute legal advice and are not endorsed by the high Courts.

III.
Recommended Rule on Forms

After completion of the above work, the Forms subcommittee shifted its focus to addressing Senate Bill 362's first directive to the Supreme Court: to "adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code," governing emergency detention. Members of the Task Force advised that this directive stemmed from several stakeholders represented on the Task Force: the Texas Medical Association, the Texas Hospital Association, and the Federation of Texas Psychiatry (collectively, "Medical and Hospital Associations"). Specifically, the Medical and Hospital Associations raised concerns that the emergency detention and civil commitment processes are inefficient because they are too localized and lack uniformity, even in a single hospital region, and that this inefficiency is particularly problematic in these time-sensitive, crisis situations. For example, a hospital physician may be required to complete twenty different versions of the same form to initiate the emergency detention process because each judge in the hospital's region requires a different form.

To address these concerns, the Medical and Hospital Associations requested that the Supreme Court require the use of the Task Force-approved forms *related to emergency detention* to promote efficiency in the emergency detention process. Alternatively, the Medical and Hospital Associations requested that the Supreme Court adopt a rule prohibiting courts from rejecting these forms. The Task-Force approved forms related to emergency detention include:

- Application for Emergency Detention
- Advisement to Patient Under Emergency Detention
- Motion for Protective Custody
- Order for Protective Custody
- Motion to Modify Court-Ordered Inpatient Mental Health Services to Outpatient Mental Health Services
- Application for Order to Administer Psychoactive Medication (Forensic)
- Application for Order to Administer Psychoactive Medication (Non-Forensic)

The Forms subcommittee ultimately did not recommend a rule, primarily based on feedback from the Honorable Guy Herman. The Honorable Guy Herman, Presiding Statutory Probate Judge of Texas, stated that he requested feedback on this matter from the Texas probate judges and that they were opposed to both rules suggested by the Medical and Hospital Associations because they preferred to allow each county to use or require any form according to local needs and practices.

However, JCMH staff recommend that the Supreme Court adopt a rule that prohibits courts from rejecting the Task-Force approved forms on emergency detention. Such an approach would ensure that court users can rely on the acceptability of a Task-Force approved form, while allowing judges and court users the flexibility to continue using locally-preferred forms. It would also streamline and promote efficiencies in the emergency detention process, consistent with Senate Bill 362's directive.

JCMH staff recommend that such a rule be placed in the Rules of Judicial Administration, which are written for judges and court staff. Specifically, JCMH staff suggest placement in Rule 10 of the Rules of Judicial Administration, governing local rules, because the Supreme Court and Texas Court of Criminal Appeals have proposed amendments to Rule 10 that would, among other things, expand its application to local forms.[4] These proposed amendments are expected to take effect on January 1, 2023.

Such a rule is not unprecedented, and language previously approved by the Court may prove helpful in drafting a rule. For example, Texas Rule of Civil Procedure 145, titled "Payment of Costs Not Required," provides: "The clerk . . . may return [a form] for correction only if it is not sworn—not for failure to attach evidence of any other reason." In several form-related administrative orders, the Court has also used similar language: "Use of the approved [form] is not required. However, a trial court must not refuse to accept the [form] simply because [the person filing the form] used a form or is not represented by counsel. If the [form] is used, the court should attempt to rule on the claim without regard to non-substantive defects."[5]

JCMH staff have made plain-language and stylistic revisions to the Task-Force approved forms on emergency detention to make the emergency detention forms more user-friendly and promote consistency. Additionally, JCMH staff have expanded the information given to the patient in the Advisement to Patient under Emergency Detention form to include information that would be helpful to patient under emergency detention, but not required by Section 573.025 of the Texas Health and Safety Code, governing the rights of such patients. The revised forms are attached as **Exhibit B**.

---

[4] Preliminary Approval of Amendments to Rule 3a of the Texas Rules of Civil Procedure, Rule 1.2 of the Texas Rules of Appellate Procedure, and Rule 10 of the Texas Rules of Judicial Administration (Misc. Docket No. 22-9026).

[5] *See, e.g.*, Order Approving Revised Protective Order Forms (Misc. Docket No. 22-9053); Final Approval of Amendments to Texas Rules of Civil Procedure 306a, 503, 505, 508, 509, 510, 663a, and 664a; of Texas Rules of Civil Procedure 679a and 679b; and of a Form Notice of Protected Property Rights, Instructions for Protected Property Claim Form, Protected Property Claim Form, and a Form Order Appointing Receiver (Misc. Docket No. 22-9031); Order Approving Revised Uniform Forms – Divorce Set One (Misc. Docket No. 13-9085).

IV.
Appendix A

1. Clarification of Officer's Duties Upon Presenting a Person for Emergency Mental Health Services 10

2. Expansion of the Types of Personnel Who May Make an Electronic Application for Emergency Detention Warrant 11

3. Seizure of Firearms in Possession of Person Taken into Custody by Warrant for Emergency Detention 13

4. Authorization for Blood Draws to Monitor Blood Levels of Psychoactive Medications Involuntarily Administered to Patients in Accordance with Lawful Orders 17

5. Statutory Authority to Delay the Arrest of a Mental Health Patient, Detained Under an Emergency Detention or Order of Protective Custody, Who Engages in Conduct that May Subject the Patient to Arrest for an Assault or other Low-level Offense, Until the Patient's Mental Health Condition Has Stabilized 18

Clarification of Officer's Duties Upon Presenting a Person for Emergency Mental Health Services

Amendment to Texas Health & Safety Code Section 573.012 by adding new section (d-2) as follows:

(d-2) A peace officer does not have a duty to wait at a hospital or other facility for the person to be medically screened, treated, or to have their insurance verified. The officer's duties are complete when the officer makes a responsible delivery of the person to the appropriate hospital or facility staff member along with the completed documentation required by this subchapter.

Expansion of the Types of Professionals Who May Make an Electronic Application for Emergency Detention Warrant

Amendment to Tex. Health & Safety Code, Sec. 573.012, as follows:

(h) A judge or magistrate may permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive

communication of image and sound between the judge or magistrate and the

applicant.

(h-1) After the presentation of an application under Subsection (h), the judge or magistrate may transmit a warrant to the applicant:

(1) electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or

(2) by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document.

(h-2) If the person who is the subject of an application is receiving care in a hospital or a facility operated by a local mental health authority, a judge or magistrate may permit an applicant who is either a physician, a physician's assistant, a nurse practitioner, or a non-physician mental health professional, as defined by Section 571.003

(15) (A)-(D) of the Texas Health and Safety Code, to submit an application under the provisions of subsections (h) and (h-1).

Seizure of Firearms in Possession of Person Taken into Custody by Warrant for Emergency Detention

Amendment to Tex. Health & Safety Code, Sec. 573.012, adding a new subsection (d-1) as follows:

(d-1) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

Amendment to Tex. Code of Criminal Procedure, Art. 18.191, as follows:

Art. 18.191. DISPOSITION OF FIREARM SEIZED FROM CERTAIN PERSONS WITH MENTAL ILLNESS.

(a) A law enforcement officer who seizes a firearm from a person taken into custody under Section 573.001 or 573.012, Health and Safety Code, and not in connection with an offense involving the use of a weapon or an offense under Chapter 46, Penal Code, shall immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this article.

(b) The law enforcement agency holding a firearm subject to disposition under this article shall, as soon as possible, but not later than the 15th day after the date the person is taken into custody under Section 573.001 or 573.012, Health and Safety Code, provide written notice of the procedure for the return of a firearm under this article to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail, return receipt requested. The written notice must state the date by which a request for the return of the firearm must be submitted to the law enforcement agency as provided by Subsection (h).

(c) Not later than the 30th day after the date a firearm subject to disposition under this article is seized, the law enforcement agency holding the firearm shall contact the court in the county having jurisdiction to order commitment under Chapter 574, Health and Safety Code, and request the disposition of the case. Not later than the 30th

day after the date of this request, the clerk of the court shall advise the requesting agency whether the person taken into custody was released under Section 573.023, Health and Safety Code, or was ordered to receive inpatient mental health services under Section 574.034 or 574.035, Health and Safety Code.

(d) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was released under Section 573.023, Health and Safety Code, the law enforcement agency shall:

(1) conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) provide written notice to the person by certified mail that the firearm may be returned to the person on verification under Subdivision (1) that the person may lawfully possess the firearm.

(e) Not later than the 30th day after the date the clerk of the court informs a law enforcement agency holding a firearm subject to disposition under this article that the person taken into custody was ordered to receive inpatient mental health services under Sections 574.034 or 574.035, Health and Safety Code, the law enforcement agency shall provide written notice to the person by certified mail that the person:

(1) is prohibited from owning, possessing, or purchasing a firearm under 18 U.S.C. Section 922(g)(4);

(2) may petition the court that entered the commitment order for relief from the firearms disability under Section 574.088, Health and Safety Code; and

(3) may dispose of the firearm in the manner provided by Subsection f).

(f) A person who receives notice under Subsection (e) may dispose of the person's firearm by:

(1) releasing the firearm to the person's designee, if:

(A) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the designee may lawfully possess a firearm under 18 U.S.C. Section 922(g);

(B) the person provides to the law enforcement agency a copy of a notarized statement releasing the firearm to the designee; and

(C) the designee provides to the law enforcement agency an affidavit confirming that the designee:

(i) will not allow access to the firearm by the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, at any time during which the person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(ii) acknowledges the responsibility of the designee and no other person to verify whether the person has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); or

(2) releasing the firearm to the law enforcement agency holding the firearm, for disposition under Subsection (h).

(g) If a firearm subject to disposition under this article is wholly or partly owned by a person other than the person taken into custody under Section 573.001 or 573.012, Health and Safety Code, the law enforcement agency holding the firearm shall release the firearm to the person claiming a right to or interest in the firearm after:

(1) the person provides an affidavit confirming that the person:

(A) wholly or partly owns the firearm;

(B) will not allow access to the firearm by the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, at any time during which that person may not lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(C) acknowledges the responsibility of the person and no other person to verify whether the person who was taken into custody under Section 573.001 or 573.012, Health and Safety Code, has reestablished the person's eligibility to lawfully possess a firearm under 18 U.S.C. Section 922(g); and

(2) the law enforcement agency holding the firearm conducts a check of state and national criminal history record information and verifies that the person claiming a right to or interest in the firearm may lawfully possess a firearm under 18 U.S.C. Section 922(g).

(h) If a person to whom written notice is provided under Subsection (b) or another lawful owner of a firearm subject to disposition under this article does not submit a written request to the law enforcement agency for the return of the firearm before the 121st day after the date the law enforcement agency holding the firearm provides written notice under Subsection (b), the law enforcement agency may have the firearm sold by a person who is a licensed firearms dealer under 18 U.S.C. Section 923. The proceeds from the sale of a firearm under this subsection shall be given to the owner of the seized firearm, less the cost of administering this subsection. An unclaimed firearm that was seized from a person taken into custody under Section 573.001 or 573.012, Health and Safety Code, may not be destroyed or forfeited to the state.

Authorization for blood draws to monitor blood levels of psychoactive medications involuntarily administered to patients in accordance with lawful orders

Amendment to Tex. Health & Safety Code §574.106 by adding new subsection (j-1), as follows:

(j-1) The authority to administer a medication involuntarily to a patient under subsection (a) includes the authority to obtain blood samples for analysis and conduct evaluations and laboratory tests that are reasonable and medically necessary to safely administer psychoactive medications.

Statutory authority to delay the arrest of a mental health patient, detained under an emergency detention or order of protective custody, who engages in conduct that may subject the patient to arrest for an assault or other low-level offense, until the patient's mental health condition has been stabilized

Amendment to Chapter 15, Code of Criminal Procedure, by adding new section 15A, as follows:

Art. 15A.01. Deferral of Arrest for Nonviolent Offenders Receiving Emergency Mental Health or Intellectual Disability Services.

(a) In this article, "violent offense" shall mean an offense listed in Art. 42A.054 of this code. This article does not apply to a person who is charged with or subject to arrest for a violent offense.

(b) In this article "detained person" shall refer to a person who is being detained under Chapter 573, or Chapter 574, Subchapter B, of the Texas Health and Safety Code, who subsequent to the detention engages in conduct that would constitute a criminal offense at the facility where the person is being detained for emergency mental health services.

(c) An officer who has probable cause to make a warrantless arrest or who has a warrant for the arrest of a detained person for an offense other than a violent offense shall defer the arrest of the detained person until after the detained person has completed the detention for emergency mental health services.

(d) The deferral of arrest authorized by this article is subject to the approval of the head of the facility or designee. If the head of the facility or designee does not approve the deferral of arrest authorized by this article, the law enforcement officer may immediately take the person into custody.

(e) A copy of the notice of approval or disapproval of the deferral of the arrest by the head of the facility or designee, must be in writing and delivered to the officer seeking to arrest the detained person within one hour of the time the officer appears at the facility to make an arrest. A copy of the notice shall be filed by the facility with the court having probate jurisdiction over the person detained.

(f) A subsequent arrest of a detained person for whom an arrest was deferred will require a warrant based on probable cause.

(g) The facility where the detained person is located shall notify the law enforcement agency who sought the arrest of the detained person at least 12 hours prior to releasing the detained person.

(h) Nothing in this article shall be construed to limit any other lawful disposition of the acts for which an arrest was deferred.

V.
Appendix B

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Cause No. ________
(The court clerk will fill in this blank when you turn in this Application.)

The State of Texas for the	§	**In the ______________ Court**
	§	(The court clerk will fill in this blank
	§	when you turn in this Application.)
Best Interest and Protection of	§	
	§	**___________________County, Texas**
____________________________	§	(The court clerk will fill in this blank
(List the initial of the person you seek to	§	when you turn in this application.)
protect.)	§	

<u>Application for Emergency Detention</u>
(Sec. 573.011, Texas Health and Safety Code)

1. My full name is ____.

2. I am ___________ years old.

3. My address is ____.

4. My phone number is ____.

5. My email address is ____.

6. I have reason to believe and do believe that the following person has a mental illness:

   ____. This person is called the "Proposed Patient."
   (List the person's full name.).

7. I have reason to believe and do believe that the Proposed Patient presents a substantial risk of serious harm to themselves or to others, which I have described in specific detail below:

   ____

   ____

   ____

   ____

   ____

   ____

   ____

   ____.

8. I have reason to believe and do believe that the risk of harm from the Proposed Patient is imminent unless the Proposed Patient is immediately restrained.

9. My beliefs are based on specific recent behavior, acts, attempts, or threats by the Proposed Patient, which I have described in specific detail below:

____

____

____

____

____

____

____

____.

10. My relationship to the Proposed Patient is: ____.

11. (Check one.)
I am the Proposed Patient's guardian:
☐ No
☐ Yes, and the following Court granted the guardianship: ____________________________
(List the Court's name.)

12. I have attached any other relevant information to this Application.

13. I swear to the truth of everything in this Application, and I know that I can be prosecuted for the crime of lying.

____
Applicant (Sign your name here.)

____
Date

You should **not** fill in this portion of the Application. The judge or magistrate will complete it.
This Application was sworn to before me on ____. (List the date.) ____ Judge/Magistrate (Print name here.) ____ Judge/Magistrate (Sign name here.)

Advisement to Patient under Emergency Detention

(To be completed by a peace officer. **The peace officer should return one copy to the court.**)

To: ____

(List the Patient's name.)

You are being temporarily detained at a facility to determine if you are suffering from mental illness and if you need mental health services for the protection of yourself and others. "Detained" means held.

You should know the following information:

1. You are being temporarily detained at ______________________________________("Facility").
   (List the facility's name.)

2. The reasons for your temporary detention are: ____

   ____

   ____

   ____

   ____

   ____

   ____

   ____.

3. A doctor must examine you in the first 12 hours of your temporary detention. The Facility will then decide whether to officially admit you for temporary detention. "Temporary detention" is sometimes called "emergency detention" and usually lasts for less than 48 hours unless a court orders a longer period.

4. Your temporary detention could result in a longer period of involuntary commitment to a mental health facility. "Involuntary commitment" means checking you in to a mental health facility without your consent.

5. You have the right to hire a lawyer of your own choosing. If you cannot afford to hire a lawyer, a lawyer will be appointed to represent you. You must be given a reasonable opportunity to communicate with your lawyer.

6. You also have the right to a reasonable opportunity to communicate with a member of your family or another person who has an interest in your health and safety.

7. If you communicate with a mental health professional, those communications may be used to determine if a longer period of detention is necessary.

8. You will be released from temporary detention if, after the doctor's examination, the Facility decides not to officially admit you.

9. Even if the Facility decides to officially admit you, you have the right to be released from temporary detention if the Facility administrator determines at any time that:

   a. you no longer have a mental illness;

   b. there is no longer a substantial risk of serious harm to yourself or others;

   c. the risk of harm to yourself or to others is no longer imminent; or

   d. temporary detention is no longer the least restrictive means of restraint necessary.

10. If you are released, you have the right to be taken back to the location where you were found, to your Texas home, or another suitable location, unless you are arrested or object to the return.

____ __________________
Signature of Patient Date

____ __________________
Signature of Peace Officer Date

Cause No. ________

The State of Texas for the	§	**In the ______________ Court**
	§	
	§	
Best Interest and Protection of	§	
	§	**___________________County, Texas**
_________________________	§	
(List the initial of the person you seek to protect.)	§	
	§	

<u>Motion for Protective Custody</u>
(Sec. 574.021, Texas Health and Safety Code)
(To be completed by a county or district attorney.)

1. An application for court-ordered mental health services ("Application") was filed in the Court and is still pending.

2. A Certificate of Medical Examination for Mental Illness ("Certificate") is attached to this Motion. The Certificate was prepared by a physician ("Certifying Physician") who examined ____ ("Proposed Patient") within the three days before this Motion's filing.

3. Movant has reason to believe and does believe that: (1) the Certifying Physician stated their opinion that the Proposed Patient is a person with mental illness and gave the detailed basis for that opinion; and (2) the Proposed Patient presents a substantial risk of serious harm to themselves or others if not immediately restrained pending a hearing.

4. Movant's belief is derived from:

   (Check all that apply.)
   ☐ the representation of a credible person;
   ☐ the Proposed Patient's conduct;
   ☐ the circumstances under which the Proposed Patient is found.

5. Movant asks the Court to determine—based on the information in the Application, this Motion, and the Certificate—that (1) the Certifying Physician stated their opinion that the Proposed Patient is a person with mental illness and gave the detailed basis for that opinion; and (2) the Proposed Patient presents a substantial risk of serious harm to themselves or others if not immediately restrained pending a hearing. However, Movant conditionally requests to present additional evidence if the Court decides that a fair determination cannot be made from the Application, Motion, and Certificate alone.

6. Movant asks the Court to issue an Order of Protective Custody, ordering that a peace officer or other designated person:

(Check one.)

☐ take the Proposed Patient into protective custody and immediately transport the Proposed Patient to ____ ("Facility").

☐ maintain protective custody of the Proposed Patient at ________________________________ ________________________________ ("Facility").

7. Movant also asks the Court to order that the Proposed Patient be detained in the Facility until a probable cause hearing or a hearing on court-ordered mental health services, whichever is first.

Respectfully Submitted,

____

County/District Attorney Name and Contact Information

____

County/District Attorney Signature

____

Date

Cause No. ________

The State of Texas for the	§	**In the ______________ Court**
	§	
	§	
Best Interest and Protection of	§	
	§	**____________________County, Texas**
__________________________	§	
	§	
	§	

Order of Protective Custody

1. An Application for Court-Ordered Mental Health Services ("Application") for ____ ("Proposed Patient") was filed in this Court. A Motion for Protective Custody ("Motion") was filed by the appropriate representative of the State. A Certificate of Medical Examination for Mental Illness ("Certificate") was attached to the motion. The Certificate showed that the Proposed Patient was examined within the three days before the Motion's filing, by ____ ("Certifying Physician").

2. The Court has considered the Application, Motion, and Certificate.

3. (Check one.)
   ☐ The Court determines that the conclusions of the Applicant, Movant, and Certifying Physician are adequately supported by the information provided.
   ☐ The Court heard additional evidence.

4. Based on the Application, Motion, Certificate, and any additional evidence heard, the Court determines that the Certifying Physician stated their opinion that the Proposed Patient is a person with mental illness and gave the detailed basis for that opinion. The Court also determines that the Proposed Patient shows a substantial risk of serious harm to themselves or others if not immediately restrained pending a hearing. The substantial risk of serious harm was evidenced by:

   (Check all that apply.)
   ☐ the Proposed Patient's behavior;
   ☐ evidence of severe emotional distress and deterioration in the Proposed Patient's mental condition to the extent that the proposed patient cannot remain at liberty.

5. A person authorized to transport a patient under Section 574.045 of the Texas Health and Safety Code **is ordered** to:

   (Check one.)
   ☐ take the Proposed Patient into protective custody and immediately transport the Proposed Patient to ____ ("Facility"),

which the Court finds is a suitable facility, pending a probable cause hearing or a hearing on court-ordered mental health services, whichever is first.

☐ maintain custody of the Proposed Patient at ____ ("Facility"), which the Court finds is a suitable facility, pending a probable cause hearing or a hearing on court-ordered mental health services, whichever is first.

6. A person authorized to transport a patient under Section 574.045 of the Texas Health and Safety Code **is also ordered** to return a copy of this Order, signed by the facility's representative, to the Court.

7. **This Order is effective for 72 hours from the below date and time, unless the expiration time falls on a weekend or legal holiday, then the Order expires the next business day at 4 p.m.**

____
Date and Time

____
Judge (Print name here.)

____
Judge (Sign name here.)

To be completed by the Facility:
The Proposed Patient was received at ____ (facility name) on ____ (date). ____ Facility Representative (Print name here.) ____ Facility Representative (Sign name here.) ____ Title

Cause No. ________

The State of Texas for the	§	In the _____________ Court
	§	
	§	
Best Interest and Protection of	§	
	§	__________________County, Texas
________________________	§	
(List the initial of the person you seek to protect.)	§	
	§	

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

Motion to Modify Court-Ordered Inpatient Mental Health Services to Outpatient Mental Health Services
(Sec. 574.061, Texas Health and Safety Code)

1. My name is ____.

2. I am a Mental Health Administrator at ____.
(List the name of the facility.)

3. I am the individual responsible for the court-ordered inpatient mental health services of the Patient, ____.
(List the name of the patient.)

4. The Court issued an Order for Inpatient Mental Health Services on ______________________ date that ordered the Patient to participate in involuntary inpatient mental health services at ____.
(List the name of the facility.)

5. The Order for Inpatient Mental Health Services provides for:

(Check one.)
☐ temporary inpatient services under Section 574.034 of the Texas Health and Safety Code.
☐ extended inpatient services under Section 574.035 of the Texas Health and Safety Code.

6. I believe there has been a substantial change in the needs and condition of the Patient, and the Patient now requires a less restrictive environment. The detailed reasons for my opinion are:

____

____

____

____

____

____.

7. I have attached a supporting Certificate of Medical Examination for Mental Illness, showing that the Patient was examined, within the seven days before this Motion's filing, by ____.
(List the name of the certifying physician.)

8. I ask the Court to modify the Order for Inpatient Mental Health Services to require the Patient to participate in outpatient mental health services.

____
Movant (Print your name here.)

____
Movant (Sign your name here.)

____
Date

Cause No. ________

The State of Texas for the	§	**In the ______________ Court**
	§	
	§	
Best Interest and Protection of	§	
	§	**____________________County, Texas**
__________________________	§	
(List the initial of the person you seek to protect.)	§	
	§	

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

Certificate of Notice
Motion to Modify Court-Ordered Inpatient Services to Outpatient Services

I certify that on __________________________________ (date) I gave a copy of the Motion to Modify Court-Ordered Inpatient Services to Outpatient Services to the Patient.

The Patient:

(Check one.)
☐ requests a hearing
☐ **does not** request a hearing.

____ ____________________
Your Signature Date

____
Patient Signature

____
Witness Signature

Cause No. ________

The State of Texas for the	§	**In the _____________ Court**
	§	
	§	
Best Interest and Protection of	§	
	§	**__________________County, Texas**
________________________	§	
(List the initial of the person you seek to protect.)	§ §	

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

Application for Order to Administer Psychoactive Medication
(Patient with Criminal Justice Involvement)
(Sec. 574.104, Texas Health and Safety Code)

1. My name is ____.

2. (Check one.)
☐ I am a M.D.
☐ I am a D.O.

3. I am filing this Application under Section 574.104 of the Texas Health and Safety Code to ask for an order authorizing the administration of psychoactive medication(s) listed in Exhibit A to ____ (“Patient”), regardless of Patient’s refusal. (List the patient’s name.)

4. The Court issued an Order for Inpatient Mental Health Services on ____________________________ (date) that ordered the Patient to participate in involuntary inpatient mental health services.

5. The current Order for Inpatient Mental Health Services provides for services under:

(Check one.)
☐ Chapter 46B of the Texas Code of Criminal Procedure, titled “Incompetency to Stand Trial.”
☐ Chapter 46C of the Texas Code of Criminal Procedure, titled “Insanity Defense.”
☐ Chapter 55 of the Texas Family Code, titled “Proceedings Concerning Children with Mental Illness or Intellectual Disability.”

6. I have diagnosed the Patient with the following condition(s): ____________________________

____

____.

7. I have determined that the administration of the psychoactive medication(s) listed in Exhibit A is the proper course of treatment for and in the best interest of the Patient.

8. I propose administering the psychoactive medication(s) by the method(s) specified in Exhibit A. If a proposed method for administering a medication is not customary, I have explained my reasons for the departure from custom in Exhibit A.

9. The Patient, verbally or by other indication, refuses to take voluntarily the psychoactive medication(s) listed in Exhibit A.

10. (Check all that apply.)

☐ I believe the Patient lacks the capacity to make a decision regarding the administration of psychoactive medication for the following reasons:

____

____

____

____

____

____

____

____.

☐ I believe the Patient presents a danger, as set forth in Section 574.1065 of the Texas Health and Safety Code, to self or others in the mental health facility or correctional facility in which they are being treated for the following reasons:

____

____

____

____

____

____

____

____.

11. I believe that, if the Patient is treated with the psychoactive medication(s) listed in Exhibit A, the Patient's prognosis is:

____

____

____

____

____

____

____

____.

12. I have considered the following alternatives to the psychoactive medication(s) listed in Exhibit A for treatment of the Patient:

____

____

____

____

____

____

____

____.

13. I have determined that the alternatives listed in paragraph 12 will not be as effective as the administration of the psychoactive medication(s) listed in Exhibit A for the following reasons:

____

____

____

____

____

____

____

____.

14. I believe that, if the Patient is not administered the psychoactive medication(s) listed in Exhibit A, the consequences will be:

____

____

____

____

____

____

____

____.

15. I believe that the benefits of the Patient taking the psychoactive medication(s) listed in Exhibit A outweigh the risks of such medication in relation to present medical treatment.

16. I believe the following entity is responsible for costs and expenses:
☐ Hospital: ____ (List name of hospital.)
☐ Healthcare district
☐ County where the proceedings are pending
☐ Other County: ____
(List the name of the other county.)

____
(List the person you spoke with from that county.)

____
(List that person's phone number.)

____
(List the date you contact that person.)

(**Attach paperwork from the other county to this Application.**)

17. In addition to the requests in paragraphs 3 and 4, I also ask the Court to:

    a. appoint a lawyer to represent the Patient;

    b. set a hearing on this Application to be held not later than 30 days after the date this Application is filed;

    c. direct the Clerk of the Court to issue a notice of hearing with a copy of this Application to be served upon the Patient immediately after the time of the hearing is set; and

    d. direct the Clerk of the Court to issue a notice of hearing to me immediately after the time of hearing is set.

18. I swear to the truth of everything in this Application, and I know that I can be prosecuted for the crime of lying

____
Date

____
Applicant (List your contact information here.)

____
Applicant (Sign your name here.)

Cause No. ________

The State of Texas for the	§	**In the _____________ Court**
	§	
	§	
Best Interest and Protection of	§	
	§	**__________________County, Texas**
________________________	§	
(List the initial of the person you seek to protect.)	§	
	§	

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

Application for Order to Administer Psychoactive Medication
(Patient without Criminal Justice Involvement)
(Sec. 574.104, Texas Health and Safety Code)

1. My name is ____.

2. (Check one.)
☐ I am a M.D.
☐ I am a D.O.

3. I am filing this Application under Section 574.104 of the Texas Health and Safety Code to ask for an order authorizing the administration of psychoactive medication(s) listed in Exhibit A to ____ ("Patient"), regardless of Patient's refusal. (List Patient's name.)

4. (Check one.)
☐ The Court issued an Order for Inpatient Mental Health Services on _____________________________ (date) that ordered the Patient to participate in involuntary inpatient mental health services.
☐ An Application for Court-Ordered Mental Health Services has been filed and is still pending. I ask that this Application be heard on the same date as the Application for Court-Ordered Mental Health Services.

5. The current Order for Inpatient Mental Health Services or Application for Court-Appointed Mental Health Services provides for or requests:

(Check one.)
☐ temporary inpatient services under Section 574.034 of the Texas Health and Safety Code.
☐ extended inpatient services under Section 574.035 of the Texas Health and Safety Code.

6. I have diagnosed the Patient with the following condition(s): ___________________________

____

____.

7. I have determined that the administration of the psychoactive medication(s) listed in Exhibit A is the proper course of treatment for and in the best interest of the Patient.

8. I propose administering the psychoactive medication(s) by the method(s) specified in Exhibit A. If a proposed method for administering a medication is not customary, I have explained my reasons for the departure from custom in Exhibit A.

9. The Patient, verbally or by other indication, refuses to take voluntarily the psychoactive medication(s) listed in Exhibit A.

10. I believe the Patient lacks the capacity to make a decision regarding the administration of psychoactive medication for the following reasons:

____

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11. I believe that, if the Patient is treated with the psychoactive medication(s) listed in Exhibit A, the Patient's prognosis is:

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12. I have considered the following alternatives to the psychoactive medication(s) listed in Exhibit A for treatment of the Patient:

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13. I have determined that the alternatives listed in paragraph 12 will not be as effective as the administration of the psychoactive medication(s) listed in Exhibit A for the following reasons:

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14. I believe that, if the Patient is not administered the psychoactive medication(s) listed in Exhibit A, the consequences will be:

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15. I believe that the benefits of the Patient taking the psychoactive medication(s) listed in Exhibit A outweigh the risks of such medication in relation to present medical treatment.

16. I believe the following entity is responsible for costs and expenses:
☐ Hospital: ____ (List name of hospital.)
☐ Healthcare district
☐ County where the proceedings are pending
☐ Other County: ____
(List the name of the other county.)

____
(List the person you spoke with from that county.)

____
(List that person's phone number.)

____
(List the date you contact that person.)

(**Attach paperwork from the other county to this Application.**)

17. In addition to the requests in paragraphs 3 and 4, I also ask the Court to:

a. appoint a lawyer to represent the Patient;

b. set a hearing on this Application to be held not later than 30 days after the date this Application is filed;

c. direct the Clerk of the Court to issue a notice of hearing with a copy of this Application to be served upon the Patient immediately after the time of the hearing is set; and

d. direct the Clerk of the Court to issue a notice of hearing to me immediately after the time of hearing is set.

18. I swear to the truth of everything in this Application, and I know that I can be prosecuted for the crime of lying

____
Date

Applicant (List your contact information here.)

Applicant (Sign your name here.)

Tab D2

[Judicial Administration Committee Redline]

1. Application for Emergency Detention 21

2. Advisement to Patient under Emergency Detention 24

3. Motion for Protective Custody............ 26

4. Order for Protective Custody 28

5. Motion to Modify Court-Ordered Inpatient Mental Health Services to Outpatient Mental Health Services............ 30

6. Application for Order to Administer Psychoactive Medication (Patient with Criminal Justice Involvement)............ 33

7. Application for Order to Administer Psychoactive Medication (Patient without Criminal Justice Involvement)............ 38

Cause No. ________
(The court clerk will fill in this blank when you turn in this Application.)

The State of Texas for the	§	**In the ______________ Court**
	§	(The court clerk will fill in this blank
	§	when you turn in this Application.)
Best Interest and Protection of	§	
	§	___________________**County, Texas**
_________________________	§	(The court clerk will fill in this blank
(List the initial of the person you seek to	§	when you turn in this A~~a~~pplication.)
protect.)	§	

<u>Application for Emergency Detention</u>
(Sec. 573.011, Texas Health and Safety Code)

1. My full name is ____.

2. I am ___________ years old.

3. My address is ____.

Commented [KW1]: If a specific type of address (home or business) is needed, specify as much.

4. My phone number is ____.

5. My email address is ____.

6. I have reason to believe and do believe that the following person has a mental illness:

   ____. This person is called the "Proposed Patient." (List the person's full name.).

7. I have reason to believe and do believe that the Proposed Patient presents a substantial risk of serious harm to themselves or to others, which I have described in specific detail below:

   ____

   ____

   ____

   ____

   ____

   ____

   ____

   ____.

8. I have reason to believe and do believe that the risk of harm from the Proposed Patient is imminent unless the Proposed Patient is immediately restrained.

9. My beliefs are based on specific recent behavior, acts, attempts, or threats by the Proposed Patient, which I have described in specific detail below:

____

____

____

____

____

____

____

____.

10. My relationship to the Proposed Patient is: ____.

11. (Check one.)
I am the Proposed Patient's guardian:
☐ No
☐ Yes, and the following Court granted the guardianship: _____________________________
(List the Court's name.)

12. I have attached any other relevant information to this Application.

13. I swear to the truth of everything in this Application, and I know that I can be prosecuted for the crime of lying.

____
Applicant (Sign your name here.)

____
Date

You should **not** fill in this portion of the Application. The judge or magistrate will complete it.
This Application was sworn to before me on ____. (List the date.) ____ Judge/Magistrate (Print name here.) ____ Judge/Magistrate (Sign name here.)

Advisement to Patient under Emergency Detention

(To be completed by a peace officer. **The peace officer should return one copy to the court.**)

To: ____

(List the Patient's name.)

You are being temporarily detained at a facility to determine if you are suffering from mental illness and if you need mental health services for the protection of yourself and others. "Detained" means held.

You should know the following information:

1. You are being temporarily detained at ____________________________________("Facility").
   (List the facility's name.)

2. The reasons for your temporary detention are: ____

   ____

   ____

   ____

   ____

   ____

   ____

   ____.

3. A doctor must examine you in the first 12 hours of your temporary detention. The Facility will then decide whether to officially admit you for temporary detention. "Temporary detention" is sometimes called "emergency detention" and usually lasts for less than 48 hours unless a court orders a longer period.

4. Your temporary detention could result in a longer period of involuntary commitment to a mental health facility. "Involuntary commitment" means checking you in to a mental health facility without your consent.

5. You have the right to hire a lawyer of your own choosing. If you cannot afford to hire a lawyer, a lawyer will be appointed to represent you. You must be given a reasonable opportunity to communicate with your lawyer.

6. You also have the right to a reasonable opportunity to communicate with a member of your family or another person who has an interest in your health and safety.

7. If you communicate with a mental health professional, those communications may be used to determine if a longer period of detention is necessary.

8. You will be released from temporary detention if, after the doctor's examination, the Facility decides not to officially admit you.

9. Even if the Facility decides to officially admit you, you have the right to be released from temporary detention if the Facility administrator determines at any time that:

   a. you no longer have a mental illness;

   b. there is no longer a substantial risk of serious harm to yourself or others;

   c. the risk of harm to yourself or to others is no longer imminent; or

   d. temporary detention is no longer the least restrictive means of restraint necessary.

10. If you are released, you have the right to be taken back to the location where you were found, to your Texas home, if any, or to another suitable location, unless you are arrested or object to the return.

Commented [KW2]: Will there ever be more than one Facility administrator? If so, change "the" to "a" here.

______________________________________ ______________

Signature of Patient Date

______________________________________ ______________

Signature of Peace Officer Date

Cause No. ________

The State of Texas for the	§	**In the _____________ Court**
	§	
	§	
Best Interest and Protection of	§	
	§	**__________________County, Texas**
________________________	§	
(List the initial of the person you seek to protect.)	§ §	

<u>Motion for Protective Custody</u>
(Sec. 574.021, Texas Health and Safety Code)
(To be completed by a county or district attorney.)

1. An application for court-ordered mental health services (“Application”) was filed in the Court and is still pending.

2. A Certificate of Medical Examination for Mental Illness (“Certificate”) is attached to this Motion. The Certificate was prepared by a physician (“Certifying Physician”) who examined ____ (“Proposed Patient”) within the three days before this Motion’s filing.

3. The person filing this motion (“Movant”) has reason to believe and does believe that: (1) the Certifying Physician stated their opinion that the Proposed Patient is a person with mental illness and gave the detailed basis for that opinion; and (2) the Proposed Patient presents a substantial risk of serious harm to themselves or others if not immediately restrained pending a hearing.

4. Movant’s belief is derived from:

   (Check all that apply.)
   ☐ the representation of a credible person;
   ☐ the Proposed Patient’s conduct;
   ☐ the circumstances under which the Proposed Patient was found.

5. Movant asks the Court to determine—based on the information in the Application, this Motion, and the Certificate—that (1) the Certifying Physician stated their opinion that the Proposed Patient is a person with mental illness and gave the detailed basis for that opinion; and (2) the Proposed Patient presents a substantial risk of serious harm to themselves or others if not immediately restrained pending a hearing. However, Movant conditionally requests to present additional evidence if the Court decides that a fair determination cannot be made from the Application, Motion, and Certificate alone.

6. Movant asks the Court to issue an Order of Protective Custody, ordering that a peace officer or other designated person:

(Check one.)
☐ take the Proposed Patient into protective custody and immediately transport the Proposed Patient to ____ ("Facility").
☐ maintain protective custody of the Proposed Patient at ________________________________ ________________________________ ("Facility").

7. Movant also asks the Court to order that the Proposed Patient be detained in the Facility until a probable cause hearing or a hearing on court-ordered mental health services, whichever is first.

Respectfully Submitted,

____
County/District Attorney Name and Contact Information

____
County/District Attorney Signature

____
Date

Cause No. ________

The State of Texas for the	§	**In the _____________ Court**
	§	
	§	
Best Interest and Protection of	§	
	§	**__________________County, Texas**
________________________	§	
	§	
	§	

<u>Order of Protective Custody</u>

1. An Application for Court-Ordered Mental Health Services ("Application") for ____ ("Proposed Patient") was filed in this Court. A Motion for Protective Custody ("Motion") was filed by the appropriate representative of the State. A Certificate of Medical Examination for Mental Illness ("Certificate") was attached to the M~~m~~otion. The Certificate showed that the Proposed Patient was examined within the three days before the Motion's filing, by ____ ("Certifying Physician").

2. The Court has considered the Application, Motion, and Certificate.

3. (Check one.)
   ☐ The Court determines that the conclusions of the Applicant, Movant, and Certifying Physician are adequately supported by the information provided.
   ☐ The Court heard additional evidence.

4. Based on the Application, Motion, Certificate, and any additional evidence heard, the Court determines that the Certifying Physician stated their opinion that the Proposed Patient is a person with mental illness and gave the detailed basis for that opinion. The Court also determines that the Proposed Patient shows a substantial risk of serious harm to themselves or others if not immediately restrained pending a hearing. The substantial risk of serious harm was evidenced by:

   (Check all that apply.)
   ☐ the Proposed Patient's behavior;
   ☐ evidence of severe emotional distress and deterioration in the Proposed Patient's mental condition to the extent that the P~~p~~roposed P~~p~~atient cannot remain at liberty.

5. A person authorized to transport a patient under Section 574.045 of the Texas Health and Safety Code **is ordered** to:

   (Check one.)
   ☐ take the Proposed Patient into protective custody and immediately transport the Proposed Patient to ____ ("Facility"),

which the Court finds is a suitable facility, pending a probable cause hearing or a hearing on court-ordered mental health services, whichever is first.

☐ maintain custody of the Proposed Patient at ____ ("Facility"), which the Court finds is a suitable facility, pending a probable cause hearing or a hearing on court-ordered mental health services, whichever is first.

6. A person authorized to transport a patient under Section 574.045 of the Texas Health and Safety Code **is also ordered** to return a copy of this Order, signed by the Ffacility's representative, to the Court.

Commented [KW3]: Should this be "a"?

7. **This Order is effective for 72 hours from the below date and time, unless the expiration time falls on a weekend or legal holiday, then the Order expires the next business day at 4 p.m.**

____
Date and Time

____
Judge (Print name here.)

____
Judge (Sign name here.)

To be completed by the Facility:
The Proposed Patient was received at ____ (facility name) on ____ (date). ____ Facility Representative (Print name here.) ____ Facility Representative (Sign name here.) ____ Title

Cause No. ________

The State of Texas for the	§	**In the ______________ Court**
	§	
	§	
Best Interest and Protection of	§	
	§	**___________________County, Texas**
_________________________	§	
(List the initial of the person you seek to protect.)	§ §	

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

Motion to Modify Court-Ordered Inpatient Mental Health Services to Outpatient Mental Health Services
(Sec. 574.061, Texas Health and Safety Code)

1. My name is ____.

2. I am a Mental Health Administrator at ____.
(List the name of the facility.)

3. I am the individual responsible for the court-ordered inpatient mental health services of the Patient, ____.
(List the name of the patient.)

4. The Court issued an Order for Inpatient Mental Health Services on _______________________ (date) that ordered the Patient to participate in involuntary inpatient mental health services at ____.
(List the name of the facility.)

5. The Order for Inpatient Mental Health Services provides for:

(Check one.)
☐ temporary inpatient services under Section 574.034 of the Texas Health and Safety Code.
☐ extended inpatient services under Section 574.035 of the Texas Health and Safety Code.

6. I believe there has been a substantial change in the needs and condition of the Patient, and the Patient now requires a less restrictive environment. The detailed reasons for my opinion are:

____

____

____

____

____

____.

7. I have attached a supporting Certificate of Medical Examination for Mental Illness, showing that the Patient was examined, within the seven days before this Motion's filing, by
____.
(List the name of the certifying physician.)

8. I ask the Court to modify the Order for Inpatient Mental Health Services to require the Patient to participate in outpatient mental health services.

____
Movant (Print your name here.)

____
Movant (Sign your name here.)

____
Date

Cause No. ________

The State of Texas for the	§	**In the ______________ Court**
	§	
	§	
Best Interest and Protection of	§	
	§	**___________________County, Texas**
_________________________	§	
(List the initial of the person you seek to protect.)	§	
	§	

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

Certificate of Notice
Motion to Modify Court-Ordered Inpatient Services to Outpatient Services

I certify that on _________________________________ (date) I gave a copy of the Motion to Modify Court-Ordered Inpatient Services to Outpatient Services to the Patient.

The Patient:

(Check one.)
☐ requests a hearing
☐ **does not** request a hearing.

_______________________________________ ____________________
Your Signature Date

____
Patient Signature

____
Witness Signature

Cause No. ________

The State of Texas for the **Best Interest and Protection of** _________________________ (List the initial of the person you seek to protect.)	§ § § § § § § §	**In the _____________ Court** **__________________County, Texas**

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

Application for Order to Administer Psychoactive Medication
(Patient with Criminal Justice Involvement)
(Sec. 574.104, Texas Health and Safety Code)

1. My name is ____.

2. (Check one.)
☐ I am a M.D.
☐ I am a D.O.

3. I am filing this Application under Section 574.104 of the Texas Health and Safety Code to ask for an order authorizing the administration of psychoactive medication(s) listed in Exhibit A to ____ ("Patient"), regardless of Patient's refusal. (List the patient's name.)

4. The Court issued an Order for Inpatient Mental Health Services on _____________________________ (date) that ordered the Patient to participate in involuntary inpatient mental health services.

5. The current Order for Inpatient Mental Health Services provides for services under:

(Check one.)
☐ Chapter 46B of the Texas Code of Criminal Procedure, titled "Incompetency to Stand Trial."
☐ Chapter 46C of the Texas Code of Criminal Procedure, titled "Insanity Defense."
☐ Chapter 55 of the Texas Family Code, titled "Proceedings Concerning Children with Mental Illness or Intellectual Disability."

6. I have diagnosed the Patient with the following condition(s): ____________________________

____

____.

7. I have determined that the administration of the psychoactive medication(s) listed in Exhibit A is the proper course of treatment for and in the best interest of the Patient.

8. I propose administering the psychoactive medication(s) by the method(s) specified in Exhibit A. If a proposed method for administering a medication is not customary, I have explained my reasons for the departure from custom in Exhibit A.

9. The Patient, verbally or by other indication, refuses to take voluntarily the psychoactive medication(s) listed in Exhibit A.

10. (Check all that apply.)

☐ I believe the Patient lacks the capacity to make a decision regarding the administration of psychoactive medication for the following reasons:

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☐ I believe the Patient presents a danger, as set forth in Section 574.1065 of the Texas Health and Safety Code, to self or others in the mental health facility or correctional facility in which they are being treated for the following reasons:

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11. I believe that, if the Patient is treated with the psychoactive medication(s) listed in Exhibit A, the Patient's prognosis is:

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12. I have considered the following alternatives to the psychoactive medication(s) listed in Exhibit A for treatment of the Patient:

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13. I have determined that the alternatives listed in paragraph 12 will not be as effective as the administration of the psychoactive medication(s) listed in Exhibit A for the following reasons:

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14. I believe that, if the Patient is not administered the psychoactive medication(s) listed in Exhibit A, the consequences will be:

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____.

15. I believe that the benefits of the Patient taking the psychoactive medication(s) listed in Exhibit A outweigh the risks of such medication in relation to present medical treatment.

16. I believe the following entity is responsible for costs and expenses:

☐ Hospital: ____ (List name of hospital.)
☐ Healthcare district
☐ County where the proceedings are pending
☐ Other County: ____
(List the name of the other county.)

____
(List the person you spoke with from that county.)

____
(List that person’s phone number.)

____
(List the date you contact that person.)

(**Attach paperwork from the other county to this Application.**)

17. In addition to the requests in paragraphs 3 and 4, I also ask the Court to:

    a. appoint a lawyer to represent the Patient;

    b. set a hearing on this Application to be held not later than 30 days after the date this Application is filed;

    c. direct the Clerk of the Court to issue a notice of hearing with a copy of this Application to be served upon the Patient immediately after the time of the hearing is set; and

    d. direct the Clerk of the Court to issue a notice of hearing to me immediately after the time of hearing is set.

18. I swear to the truth of everything in this Application, and I know that I can be prosecuted for the crime of lying.

____
Date

____
Applicant (List your contact information here.)

____
Applicant (Sign your name here.)

Cause No. ________

The State of Texas for the	§	**In the _____________ Court**
	§	
	§	
Best Interest and Protection of	§	
	§	**__________________County, Texas**
________________________	§	
(List the initial of the person you seek to protect.)	§	
	§	

(Fill in the blanks above. Copy the information listed at the top of the Order for Inpatient Mental Health Services.)

<u>Application for Order to Administer Psychoactive Medication</u>
<u>(Patient without Criminal Justice Involvement)</u>
(Sec. 574.104, Texas Health and Safety Code)

1. My name is ____.

2. (Check one.)
☐ I am a M.D.
☐ I am a D.O.

3. I am filing this Application under Section 574.104 of the Texas Health and Safety Code to ask for an order authorizing the administration of psychoactive medication(s) listed in Exhibit A to ____ ("Patient"), regardless of Patient's refusal. (List Patient's name.)

4. (Check one.)
☐ The Court issued an Order for Inpatient Mental Health Services on ____________________________ (date) that ordered the Patient to participate in involuntary inpatient mental health services.
☐ An Application for Court-Ordered Mental Health Services has been filed and is still pending. I ask that this Application be heard on the same date as the Application for Court-Ordered Mental Health Services.

5. The current Order for Inpatient Mental Health Services or Application for Court-Appointed Mental Health Services provides for or requests:

(Check one.)
☐ temporary inpatient services under Section 574.034 of the Texas Health and Safety Code.
☐ extended inpatient services under Section 574.035 of the Texas Health and Safety Code.

6. I have diagnosed the Patient with the following condition(s): ___________________________

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____.

7. I have determined that the administration of the psychoactive medication(s) listed in Exhibit A is the proper course of treatment for and in the best interest of the Patient.

8. I propose administering the psychoactive medication(s) by the method(s) specified in Exhibit A. If a proposed method for administering a medication is not customary, I have explained my reasons for the departure from custom in Exhibit A.

9. The Patient, verbally or by other indication, refuses to take voluntarily the psychoactive medication(s) listed in Exhibit A.

10. I believe the Patient lacks the capacity to make a decision regarding the administration of psychoactive medication for the following reasons:

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11. I believe that, if the Patient is treated with the psychoactive medication(s) listed in Exhibit A, the Patient's prognosis is:

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12. I have considered the following alternatives to the psychoactive medication(s) listed in Exhibit A for treatment of the Patient:

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13. I have determined that the alternatives listed in paragraph 12 will not be as effective as the administration of the psychoactive medication(s) listed in Exhibit A for the following reasons:

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14. I believe that, if the Patient is not administered the psychoactive medication(s) listed in Exhibit A, the consequences will be:

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15. I believe that the benefits of the Patient taking the psychoactive medication(s) listed in Exhibit A outweigh the risks of such medication in relation to present medical treatment.

16. I believe the following entity is responsible for costs and expenses:
☐ Hospital: ____ (List name of hospital.)
☐ Healthcare district
☐ County where the proceedings are pending
☐ Other County: ____
(List the name of the other county.)

____
(List the person you spoke with from that county.)

____
(List that person's phone number.)

____
(List the date you contact that person.)

(**Attach paperwork from the other county to this Application.**)

17. In addition to the requests in paragraphs 3 and 4, I also ask the Court to:

a. appoint a lawyer to represent the Patient;

b. set a hearing on this Application to be held not later than 30 days after the date this Application is filed;

c. direct the Clerk of the Court to issue a notice of hearing with a copy of this Application to be served upon the Patient immediately after the time of the hearing is set; and

d. direct the Clerk of the Court to issue a notice of hearing to me immediately after the time of hearing is set.

18. I swear to the truth of everything in this Application, and I know that I can be prosecuted for the crime of lying.

____
Date

____
Applicant (List your contact information here.)

____
Applicant (Sign your name here.)

Tab E

The Supreme Court of Texas

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201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

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December 14, 2021

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

Remote Proceedings Rules. In the attached report, the Remote Proceedings Task Force proposes new Rules of Civil Procedure 21d, 500.2(g), and 500.10; amendments to Rules of Civil Procedure 18c, 21, 176, and 500.8; amendments to Rules of Appellate Procedure 14, 39, and 59; and amendments to Rule of Judicial Administration 12. The Committee should review and make recommendations.

Sincerely,

Nathan L. Hecht
Chief Justice

Attachments

KEN WISE
KEVIN D. JEWELL
FRANCES BOURLIOT
JERRY ZIMMERER
CHARLES A. SPAIN
MEAGAN HASSAN
MARGARET "MEG" POISSANT
RANDY WILSON

Fourteenth Court of Appeals

TRACY CHRISTOPHER

CHRISTOPHER A. PRINE
Phone: 713/274-2800

www.txcourts.gov/14thcoa

November 17, 2021

Chief Justice Nathan Hecht
(sent via email)

Re: Remote Proceedings Task Force Report of November 17, 2021

Dear Chief Justice Hecht,

Pursuant to the Supreme Court's Remote Proceedings Rules Plan, our task force split into three subcommittees to review our civil rules. Our goal was to propose rules that will accommodate remote proceedings in the future. Our Task Force received numerous emails in support of continued remote proceedings and met with other interested stakeholders. We had input from members of the State Bar Rules Committee as well.

Subcommittee 1, chaired by Lisa Hobbs, reviewed the Rules of Judicial Administration, the Rules of Appellate Procedure, and Texas Rule of Civil Procedure 18c, concerning recording and broadcasting of court proceedings. The committee has proposed a substantially revised rule 18c, changes to various appellate rules and to administrative rule12. The report is attached as Exhibit A.

Subcommittee 2, chaired by Kennon Wooten, has proposed a new rule of civil procedure for notice of hearings and for remote appearances at court proceedings. The subcommittee also worked with the Justice Court Working Group to similarly revise those rules. The report is attached as Exhibit B

Subcommittee 3, chaired by Quentin Smith, discussed and prepared changes to Rule 176 to accommodate subpoenas to remote depositions or hearings and a few other minor rule changes. The report is attached as Exhibit C.

We have enjoyed working on the preliminary drafting assignments and stand ready to assist the court in any further review or drafting.

Sincerely, *Tracy Christopher*
Tracy Christopher

November 9, 2021

To: Remote Proceedings Task Force

From: Lisa Hobbs, chair, Subcommittee 1

Re: Subcommittee 1's Report and Recommendations

Subcommittee one met on the following dates:

September 29, 2021
October 12, 2021
November 3, 2021

Our proposed new and amended rules are attached as Exh. A.

Task 1: Recording and Broadcasting Rules

One of the most difficult of our subcommittee's tasks was to review and recommend amendments to the Texas rules governing the recording and broadcasting of court proceedings in light of the trend towards remote proceedings via Zoom, YouTube, etc. The subcommittee reviewed two rules. *See* TEX. R. CIV. P. 18c; TEX. R. APP. P 14 (copies of current rules attached as Exh. B).

In addition to the current rules, the subcommittee also reviewed and relied on two other documents. First, the Office of Court Administration has created a document entitled *Background and Legal Standards – Public Right to Access Remote Hearings During Covid-19 Pandemic*. (See Exh. C.)[1] Second, in the early nineties, the Texas Supreme Court studied and finalized uniform rules for the coverage of court proceedings, which served as a template for many counties who have adopted a local rule on broadcasting. *See, e.g.*, Misc. Docket No. 92-0068 (attached as Exh. D).

The subcommittee observed the differences in approaches to the various rules and standards. Most notably, current Rule 18c appears to require consent of participants before a proceeding can be recorded or broadcast. *See also In re BP Products North America Inc.*, 263 S.W.3d 117 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding)

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[1] OCA provided trial courts a wealth of information on remote proceedings during the pandemic, which can be accessed here: [TJB | Court Coronavirus Information | Electronic Hearings (Zoom) (txcourts.gov)]

(conditionally issuing writ of mandamus in a case where a Galveston trial court allowed the "gavel to gavel" broadcast of a trial over one party's objection). Rule 18c is alone in this approach. The other rules and guidelines, including TRAP 14, leave the decision to record or broadcast to the trial or appellate court, presumably even over an objection by a party or participant.

The variance left a lot for the subcommittee to discuss. Some discussions were more philosophical; some discussions were more practical:

- When these rules were originally drafted, they contemplated a television camera in a physical courthouse to air on an evening newscast. Technology, and thus an individual's expectation of access and to information, has increased dramatically. There is room to completely re-write the rules with those expectations and technological advances in mind.
- Any "right to access" the courthouse is not an unfettered right. Live broadcasts during the pandemic were not an entitlement; they were a practical necessity for the participants and so the judicial process did not grind to a halt. As we get back to "normal," courthouses are and will be physically opened. There is no established "right" for the public to watch a proceeding from the comfort of their own homes.
- When sensitive and protected information is presented in a courtroom, rather than in person or remotely, that information must be protected. Any new rules should address that issue (particularly the issue of trade secrets) directly.
- A definition of "remote proceeding" might be helpful. A remote proceeding is not any proceeding in which any participant is participating remotely. A remote proceeding is one in which the judge is not in the courtroom, *i.e.*, there is no physical courtroom to "open" to the public.
- What is the nature of the public's right to access? What are the parameters of that right? The current rules, though philosophically different, already adopt the basic principle that the public's right to access is not unfettered and is subject to reasonable restrictions. (*See In re M-I L.L.C.*, 505 S.W.3d 569, 577-78 (Tex. 2016) ("To the extent the open-courts provision might confer a right of public access, this right clearly would not be absolute, but instead would be subject to reasonable limitations imposed to protect countervailing interests.")). We need not start from a blank slate. We should consider the limitations and restrictions already considered in Texas in past studies.
- With the publication of proceedings on a site like YouTube, there is the potential for misuse that was less of a concern under the traditional context of a media

entity recording portions of a proceeding for news broadcast purposes. These readily available, unedited recordings may pose security risks for the participants. They are also easy to manipulate and to be used for nefarious purposes—particularly in a state like Texas that elects judges. The potential for misuse raises practical questions, *e.g.*, should there be time limits for how long footage is stored/accessible?

- Should the procedures and standards for recording or broadcasting be different whether the medium is traditional media versus a court-controlled medium (like You-Tube)? Courts that regularly livestream their docket do not want an unwieldly process that might encourage objections to what is now seen as routine. This philosophy may create tension with business litigants who prefer a more defined procedure to guide a trial court when proprietary or trade secret information is at issue in a lawsuit.
- How detailed should the rule be?
  - Should it be a broad rule, leaving the issue in the trial court's sole discretion?
  - Should it provide time limitations or broader concepts like "reasonableness"/ "opportunity to be heard"?
  - Should the rule be permissive ("may… under these limitations…") or prohibitive ("cannot . . . unless")?
  - Who has the burden? What is the showing? Should findings be required?
  - Should there be an avenue for appellate review? If so, what is the standard of review?
  - Should a local jurisdiction be able to expand or restrict access inconsistent with any new rule?
- A final concern that did not get incorporated in the draft due to time constraints: some subcommittee member would expressly state that the ruling on an objection to recording/broadcasting must be made prior to a proceeding being recorded/broadcast, whether as a matter of good procedure or so that a party would have an express ruling for mandamus purposes. Others felt the ruling would be implicit in the trial court's action to record/broadcast (or not).

<u>Task 2: TRAP recommendations</u>

The subcommittee also reviewed the Texas Rules of Appellate Procedure to consider whether any rules needed to be amended to account for any new rules regarding remote proceedings that are recorded or broadcast.

As a result of its review, the subcommittee proposes amendments to the Texas Rules of Appellate Procedure to (1) conform TRAP 14 with new proposed TRCP 18c; and (2) expressly authorize remote oral argument in all cases. In making these recommendations, the subcommittee reviewed the relevant provisions of Chapter 22 of the Government Code and makes a few observations.

First, the Government Code authorizes any appellate court to "order that oral argument be presented through the use of teleconferencing technology." TEX. GOV'T CODE §22.302.[2] The Government Code also authorizes the two high courts to record and post online their arguments. TEX. GOV'T CODE §22.303 ("If appropriated funds or donations are available in the amount necessary to cover the cost, the supreme court and the court of criminal appeals shall make a video recording or other electronic visual and audio recording of each oral argument and public meeting of the court and post the recording on the court's Internet website."). The Government Code does not appear to authorize livestreaming for any appellate court and, more importantly, does not appear to authorize the intermediate appellate courts to even record and post online their oral arguments. Proposed amendments to TRAP 14 expressly provide that authority for all appellate courts.

Second, generally speaking, transferred cases must be heard in the originating appellate district unless all parties agree otherwise. TEX. GOV'T CODE §73.003. Likewise, some courts of appeals must hold argument in certain cases in a specific city or county. *See* TEX. GOV'T CODE TEX. GOV'T CODE §22.204 (Third CA must hold argument in Travis County in Travis County); §22.205 (Fourth CA must hold argument in Bexar County appeals in Bexar County); §22.207 (Sixth CA must hold argument in Bowie County appeals in Texarkana); §22.209 (Eighth CA must hold argument in El Paso appeals in El Paso county); §22.213 (Twelfth CA must hold argument in Smith County appeals in Tyler); TEX. GOV'T CODE §22.214 (Thirteenth CA must hold argument in Nueces County cases in Nueces County and cases from Cameron, Hidalgo, or Willacy County shall be heard and transacted in Cameron, Hidalgo, or Willacy counties). *See also* Roger Hughes, *The Fixed Locale Requirements for Appellate Court Proceedings: The Importance of Being Somewhere if You're Not Anywhere*, 22 APP. ADVOC. 122 (Winter 2009) (discussing in greater detail "fixed locale requirements" for Texas appellate courts and their history).

[2] There is also a specific authorization for remote proceedings in election proceedings. TEX. GOV'T CODE §22.305(b) (entitled "PRIORITY OF CERTAIN ELECTION PROCEEDINGS," and providing "[i]f granted, oral argument for a proceeding described by Subsection (a) may be given in person or through electronic means"). This is probably unnecessary given the general authorization in Section 22.302.

Even in these situations, however, it appears that appellate courts can hold argument remotely in lieu of in-person argument at a specific location. *See, e.g.*, TEX. GOV'T CODE §73.003(e) (allowing the chief justice of an appellate court to elect to "hear oral argument through the use of teleconferencing technology" in transferred cases); §22.302 (more generally authorizing an appellate "court and the parties or their attorneys [to] participate in oral argument from any location through the use of teleconferencing technology." Nevertheless, the subcommittee recommends adding a provision in proposed amendments to TRAP 39.8 to make clear that the general authority to hear a case remotely applies even when a particular case, by statute, must be heard in a particular location.

The additional notice requirements were added as good policy and to conform with existing practice.

The subcommittee recognized that having a recording of a proceeding, in addition to a transcribed record of the proceeding, may create confusion concerning the "official record" of a proceeding for purposes of appeal. The subcommittee unanimously agreed that the "official record" of a proceeding for purposes of appeal is only the transcribed record. The broadcast/recording is not the official record and should not be made a part of the appellate record. Moreover, any disputes about the "official record," whether prompted by a recording or otherwise, should be resolved by the trial court, not an appellate court. The subcommittee ultimately decided to include in proposed Rule 18c a notation about this issue. A similar provision could be added to TRAP 13.2 (duties of "official recorders").

Task 3: Rule of Judicial Administration 12

Rule of Judicial Administration 12 provides public access to "judicial records." The Rule is essentially the judiciary's version of the Public Information Act. The rule defines "judicial record" to expressly exclude records "pertaining to [a court's] adjudicative function, regardless of whether that function relates to a specific case." TEX. R. JUD. ADMIN. 12.2(d). "A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record." *Id.* Thus, under the current version of the rule, a "Zoom" recording of a hearing or proceeding is not a "judicial record" subject to Rule 12. *See, e.g.*, Rule 12 Decision, Appeal No. 21-009 (May 24, 2021) (available online at 21-009.pdf (txcourts.gov)).

Nevertheless, courts continue to receive requests for recordings of case-specific hearings and proceedings. The subcommittee recommends amending Rule 12 to make the current law more express as it relates to recordings of court proceedings.

EXHIBIT A

New Texas Rule of Civil Procedure 18c:

Recording and Broadcasting of Court Proceedings

18c.1. Recording and Broadcasting Permitted

A trial court may permit courtroom proceedings to be recorded or broadcast in accordance with this rule and any standards adopted by the Texas Supreme Court. This rule does not apply to an investiture, or other ceremonial proceedings, which may be broadcast or recorded at the trial court's sole discretion, with or without guidance from these rules.

18c.2. Recording and Broadcasting as a Matter of Course

A trial court may record or broadcast courtroom proceedings over which the trial court presides via a court-controlled medium. If a trial court elects to broadcast the proceeding, the trial court must give reasonable notice to the parties. Reasonable notice may include posting on the trial court's official webpage a general notice stating the types of proceedings recorded and broadcasted as a matter of course and the medium of broadcasting. Parties may object to a proceeding being recorded or broadcast by following the procedures and standards set forth in this rule.

18c.3 Procedure Upon Request

(a) *Request to Cover Court Proceeding*. A person wishing to cover a court proceeding by broadcasting, recording, or otherwise disseminating the audio, video, or images of a court proceeding must file with the court clerk a request to do so. The request must state:

(A) the case style and number;
(B) the date and time when the proceeding is to begin;
(C) the name of the requesting person or organization;
(D) the type of coverage requested (for example, televising or photographing);
(E) the type and extent of equipment to be used; and
(F) that all parties were notified of the request.

(b) *Response*. Any party may file a response to the request. If a party objects to coverage of a hearing, the objections must not be conclusory and must state the specific and demonstrable injury alleged to result from coverage.

(c) *Hearing*. The requestor or any party may request a hearing on objections to broadcasting or recording a proceeding, which may be granted so long as the hearing will not substantially delay the proceeding or cause undue prejudice to any party or participant.

18c.4. Decision of the Court

In making the decision to record or broadcast court proceedings, the court may consider all relevant factors, including but not limited to:

(1) the importance of maintaining public trust and confidence in the judicial system;
(2) the importance of promoting public access to the judicial system;
(3) whether public access to the proceeding is available absent the broadcast or recording of the proceeding;
(4) the type of case involved;
(5) the importance of, and degree of public interest in, the court proceeding;
(6) whether the coverage would harm any participants;
(7) whether trade secrets or other proprietary information will be unduly disseminated;
(8) whether the coverage would interfere with the fair administration of justice, provision of a fair trial, or the rights of the parties;
(9) whether the coverage would interfere with any law enforcement activity;
(10) the objections of any of the parties, prospective witnesses, victims, or other
(11) participants in the proceeding of which coverage is sought;
(12) the physical structure of the courtroom and the likelihood that any equipment required to conduct coverage of proceedings can be installed and operated without disturbance to those proceedings or any other proceedings in the courthouse;
(13) the extent to which the coverage would be barred by law in the judicial proceeding;
(14) undue administrative or financial burden to the court or participants; and
(15) the fact that any party, prospective witness, victim, or other participant in the proceeding is a child, to which fact the court shall give great weight.[1]

18c.5 Official Record

Video or audio reproductions of a proceeding pursuant to these rules shall not be considered as part of the official court record.

18c.6 Violations of Rule

Any person who records, broadcasts, or otherwise disseminates the audio, video, or imagery of a court proceeding without approval in accordance with this rule may be subject to disciplinary action by court, up to and including contempt.

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[1] Some subcommittee members would remove the phrase "to which fact the court shall give great weight" because it may cause more confusion than clarity. This phrase comes from the factors the supreme court adopted in Misc. Docket No. 92-0068.

Proposed Revisions to Texas Rules of Appellate Procedure 14:

Rule 14. Recording and Broadcasting Court Proceedings

14.1. Recording and Broadcasting Permitted

An appellate court may permit courtroom proceedings to be broadcast, televised, recorded, or photographed in accordance with this rule.

14.2. Recording and Broadcasting as a Matter of Course

An appellate court may record or broadcast courtroom proceedings over which the court presides via a court-controlled medium upon reasonable notice to the parties. Reasonable notice may include posting a general notice on the court's official webpage. Parties may object to a proceeding being recorded or broadcast by following the procedures and standards set forth in this rule.

14.3 Procedure Upon Request

(a) *Request to Cover Court Proceeding.*

(1) A person wishing to broadcast, televise, record, or photograph a court proceeding must file with the court clerk a request to cover the proceeding. The request must state:

(A) the case style and number;
(B) the date and time when the proceeding is to begin;
(C) the name of the requesting person or organization;
(D) the type of coverage requested (for example, televising or photographing); and
(E) the type and extent of equipment to be used.

(2) A request to cover argument of a case must be filed no later than five days before the date the case is set for argument and must be served on all parties to the case. A request to cover any other proceeding must be filed no later than two days before the date when the proceeding is to begin.

(b) *Response.* Any party may file a response to the request. If the request is to cover argument, the response must be filed no later than two days before the date set for argument. If a party objects to coverage of the argument, the response should state the injury that will allegedly result from coverage.

(c) *Court May Shorten Time*. The court may, in the interest of justice, shorten the time for filing a document under this rule if no party or interested person would be unduly prejudiced.

(d) *Decision of Court*. In deciding whether to allow coverage, the court may consider information known ex parte to the court. The court may allow, deny, limit, or terminate coverage for any reason the court considers necessary or appropriate, such as protecting the parties' rights or the dignity of the court and ensuring the orderly conduct of the proceedings.

Proposed Revisions to Texas Rules of Appellate Procedure 39:

Rule 39. Oral Argument; Decision Without Argument

***

39.8. Remote Argument

An appellate court may hold oral argument with participants physically present in the courtroom or remotely by audio, video, or other technological means. An oral argument held remotely complies with statutory provisions requiring argument be held in a specific location regardless of where the justices and participants are located at the time of argument.

39.9 Clerk's Notice

The clerk must send to the parties—at least 21 days before the date the case is set for argument or submission without argument—a notice telling the parties:

(a) whether the court will allow oral argument or will submit the case without argument;

(b) the date of argument or submission without argument;

(c) if argument is allowed, the time allotted for argument; ~~and~~

(d) the names of the members of the panel to which the case will be argued or submitted, subject to change by the court; and

(e) if a remote argument, whether the argument will be recorded or broadcast pursuant to Rule 14.2.

A party's failure to receive the notice does not prevent a case's argument or submission on the scheduled date.

Proposed Revisions to Texas Rules of Appellate Procedure 59:

Rule 59. Submission and Argument

59.2. Submission With Argument

If the Supreme Court decides that oral argument would aid the Court, the Court will set the case for argument. The clerk will notify all parties of the submission date, location, and, if a remote argument, whether the argument will be recorded or broadcast pursuant to Rule 14.2.

12.3 Applicability. This rule does not apply to:

(a) records or information to which access is controlled by:

(1) a state or federal court rule, including:

(A) a rule of civil or criminal procedure, including Rule 76a, Texas Rules of Civil Procedure;

(B) a rule of appellate procedure;

(C) a rule of evidence;

(D) a rule of administration;

(2) a state or federal court order not issued merely to thwart the purpose of this rule;

(3) the Code of Judicial Conduct;

(4) Chapter 552, Government Code, or another statute or provision of law;

(b) records or information to which Chapter 552, Government Code, is made inapplicable by statute, rule, or other provision of law, other than Section 552.003(1)(B);

(c) records or information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by:

(1) a state or federal court rule, including a rule of civil or criminal procedure, appellate procedure, or evidence; or

(2) common law, court order, judicial decision, or another provision of law

(d) elected officials other than judges~~.~~; or

(e) recordings of a remote proceeding made pursuant to Rule 18c.

EXHIBIT B

Texas Rules of Civil Procedure 18c provides:

> **Recording and Broadcasting of Court Proceedings**
>
> A trial court may permit broadcasting, televising, recording, or photographing of proceedings in the courtroom only in the following circumstances:
>
> (a) in accordance with guidelines promulgated by the Supreme Court for civil cases, or
>
> (b) when broadcasting, televising, recording, or photographing will not unduly distract participants or impair the dignity of the proceedings and the parties have consented, and consent to being depicted or recorded is obtained from each witness whose testimony will be broadcast, televised, or photographed, or
>
> (c) the broadcasting, televising, recording, or photographing of investiture, or ceremonial proceedings.

Texas Rules of Appellate Procedure 14 provides:

Rule 14. Recording and Broadcasting Court Proceedings

14.1. Recording and Broadcasting Permitted

An appellate court may permit courtroom proceedings to be broadcast, televised, recorded, or photographed in accordance with this rule.

14.2. Procedure

(a) *Request to Cover Court Proceeding.*

(1) A person wishing to broadcast, televise, record, or photograph a court proceeding must file with the court clerk a request to cover the proceeding. The request must state:

(A) the case style and number;
(B) the date and time when the proceeding is to begin;
(C) the name of the requesting person or organization;
(D) the type of coverage requested (for example, televising or photographing); and
(E) the type and extent of equipment to be used.

(2) A request to cover argument of a case must be filed no later than five days before the date the case is set for argument and must be served on all parties to the case. A request to cover any other proceeding must be filed no later than two days before the date when the proceeding is to begin.

(b) *Response.* Any party may file a response to the request. If the request is to cover argument, the response must be filed no later than two days before the date set for argument. If a party objects to coverage of the argument, the response should state the injury that will allegedly result from coverage.

(c) *Court May Shorten Time.* The court may, in the interest of justice, shorten the time for filing a document under this rule if no party or interested person would be unduly prejudiced.

(d) *Decision of Court.* In deciding whether to allow coverage, the court may consider information known ex parte to the court. The court may allow, deny, limit, or terminate coverage for any reason the court considers necessary or appropriate, such as protecting the parties' rights or the dignity of the court and ensuring the orderly conduct of the proceedings.

EXHIBIT C

BACKGROUND AND LEGAL STANDARDS – PUBLIC RIGHT TO ACCESS TO REMOTE HEARINGS DURING COVID-19 PANDEMIC[1]

On March 13, 2020, the Supreme Court of Texas and Court of Criminal Appeals issued the First Emergency Order Regarding the COVID-19 State of Disaster and authorized all courts in Texas in any case – civil or criminal – without a participant's consent to: 1) conduct any hearing or court proceeding remotely through teleconferencing, videoconferencing, or other means; and 2) conduct proceedings away from the court's usual location *with reasonable notice and access to the participants and the public*.[2] This emergency order's recognition of the public's right to reasonable notice and access to court proceedings, both civil and criminal, is consistent with traditional practice in Texas state courts and with federal and state precedent as discussed below.

The 6th Amendment of the Constitution of the United States affords defendants the right to a public trial, including all phases of criminal cases. Texas extends that right through the 14th Amendment to juvenile justice cases brought under Chapter 54 of the Texas Family Code.[3]

The Supreme Court has also held that the press and public have a similar, independent right under the 1st Amendment to attend all criminal proceedings in both federal and state courts.[4] Although the Supreme Court has never specifically held that the public has a First Amendment right of access to *civil* proceedings,[5] federal and state courts that have considered the issue have overwhelmingly held

[1] The Office of Court Administration wishes to thank District Judge Roy Ferguson (394th) for primary authorship on this document.

[2] The Third Emergency Order Regarding the COVID-19 State of Disaster amended the First Emergency Order to remove the requirement that the court conduct the proceedings in the count of venue.

[3] Texas courts have recognized the juvenile's right to public proceedings in quasi-criminal juvenile justice cases under the 14th Amendment and Section 54.08 of the Texas Family Code. Article 1, Section 13 of the Texas Constitution states that "All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law." Courts construing this provision interpret it to prohibit the erection of barriers to the redress of grievances in the court system. So, the phrase "open courts" in Section 13 does not appear to mean "public trial."

[4] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) (establishing that the 1st Amendment to the United States Constitution guarantees the public a right of access to judicial proceedings).

[5] Although the holding is specific to the criminal case, the constitutional analysis in *Richmond Newspapers* applies similarly to civil cases. As Chief Justice Burger in the majority opinion opined, "What this means in the context of trials is that the First Amendment guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long been open to the public at the time that Amendment was adopted." *Id.* at 576. In his concurrence, Justice Stevens wrote, "[T[he First Amendment protects the public and the press from abridgment of their rights of access to information about the operation of their government, including the judicial branch[.]" Justice Brennan added, "Even more significantly for our present purpose, […] open trials are bulwarks of our free and democratic government: public access to court proceedings is one of the numerous 'checks and balances' of our system, because 'contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power[.]'" *Id.* And Justice Stewart specifically addressed the issue of civil cases, saying, "the First and Fourteenth Amendments clearly give the press and the public a right of access to trials themselves, civil as well as criminal." *Id.* at 599.

that there is a public right to access in civil cases under the 1st Amendment.[6] Courts must ensure and accommodate public attendance at court hearings.[7] However, although constitutional in nature and origin, the right to public and open hearings is not absolute, and may be outweighed by other competing rights or interests, such as interests in security, preventing disclosure of non-public information, ensuring a fair trial, or protecting a child from emotional harm.[8] Such cases are rare, however, as the presumption of openness adopted by the Supreme Court must be overcome in order to close hearings to the public.[9] In some instances, improper or unjustified closure of court proceedings constitutes structural error, requiring "automatic reversal and the grant of a new trial."[10]

The Texas Family Code expressly authorizes the limiting of public access by agreement in contested hearings involving SAPCR claims and rights.[11] If supported by appropriate findings made on the record, the court may limit attendance at the hearing to only those persons who have a direct interest in the suit or in the work of the court.[12] But because the constitutional right at issue belongs to the public rather than the parties, all closures or restrictions of public access to such hearings must satisfy the same heightened standards handed down by the Supreme Court in *Waller* regarding criminal cases – even when agreed to by the parties. Thus, while the court may consider the parties' agreement while evaluating a request for closure, that agreement alone is not sufficient to warrant closure. The 1st Amendment right belongs to the public – not to the parties; the parties cannot waive it by agreement.

It is the court's affirmative burden to ensure meaningful and unfettered access to court proceedings. In fulfilling this burden, the court must take all reasonable measures necessary to ensure public access.[13] Lack of access to a single hearing (suppression), or even a portion of a single hearing (voir dire), is enough to mandate reversal and a new trial. At this time, the movement of the general public is limited by the executive branch through the governor and various county judges. Shelter-in-place orders and prohibitions on non-essential travel prevent members of the general public from viewing hearings in the courthouse. While hearings in courthouses are no longer mandatory under the First Emergency Order Regarding the COVID-19 State of Disaster, the emergency order requires "reasonable notice and access to the participants and the public." Even if a judge is physically in a courtroom for the virtual hearing, it is the court's burden to ensure public access to each hearing and take reasonable measures to remove barriers thereto. There is no reasonable access to the public for a hearing, whether remote or physically located in a courthouse, when emergency measures are in place that would require the public to commit a jailable criminal offense to attend the hearing in person in a courtroom.[14] For the duration of this crisis and while these emergency orders are in effect, courts must find a practical and effective way to enable public access to virtual court proceedings. Choosing not to provide reasonable and meaningful public access to remote court proceedings at this time may equate to constitutional error and mandate reversal.

[6] *See Doe v. Santa Fe Indep. School Dist.*, 933 F. Supp. 647, 648-50 (S.D. Tex. 1996) (discussing 3rd, 6th and 7th Circuit decisions and concluding that the right of the public to attend civil trials is grounded in the First Amendment as well as the common law).
[7] *See Lilly v. State*, 365 S.W.3d 321, 331 (Tex. Crim. App. 2012).
[8] *See United States v. Osborne*, 68 F.3d 94, 98-99 (5th Cir. 1995).
[9] *See In re A.J.S.*, 442 S.W.3d 562 (Tex. App.—El Paso 2014, no pet.)(discussing open courts in juvenile cases).
[10] Id. (citing *Steadman v. State*, 360 S.W.3d 499, 510 (Tex.Crim.App. 2012)(violation of 6th Amendment right)).
[11] Tex. Fam. Code § 105.003(b).
[12] Tex. Fam. Code. § 105.003.
[13] *See Lilly*, 365 S.W.3d at 331.
[14] *See* Executive Order GA-14 (March 31, 2020) and Tex. Gov't Code § 418.173.

Under the standards established by the United States Supreme Court, the protective measures employed must be limited to those necessary to protect an overriding interest and no broader. The trial court must consider all reasonable alternatives to closing the proceeding and make findings in open court on the record adequate to support the closure.[15] The court must weigh the totality of the circumstances in making these fact specific findings. For this reason, no standing order or global rule for closure of specific categories of hearings may be preemptively issued by a court without running afoul of the requirement to provide the public with access to court proceedings.

The court should not close the entirety of a hearing from public view in order to protect a single witness or topic of testimony. Because the court must apply only the least restrictive measures to protect the overriding interest, only specific portions of a hearing or trial that meet this exacting burden may be conducted outside of the public view, and that only in rare cases. Appellate courts have reversed judgments when a single less-restrictive solution existed but was not considered on the record.[16]

Courts should strongly consider employing protective measures short of interrupting or terminating the live stream. Federal courts, including the Fifth Circuit, have held that a partial closure of a proceeding – limiting access rather than excluding the public – does not raise the same constitutional concerns as a complete closure from public access.[17] To employ a less-restrictive measure (for example, temporarily obscuring video but not audio, or not displaying exhibits through screen share,[18] providing a phone number for the public to access the audio of the proceeding only, or providing a link that permits certain members of the public only to view the hearing either through a YouTube private link or a link to the Zoom meeting), the court need only find a "substantial reason" for the limitation and employ a restriction that does not exceed justifiable limits.[19] Terminating or interrupting the livestream without an alternative means for the public to view the hearing – even temporarily – would constitute a complete closure, and the higher burden would apply.

It bears mentioning that this is not a new issue created by video hearings or public livestreaming. Sensitive and embarrassing testimony is entered in every contested family law hearing yet rarely merits closure or clearing of courtrooms. Child protection cases categorically involve evidence that is or may be damaging or embarrassing to the child. Commercial disputes commonly involve protected internal corporate operations. Rarely – if ever – have such trials been closed to the public. Such testimony should not now be evaluated differently simply because more people may exercise their constitutional right to view court proceedings than ever before. Public exercise of a constitutional right does not change the court's evaluation of whether that right should be protected. Nor should courts erect barriers or hurdles to public attendance at hearings to discourage public exercise of that right. On the contrary, courts are required to take whatever steps are reasonably calculated to accommodate public attendance. Closure of courtrooms is constitutionally suspect and risky and should be a last resort.

[15] *Waller v. Georgia*, 467 U.S. 39, 48, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984).
[16] *See Cameron v. State*, 535 S.W.3d 574, 578 (Tex.App.—San Antonio 2017, no pet.)
[17] *United States v. Osborne*, 68 F.3d 94, 98-99 (5th Circ. 1995).
[18] The Supreme Court has ruled that the media does not have a First Amendment right to copy exhibits. *Nixon v. Warner Communications*, 435 U.S. 589 (1978).
[19] *A.J.S.*, 442 S.W.3d at 567 (citing *Osborne*, 68 F.3d at 94, and applying the 6th Amendment *Waller* and "substantial reason" standards to 14th Amendment public rights).

EXHIBIT D

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 92-0068

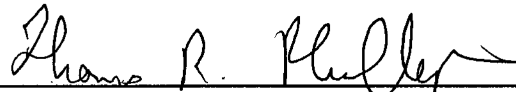
ADOPTION OF RULES FOR RECORDING AND BROADCASTING COURT PROCEEDINGS IN CERTAIN CIVIL COURTS OF TRAVIS COUNTY

ORDERED:

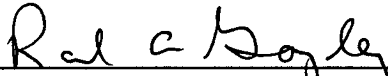
At the request of the civil district courts, county courts at law, and probate court of Travis County, the attached rules are adopted governing the recording and broadcasting of civil proceedings in those courts. TEX. R. CIV. P. 18c; TEX. R. APP. P. 21.

This Order shall be effective for each such court when it has recorded the Order in its minutes and complied with Texas Rule of Civil Procedure 3a(4).

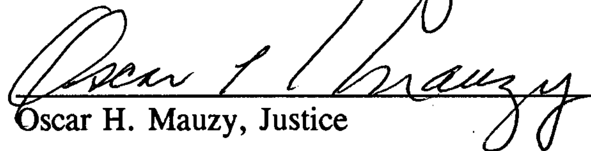
SIGNED AND ENTERED this 11th day of March, 1992.



Thomas R. Phillips, Chief Justice

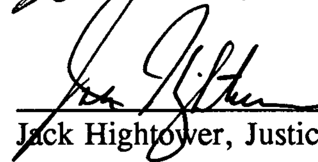


Raul A. Gonzalez, Justice



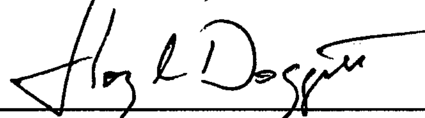
Oscar H. Mauzy, Justice

Eugene A. Cook, Justice

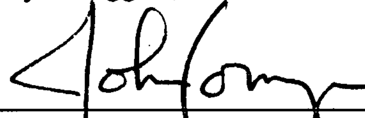


Jack Hightower, Justice

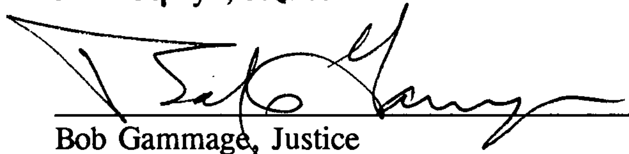
Nathan L. Hecht, Justice



Lloyd Doggett, Justice



John Cornyn, Justice



Bob Gammage, Justice

RULES GOVERNING THE RECORDING AND BROADCASTING OF COURT PROCEEDINGS IN CERTAIN CIVIL COURTS OF TRAVIS COUNTY

Pursuant to Rule 18c(a) of the Texas Rules of Civil Procedure, the following rules govern the recording and broadcasting of court proceedings before the civil district courts, county courts at law, and probate court of Travis County, and their masters and referees.

1. **Policy.** The policy of these rules is to allow media coverage of public civil court proceedings to facilitate the free flow of information to the public concerning the judicial system, to foster better public understanding about the administration of justice, and to encourage continuing legal education and professionalism by lawyers. These rules are to be construed to provide the greatest access possible while at the same time maintaining the dignity, decorum and impartiality of the court proceeding.

2. **Definitions.** Certain terms are defined for purposes of these rules as follows.

2.1. "Court" means the particular court, master or referee in which the proceeding will be held.

2.2. "Media coverage" means any visual or audio coverage of court proceedings by a media agency.

2.3. "Media" or "media agency" means any person or organization engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, in-house publication, professional journal, or other news reporting or news gathering agency.

2.4. "Visual coverage" means coverage by equipment which has the capacity to reproduce or telecast an image, and includes still and moving picture photographic equipment and video equipment.

2.5. "Audio coverage" is coverage by equipment which has the capacity to reproduce or broadcast sounds, and includes tape and cassette sound recorders, and radio and video equipment.

3. **Media coverage permitted.**

3.1. Media coverage is allowed in the courtroom only as permitted by Rule 18c of the Texas Rules of Civil Procedure and these rules.

3.2. If media coverage is of investiture or ceremonial proceedings as allowed by Rule 18c(c) of the Texas Rules of Civil Procedure, permission for, and the manner of such

coverage, are determined solely by the court, with or without guidance from these rules. If media coverage is for other than investiture or ceremonial proceedings, that is, under Rule 18c(a) or (b) of the Texas Rules of Civil Procedure, the provisions of these rules shall govern.

3.3. Media coverage under Rule 18c(a) and (b) of the Texas Rules of Civil Procedure is permitted only on written order of the court. A request for an order shall be made on the form included in these rules. The following procedure shall be followed, except in extraordinary circumstances and only if there is a finding by the court that good cause justifies a different procedure: (i) the request should be filed with the district clerk or county clerk, depending upon the court in which the proceeding is pending, with a copy delivered to the court, court administrator, all counsel of record and, where possible, all parties not represented by attorneys, and (ii) such request shall be made in time to afford the attorneys and parties sufficient time to confer, to contact their witnesses and to be fully heard by the court on the questions of whether media coverage should be allowed and, if so, what conditions, if any, should be imposed on such coverage. Whether or not consent of the parties or witnesses is obtained, the court may in its discretion deny, limit or terminate media coverage. In exercising such discretion the court shall consider all relevant factors, including but not limited to those listed in rule 3.5 below.

3.4. If media coverage is sought with consent as provided in Rule 18c(b) of the Texas Rules of Civil Procedure, consent forms adopted by the court shall be used to evidence the consent of the parties and witnesses. Original signed consent forms of the parties shall be attached to and filed with the request for order. Consent forms of the witnesses shall be obtained in the manner directed by the court. No witness or party shall give consent to media coverage in exchange for payment or other consideration, of any kind or character, either directly or indirectly. No media agency shall pay or offer to pay any consideration in exchange for such consent.

3.5. If media coverage is sought without consent, pursuant to Rule 18c(a) of the Texas Rules of Civil Procedure, the decision to allow such coverage is discretionary and will be made by the court on a case by case basis. Objections to media coverage should not be conclusory but should state the specific and demonstrable injury alleged to result from media coverage. If the court denies coverage, it shall set forth in its order the findings upon which such denial is based. In determining an application for coverage, the court shall consider all relevant factors, including but not limited to:

(a) the type of case involved;

(b) whether the coverage would cause harm to any participants;

(c) whether the coverage would interfere with the fair administration of justice, advancement of a fair trial, or the rights of the parties;

(d) whether the coverage would interfere with any law enforcement activity;

(e) the objections of any of the parties, prospective witnesses, victims, or other participants in the proceeding of which coverage is sought;

(f) the physical structure of the courtroom and the likelihood that any equipment required to conduct coverage of proceedings can be installed and operated without disturbance to those proceedings or any other proceedings in the courthouse;

(g) the extent to which the coverage would be barred by law in the judicial proceeding of which coverage is sought; and

(h) the fact that any party, prospective witness, victim, or other participant in the proceeding is a child, to which fact the court shall give great weight.

4. Media coverage prohibited

4.1. Media coverage of proceedings held in chambers, proceedings closed to the public, and jury selection is prohibited. Audio coverage and closeup video coverage of conferences between an attorney and client, witness or aide, between attorneys, or between counsel and the court at the bench is prohibited.

4.2. Visual coverage of potential jurors and jurors in the courthouse is prohibited except when in the courtroom the physical layout of the courtroom makes it impossible to conduct visual coverage of the proceeding without including the jury, and the court so finds. In such cases visual coverage is allowed only if the jury is in the background of a picture of some other subject and only if individual jurors are not identifiable.

5. Equipment and personnel. The court may require media personnel to demonstrate that proposed equipment complies with these rules. The court may specify the placement of media personnel and equipment to permit reasonable coverage without disruption to the proceedings. Unless the court in its discretion and for good cause orders otherwise, the following standards apply.

5.1. One television camera and one still photographer, with not more than two cameras and four lenses, are permitted.

5.2. Equipment shall not produce distracting sound or light. Signal lights or devices which show when equipment is operating shall not be visible. Moving lights, flash attachments, or sudden lighting changes shall not be used.

5.3. Existing courtroom sound and lighting systems shall be used without modification. An order granting permission to modify existing systems is deemed to require that the modifications be installed, maintained, and removed without public expense. Microphones and wiring shall be unobtrusively located in places approved by the court and shall be operated by one person.

5.4. Operators shall not move equipment or enter or leave the courtroom while the court is in session, or otherwise cause a distraction. All equipment shall be in place in advance of the proceeding or session.

5.5. Identifying marks, call letters, words and symbols shall be concealed on all equipment. Media personnel shall not display any identifying insignia on their clothing.

6. Delay of proceedings. No proceeding or session shall be delayed or continued for the sole purpose of allowing media coverage, whether because of installation of equipment, obtaining witness consents, conduct or hearings related to the media coverage or other media coverage questions. To assist media agencies to prepare in advance for media coverage, and when requested to do so: (i) the court will attempt to make the courtroom available when not in use for the purpose of installing equipment; (ii) counsel (to the extent they deem their client's rights will not be jeopardized) should make available to the media witness lists; (iii) and the court administrator will inform the media agencies of settings or proceedings.

7. Pooling. If more than one media agency of one type wish to cover a proceeding or session, they shall make pool arrangements. If they are unable to agree, the court may deny media coverage by that type of media agency.

8. Official record. Films, videotapes, photographs or audio reproductions made in the proceeding pursuant to these rules shall not be considered as part of the official court record.

THE SUPREME COURT OF TEXAS

P.O. BOX 12248 AUSTIN, TEXAS 78711
TEL: (512) 463-1312
FAX: (512) 463-1365

CHIEF JUSTICE
THOMAS R. PHILLIPS

JUSTICES
RAUL A. GONZALEZ
OSCAR H. MAUZY
EUGENE A. COOK
JACK HIGHTOWER
NATHAN L. HECHT
LLOYD DOGGETT
JOHN CORNYN
BOB GAMMAGE

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
MARY ANN DEFIBAUGH

September 22, 1992

Ms. Amalia Mendoza
District Clerk
Post Office Box 1748
Austin, Texas 78767

Dear Ms. Mendoza,

Enclosed, please find a **corrected** copy of the order of this Court of March 11, 1992 that approved local rules for recording and broadcasting court proceedings in certain civil courts of Travis County. Please destroy previous versions of this order.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.

cc:
Hon. B. B. Schraub
3rd Admin Judicial Rgn

Hon. Joseph H. Hart
126th District Court

County Clerk

Mr. Ray Judice
Office of Court Admin

State Law Library

Chmn Supreme Ct Adv Committee

JOSEPH H. HART
DISTRICT JUDGE
126TH JUDICIAL DISTRICT COURT

P. O. BOX 1748
AUSTIN, TEXAS 78767

April 17, 1992

Justice Nathan L. Hecht
Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Dear Justice Hecht:

Thank you for forwarding to me a copy of the Order recently issued by the Supreme Court adopting rules for recording and broadcasting court proceedings in civil courts in Travis County. A few omissions and errors have been brought to my attenion that the Court may wish to change.

There is some inconsistency between the first paragraph of the rules and paragraph 2.1. The opening paragraph does not include district court masters and referees, while paragraph 2.1 does. Paragraph 2.1 does not include county courts at law and the probate court of Travis County, while the opening paragraph does. I believe we intended to have all of the courts covered by the rules, and they all should be included in both the opening paragraph and paragraph 2.1.

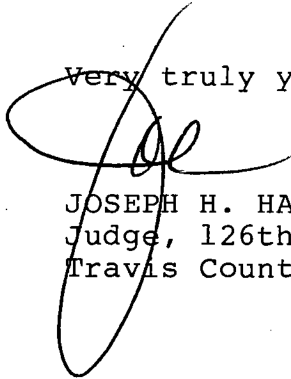
In paragraph 3.5(c) the conjunction "and" was probably included inadvertently and is not necessary.

The last sentence of paragraph 4.2 reads in part as follows: "In such cases visual coverage is allowed only <u>of</u> the jury is in the background of a picture ...." The "of" should be changed to "if" so that the sentence begins as follows: "In such cases visual coverage is allowed only <u>if</u> the jury is in the background of a picture ...."

Paragraph 5.1 reads in part as follows: "One television camera and one still photographer<u>s</u> ..." The word should be "photographer," singular, rather than "photographer<u>s</u>," plural.

Thank you, the Court and your staff for working with us on these rules. If there is a problem in making the corrections, please let me know.

Very truly yours,



JOSEPH H. HART
Judge, 126th District Court
Travis County, Texas

JHH/bjv

MEMORANDUM

TO: Chief Justice Tracy Christopher – Chair of Remote Proceedings Task Force

FROM: Subcommittee 2 of Task Force & Members of Justice Court Working Group

IN RE: Proposals Relating to Remote Hearings

DATE: November 8, 2021

I. Background Information

In a letter to you dated September 2, 2021, Chief Justice Nathan Hecht conveyed the Supreme Court of Texas's request that the Remote Proceedings Task Force (the "Task Force") "begin drafting rule amendments to remove impediments to and support the use of remote proceedings, starting with the Texas Rules of Civil Procedure." **Ex. 1**. He recognized that this is "a sizeable project that must be informed by many perspectives and experiences, as well as vision." *Id.* He then proposed a division of labor among many groups, including the Task Force and the Justice Court Working Group (the "Working Group"), but he noted that "the Task Force has the laboring oar." *Id.* Finally, he enclosed with his letter an outline of an envisioned work flow. *See id.* (enclosure).

In a memo dated September 9, 2021, you asked Subcommittee 2 of the Task Force to analyze hearings. You addressed the possibility of a global rule about hearings and suggested consideration of codification of submission-docket procedures. **Ex. 2**. You also stated that Subcommittee 2's proposal should cover witnesses appearing by remote means in a hearing or trial. You suggested generation of a draft in 60 days, if possible. *Id.*

After receiving your letter, the Chair of Subcommittee 2 (Kennon Wooten) and the Chair of the Working Group (Judge Nicholas Chu) decided that collaborative discussions among members of their respective groups would be beneficial to the rule-drafting process. Accordingly, they formed a team comprised of the following members: Ms. Wooten, Judge Chu, Judge Robert Hofmann, Judge Emily Miskel, Judge Larry Phillips, Nelson Mock, Judge Amy Tarno, Judge Kyle Hartmann, Trish McAllister, Briana Stone, Amber Myers, and Craig Noack (collectively referred to herein as the "Combined Team").[1] Subsequently, the Chair of the State Bar of Texas Court Rules Committee (Cynthia Timms) met with you and chairs of the Task Force's subcommittees to offer the Court Rules Committee's assistance with the drafting process. That discussion led to the addition of Chad Baruch as a member of the Combined Team.

The Combined Team met twice—on September 29 and October 18. In addition, a subset of the Combined Team met twice—on October 7 and October 15—to work on developing proposed rule language for consideration by the full Combined Team. Judge Miskel, Judge Chu, and Ms. Wooten also worked on drafting proposed rule language between meetings, in order to make meetings more efficient. All meetings occurred remotely, via Zoom. The Rules Attorney, Jaclyn Daumerie, joined meetings to the extent possible. She also provided guidance between meetings as to what the Supreme Court of Texas may want to see in rules relating to remote proceedings. Her guidance, combined with guidance set forth in Exhibits 1 and 2, shaped the Combined Team's discussions.

The Combined Team's proposal for rules of practice in district and county courts was finalized on October 18. That proposal is set forth in **Exhibit 3**. The Working Group, in turn, considered that proposal when developing a comparable proposal for rules of practice in justice courts. The Working Group's proposal is set forth in **Exhibit 4** and tracks the Combined Team's proposal, with some modifications needed for justice-court proceedings.

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[1] Judge Chu and Nelson Mock are members of Subcommittee 2 and of the Working Group.

II. Explanation of Considerations and Proposals

A. Judicial Discretion

The Combined Team had a robust discussion about whether to require or allow remote proceedings and, relatedly, whether to give parties the ability to opt out of remote proceedings in favor of in-person proceedings. Some members believed that judges should have the discretion to decide how to conduct court proceedings. Reasons in favor of judicial discretion included the following: (1) if allowed to opt in, some parties may not consent to remote participation, even when it is more efficient and cost-effective than in-person participation; and (2) the availability of remote proceedings during the pandemic has revealed that they increase party participation (over the baseline measured before the pandemic), which suggests that they increase access to justice. Members in favor of allowing parties to opt in to remote proceedings focused primarily on the following considerations: (1) some people do not have the technology needed to participate remotely; (2) some people have disabilities that preclude them from participating remotely; and (3) some proceedings are not well-suited for remote participation.

Considering the aforementioned guidance and the need to increase access to justice, among other factors, the Combined Team decided to let courts require or allow participants to appear at a court proceeding in person or remotely. Rather than trying to define the concept of "a remote proceeding," the Combined Team addressed what it means to appear in person or remotely.[2] Mindful that courts may feel restricted by statutes requiring in-person participation, the Combined Team included the following provision in proposed Rule 21d: "A remote appearance satisfies any statutory requirement to appear in person unless the statute expressly prohibits remote appearances." Otherwise, the Combined Team was intentionally neutral, in relation to in-person versus remote participation, understanding there is not a one-size-fits-all approach for court proceedings, courts, or participants.

B. Objection Procedure and Standard

Although the Combined Team decided to give courts the discretion to decide whether participants appear in person or remotely, the Combined Team also decided to give parties the ability to object to a designated method of appearance, regardless of whether the method was chosen initially by another party or by the court itself. The Combined Team discussed whether to impose a particular deadline for asserting an objection, but decided against that approach, understanding that the need for an objection may not arise until the day of the proceeding at hand. That said, the Combined Team also wanted to guard against the possibility of a party sitting on an objection, which could lead to unnecessary delay or postponement of proceedings. In an effort to strike the right balance, the Combined Team decided to require a party to make an objection within a reasonable time after the party identifies the need for the objection. The Combined Team also decided to require the court to rule on any objection asserted, but to allow the objection to be decided on submission rather than requiring a hearing for resolution.

Under proposed Rule 21d, an objection to a method of appearance must be supported by good cause. Rather than simply allowing the concept of "good cause" to develop through case law over time, the Combined Team provided a non-exhaustive list of examples of good cause in a draft comment for the proposed rule. This approach is not novel; it is modeled after the approach taken for comment 3 regarding the 2013 adoption of the

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[2] The language addressing remote participation is phrased broadly to withstand the test of time. It states that an individual can participate remotely "by audio, video, or other technological means." When the Supreme Court of Texas is deciding which standard to use here, it should consider whether there is a need to revisit and modify the current standards for remote depositions. *See* Tex. R. Civ. P. 199.1(b) ("A party may take an oral deposition *by telephone or other remote electronic means* if the party gives reasonable prior written notice of intent to do so. For the purposes of these rules, an oral deposition taken *by telephone or other remote electronic means* is considered as having been taken in the district and at the place where the witness is located when answering the questions.") (emphasis added); Tex. R. Civ. P. 199.5(a)(2) ("If a deposition is taken *by telephone or other remote electronic means*, the party noticing the deposition must make arrangements for all persons to attend by the same means. If the party noticing the deposition appears in person, any other party may appear *by telephone or other remote electronic means* if that party makes the necessary arrangements with the deposition officer and the party noticing the deposition.") (emphasis added).

expedited-actions process set forth in Rule 169 of the Texas Rules of Civil Procedure. What is novel, however, are the good-cause examples provided in the comment for proposed Rule 21d. The Combined Team strived to ensure that courts have guidance that will help them to be sufficiently sensitive to participants' abilities and needs. Of note, representatives of the Texas Access to Justice Commission were instrumental in drafting this comment.

C. Notice Requirements

Existing Rule 21(b) addresses the service of notice for a hearing. Considering that proposed Rule 21d addresses court proceedings generally, the Combined Team changed the term "hearing" to "court proceeding" or "proceeding" throughout. Retained in Rule 21(b), however, is the provision recognizing that the period of notice may be modified by the court or, for particular types of proceedings, by other Texas Rules of Civil Procedure.

A lot of discussion was dedicated to the content of a notice. Several questions arose. Should the content vary depending on whether the notice is coming from a party or from the court? Should the notice include a phone number for the court, so that participants can contact the court readily if the need to do so arises? How much technological detail should the notice include when remote participation is required? Should instructions for submitting evidence be in a notice for remote participation only, or for remote *and* in-person participation?

Ultimately, the Combined Team decided to require any notice of proceeding to "contain all information needed to participate in the proceeding" and provided a non-exhaustive explanation of notice content: "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." The Combined Team also included a comment recommending that a court "post or otherwise provide the information needed for notices of its proceeding." This approach will enable each court to dictate the information participants receive for its proceedings. Such flexibility reflects the reality that systems and abilities vary among courts in the 254 counties. Ideally, there will be more uniformity over time. But we are not there yet and must meet courts where they are.

D. Unique Standards for Rules of Practice in Justice Courts

The Working Group's proposal set forth in Exhibit 4 mirrors language in the Combined Team's proposal set forth in Exhibit 3 while also maintaining unique aspects of the rules in Part V of the Texas Rules of Civil Procedure, which applies to justice-court proceedings. With some exceptions, other Texas Rules of Civil Procedure (in parts other than Part V) do not apply to justice-court proceedings. *See* Tex. R. Civ. P. 500.1(e).

The Working Group's proposal adds a definition of "court proceeding" as a new Rule 500.2(g), in line with Part V's approach of defining terms of art to make Part V more accessible to self-represented litigants.

The Working Group's proposal also adds new Rule 500.10, which largely tracks new Rule 21d in Exhibit 3, with three changes. First, in Rule 500.10(b), the Working Group added the phrase "and timely communicate the ruling to the parties" after the provision mandating the court to rule on an objection to the designated method of appearance. This addition stems from the Working Group's concern that, without a requirement of timely communication, a participant might not have enough time to make arrangements to appear as ordered by the court. Second, Rule 500.10(c) incorporates the proposed changes to Rule 21(b), but focuses solely on notices generated by the justice court. This modification is based on the fact that, in justice-court proceedings, only the court can generate a notice of a setting. A party may not give notice to any other participant of a justice-court setting.

Lastly, the Working Group thought it was necessary to supplement the Combined Team's proposed comment by adding that the court's contact information in a notice should be specific enough to enable people to use that information to contact the court about an issue regarding participating in a proceeding and that people should expect a reasonably timely response from the court. In justice courts, many participants in proceedings are interacting with a court for the first time in their lives. Some people may not be familiar with the justice court, or may confuse the justice court with another court or clerk's office if left to research a way to contact the court.

Ensuring the expectation that using the court's designated contact information will result in a prompt response is designed to allow participants to troubleshoot issues with appearances quickly and, therefore, to ensure access to justice in proceedings when a participant may be new or unfamiliar with remote-proceeding technology.

E. Content Excluded From Proposed Rules

Technology standards (e.g., for remote attendance and remote submission of evidence) are excluded from the proposed rules. These standards will evolve over time, sometimes rapidly, and are better-suited for placement outside rules and development by the Judicial Committee on Information Technology ("JCIT") or a similar body. For one potential home, see the Technology Standards at https://www.txcourts.gov/jcit/technology-standards/. Wherever the standards are placed, it will be critical to educate courts and participants about them. If they are placed outside the Texas Rules of Civil Procedure, they should be referenced in comments to the amended rules. The Combined Team also suggests the creation of training videos, for courts and participants, and the placement of such videos on publicly available websites, such as Texas Law Help (at https://www.texaslawhelp.org/).

Submission-docket procedures are also excluded from the proposed rules. The approaches to and perceptions of submission dockets vary from court to court in Texas. The courts have been handling submission dockets without statewide rules for years. There does not appear to be a compelling need to regulate them.

EXHIBIT 1

The Supreme Court of Texas

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

Chambers of
THE CHIEF JUSTICE

September 2, 2021

Hon. Tracy Christopher
Chief Justice
Court of Appeals for the
Fourteenth District of Texas
Houston, TX

via email

Re: Remote Proceedings

Dear Chief Justice Christopher:

Thank you for your leadership as Chair of the Remote Proceeding Task Force and for the truly superb job that you and the Task Force members did on your reports submitted this spring. I know it was a Herculean task in a short amount of time.

The Court requests the Task Force to begin drafting rule amendments to remove impediments to and support the use of remote proceedings, starting with the Texas Rules of Civil Procedure. This is obviously a sizeable project that must be informed by many perspectives and experiences, as well as vision. We propose to divide the work among several groups—the Task Force, the Supreme Court Advisory Committee, the Justice Court Working Group, the Municipal Courts Education Center, and the Texas Judicial Council—though the Task Force has the laboring oar. The enclosure outlines the workflow we envision, but we encourage your feedback.

You are welcome to contact me or the Court's rules attorney, Jackie Daumerie, at any time. As always, thank you for your expert work and wise counsel.

Cordially,

Nathan L. Hecht
Chief Justice

Remote Proceedings Rules Plan

Preliminary Drafting Assignments

Rule	Group	Notes
Rules of Judicial Administration		
RJA 7	SCAC	Referred June 2021
Updates to other existing rules	Remote Proceedings TF	RPTF Access Subcommittee report suggests updates to RJA 12
Draft any necessary rules to preserve remote proceedings in criminal cases	TMCEC JP Working Group	
Rules of Civil Procedure		
TRCP 3a	Court	Already under consideration at Court.
TRCP 216-236	SCAC	
TRCP Part V	JP Working Group	
Draft any necessary rules for civil municipal court cases	TMCEC	TMCEC/MC judges are already working on civil rules more generally, and we can ask that they specifically think about remote proceeding needs.
Updates to other existing rules, including TRCP 18c, and drafting of any necessary rules	Remote Proceedings TF	RPTF Access Subcommittee report suggests updates to TRCP 176. RPTF Civil Subcommittee report has long list of other potential updates.

		Over the course of the pandemic, we've received consistent feedback that we need to (1) update the broadcasting rule and provide more guidance on public access; (2) implement procedures for requesting remote proceedings and objecting to and ruling on those requests; (3) add requirements, like citation and notice requirements, to inform SRLs and others about remote proceedings; and (4) draft rules about the exchange of evidence.
Rules of Appellate Procedure	Remote Proceedings TF	RPTF Civil Subcommittee report has list of potential updates.
Rules of Evidence	SBOT AREC	RPTF Civil Subcommittee report has list of potential updates. Over the course of the pandemic, we've received consistent feedback that we need to provide more guidance on Rule 614 (exclusion of witnesses) in the context of remote proceedings.
Best Practices/Mechanical "How To" Guides	Judicial Council	

Workflow

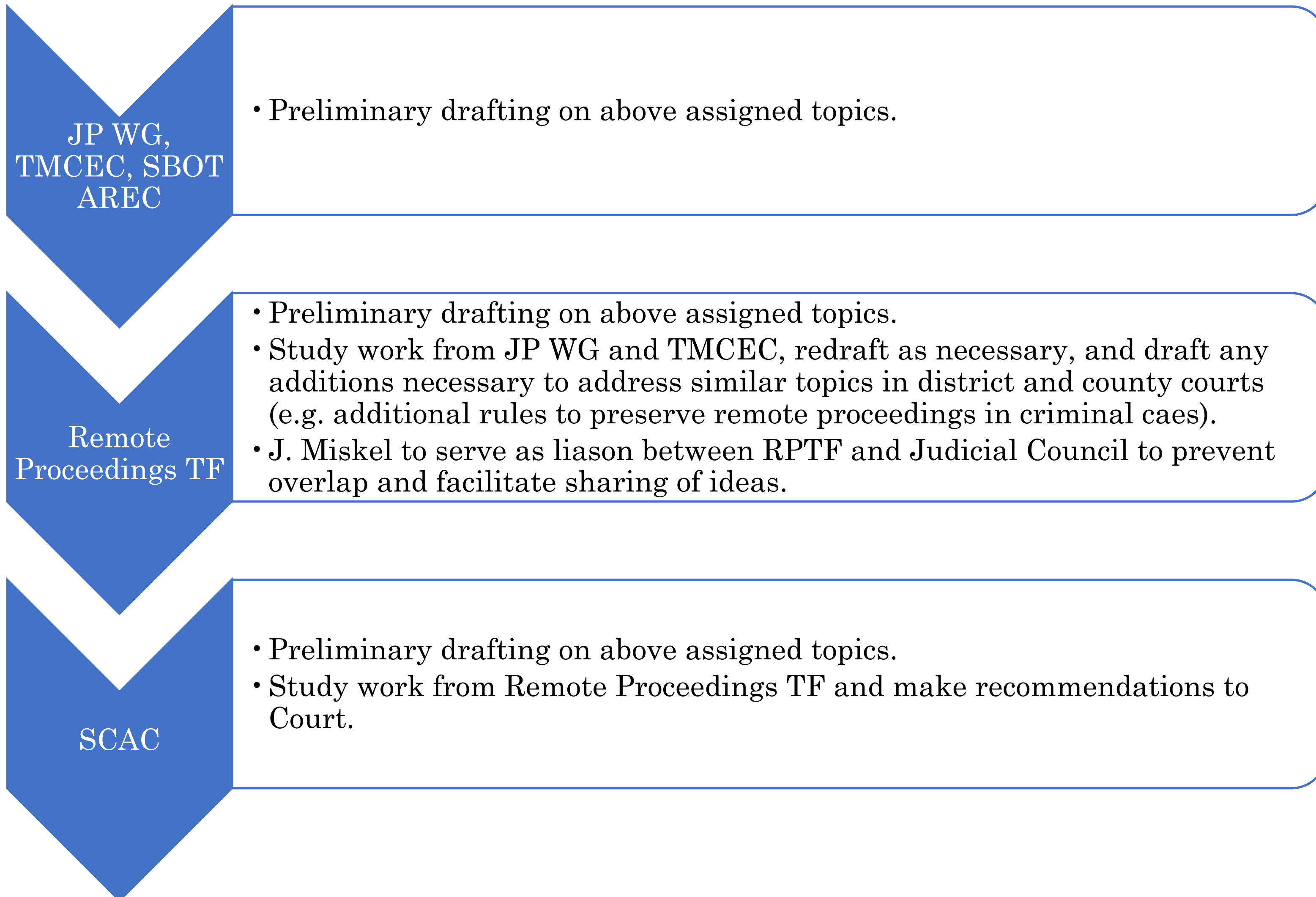

EXHIBIT 2

Memorandum

To: Remote Proceedings Task Force

From: Tracy Christopher

Date: September 9, 2021

Re: September 2021 referral from Chief Justice Hecht

I have decided to combine committees 1 and 2 and I have switched out the chairs for all subcommittees. I have asked CJ Hecht for a timeline but he did not have one in mind. I suggest a draft in 60 days if possible.

Subcommittee 1

Rules of Judicial Administration–12 (any others? 7 is revised)
TRCP 18c (consider best practices for sensitive information and broadcasting)
Rules of Appellate Procedure (coordinate on the broadcasting rules with subcommittee one)

Members:
Lisa Hobbs–chair
Judge Roy Ferguson
Chief Justice Rebecca Martinez
John Browning
Courtney Perez
Chris Prine
Marcy Greer

Subcommittee 2

Hearings–this would potentially be a global rule about hearings. Surprisingly when you look through TRCP, how and when a court has a hearing is not well defined–other than the 3 day notice rule. As many civil and family courts in the state now use a submission docket (by local rule) I suggest considering a codification of that process too. 2 supreme court cases on the submission docket. *Martin v. Martin, Martin & Richards, Inc*., 989 S.W.2d 357, 359 (Tex. 1998) (per

curiam) (motion for summary judgment hearing). *Contra Gulf Coast Inv. Corp. Nasa 1 Business Center*, 754 S.W.2d 152 (Tex. 1988) (per curiam) (language of rule 165a requires an oral hearing rather than submission).

It should also cover witnesses appearing by remote means in a hearing or trial.

Members:
Kennon Wooten–chair
Judge Robert Hofmann
Judge Emily Miskel
Judge Larry Phillips
Nicholas Chu
Nelson Mock

Subcommittee 3

TRCP 176–subpoenas

Members:
Quentin Smith-chair
Teri Workman
Judge Mollee Westfall
Dean Stanzione
Chief Justice Tracy Christopher

EXHIBIT 3

Proposed Rule Language
<u>Draft Date: October 18, 2021</u>

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 Proceeding.* An application to the court for an order and notice of any court proceeding thereon, not presented during a proceeding, must be served upon all other parties not less than three days before the time specified for the proceeding, 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.

. . . .

<u>Comment to 2021 Change</u>: 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) *Method.* 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. A remote appearance satisfies any statutory requirement to appear in person unless the statute expressly prohibits remote appearances.

(b) *Objection.* An objection to a method of appearance must be made within a reasonable time after a party identifies the need for the objection. The court must rule on the objection. The court is not required to hold a hearing on the objection before ruling and may grant the objection if it was timely filed and is supported by good cause.

<u>Comment to 2021 Change</u>: Rule 21d clarifies procedures for appearances at court proceedings. Subpart (b) addresses good-cause objections to a method of appearance. Examples of good cause include (1) an inability 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 a proceeding; (2) an inability to appear in person without compromising one's health or safety; and (3) the inability of the court to provide language access services for a person with limited English proficiency or to provide a reasonable accommodation for a person with a disability to participate in a proceeding.

EXHIBIT 4

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) *Method.* 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. A remote appearance satisfies any statutory requirement to appear in person unless the statute expressly prohibits remote appearances.

(b) *Objection.* An objection to a method of appearance must be made within a reasonable time after a party identifies the need for the objection. The court must rule on the objection and timely communicate the ruling to the parties. The court is not required to hold a hearing on the objection before ruling and may grant the objection if it was timely filed and is supported by good cause.

(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.

Comment to 2021 Change: New Rule 500.10 clarifies procedures for appearances at court proceedings. Subpart (b) addresses good-cause objections to a method of appearance. Examples of good cause include (1) an inability 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 a proceeding; (2) an inability to appear in person without compromising one's health or safety; and (3) the inability of the court to provide language access services for a person with limited English proficiency or to provide a reasonable accommodation for a person with a disability to participate in a proceeding. Subpart (c) requires the court's contact information to be included in a notice of a court proceeding. A participant should be able to use that information to receive a reasonably timely response regarding any issues concerning participating by being physically present in the courtroom or remotely.

Memorandum

Date: October 28, 2021

To: Remote Proceedings Task Force

From: <u>**Subcommittee on Subpoenas**</u>
Chief Justice Tracy Christopher
Mr. Quentin Smith – Chair
Hon. Mollee B. Westfall
Ms. Teri Workman

Re:

The Remote Proceedings Task Force asked our subcommittee to analyze how to make discovery from third parties by subpoenas more amenable to a remote environment, and, in doing so, address rules or obstacles that may be altered to promote that goal. In conducting our review, we primarily analyzed Texas Rules of Civil Procedure 176, 199, 205, and 500.8. We also analyzed Texas Civil Practice & Remedies Code Section 22.002.

This memorandum addresses our findings and attaches as Appendix A, proposed alterations to certain rules in the Texas Rules of Civil Procedure to make discovery from third parties by subpoenas more amenable to remote proceedings. After our discussions, our subcommittee identified four main areas that we needed to consider in this undertaking: (1) the 150-mile limitation on subpoenas; (2) the notice and appearance requirements at depositions, hearings, and trials; document production at a remote deposition; (3) document production in connection with a remote proceeding subpoena; and (4) enforcing compliance of remote proceeding subpoenas and electronic service.

1. The 150-Mile Limitation on Subpoenas

Allowing subpoenas for remote proceedings to be effective beyond 150 miles of the court would help promote the use of remote proceedings. Given that a remote proceeding should not require any party to travel (or at least travel less than 150 miles), there is not an undue burden placed on the person subject to a subpoena for a remote proceeding. Allowing parties to subpoena people more than 150 miles away would require a modification of Rule 176.3. Our proposed change is to carve out remote proceedings from the 150-mile limitation by stipulating that the place for compliance is in the county where the subpoenaed

person resides.[1] We propose limiting the applicability of subpoenas for remote proceedings to those persons who are in the State of Texas at the time of service.

2. The Notice and Appearance requirements at Depositions, Hearings, and Trials

Rule 176.2 does not prohibit subpoenas for remote proceedings or expressly state that attendance must be in person. Nonetheless, for the sake of clarity, we suggested a modification to Rule 176.2(a) to expressly allow for remote depositions and, if a court permits, remote appearances at a hearing or trial.

3. Document Production and Remote Proceedings

One of the key issues that arose is the production of documents at a virtual deposition. After discussing several ways to address this by rule, we realized that there is no perfect solution. Instead, we decided not to propose an alteration to any rule to specifically address documents at a virtual deposition, despite potential problems, because this is currently an issue that parties appear to be addressing without additional clarity in the rules. Our rationale in reaching this conclusion is that it is difficult to address the production of electronic documents at an in-person deposition under the current rules and people have been having virtual depositions throughout the COVID-19 pandemic seemingly without a rule addressing document production. Moreover, production of electronic documents is also an issue at in-person depositions and no rule addresses that dilemma. Therefore, our recommendation would be to stay silent and allow the parties to work together to reach a solution. To the extent the parties are unable to resolve a particular issue, trial court judges are more than capable of providing a solution for the parties.

4. Remote Subpoena Enforceability and Electronic Service

Two open items that remain in making subpoenas more amenable to remote proceedings relate to service of subpoenas. Rule 176.5 requires in-person service. Therefore, it does not allow for electronic service of subpoenas or service by certified mail. To make this possible, we would need to modify Rule 176.5 to be consistent with the recently amended rules that allow service of a petition by electronic mail and social media. We have not currently made this suggested revision because it is unclear whether it would be good policy to allow litigants to serve subpoenas on third parties by electronic means. Nonetheless, even if electronic service is not adopted, we do believe that parties should be allowed to serve subpoenas by certified mail.

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[1] We also note that Tex. Civ. Prac. & Rem. Code § 22.002 references the 150-mile limitation; however, the language of that statute is more permissive rather than limiting. *See id.* ("A witness who is represented to reside 150 miles or less from a county in which a suit is pending or who may be found within that distance at the time of trial on the suit may be subpoenaed in the suit.").

Related to service is the requirement that a party pay a subpoenaed person $10 with the subpoena to make it enforceable. If a party does not pay $10 to the subpoenaed person at the time of service, then the serving party cannot enforce the subpoena under Rule 1786.8(b). Even if the rules change to permit electronic service or service by certified mail, we believe that the rules addressing the payment of the fee for enforcement should remain unchanged. Our view is that it is best to let entrepreneurial litigants figure out how to solve that particular compliance issue rather than alter existing rules, which may create other unintended consequences. Additionally, altering the payment requirement could potentially require a change to a statute, Section 22.001 of the Texas Civil Practice & Remedies Code.[2]

[2] Tex. Civ. Prac. & Rem. Code § 22.001(a) ("Except as provided by Section 22.002, a witness is entitled to 10 dollars for each day the witness attends court. This fee includes the entitlement for travel and the witness is not entitled to any reimbursement for mileage traveled."); Tex. Civ. Prac. & Rem. Code § 22.001(b) ("The party who summons the witness shall pay that witness's fee for one day, as provided by this section, at the time the subpoena is served on the witness.").

Appendix A

RULE 176

176.1 Form.

Every subpoena must be issued in the name of "The State of Texas" and must:

(a) state the style of the suit and its cause number;

(b) state the court in which the suit is pending;

(c) state the date on which the subpoena is issued;

(d) identify the person to whom the subpoena is directed;

(e) state the time, place, and nature of the action required by the person to whom the subpoena is directed, as provided in Rule 176.2;

(f) identify the party at whose instance the subpoena is issued, and the party's attorney of record, if any;

(g) state the text of Rule 176.8(a); and

(h) be signed by the person issuing the subpoena.

176.2 Required Actions.

A subpoena must command the person to whom it is directed to do either or both of the following:

(a) attend and give testimony at a deposition, hearing, or trial, which attendance may be in person, by telephone, or by other remote means at a deposition and, with court permission, at a hearing or trial;

(b) produce and permit inspection and copying of designated documents or tangible things in the possession, custody, or control of that person.

176.3 Limitations.

(a) Range. A person may not be required by subpoena to appear or produce documents or other things in a county that is more than 150 miles from where the person resides or is served. However, a person whose appearance or production at a deposition may be compelled by notice alone under Rules 199.3 or 200.2 may be required to appear and produce documents or other things at any location permitted under Rules 199.2(b)(2). Notwithstanding anything else in this Rule, a person required to appear by telephone or other remote means is deemed to be appearing in the county where the subpoenaed person resides.

(b) Use for discovery. A subpoena may not be used for discovery to an extent, in a manner, or at a time other than as provided by the rules governing discovery.

176.4 Who May Issue.

A subpoena may be issued by:

(a) the clerk of the appropriate district, county, or justice court, who must provide the party requesting the subpoena with an original and a copy for each witness to be completed by the party;

(b) an attorney authorized to practice in the State of Texas, as an officer of the court; or

(c) an officer authorized to take depositions in this State, who must issue the subpoena immediately on a request accompanied by a notice to take a deposition under Rules 199 or 200, or a notice under Rule 205.3, and who may also serve the notice with the subpoena.

176.5 Service.

(a) Manner of service. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record.

(b) Proof of service. Proof of service must be made by filing either:

(1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

176.6 Response.

(a) Compliance required. Except as provided in this subdivision, a person served with a subpoena must comply with the command stated therein unless discharged by the court or by the party summoning such witness. A person commanded to appear and give testimony must remain at the ~~place of~~ deposition, hearing, or trial from day to day until discharged by the court or by the party summoning the witness.

(b) Organizations. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(c) Production of documents or tangible things. A person commanded to produce documents or tangible things need not appear in person at the time and place of production unless the person is also commanded to attend and give testimony, either in the same subpoena or a separate one. A person must produce documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand. A person may withhold material or information claimed to be privileged but must comply with Rule 193.3. A nonparty's production of a document authenticates the document for use against the nonparty to the same extent as a party's production of a document is authenticated for use against the party under Rule 193.7.

(d) Objections. A person commanded to produce and permit inspection or copying of designated documents and things may serve on the party requesting issuance of the subpoena - before the time specified for compliance - written objections to producing any or all of the designated materials. A person need not comply with the part of a subpoena to which objection is made as provided in this paragraph unless ordered to do so by the court. The party requesting the subpoena may move for such an order at any time after an objection is made.

176.5 Service.

(a) Manner of service. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record.

(b) Proof of service. Proof of service must be made by filing either:

(1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

Commented [TC1]: During the pandemic people did not want to open the door to a person serving a subpoena.
Should we consider an alternative to personal service?
We can now serve lawsuits by email–why not a subpoena?
Future discussion?

176.6 Response.

(a) Compliance required. Except as provided in this subdivision, a person served with a subpoena must comply with the command stated therein unless discharged by the court or by the party summoning such witness. A person commanded to appear and give testimony must remain at in ~~the place of~~ deposition, hearing, or trial from day to day until discharged by the court or by the party summoning the witness.

(b) Organizations. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(c) Production of documents or tangible things. A person commanded to produce documents or tangible things need not appear in person at the time and place of production unless the person is also commanded to attend and give testimony, either in the same subpoena or a separate one. A person must produce documents as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand. A person may withhold material or information claimed to be privileged but must comply with Rule 193.3. A nonparty's production of a document authenticates the document for use against the nonparty to the same extent as a party's production of a document is authenticated for use against the party under Rule 193.7.

(d) Objections. A person commanded to produce and permit inspection or copying of designated documents and things may serve on the party requesting issuance of the subpoena - before the time specified for compliance - written objections to producing any or all of the designated materials.

A person need not comply with the part of a subpoena to which objection is made as provided in this paragraph unless ordered to do so by the court. The party requesting the subpoena may move for such an order at any time after an objection is made.

(e) Protective orders. A person commanded to appear at a deposition, hearing, or trial, or to produce and permit inspection and copying of designated documents and things, and any other person affected by the subpoena, may move for a protective order under Rule 192.6(b)--before the time specified for compliance--either in the court in which the action is pending or in a district court in the county where the subpoena was served. The person must serve the motion on all parties in accordance with Rule 21a. A person need not comply with the part of a subpoena from which protection is sought under this paragraph unless ordered to do so by the court. The party requesting the subpoena may seek such an order at any time after the motion for protection is filed.

(f) Trial subpoenas. A person commanded to attend and give testimony, or to produce documents or things, at a hearing or trial, may object or move for protective order before the court at the time and place specified for compliance, rather than under paragraphs (d) and (e).

176.7 Protection of Person from Undue Burden and Expense.

A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

176.8 Enforcement of Subpoena.

(a) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both.

(b) Proof of payment of fees required for fine or attachment. A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered.

RULE 199. DEPOSITIONS UPON ORAL EXAMINATION

199.1 Oral Examination; Alternative Methods of Conducting or Recording.

(a) Generally. A party may take the testimony of any person or entity by deposition on oral examination before any officer authorized by law to take depositions. The testimony, objections, and any other statements during the deposition must be recorded at the time they are given or made.

(b) Depositions by telephone or other remote electronic means. A party may take an oral deposition by telephone or other remote electronic means if the party gives reasonable prior written notice of intent to do so. For the purposes of these rules, an oral deposition taken by telephone or other remote electronic means is considered as having been taken in the district and at the place where the witness is located when answering the questions.

(c) Non-stenographic recording. Any party may cause a deposition upon oral examination to be recorded by other than stenographic means, including videotape recording. The party requesting the non-stenographic recording will be responsible for obtaining a person authorized by law to administer the oath and for assuring that the recording will be intelligible, accurate, and trustworthy. At least five days prior to the deposition, the party must serve on the witness and all parties a notice, either in the notice of deposition or separately, that the deposition will be recorded by other than stenographic means. This notice must state the method of non-stenographic recording to be used and whether the deposition will also be recorded stenographically. Any other party may then serve written notice designating another method of recording in addition to the method specified, at the expense of such other party unless the court orders otherwise.

199.2 Procedure for Noticing Oral Depositions.

(a) Time to notice deposition. A notice of intent to take an oral deposition must be served on the witness and all parties a reasonable time before the deposition is taken. An oral deposition may be taken outside the discovery period only by agreement of the parties or with leave of court.

(b) Content of notice.

(1) Identity of witness; organizations. The notice must state the name of the witness, which may be either an individual or a public or private corporation, partnership, association, governmental agency, or other organization. If an organization is named as the witness, the notice must describe with reasonable particularity the matters on which examination is requested. In response, the organization named in the notice must - a reasonable time before the deposition - designate one or more individuals to testify on its behalf and set forth, for each individual designated, the matters on which the individual will testify. Each individual designated must testify as to matters that are known or reasonably available to the organization. This subdivision does not preclude taking a deposition by any other procedure authorized by these rules.

(2) Time and place. The notice must state a reasonable time and place for the oral deposition. The place may be in:

(A) the county of the witness's residence;

(B) the county where the witness is employed or regularly transacts business in person;

(C) the county of suit, if the witness is a party or a person designated by a party under Rule 199.2(b)(1);

(D) the county where the witness was served with the subpoena, or within 150 miles of the place of service, if the witness is not a resident of Texas or is a transient person; or

(E) subject to the foregoing, at any other convenient place directed by the court in which the cause is pending.

(3) Alternative means of conducting and recording. The notice must state whether the deposition is to be taken by telephone or other remote electronic means and identify the means. If the deposition is to be recorded by nonstenographic means, the notice may include the notice required by Rule 199.1(c).

(4) Additional attendees. The notice may include the notice concerning additional attendees required by Rule 199.5(a)(3).

(5) Request for production of documents. A notice may include a request that the witness produce at the deposition documents or tangible things within the scope of discovery and within the witness's possession, custody, or control. If the witness is a nonparty, the request must comply with Rule 205 and the designation of materials required to be identified in the subpoena must be attached to, or included in, the notice. The nonparty's response to the request is governed by Rules 176 and 205. When the witness is a party or subject to the control of a party, document requests under this subdivision are governed by Rules 193 and 196.

199.3 Compelling Witness to Attend.

A party may compel the witness to attend the oral deposition by serving the witness with a subpoena under Rule 176. If the witness is a party or is retained by, employed by, or otherwise subject to the control of a party, however, service of the notice of oral deposition upon the party's attorney has the same effect as a subpoena served on the witness.

199.4 Objections to Time and Place of Oral Deposition.

A party or witness may object to the time and place designated for an oral deposition by motion for protective order or by motion to quash the notice of deposition. If the motion is filed by the third business day after service of the notice of deposition, an objection to the time and place of a deposition stays the oral deposition until the motion can be determined.

199.5 Examination, Objection, and Conduct During Oral Depositions.

(a) Attendance.

(1) Witness. The witness must remain in attendance from day to day until the deposition is begun and completed.

(2) Attendance by party. A party may attend an oral deposition in person, even if the deposition is taken by telephone or other remote electronic means. If a deposition is taken by telephone or other remote electronic means, the party noticing the deposition must make arrangements for all persons to attend by the same means. If the party noticing the deposition appears in person, any other party may appear by telephone or other remote electronic means if that party makes the necessary arrangements with the deposition officer and the party noticing the deposition.

(3) Other attendees. If any party intends to have in attendance any persons other than the witness, parties, spouses of parties, counsel, employees of counsel, and the officer taking the oral deposition, that party must give reasonable notice to all parties, either in the notice of deposition or separately, of the identity of the other persons.

(b) Oath; examination. Every person whose deposition is taken by oral examination must first be placed under oath. The parties may examine and cross-examine the witness. Any party, in lieu of participating in the examination, may serve written questions in a sealed envelope on the party noticing the oral deposition, who must deliver them to the deposition officer, who must open the envelope and propound them to the witness.

(c) Time limitation. No side may examine or cross-examine an individual witness for more than six hours. Breaks during depositions do not count against this limitation.

(d) Conduct during the oral deposition; conferences. The oral deposition must be conducted in the same manner as if the testimony were being obtained in court during trial. Counsel should cooperate with and be courteous to each other and to the witness. The witness should not be evasive and should not unduly delay the examination. Private conferences between the witness and the witness's attorney during the actual taking of the deposition are improper except for the purpose of determining whether a privilege should be asserted. Private conferences may be held, however, during agreed recesses and adjournments. If the lawyers and witnesses do not comply with this rule, the court may allow in evidence at trial statements, objections, discussions, and other occurrences during the oral deposition that reflect upon the credibility of the witness or the testimony.

(e) Objections. Objections to questions during the oral deposition are limited to "Objection, leading" and "Objection, form." Objections to testimony during the oral deposition are limited to "Objection, non-responsive." These objections are waived if not stated as phrased during the oral deposition. All other objections need not be made or recorded during the oral deposition to be later raised with the court. The objecting party must give a clear and concise explanation of an objection if requested by the party taking the oral deposition, or the objection is waived. Argumentative or suggestive objections or explanations waive objection and may be grounds for terminating the oral deposition or assessing costs or other sanctions. The officer taking the oral deposition will not rule on objections but must record them for ruling by the court. The officer taking the oral deposition must not fail to record testimony because an objection has been made.

(f) Instructions not to answer. An attorney may instruct a witness not to answer a question during an oral deposition only if necessary to preserve a privilege, comply with a court order or these rules, protect a witness from an abusive question or one for which any answer would be misleading, or secure a ruling pursuant to paragraph (g). The attorney instructing the witness not to answer

must give a concise, non-argumentative, non-suggestive explanation of the grounds for the instruction if requested by the party who asked the question.

(g) Suspending the deposition. If the time limitations for the deposition have expired or the deposition is being conducted or defended in violation of these rules, a party or witness may suspend the oral deposition for the time necessary to obtain a ruling.

(h) Good faith required. An attorney must not ask a question at an oral deposition solely to harass or mislead the witness, for any other improper purpose, or without a good faith legal basis at the time. An attorney must not object to a question at an oral deposition, instruct the witness not to answer a question, or suspend the deposition unless there is a good faith factual and legal basis for doing so at the time.

199.6 Hearing on Objections.

Any party may, at any reasonable time, request a hearing on an objection or privilege asserted by an instruction not to answer or suspension of the deposition; provided the failure of a party to obtain a ruling prior to trial does not waive any objection or privilege. The party seeking to avoid discovery must present any evidence necessary to support the objection or privilege either by testimony at the hearing or by affidavits served on opposing parties at least seven days before the hearing. If the court determines that an in camera review of some or all of the requested discovery is necessary to rule, answers to the deposition questions may be made in camera, to be transcribed and sealed in the event the privilege is sustained, or made in an affidavit produced to the court in a sealed wrapper.

RULE 205

205.1 Forms of Discovery; Subpoena Requirement.

A party may compel discovery from a nonparty--that is, a person who is not a party or subject to a party's control--only by obtaining a court order under Rules 196.7, 202, or 204, or by serving a subpoena compelling:

(a) an oral deposition;

(b) a deposition on written questions;

(c) a request for production of documents or tangible things, pursuant to Rule 199.2(b)(5) or Rule 200.1(b), served with a notice of deposition on oral examination or written questions; and

(d) a request for production of documents and tangible things under this rule.

205.2 Notice.

A party seeking discovery by subpoena from a nonparty must serve, on the nonparty and all parties, a copy of the form of notice required under the rules governing the applicable form of discovery.

A notice of oral or written deposition must be served before or at the same time that a subpoena compelling attendance or production under the notice is served. A notice to produce documents or tangible things under Rule 205.3 must be served at least 10 days before the subpoena compelling production is served.

205.3 Production of Documents and Tangible Things Without Deposition.

(a) Notice; subpoena. A party may compel production of documents and tangible things from a nonparty by serving - reasonable time before the response is due but no later than 30 days before the end of any applicable discovery period - the notice required in Rule 205.2 and a subpoena compelling production or inspection of documents or tangible things.

(b) Contents of notice. The notice must state:

(1) the name of the person from whom production or inspection is sought to be compelled;

(2) a reasonable time and place for the production or inspection; and

(3) the items to be produced or inspected, either by individual item or by category, describing each item and category with reasonable particularity, and, if applicable, describing the desired testing and sampling with sufficient specificity to inform the nonparty of the means, manner, and procedure for testing or sampling.

(c) Requests for production of medical or mental health records of other non-parties. If a party requests a nonparty to produce medical or mental health records of another nonparty, the requesting party must serve the nonparty whose records are sought with the notice required under this rule. This requirement does not apply under the circumstances set forth in Rule 196.1(c)(2).

(d) Response. The nonparty must respond to the notice and subpoena in accordance with Rule 176.6.

(e) Custody, inspection and copying. The party obtaining the production must make all materials produced available for inspection by any other party on reasonable notice, and must furnish copies to any party who requests at that party's expense.

(f) Cost of production. A party requiring production of documents by a nonparty must reimburse the nonparty's reasonable costs of production.

RULE 500.8. SUBPOENAS

(a) Use. A subpoena may be used by a party or the judge to command a person or entity to attend and give testimony at a hearing or trial. A person may not be required by subpoena to appear in person in a county that is more than 150 miles from where the person resides or is served.

(b) Who Can Issue. A subpoena may be issued by the clerk of the justice court or an attorney authorized to practice in the State of Texas, as an officer of the court.

(c) Form. Every subpoena must be issued in the name of the "State of Texas" and must:

(1) state the style of the suit and its case number;

(2) state the court in which the suit is pending;

(3) state the date on which the subpoena is issued;

(4) identify the person to whom the subpoena is directed;

(5) state the date, time, place, and nature of the action required by the person to whom the subpoena is directed;

(6) identify the party at whose instance the subpoena is issued, and the party's attorney of record, if any;

(7) state that "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of court from which the subpoena is issued and may be punished by fine or confinement, or both"; and

(8) be signed by the person issuing the subpoena.

(d) Service: Where, By Whom, How. A subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or by any person who is not a party and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness and tendering to that person any fees required by law. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney of record. Proof of service must be made by filing either:

(1) the witness's signed written memorandum attached to the subpoena showing that the witness accepted the subpoena; or

(2) a statement by the person who made the service stating the date, time, and manner of service, and the name of the person served.

(e) Compliance Required. A person commanded by subpoena to appear and give testimony must remain at the hearing or trial from day to day until discharged by the court or by the party summoning the witness. If a subpoena commanding testimony is directed to a corporation, partnership, association, governmental agency, or other organization, and the matters on which examination is requested are described with reasonable particularity, the organization must designate one or more persons to testify on its behalf as to matters known or reasonably available to the organization.

(f) Objection. A person commanded to attend and give testimony at a hearing or trial may object or move for a protective order before the court at or before the time and place specified for compliance. A party causing a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served. In ruling on objections or motions for protection, the court must provide a person served with a subpoena an adequate time for compliance and protection from undue burden or expense. The court may impose reasonable conditions on compliance with a subpoena, including compensating the witness for undue hardship.

(g) Enforcement. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena is issued or of a district court in the county in which the subpoena is served, and may be punished by fine or confinement, or both. A fine may not be imposed, nor a person served with a subpoena attached, for failure to comply with a subpoena without proof of service and proof by affidavit of the party requesting the subpoena or the party's attorney of record that all fees due the witness by law were paid or tendered.

Tab F

MEMORANDUM

TO: Supreme Court Advisory Committee (SCAC)

FROM: Kennon L. Wooten

IN RE: Remote Proceedings – Revised Rule Proposals

DATE: August 11, 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, 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.[1] 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 clarity 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

---

[1] 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 Proceeding~~Hearing~~.** An application to the court for an order and notice of any court proceeding~~hearing~~ thereon, not presented during a ~~hearing or trial~~proceeding, must be served upon all other parties not less than three days before the time specified for the ~~hearing~~proceeding, 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.

Tab F1

Supplemental Remote Proceedings Materials

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Item

1 Emails Regarding Remote Proceedings

2 Judge Herman Letter Regarding Remote Proceedings

3 Texas Judicial Council Public Trust & Confidence Committee Report

4 California Judicial Council Workgroup Interim Report

5 NCSC Judicature Editorial Board Brief

1

From: Shawn Vandenberg
To: Tracy Christopher
Subject: Action on Zoom Legislation
Date: Friday, June 17, 2022 11:29:03 AM

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DO NOT click links or open attachments unless you expect them from the sender and know the content is safe.

Good day -

I would like to take this opportunity to state I am STRONGLY in favor of ZOOM hearings being allowed when both attorneys agree to its use or when a matter is uncontested and I would support any legislation that requires they be permitted in these types of matters. My office is 45 minutes (on a good day) from the four counties in which I routinely practice (Comal, Bexar, Guadalupe and Wilson). Having ZOOM hearings allows me to do other work when I am waiting in the ZOOM courtroom and the client whose matter is before the ZOOM Court doesn't have to pay for me to be sitting around in a physical courtroom. Furthermore, the 45 minute to one hour drive each way also saves the client money becasue without the drive time I would be working on other cases. I cannot see any reason why ZOOM courts would not be most beneficial for the above mentioned types of cases.

Regards,

Shawn E. Vandenberg
Attorney at Law

JODI HEAD LOPEZ & ASSOCIATES, P.C.
206 FM 78

Schertz, Texas 78154
Tel: 210-658-7799 (Fax) 210-658-9299
shawn.vandenberg@jhlopezlaw.com

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From: Jill Vereb
To: Tracy Christopher
Subject: Attorneys for ZOOM
Date: Tuesday, June 14, 2022 11:15:53 PM

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I am 100% for Zoom hearings. I'm a family law attorney. It saves clients quite a lot of fees by not having to drive to the courthouse for ministerial motions, prove ups, discovery disputes, etc. Since disclosures now require more fees, not having to charge as much for court time is a big help to clients. Zoom hearings, trials, prove ups, etc, also save attorneys quite a lot of time out of the office.

Jill Renee Vereb
SBOT 24082007

Jill Vereb

From: Robert Gaudet
To: Tracy Christopher
Subject: Fw: Attorney Input Regarding Remote (ZOOM) Hearings Requested by the Texas Supreme Court's Remote Task Force
Date: Thursday, February 3, 2022 5:01:32 PM

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Hi,

I greatly prefer Zoom hearings. They are more efficient as stated below. They also allow us to more easily present documents by sharing the screen. In theory, they should make court proceedings more easily available to the public, as well, but this potential seems to be sabotaged by judges who don't want to make their hearings publicly available.

Certain judges do not make their remote hearings available to the public, and this is a problem. In one case before Judge Solis in the 243rd Judicial District Court, the last two hearings (one of which was in the past two weeks) were not shown on the Youtube channel where hearings are supposed to be shown to the public. Her coordinator asks counsel that, if anyone else wishes to use the ZOom link, then counsel should let them know, which tends to discourage counsel from sharing the Zoom link with their clients for viewing. Also, these Zoom links are often sent on the same day as the hearing which creates anxiety and confusion about how to join since they could easily be sent a day or more in advance.

Yours,
Robert

Robert J. Gaudet, Jr.
RJ Gaudet & Associates LLC
Email: robert@rjgaudet.com
Telephone: (915) 308-0025
Fax: (866) 333-1484
www.rjgaudet.com

From: El Paso Bar Association <info=elpasobar.com@cmail19.com> on behalf of El Paso Bar Association <info@elpasobar.com>
Sent: Thursday, February 3, 2022 2:22 PM
To: Robert Gaudet <robert@rjgaudet.com>
Subject: Attorney Input Regarding Remote (ZOOM) Hearings Requested by the Texas Supreme Court's Remote Task Force

El Paso Bar Association

Attorney Input Regarding Remote (ZOOM) Hearings Requested by the Texas Supreme Court's Remote Task Force

At the January 27, 2022 State Bar Meeting our Board of Directors passed a resolution in favor of

continued remote proceedings after the protocols directly related to COVID expire. The Supreme Court's Remote Task Force would love your input. My resolution was aimed at giving attorneys, not only judges, a say in the future use of "ZOOM". I brought more than 20 attorneys to speak at the previous bar meeting and some of the reasons for continued use of ZOOM with attorney input were avoiding traffic, saving gas and time, parking, not having to bill for driving time and for attorneys with disabilities. Although the resolution did not say so specifically, it was meant for Remote Hearings without many witnesses etc.; for example, "Cattle Calls", where attorneys appear in person basically to say "Present" if you have suggestions I can pass them on to the committee or you can write Chair - Justice Tracy Christopher at Tracy.christopher@txcourts.gov

This is your chance to share your opinion.

Thank you,

Steve Fischer

break

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From: reneebeilue@gmail.com
To: Tracy Christopher
Subject: keep Zoom as an option
Date: Tuesday, June 14, 2022 9:54:18 PM

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I heard you were wanting to hear the opinion of
lawyers re: Zoom.
Please keep the option. I makes much more sense to appear by Zoom
rather than driving 30+ minutes and waiting 1 hour for a 15:minute hearing.
Easier on clients too.

I also like Zoom:
1. for probate hearings — much better for my older clients
who rarely drive to downtown; and
2. for DFPS hearings— often my clients don't have reliable transportation,
but they all have a cell phone and can appear by Zoom.

Thank you for your consideration.

Sent from my iPad

From:	Lisa Fancher
To:	Tracy Christopher
Subject:	Let"s please keep Zoom and encourage its use
Date:	Friday, June 17, 2022 5:01:36 PM
Attachments:	image001.png

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It has been a tremendous savings for my clients for me to be able to participate remotely in hearings, particularly those that are uncontested and non-evidentiary. The amount of time it takes for me to attend a Zoom hearing, as opposed to driving and parking and waiting for cases to be reached, is significantly less. I can also work on other matters while I am waiting to be reached, which isn't really possible while I am waiting in court. All of this translates into lower bills.

It is also very convenient for our clients to be able to attend the hearings virtually instead of spending hours waiting in court. This benefits both working people and parents who can't easily take time off to go to court, as well as busy business people, who can conduct business while they are waiting in their offices.

Please let me know if any other information is needed. I appreciate your consideration.

Lisa C. Fancher
Fritz, Byrne, Head & Gilstrap, PLLC
221 West Sixth Street, Suite 960
Austin, TX 78701
512-322-4708
512-477-5267 Fax
lfancher@fbhg.law
www.fbhg.law

Fritz, Byrne, Head & Gilstrap
FBH&G

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STATUTORY PROBATE COURTS

STATE OF TEXAS

Guy Herman, Presiding Statutory Probate Judge

P.O. Box 1748, Austin, TX 78767
200 W. 8th Street, Second Floor
Phone: (512) 854-9258
Fax: (512) 854-4418

March 21, 2022

Chief Justice Tracy Christopher
Fourteenth Court of Appeals

Re.: Remote Proceedings

I, as the presiding Statutory Probate Judge and on behalf of the unanimous consent of the 19 statutory probate court judges, write in support of permanent rules permitting remote proceedings by agreement of the parties and subject to the discretion of the judge. Having conducted proceedings remotely for the past two years, we know they are an effective tool in promoting judicial efficiency, access to justice[1], and can be a significant savings for parties. However, in some cases, they can also cause undue delays and "zoom fatigue" for judges[2], so judicial discretion is key to managing these proceedings.

Many uncontested hearings that come before the Probate Courts require fewer than 5 minutes before the judge. In larger counties[3], parties and attorneys must navigate downtown, find and pay for parking, walk to the courthouse and wait through security lines in order to appear for these very brief hearings. It is easy to conclude that remote proceedings save the communities we serve time and money. In addition, attorneys can move from hearing to hearing around the state easily without having to travel, thus making their practices more efficient and cost-effective for their clients.

An unanticipated effect of remote proceedings is increased participation by parties in guardianships, mental health proceedings, and even show cause for compliance. Proposed wards in guardianships almost never appear in-person for their own hearing. However, we have seen marked increase participation via remote access by those whose capacity and rights are being determined. Surprisingly, even those who are cited to appear to show cause for noncompliance appear in greater numbers remotely giving the court the opportunity to help them get back into compliance or determine that a removal is necessary.

We realize the benefits of remote proceedings are not without their complications. Lack of access to technology and unfamiliarity or difficulties with technology can delay

---

[1] *The Impacts of the COVID-19 Pandemic on State & Local Courts Study 2021: A Look at Remote Hearings, Legal Technology, and Access to Justice*, Thompson Reuters Institute, 2021. The study found 77% of judges surveyed felt access to justice increased or stayed the same with virtual proceedings.

[2] *The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload Final Report*, December 2020, the National Center for State Courts, Court Consulting Division, and the State Justice Institute.

[3] Harris County Probate Court One reports having heard 5,595 uncontested hearings for the two year COVID period from March 2020 to February 2022.

hearings. Judges must also manage their remote systems and become troubleshooters for participants, which requires greater attention that can lead to judicial fatigue[4]. For these reasons, we believe judges must have final discretion to determine whether and how to proceed with a remote appearance or proceeding.

The continuation of remote proceedings benefits the courts and the public, and has become irretrievably intertwined in the modern administration of justice. It is our hope that new rules will be established quickly so that we may continue without interruption.

Sincerely,

Guy Herman
Presiding Statutory Probate Judge

[4] *The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload Final Report*, December 2020, the National Center for State Courts, Court Consulting Division, and the State Justice Institute.

From: David Gibson
To: Tracy Christopher
Subject: Online proceedings
Date: Thursday, March 4, 2021 8:30:08 AM

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Good morning,

I understand that the court has solicited opinions on continuing remote proceedings, i.e., online through Zoom or Courtcall.

I am a trial lawyer of 30 years experience and a former trial judge. I LOVE the online proceedings. They save lawyers a ton of travel and waiting time, which in turn saves clients many thousands of dollars. For example, I was on a hearing in Collin County last week for 3.5 hours. The hearing itself lasted about 15 minutes. Because I was online, I was able to work on other matters and was able to charge my client only for the 15 minutes I spent on his case, rather than the 3.5 hours I would have wasted sitting in a courtroom, not to mention the hour round trip drive.

The online hearings are also extremely helpful for out-of-town hearings. Instead of flying from Dallas to Houston for a 5-minute hearing, I can spend 5 minutes online, saving the client thousands of dollars and allowing me to invest the time saved on other clients in need of that time.

I, for one, strongly encourage the court to allow trial courts to continue remote hearing at their discretion.

Thank you and please do not hesitate to reach out with any questions.

--
David R. Gibson
The Gibson Law Group, PC
15400 Knoll Trail, Ste. 205
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(817) 769-4044
(817) 769-4016 DD
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-----Original Message-----
From: Brett Pritchard <brett@bpattorney.com>
Sent: Thursday, February 25, 2021 3:01 PM
To: Tracy Christopher <Tracy.Christopher@txcourts.gov>
Subject: Zoom hearings

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Tracy—
I have the following two suggestions moving forward:

1. That attorneys have the right to request Zoom hearings for matters moving forward,

2. That once a Court approves Zoom hearings in a matter then the Court cannot subsequently require in-person hearings in the same matter, and

3. That a directory be set up where with one click, attorneys can access the zoom requirements and credentials of any Court in the Texas.

Please let me know your thoughts on these matters.

Sincerely,

Brett H. Pritchard

This message was sent from my cellular device. Please excuse any typographical errors.

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This communication and any files or documents attached to it are intended only for the use of the person or entity to which it is addressed. It contains information that may be privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient of this communication, you are hereby notified that the copying, distribution or other use of this communication is strictly prohibited. If you have received this communication by mistake, please notify the sender immediately by electronic mail and destroy all forms of this communication (electronic or paper). Thank you.

From: Atkinson, Tyler
To: Tracy Christopher
Subject: Remote Court Proceedings
Date: Wednesday, March 3, 2021 3:12:30 PM
Attachments: image004.png

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Good Afternoon Justice Christopher,

I am attending TMCEC virtual "Judge School." One of the Judges mentioned that you are working on a recommendation for how courts will use technology to conduct remote proceedings moving forward as the pandemic restrictions become relaxed.

I wanted to let you know that remote proceedings have become an integral part of delivering justice services for the City of Denton Municipal Court. The defendants appearing before the court appreciate the convenience and time savings of not appearing in person. We have pivoted our personnel resources and technology toward remote and digital resolution of our cases.

I hope that Judges will be given the discretion to continue current remote processes unless a defendant objects and requests an in-person proceeding.

I am available to help if needed.

Thank you,

-Judge Atkinson

C. Tyler Atkinson
Presiding Judge
Denton Municipal Court
601 E. Hickory Street
Denton, Texas 76205
940.349.8139
Tyler.Atkinson@CityofDenton.com

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From: Brett Duke
To: Tracy Christopher
Subject: Remote hearings are favored
Date: Tuesday, February 8, 2022 1:31:46 PM

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Dear Justice Tracy Christopher:

For input regarding remote hearings, nearly all attorneys that I practice with prefer remote hearings and would like for them to continue beyond pandemic protocols.

Respectfully,

--
Brett Duke
Law Office of Brett Duke, P.C.
brettduke@brettduke.com
6350 Escondido Dr., Ste. A14
El Paso, TX 79912
915-875-0003

From: Elaine Harris
To: Tracy Christopher
Subject: Steve Fischer"s Resolution
Date: Wednesday, June 15, 2022 7:01:35 PM

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Sir: I strongly support this. There is no point in requiring people to drive all over creation when that's not necessary.

SPUR LAW

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web	www.spurlaw.com

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From: Tom McCrory
To: Tracy Christopher
Subject: Support Continuing hearings by zoom
Date: Thursday, March 4, 2021 12:47:22 PM

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I want to add my support for continuing the option of hearings via zoom or other remote access. Great timesaver for all involved as well as expense.

Thanks

Tom

Tom M. McCrory III
McCrory Law Firm
One Galleria Tower, Suite 1700
13355 Noel Rd.
Dallas, Tx. 75240
214/369-9918
214/369-6542 (Fax)

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message and delete the original message. Thank you

From: ellen ellenwilliamsonlaw.com
To: Tracy Christopher
Subject: Support for continued Zoom hearings
Date: Tuesday, July 19, 2022 5:17:00 PM
Attachments: Logo small2.png

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Justice Christopher,

I'm a probate, guardianship, and estate planning attorney and writing to express my support for the indefinite continuation of Zoom hearings.

While some matters may be better addressed in person, virtual hearings have been a godsend for my practice. In fact, I have not had an in-person hearing since early April 2020 and can think of only a single matter in those 2+ years which would have been better shandled in person while dozens, even hundreds of matters, were efficiently addressed via Zoom.

Virtual hearings work well for uncontested probate matters and allow me as an attorney to save my clients time and money by not having to bill them for parking and time spent waiting at the courthouse for a 10-minute hearing. They enable clients, some of whom are not local and many of whom may have difficulty taking time off from work or caregiving responsibilities, to more easily attend hearings. Heirship matters, even uncontested ones, require the attendance of two disinterested witnesses—people who by definition get nothing out of attending yet before, had to take hours out of their day to go downtown for the hearing. Now, they can appear from their desk or the comfort of their home.

Virtual hearings also provide greater access to justice for alleged incapacitated persons who are hospitalized or in assisted living facilities and whose condition would make attendance at a live hearing difficult or impossible. In the past, many alleged incapacitated persons were not able to attend the prove-up hearing for guardianship due to mobility or other challenges. Now, even a bedridden person has the option to attend. Likewise, while it's unlikely that rural areas will see significant growth in their local attorney ranks, Zoom court enables those underserved populations in legal services deserts to access counsel across the state cost-efficiently.

I'm hopeful long-term that, if virtual hearings continue to remain an option, it may enable growing counties such as mine (Dallas) to more easily add additional associate judges to handle their dockets, as they might be able to designate such positions as exclusively virtual and thus save the cost of creating another physical office.

Zoom court may also enable the courts to offer "rocket dockets" and to fill cancellations on short notice, allowing them to better steward the valuable and limited public resource of Court time.

For most of my clients, the legal matter that brings them to my door represents their first and only experience with the legal system, and it comes at a difficult and stressful time in their life

as they deal with the death or incapacity of a loved one. From my perspective, anything that can make that process easier for them is a win, and the option of Zoom court is one my clients have enthusiastically embraced.

Thank you for your time and attention and for your service to us all.

Sincerely,
Ellen Daniel Williamson

Ellen Daniel Williamson

Ellen Williamson Law, PC
2626 Cole Ave. Ste. 300
Dallas, TX 75204
T: 214.842.6462
F: 214.273.2560
ellen@ellenwilliamsonlaw.com

She/her

From: Angela Odensky
To: Tracy Christopher
Subject: Support for continued ZOOM Hearings
Date: Wednesday, June 15, 2022 1:23:55 PM

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On behalf of myself and my clients, I would like to offer my support of Zoom hearings for uncontested matters and when all attorneys are in agreement. I practice uncontested probate and guardianship matters in Harris County and Fort Bend County, and my clients have expressed enormous gratitude that they do not have to travel downtown for the few moments it takes to prove up a valid Will or offer testimony in the guardianship of the person of a special needs adult child. For my parents with special needs children it means not having to find care for that time or not having to use a vacation day from work, which is precious. Many times my probate clients are elderly and travel is difficult for them, but they've been using Zoom to communicate with grandchildren for two years now and have no issues getting on and performing their duties. Zoom hearings save time and money for people who do not have a lot of either.

In these kinds of uncontested probate matters, every hearing follows the same formula. There are rarely surprises and no need to require the parties to take half a day off work, find child care, or otherwise interrupt their lives to go to downtown Houston, find parking, get through security, await their docket, and then spend less than five minutes in front of the judge. Zoom has become a part of our lives and has made many things more convenient. I urge the Court to all Zoom hearings to continue for the benefit of attorneys and our clients. Our Courts have spent time and money to update their technology to allow for Zoom hearings, and that should not go to waste. My understanding is that Zoom hearings in uncontested matters are as convenient for the Court as it is for the attorneys and clients.

Please allow us to continue using Zoom for uncontested matters and matters where all attorneys are in agreement.

All my best,

Angela Odensky, Certified Elder Law Attorney

The Law Office of Angela Odensky, PLLC
6575 W. Loop S., #145
Bellaire, Texas 77401
angela@odenskylaw.com
713-344-0730
www.odenskylaw.com

NOTE: We will be closed June 27th through July 5. If you have a time sensitive issue, please call and leave a message with reception. If it is not an emergency we will start returning calls and emails in the order received once we get back on July 6th.

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From: Layla Morgan
To: Tracy Christopher
Subject: Support for the permanency of Zoom hearings
Date: Wednesday, June 15, 2022 6:54:49 AM

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Dear Justice Christopher,

I am writing to you as a nine-year member of the State Bar of Texas and two-year member of State Bar of Oregon to voice my support for the permanency of Zoom hearings in Texas Courts. We also share The University of Texas School of Law as our alma mater.

We live in a digital age and should seize this opportunity to bring our profession permanently into it. I believe the appropriate line of demarcation is Zoom by default for all non-jury settings, with in-person availability upon request by either party. Ideally, the rule would not require the in-person attendance of the opposing attorney if they still prefer to attend via Zoom for their own presentation to the court.

As a graduate of the State Bar's Texas Opportunity and Justice Incubator (TOJI) program during the Covid-19 pandemic, I can say that the 100% virtual format expanded our pool of attendees across the state—truly expanding access to justice, as the program is designed to ultimately do through our work helping to bridge the justice gap in our state. With Zoom hearings by default, litigators like myself could represent people in any of the 254 counties across the state affordably for our clients.

Over my nine year legal career, I have had four children. Only with my last (born in December 2021) have I been able to reap the benefits of full-time remote work and virtual hearing attendance. It's a night and day difference, and I could go on in much more detail (and am at your disposal). Please help make permanent accommodations for women lawyers who want to stay home with their babies but still have meaningful and fruitful law practices. Please help make permanent accommodations for lawyers who are trying to provide cost-effective legal services to clients across our abnormally vast state. Please help make Zoom hearings permanent.

I appreciate your time and service.

Most sincerely,

Layla Morgan
State Bar of Texas No. 24075968

From:	Barrett Shipp
To:	Tracy Christopher
Subject:	Texas attorney- in support of Zoom hearings and trials
Date:	Wednesday, June 15, 2022 11:10:52 AM
Attachments:	image001.png

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Tracy:

My Texas bar number is 24060601 – I have a probate and trial practice in San Antonio and the surrounding areas.

I am in favor of Zoom hearings and trials and believe we should have statewide guidance as to the ability to access the courts via Zoom. I think for clients, the bar, and the public, there are immense time and cost savings, increased access to the courtrooms, as well as increased transparency, that are a benefit of Zoom hearings and trials.

Thank you,

Barrett Shipp

J. Barrett Shipp
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From: Christopher Barber
To: Tracy Christopher
Subject: Virtual court - yes please
Date: Wednesday, June 15, 2022 8:00:12 AM

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I don't usually chime in on such things but I do want to show my support for virtual (Zoom) proceedings.

Thank you.

All the best,

Christopher J. Barber
The Barber Law Office
Texas Estate Planning, Elder Law/Medicaid and Probate Lawyer
Houston, Texas
281-464-LAWS (5297)
TexasAttorney.net

From:	Kristine Renninger
To:	Tracy Christopher
Subject:	Virtual court proceedings moving forward post-pandemic:
Date:	Wednesday, June 15, 2022 11:37:18 AM

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Justice Christopher,

I am writing to you today in support of Steve Fischer's Bar Resolution to permanently allow parties to agree to use virtual methods for court proceedings.

My husband is the superintendent of Big Bend Ranch State Park and we live inside the park. For the past 2 1/2 years, I have been able to work remotely using Zoom for the uncontested hearings on my docket without a single issue. It has saved me thousands of hours of travel time, saved my clients thousands of dollars in expenses, and greatly improved my work/life balance. Additionally, I am able to set hearings in multiple jurisdictions on the same day, which was not possible before Zoom. It is infinitely more efficient for all parties, the State, and taxpayers.

While COVID was, and still is, a terrible thing that happened (I lost both my in-laws to COVID in 2021 along with other friends and family), it was a giant, hard shove, into the present the practice of law in Texas needed. The old school ways of practicing law in Texas are woefully outdated and inefficient. There is a better way to practice and Zoom/WebX, etc., is the answer for far too many reasons to count.

Thank you for taking the time to read my message of support. I hope the Texas Supreme Court can order the judicial community to allow Zoom when agreed by the parties. Make the practice of law easier, not harder.

Warmest Regards,

RENNINGER LAW FIRM, PLLC

Kristine E. Renninger
Attorney at Law
1095 Evergreen Circle
Suite 200-479
The Woodlands, TX 77380
Tel: 832-482-4616
Mobile: 346-379-3426
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From:	Katherine McAnally
To:	Tracy Christopher
Subject:	Virtual court
Date:	Tuesday, June 14, 2022 9:37:21 PM

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Please share with the appropriate persons considering permission for virtual court proceedings moving forward post-pandemic:

I would like to share my experience and observation regarding virtual court proceedings. For the last 15 years, I have practiced child protection in a small rural county. Over the last two years, I have noticed the significant positive impact virtual court options provide with regard to access to justice for citizens challenged by poverty and/or who live in rural communities where travel for participants and counsel is a challenge. By providing virtual court options costs are significantly decreased when counsel does not have to travel large distances to multiple jurisdictions to access the courts. In addition, the ability to continue to work in the office while waiting one's turn in a court docket decreases overall costs. These cost savings amount to significant savings to both governments for court appointed counsel and to litigants with hired counsel. In addition, participants ability to actively and effectively participate in the litigation is increased when they can log in from their cell phone or other device from a remote location. This decreases the amount of time they must take off work to participate, decreases the impact of distance and transportation challenges on their ability to participate and overall increases the ability and willingness to actively participate in litigation. In addition, when working with professional witnesses, the ability for them to appear virtually results in significant cost savings to litigants. In addition, the scheduling certainty and decrease in travel time decreases the amount of time that witness is kept from otherwise serving their clients or community. For attorneys in rural areas who often practice in multiple jurisdictions that may be hours apart, virtual settings significantly increase the efficiency and ability to appear in multiple jurisdictions in the same day without wasting half (or more) of the day in the car between courthouses. Overall, the benefits of virtual court far outweigh the challenges and drawbacks, especially when considering the needs of economically disadvantaged litigants and rural communities. I would implore the Court and the State Bar to include provisions in the rules of court moving forward which allow virtual court settings in uncontested matters, when parties agree, and at the discretion of the court for "good cause" shown. These options can help to increase the ease of access to justice for economically disadvantaged litigants and rural communities.

Thank you for your consideration,
Katherine McAnally
Former First Assistant in the Burnet County Attorney's Office
Current Director of the Family Justice Division of the Williamson County Attorney's Office
Note: The opinions expressed herein are mine alone and do not reflect the position of any particular office, elected official, or governmental entity.

Sent from my iPhone

From: sharon@shermanlawfirm.us
To: Tracy Christopher
Subject: Virtual hearings
Date: Wednesday, June 15, 2022 11:39:59 AM

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My clients and I much prefer to virtual hearings as opposed to in person hearings. I practice bankruptcy and It saves so much time not having to travel and keeps my clients from having to take off work when they are struggling to make it as it is. Thank you

Sharon K. Sherman
Sherman Law Firm, P.C.
4500 Mercantile Plaza, Ste. 300
Fort Worth, TX 76137
(817) 540-2422/817-585-4807 Fax

Or

Sharon K. Sherman
Sherman Law Firm, P.C.
112 Bedford Road, Ste. 116
Bedford, TX 76052
(817) 540-2422/817-585-4807 Fax

Mailing Address:

P.O. Box 959
Haslet, TX 76052

From:	Kelly Kleist
To:	Tracy Christopher
Subject:	zoom
Date:	Friday, June 24, 2022 10:11:16 AM
Attachments:	image001.png image002.png

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Good morning,

This email is sent in accordance with a post regarding preferences relating zoom proceedings. I am in favor of keeping zoom proceedings.

Sincerely,

Kelly Kleist PARTNER

Scheef & Stone, LLP

www.solidcounsel.com | 214.472.2146

Office: 214.472.2100 | Fax: 214.472.2150

2600 Network Boulevard, Suite 400, Frisco, TX 75034

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From:	Anna Freeman
To:	Tracy Christopher
Subject:	Zoom court
Date:	Wednesday, June 15, 2022 1:44:34 PM

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Please keep the option of having attorneys & litigants appear via zoom. Thanks.

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From: Farren Sheehan
To: Tracy Christopher
Subject: Zoom Court
Date: Wednesday, June 15, 2022 9:54:44 AM

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My name is Farren Sheehan and I am an attorney practicing probate and real estate law in Travis County, I am also a presiding municipal judge in the cities of Pflugerville and Bee Cave. I am writing to you concerning the use of Zoom in our Texas courts.

In my capacity as a probate attorney, I deal with many elderly people. One of the most difficult parts of the probate process for many of my clients is attending an uncontested probate hearing in person. In Travis County this often involves an hour or more in morning traffic, parking in the unfamiliar downtown area and a courthouse that can be difficult for people with disabilities to access. Over the years I have felt the frustration my clients express that a five minute prove up must be done in person. During the COVID times, it was much easier to meet with the client in my office and simply sign into Zoom for the few required questions. In my opinion, I do not think there is any benefit to holding uncontested probate prove ups in person. In almost all cases, all the issues have been addressed by the court before the hearing is held, and the hearing itself is almost a formality. I feel the burden on the client, in terms of time, effort and expense, absolutely outweighs any benefit attending the hearing in person would provide.

I attended a regional municipal judge's seminar where the feeling was overwhelmingly in favor of keeping an online option for at least certain aspects of our courts. In my experience it allows a broader access to justice for a large number of people. Contesting a citation in person requires an individual to show up and sometimes wait in the courtroom for hours before they can be seen. The ability to simply sign into a Zoom court and address issues has allowed people to deal with cases that have dragged on for years when they lack the ability to travel to the court or take off work. Online municipal court has a much higher attendance level than in person court.

Overall, I feel that keeping an online option to access the courts is overwhelming in the best interest of our clients. All of the attorneys I know and work with are of the same opinion. I urge you to work to provide this option to the attorneys and people of Texas.

Farren Sheehan
She/Her

Sheehan Law PLLC
1601 E. Pfennig Lane
Pflugerville, TX 78660

fsheehan@farrensheehanlaw.com

512-251-4553
888-251-4959 (fax)

From: Jason Tapp
To: Tracy Christopher
Subject: Zoom Hearings
Date: Wednesday, June 15, 2022 1:28:31 AM

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Greetings,

I practice Texas law remotely from Germany. The option to participate in Zoom hearings under most circumstances would be highly beneficial to my practice.

Thank you,

Jason E. Tapp
TX Bar # 24067898

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From: Charles Kennedy
To: Tracy Christopher
Subject: Zoom hearings
Date: Wednesday, June 15, 2022 10:51:33 AM

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Ms. Christopher:

My understanding is that you are collecting information for the Court regarding Zoom hearings. I have practiced law for about 35 years in all of the trial level courts mostly in Tarrant County. I now practice almost exclusively in the probate courts. Most of my clients are elderly. Universally, my older clients want to avoid driving as much as possible. They prefer to drive a few miles inside Arlington and really want to avoid going into downtown Fort Worth or Dallas. Zoom hearings are a God Send for them. It allows them to avoid travel on highways, it saves them time, it allows them to avoid being in a crowd. Even my younger clients much prefer a Zoom hearing for the savings on time and travel.

Zoom hearings are an immense savings in money, time and travel for out of state clients and witnesses for uncontested heirship proceedings.

I understand the local Judges' preference for in person hearings. If Texas voters' opinion means anything the Supreme Court will require Courts to allow parties to choose Zoom hearings for uncontested matters.

I find most attorneys in contested probate matters want the option to attend status conferences, Summary Judgment hearings and similar matters by Zoom. I miss the collegiality of docket calls that were held when I was a much younger attorney, but the time savings and convenience to our clients should be an overwhelming consideration. If this issue was presented to the Texas voter I have no doubt how they would vote. You would have an overwhelming vote for the convenience to the citizens of Zoom hearings.

Sincerely,

Charles Kennedy
Charles Kennedy, P.C.
2403 Cales Drive, Suite B
Arlington, TX 76013
817-795-8843
ckennedy@birch.net and
charles@chaskennpc.com

From: Lisa Elizondo
To: Tracy Christopher
Subject: Zoom Hearings
Date: Thursday, February 3, 2022 3:38:32 PM
Attachments: image001.png
image002.png

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Hello Tracy-I am taking a quick moment to express my approval of continuing Zoom hearings. Thank you for your time.

Lisa A. Elizondo
2504 Montana Ave.
El Paso, Texas 79903
915/351-2775
915/351-2776 (fax)
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Licensed in Texas, New Mexico and Colorado

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From: Jolyn Wilkins
To: Tracy Christopher
Subject: Zoom Hearings
Date: Thursday, June 16, 2022 8:47:06 AM
Attachments: image001.png
image002.png

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Justice Christopher,

I am writing this e-mail in support of continued use of Zoom hearings for uncontested matters such as probate applications, docket calls, scheduling conferences, guardianship hearings, divorce prove-ups, small claims hearings, and temporary orders hearings for family law cases.

The ability to appear via Zoom is helpful in many circumstances, including but not limited to:

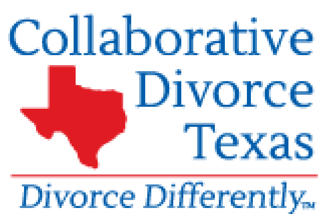
1. Attorneys and parties with compromised immunity or close relatives with compromised immunity;
2. Attorneys and partis charged with the care of elderly parents or young children;
3. Attorneys and parties concerned about the rising cost of fuel to travel back and forth to the courthouse; and
4. Attorneys and parties with compromised mobility.

Additionally, appearance via Zoom saves attorney's fees for time travelling to the courthouse and awaiting a scheduled appearance or hearing.

I understand that many trials are more suited for in-person proceedings, but the vast majority of my cases are not. I would also like the proposed rules to allow only one party to request Zoom and then the burden shifts to the opposing party to prove why a Zoom hearing would prejudice their client or case.

Thank you in advance for your attention to my input.

Jolyn C. Wilkins
Fargason Booth St.Clair Richards & Wilkins, LLP
4716 4th Street, Suite 200 (zip 79416)
PO Box 5950
Lubbock, Texas 79408
Phone: 806-744-1100
Fax: 806-744-1170
e-mail: JWilkins@LbkLawyers.com
website: LawyersOfLubbock.com



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Ethical and procedural rules, civil and criminal statutes, and the Texas Lawyer's Creed have altered our notions of what Texas lawyers should and should not do in the name of zealous advocacy. Apart from the technical standards, it's clear that achieving a sensible balance between zealous advocacy and civility can enhance the quality of life for litigants, lawyers and judges, both in and out of the courtroom.

From: slglover@aol.com
To: Tracy Christopher
Subject: ZOOM hearings
Date: Wednesday, June 15, 2022 9:28:21 PM

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Simply put....yes, please, we want to keep ZOOM!

Shari Glover

Sent from the all new AOL app for Android

From: Sharon Wilson
To: Tracy Christopher
Subject: Zoom Hearings
Date: Wednesday, June 15, 2022 4:34:53 PM

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Justice Christopher,

I am writing to show my support for continued access to Zoom hearings. Most of my practice is representing parents and children in CPS cases. We are statutorily required to have several hearings throughout the life of a case. Many of these are uncontested. Many times we represent indigent parents who lack transportation to get to and from the courthouse, sometimes, these parents even live out of state and are logistically unable to attend or participate in in person hearings. I am asking that the Court keep access to Zoom hearings, not just in CPS cases, but in all cases. I do want to emphasize how important it is to CPS cases, though. This is not just about it making dockets easier on attorneys, but it actually allows many indigent clients access to the courts when they would otherwise not be able to participate. I've personally had parents who live out of state participate in a meaningful way via zoom, one was even incarcerated out of state. Without zoom, that is not possible. I hope that you will take this into consideration when deciding the fate of zoom hearings in Texas.

--
Thank you,

Sharon Wilson
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sharon@SharonLWilsonLaw.com
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Please note Sharon L. Wilson will be unavailable the following dates:

June 20, 2022 - Juneteenth, observed
July 4, 2022 - Independence Day
July 29-Aug 1, 2022 - Personal
September 5, 2022 - Labor Day
November 11, 2022 - Veterans Day
November 21-25, 2022 - Thanksgiving Holiday
December 21-30, 2022 - Christmas Holiday

In addition to the dates listed above, the office will be closed on all holidays and bad weather days observed by Denton County. These can be found by going to www.dentoncounty.com

Law Office of Sharon L. Wilson office hours are as follows:
Monday through Thursday 9:00 am - 5:00 pm
Friday 9:00 am - 12:00 pm

From: Linda Leeser
To: Tracy Christopher
Subject: Zoom Hearings
Date: Wednesday, June 15, 2022 4:09:53 PM

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It is my understanding that you are looking for feedback from attorneys as to Zoom hearings. If it is an uncontested matter or all parties want Zoom I would love to see Zoom being an option.

Sincerely,

Linda Leeser
Attorney at Law
Leeser Law Firm PLLC
926 Chulie Drive
San Antonio, Texas 78216
210-997-2914
210-504-4486 (fax)

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From: Sharon Wilson
To: Tracy Christopher
Subject: Zoom Hearings
Date: Wednesday, June 15, 2022 4:34:53 PM

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Justice Christopher,

I am writing to show my support for continued access to Zoom hearings. Most of my practice is representing parents and children in CPS cases. We are statutorily required to have several hearings throughout the life of a case. Many of these are uncontested. Many times we represent indigent parents who lack transportation to get to and from the courthouse, sometimes, these parents even live out of state and are logistically unable to attend or participate in in person hearings. I am asking that the Court keep access to Zoom hearings, not just in CPS cases, but in all cases. I do want to emphasize how important it is to CPS cases, though. This is not just about it making dockets easier on attorneys, but it actually allows many indigent clients access to the courts when they would otherwise not be able to participate. I've personally had parents who live out of state participate in a meaningful way via zoom, one was even incarcerated out of state. Without zoom, that is not possible. I hope that you will take this into consideration when deciding the fate of zoom hearings in Texas.

--
Thank you,

Sharon Wilson
Law Office of Sharon L. Wilson, PLLC
6160 Warren Pkwy., Suite 100
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940-382-7297
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Law Office of Sharon L. Wilson office hours are as follows:
Monday through Thursday 9:00 am - 5:00 pm
Friday 9:00 am - 12:00 pm

From: Tom Zakes
To: Tracy Christopher
Subject: Zoom hearings
Date: Tuesday, July 19, 2022 5:01:27 PM

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Hon. Tracy Christopher

Dear Justice Christopher,

I saw online that you were the person to contact to let our feelings be known about the continuation of Zoom hearings after the Covid situation is over.

I have found them very helpful in my practice, especially on days that I have a busy schedule, especially if I have cases in multiple counties. They are also great if my son is sick and needs to stay home from school, and I can be there with him. I am sure that a lot of lawyers who are single parents have experienced this as well.

Certainly, the procedure has its flaws,but in cases where both parties agree, they should continue to be available.

Tom Zakes

From: Richard Thompson
To: Tracy Christopher
Subject: Zoom hearings for lawyers
Date: Tuesday, July 19, 2022 5:04:36 PM

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Good Afternoon:

I am strongly in support of Zoom hearings in most matters. If it is thought best it be by agreement, so be it.

Thank you for your attention and consideration.

Have a good evening.

Richard N. Thompson
Attorney at Law
2002 Timberloch Place, Suite 200
The Woodlands, TX 77380
281-681-3001
Fax 281-681-3016
richard@thompsonlaw.us

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From: Jackie B
To: Tracy Christopher
Subject: Zoom hearings thoughts
Date: Thursday, June 23, 2022 7:21:36 AM

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Dear Chief Justice Christopher,
Please continue to allow optional zoom hearings, with whatever practical limitations you see fit. They have been helpful for my clients. Namely, I think they have expanded the availability of attorneys for many low income clients because Zoom makes hearings much faster and more affordable. Thank you, Jackie Baltrun

Sent from my iPhone

From: LEIGH DUBOSE
To: Tracy Christopher
Subject: Zoom Hearings When Attorneys Agree
Date: Tuesday, June 14, 2022 11:18:41 PM

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Hello -

I hear there's input requested on the idea of Zoom hearings for uncontested matters or when the attorneys agree. I support this idea 100%. It would make my law practice so much more manageable. Thank you.

Leigh A. DuBose
Attorney at Law
11782 Jollyville Road
Austin, Texas 78759
Phone: (512) 459-6880
Fax: (512) 459-0624

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Sent from my iPhone

From: SAVANNAH ROBINSON
To: Tracy Christopher
Subject: Zoom hearings
Date: Wednesday, June 15, 2022 6:34:49 AM

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Zoom hearings save time and money. Zoom hearings reduce crowding in the courts, streets, and parking lots.
This week i am in quarantine. I tested positive for COVID on 6/07. But, i have a mild case. I was able to attend two hearings by Zoom without exposing anyone.
Zoom is a tool that should be encouraged for the future.

Sent from my iPhone

From:	Chris Johnston
To:	Tracy Christopher
Subject:	Zoom Protocols
Date:	Thursday, February 3, 2022 4:52:31 PM

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Dear Judge Christopher;

I understand you are the chairperson of the Committee considering keeping Zoom meetings after this pandemic finally eases   I would like to keep Zoom meetings with courts involving standard hearings when there are no witnesses. This saves the parties, the lawyers and the Court time and expenses. During docket call hearings, I can be productive on other matters while I am waiting for my case to be called. This has been the one silver lining to the pandemic.

Thank you.

Chris R. Johnston
El Paso

Sent from my iPhone

From:	Carrie Westbrook
To:	Tracy Christopher
Subject:	Zoom
Date:	Tuesday, June 14, 2022 11:15:11 PM

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Good evening,

I wanted to advise the court of my opinion regarding Zoom for what it's worth. I am very much advocating to keep Zoom as an option for hearings, particularly if they're uncontested. It saves my clients money and greatly improves my life and ability to manage my practice.

As a single mom, I honestly don't know how I would've kept afloat had it not been for the ability to conduct most of my business via Zoom during the pandemic. Being able to effectively manage my cases and be more present with my children has been such an amazing blessing. Please consider keeping it in place long-term.

Best regards,

Carrie Holman Westbrook
Holman Westbrook Law, PLLC
2019 Washington Ave., Ste. 208
Houston, TX 77007
713-352-2713
www.Holman-Firm.com

From: Rich Robins
To: Tracy Christopher
Subject: Online hearings are typically NOT desired in the legal profession...
Date: Wednesday, July 20, 2022 3:47:20 PM

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Dear Justice Christopher:

It has recently come to my attention that you have been told that online hearings are preferred here within the legal profession. I submit that they are typically NOT desired within it. Please don't make online hearings and trials mandatory even in the event that one side objects.

Why? First of all, online hearings jeopardize privacy. Imagine the potential for taking a filmed & recorded excerpt out of context and sharing it to further one's agenda, sprinkling such snippets throughout cyberspace. With such risks, folks are more likely to take the law into their own hands (like they violently do in neighboring Mexico). We typically don't allow such recording in our actual courts, where privacy matters. Unfortunately we can't adequately police what happens when such hearings are online, though.

Meanwhile, it's worth noting that with online hearings' availability, some vindictive sorts are more inclined to schedule (unnecessary) hearings, to try and fatigue and financially harm the other side but without having to actually show up in court. Indeed, online hearings tend to ignore the legitimate desire to make those who sue a local economy actually have "skin in the game" in that economy. Making folks show up for hearings requires that they perceive the local consequences. Hopefully that can dissuade at least some from shakedown thuggery OR from defending the indefensible. There are plaintiffs & defendants, alike, who abuse online hearings while hypocritically claiming we need more such hearings in the name of "court access". Let's please refrain from fortifying such folks.

In conclusion, please don't make online hearings and trials mandatory even in the event that one side objects.

Respectfully,
Rich

Rich Robins, Esq.
2450 Louisiana St. #400-155
Houston, TX 77006-2380
Rich@RichRobins.com
Tel. 832-350-1030

2

STATUTORY PROBATE COURTS

STATE OF TEXAS

Guy Herman, Presiding Statutory Probate Judge

P.O. Box 1748, Austin, TX 78767
200 W. 8th Street, Second Floor
Phone: (512) 854-9258
Fax: (512) 854-4418

March 21, 2022

Chief Justice Tracy Christopher
Fourteenth Court of Appeals

Re.: Remote Proceedings

I, as the presiding Statutory Probate Judge and on behalf of the unanimous consent of the 19 statutory probate court judges, write in support of permanent rules permitting remote proceedings by agreement of the parties and subject to the discretion of the judge. Having conducted proceedings remotely for the past two years, we know they are an effective tool in promoting judicial efficiency, access to justice[1], and can be a significant savings for parties. However, in some cases, they can also cause undue delays and "zoom fatigue" for judges[2], so judicial discretion is key to managing these proceedings.

Many uncontested hearings that come before the Probate Courts require fewer than 5 minutes before the judge. In larger counties[3], parties and attorneys must navigate downtown, find and pay for parking, walk to the courthouse and wait through security lines in order to appear for these very brief hearings. It is easy to conclude that remote proceedings save the communities we serve time and money. In addition, attorneys can move from hearing to hearing around the state easily without having to travel, thus making their practices more efficient and cost-effective for their clients.

An unanticipated effect of remote proceedings is increased participation by parties in guardianships, mental health proceedings, and even show cause for compliance. Proposed wards in guardianships almost never appear in-person for their own hearing. However, we have seen marked increase participation via remote access by those whose capacity and rights are being determined. Surprisingly, even those who are cited to appear to show cause for noncompliance appear in greater numbers remotely giving the court the opportunity to help them get back into compliance or determine that a removal is necessary.

We realize the benefits of remote proceedings are not without their complications. Lack of access to technology and unfamiliarity or difficulties with technology can delay

---

[1] *The Impacts of the COVID-19 Pandemic on State & Local Courts Study 2021: A Look at Remote Hearings, Legal Technology, and Access to Justice*, Thompson Reuters Institute, 2021. The study found 77% of judges surveyed felt access to justice increased or stayed the same with virtual proceedings.

[2] *The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload Final Report*, December 2020, the National Center for State Courts, Court Consulting Division, and the State Justice Institute.

[3] Harris County Probate Court One reports having heard 5,595 uncontested hearings for the two year COVID period from March 2020 to February 2022.

hearings. Judges must also manage their remote systems and become troubleshooters for participants, which requires greater attention that can lead to judicial fatigue[4]. For these reasons, we believe judges must have final discretion to determine whether and how to proceed with a remote appearance or proceeding.

The continuation of remote proceedings benefits the courts and the public, and has become irretrievably intertwined in the modern administration of justice. It is our hope that new rules will be established quickly so that we may continue without interruption.

Sincerely,

Guy Herman
Presiding Statutory Probate Judge

---

[4] *The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload Final Report*, December 2020, the National Center for State Courts, Court Consulting Division, and the State Justice Institute.

3

TEXAS JUDICIAL COUNCIL

2020 PUBLIC TRUST & CONFIDENCE COMMITTEE

REPORT AND RECOMMENDATIONS

September

In June 2019, the Texas Judicial Council charged the Public Trust and Confidence Committee with:

- Continue to monitor public trust and confidence in the Texas Judiciary and recommend any necessary reforms to increase public support and respect.

Members of the Committee are:

Hon. Ed Spillane, Chair
Hon. Sherry Radack
Hon. Vivian Torres
Hon. Maggie Sawyer
Senator Judith Zaffirini
Mr. Ken Saks
Ms. Sonia Clayton
Ms. Rachel Racz

The Texas Judicial Council's Public Trust and Confidence Committee met January 23, 2020, and August 28, 2020.

Recommendations

In Brief

Remote Proceedings 1
Civics Education 1
Judicial Training 1

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Civics Education 6
Judicial Training 9

Appendix

Recommendations in Brief

Remote Proceedings

1 The Legislature and the Texas Supreme Court should remove any barriers to continuing remote online court proceedings and court innovations developed as a result of the COVID-19 pandemic.

Civics Education

1 The Legislature should amend state law to require a comprehensive civic education that results in informed and responsible civic engagement for Texas school-aged children.

Judicial Training

1 The Texas Court of Criminal Appeals should require judges to obtain additional training on implicit bias.

2 The Texas Judicial Council should create an advisory committee of the Council to assist the Council in its focus on judicial training, community engagements, and developing judicial summits.

Recommendations in Detail

REMOTE PROCEEDINGS

BACKGROUND

Texas saw its first diagnosed case of COVID-19 on March 4, 2020. No one could have predicted the destruction and disruption the Coronavirus pandemic would cause our communities in Texas, the nation, and the world. Luckily, the Texas Judiciary had begun preparing for Coronavirus weeks before the first diagnosis by participating in preparedness briefings with Governor Greg Abbott, emergency services and health and human services staff starting on February 27th. Based upon the information gathered at those briefings, the Texas Judiciary activated its response plan and began taking actions including preparing to hold court online.

On March 13th, hours after Governor Abbott issued a disaster declaration and public health emergency declaration for the state, the Supreme Court, joined by the Court of Criminal Appeals, used its emergency powers under Section 22.0035(b), Texas Government Code, to issue the First Emergency Order Regarding the COVID-19 State of Disaster. The order permitted all courts in all cases, without a participant's consent, to modify or suspend deadlines, allow or require remote participation by anyone involved in a hearing or proceeding (except jurors), conduct proceedings away from the court's usual location, and permitted courts to extend statutes of limitations in Civil cases.

The Office of Court Administration (OCA) considered several technology platforms that would enable judges to conduct court proceedings remotely. After testing several different options, OCA determined that Zoom would be the best fit for the Texas Judiciary. OCA asked twenty judges to test the platform with remote hearings during the week of March 16-20. Almost 100 proceedings were conducted during that week, with judges providing positive feedback about the platform's utility for remote hearings.[1] With this feedback, OCA procured enough licenses for every judge in Texas to have one so that the full features and security of the Zoom platform would be available to those judges.

Texas judges fully adapted to the technology holding an estimated 500,000 remote hearings in every case type and type of proceeding, including bench and jury trials, with 1.5 million participants, lasting more than 1.1 million hours during the 7- month period between March and September.

Not only did judges use the tools made available to them to continue providing access to justice during the pandemic, they found that the tools had significant advantages over in-person proceedings in certain types of cases and hearings, as discussed below. With these improvements, ensuring that judges can continue using the tools post-pandemic is critical to improving access to justice.

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1 Jury Trials During the COVID-19 Pandemic: Observations and Recommendations 3, Tex. Office of Court Admin. (Aug.. 2020), https://txcourts.gov/media/1449660/jury-report-to-scotx-final.pdf.

Texas Courts Online

March - September 15, 2020

1,859 Judges

98% Customer Satisfaction

1,446,001 Participants

More than 450,000 Hearings

1,084,545 Meeting Hours

1,154 Court Channels

YouTube

RECOMMENDATION

Recommendation: The Legislature and the Texas Supreme Court should remove any barriers to continuing remote online court proceedings and court innovations developed as a result of the COVID-19 pandemic.

Texas was the first state to have its nine-member Supreme Court host remote oral arguments, the first state to hold a virtual non-binding civil jury trial in May 2020, and it became the first state to hold a virtual criminal jury trial in August 2020. The Texas Judiciary continues to lead the nation with its innovation and ability to adapt during the pandemic. However, some of the innovation and move to online proceedings would not be possible without the Governor's Disaster Declaration in place and subsequent emergency orders from the Texas Supreme Court. The disaster declaration allows the Supreme Court to "modify or suspend procedures for the conduct of any court proceeding affected by a disaster declared by the governor"[2] and allows for courts to host hearings away from their typical locations.[3]

A silver lining of the pandemic has been the improvement in access to justice. Many judges have reported that they are seeing greater participation from litigants via Zoom due to the ease of using the platform and the fact that litigants can more efficiently attend court hearings by simply logging in to their computer or mobile device. Judges are also reporting cost savings from traveling to and from court for litigants, attorneys and judges. Access to interpreters has increased as well. OCA reports that its Texas Court Remote Interpreter Service's (TCRIS) demand is up 50% from March-August 2020 over the same time period in 2019.

Texas Supreme Court Justice Eva Guzman praised virtual participation on Twitter tweeting, "Judges statewide lauding virtual participation as a game changer in CPS cases. Virtual allows more efficient and expeditious docket management across the state, removes transportation and financial barriers to successful reunification and keeps parents and kids in contact."[4] Justice Guzman continued, "Imagine the possibilities. Non-custodial parents can help with homework, meet with a teacher or doctor, and stay present in their children's lives. Often, parents are penalized for not doing so despite economic impediments like lack of transportation or inflexible work schedules."[5]

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2 Tex. Govt. Code § 22.0035(b)

3 *See* Tex. Govt. Code §§ 24.033(b) (district courts), 25.0019(b) (statutory county courts), 25.0032(b) (statutory probate courts), 26.009(b) (constitutional county courts), 27.0515 (justice courts), 29.015 (municipal courts), and 30.000123 (municipal courts of record)—relating to designating alternative locations for proceedings during a disaster. These provisions were enactments of the 86th Legislature (2019) in Senate Bill 40 (Zaffirini/Leach) on the recommendation of the Texas Judicial Council's Public Trust and Confidence Committee in our last report.

4 Justice Eva Guzman (@JusticeGuzman), Twitter (Sept. 18, 2020, 12:08PM), https://twitter.com/JusticeGuzman/status/1307003608962158597.

5 Justice Eva Guzman (@JusticeGuzman), Twitter (Sept. 18, 2020, 2:39PM), https://twitter.com/JusticeGuzman/status/1307003608962158597.

In addition, in survey of more than 3000 Texas attorneys conducted in June 2020, attorneys reported positive feedback on remote hearings:

- **94%** had no issues communicating with their client during hearings
- **93%** had positive or neutral impression of remote hearings
- **85%** would recommend remote hearings to colleagues or clients
- **44%** feel remote hearings are worse than in-person hearings, but 73% say they are effective.
- **43%** open to conducting some portion of a jury trial remotely. Jury qualification, witness testimony, and voir dire were the top answers.[6]

It is this Committee's belief that remote hearings will never fully replace in person proceedings and they shouldn't; however, the progress made during the pandemic in access to justice, accessibility and efficiency should continue long after the pandemic ends. The Committee recommends that any statutory or rule barriers to holding remote proceedings outside a disaster declaration, should be removed.

6 *Remote/ In-Person Proceedings Survey*, Tex. Office of Court Admin. (June 2020).

CIVIC EDUCATION

BACKGROUND

We have all heard the unbelievable statistics – only 27 percent of 12th graders are proficient in civics education and government, or from a study conducted by the American Bar Association – less than half of adults in America can identify the three branches of government.[7] In a 2018 public opinion poll conducted by the Texas Judicial Council, 52 percent of respondents said it was up to the person accused of the crime to prove his or her innocence.[8]

These statistics point out a need to strengthen and improve civic education in our schools, especially a deeper understanding of the purpose and role of the 3rd branch of government.[9]

The Council has long-supported measures to improve civic education. In 2018 it recommended expanding the widely successful program ***Access to Justice: Class in the Courtroom***. The program, developed by Sen. Judith Zaffirini, Ph.D., performed monthly mock trials in Laredo based off of beloved fairytale characters. The program has developed handbooks, mock trial scripts, and certificates of achievement and has made them available for courts to use across the country.[10] Since December 2017, 6,190 students have seen 50 mock trials at Webb County's County Court at Law Number Two with Judge Victor Villarreal presiding.

7 *Advocacy for Civic Education: A Statistical Cry for Help*, iCivics (July 24, 2014), https://www.icivics.org/news/advocacy-civic-education-statistical-cry-help.

8 Texas Public Trust and Confidence Survey Topline Report, SSRS (June 29, 2018), https://www.txcourts.gov/media/1442332/public-trust-and-confidence-survey-topline-report.pdf.

9 We note that, due to a lack of proper civics education, some Americans do not know there are three branches of government.

10 *Texas Access to Justice: Class in the Courtroom*, Tex. Office of Court Admin. (materials developed by Sen. Judith Zaffirini, Ph.D.), https://www.txcourts.gov/publications-training/training-materials/class-in-the-courtroom/.

> The committee recommends building on these civic education successes by partnering with various stakeholders interested in strengthening civic instruction and curriculum.

The committee recommends building on these civic education successes by partnering with various stakeholders interested in strengthening civic instruction and curriculum. One organization of interest is the Texas Civic Education Coalition. The Coalition was formed in November 2019 with the mission of preparing Texas' students for responsible, informed participation in civic life by promoting non-partisan education initiatives that support the key pillars of a comprehensive civic education.

RECOMMENDATION

Recommendation: The Legislature should amend state law to require a comprehensive civic education that results in informed and responsible civic engagement for Texas school aged children.

The Committee adopts the recommendations of the Texas Civic Education Coalition and recommends legislative changes to civic education in Texas for grades K-12 with the following components:

1. Define the elements of a comprehensive civic education that research shows results in informed and responsible civic engagement:

    a. **Civic Knowledge** - an understanding of the history and heritage of our civic life; the structure, functions, and processes of our civic institutions at all levels; founding-era documents; geography and economics that affect public policy; and the role of the citizen.
    b. **Civic Skills** - the abilities necessary to participate as active and responsible citizens in a democracy; training on how to effectively engage in the civic life and civic institutions of their community, state and nation; how to analyze text and determine the reliability of sources; how to formulate and articulate reasoned positions; how to actively listen and engage in civil discourse; and collaboration and community organizing skills.
    c. **Civic Attitudes** - appreciation of the importance and responsibility to participate in civic life; commitment to our nation and system of government; appreciation for the rule of law, free speech, and civil discourse; civic self-efficacy and understanding of perspectives that differ from one's own.
    d. **Civic Behaviors -** practicing civic habits, including voting, engaging in deliberative discussions, volunteering, attending public meetings and participating in other civic activities related to civic life through meaningful experiential opportunities or classroom simulations.

2. Recognizing the foundational civic knowledge requirements already existing in Texas educational standards but emphasizing the need for additional K-12 instruction on civic skills as well as appropriate civic attitudes in addition to just civic facts;
3. Mandating a student-led but curriculum-based, non-partisan civics practicum or project in the 8th grade and once in high school to effectively demonstrate understanding of crucial civic behaviors;
4. Requiring the Board of Education, during the already scheduled 2023 revision cycle, to revise or enhance the current social studies teaching standards (Texas Essential Knowledge and Skills) to provide for all four civic education domains described above and to specifically include these civic education domains where possible in existing history standards;
5. Instructing the TEA to infuse civics education into other disciplines by providing content rich, non-fiction civics texts in English Language Arts testing where reading and writing prompts are used and in approved ELA reading lists;
6. Requiring social studies teachers to have 25% of their teacher continuing education hours mandated every 5 years by the Education Code be specifically on effective teaching of media literacy, simulations of democratic processes, civic practicums, and guided classroom discussions of current events.

JUDICIAL TRAINING

BACKGROUND

The Texas Court of Criminal Appeals is responsible for adopting rules for programs related to education for training for attorneys, judges, justices of the peace, district and county clerks, law enforcement officers, law students and other court personnel in Texas.[11]

Appellate, District and County Judges are required to complete 30 hours of education before or within one year of taking office and 16 hours each fiscal year thereafter.[12] Justice of the Peace must complete an 80-hour live course within one year of taking office and 20 hours of education each year thereafter.[13] Municipal Judges who are attorneys must complete 16 hours of education within the first year--32 hours if they are non-attorneys--and 16 hours each year thereafter.[14]

The Legislature regularly mandates specific training for Judges,[15] and the Council in the past has recommended additional education in a multitude of areas including pretrial release, mental health and juvenile justice.

RECOMMENDATIONS

Recommendation 1: The Texas Court of Criminal Appeals should require judges to obtain additional training on implicit bias.

Implicit bias training has been part of required judicial education for Texas Judges since at least 2001 when the Texas Rules of Judicial Education were amended to require "judicial education entities [to] provide training in ethics, which must include information about issues related to race, fairness, ethnic sensitivity and cultural awareness."

Since 2012, the College for New Judges has included implicit bias and implicit judgment training for all newly-elected and-appointed judges as part of its curriculum. A full list of implicit bias training sessions compiled by the Texas Center for the Judiciary is located in the appendix of this report.

However, unlike requirements to obtain family violence training hours, there is no requirement that judges obtain a certain number of hours of implicit bias training on a regular basis. If judges do not attend the events or sessions offered by the training entities on implicit bias, they might not receive the training.

In light of recent national events and in an effort to continue the judiciary's dedication to continuously working to improve public trust and transparency, the Committee recommends that judges be required to obtain training on implicit bias annually.

11 Tex. Gov'T. Code § 56.006(a).

12 Tex. R. Jud. Ed. 2.

13 Tex. R. Jud. Ed. 3.

14 Tex. R. Jud. Ed. 5.

15 Tex. R. Jud. Ed. 12(b)

Recommendation 2: The Texas Judicial Council should create an advisory committee of the Council to assist the Council in its focus on judicial training, community engagements and developing judicial summits.

The Council and Texas Judiciary have a strong history of commitment to public engagement and efforts to increase trust and confidence in the third branch.

In December 2016, the Supreme Court of Texas and the Texas Court of Criminal Appeals hosted a summit called ***Beyond the Bench: Law, Justice and Communities*** in Dallas, Texas at Paul Quinn College. The day long conversation brought together a diverse group including Texas judges, law enforcement, educators, clergy, and national, state, and community leaders. The goal was to strengthen trust and confidence in our justice system and to have an open dialogue between community members.[16]

More recently, the Council conducted a public trust and confidence survey in 2018 that continues to be used to inform its work including recommendations to expand civic education in Texas.[17]

In 2019, the Texas judiciary was one of six states chosen for a Public Engagement Pilot Project sponsored by the National Center for State Courts. The Texas team held three engagements in late 2019 and early 2020 in Alpine, Brownsville, and Houston. The goal of the projects was to learn how to effectively engage focus groups and gain insight on ways to improve the court system through community engagement in order to assist other courts in doing the same.[18]

Recognizing that the efforts above take significant work and planning, the Committee recommends that the Council create an advisory committee to focus on judicial training, community engagement, and developing judicial summits. The Committee should be comprised of members of the Texas Judicial Council, judicial officers, advocacy groups, attorneys, community members, law enforcement and any other members necessary to its mission.

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16 *Beyond the Bench: Law, Justice, and Communities Summit*, Tex. Jud. Branch, https://www.txcourts.gov/publications-training/training-materials/beyond-the-bench-law-justice-and-communities-summit/.

17 Texas Public Trust and Confidence Survey Topline Report, *supra* note 8.

18 *Public Trust and Confidence Pilot Projects*, Nat'l Ctr. for State Courts (2019), https://www.ncsc.org/topics/court-community/public-trust-and-confidence/public-engagement-pilot-projects.

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Attachment A

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1210 San Antonio, Suite 800 – Austin, TX 78701
Phone (512) 482-8986 – Toll Free (888) 785-8986 – Fax (512) 469-7664

Judge Mark D. Atkinson, Chief Executive Officer

Implicit Bias Trainings

Rule 12 of the Rules of Judicial Education lists the statutorily mandated training for judges. Rule 12b specifies "Judicial Education entities shall provide training in ethics, which must include information about issues related to race, fairness, ethnic sensitivity and cultural awareness."

While the mandate is on training entities, most judges in Texas attend the Texas Center's College for New Judges. Implicit bias training was integrated into the curriculum of the College for New Judges in 2012 and has been included every year since then except in 2013 and 2015. With the exception of 2012, it has been taught by Professor Jeffrey Rachlinski[1] from Cornell Law School.

The following is a list of programs and presentations that are clearly and readily identifiable as bias training, followed by a list of additional presentations incorporate bias (including ethnic, gender, cultural, or racial) as part of the subject matter.

Programs Dedicated Solely to Implicit Bias

Undoing Racism Workshops (2010-2014)

Grants funds available through the Court Improvement Project, administered by The Permanent Judicial Commission on Children, Youth, and Families, were used by the Texas Center for the Judiciary to partially support an Undoing Racism workshop for judges in 2011.

Grants funds available through the Children's Justice Act (CJA), administered by The Texas Center for the Judiciary, were used to bring Undoing Racism workshops to local communities. The CJA Task Force sponsored one training at the Texas Center in 2010; provided funding to the Texas Center to partially support a workshop for judges in 2011; provided funding to the Department of Family and Protective Services to bring two workshops to local communities in 2012 and;

[1] Jeffrey Rachlinski is the Henry Allen Mark Professor of Law at Cornell Law School. He holds a BA and an MA in psychology from Johns Hopkins University, a JD from Stanford Law School, and a PhD in Psychology from Stanford. In 1994, Professor Rachlinski joined the faculty at Cornell Law School. He has also served as visiting professor at the University of Chicago, the University of Virginia, the University of Pennsylvania, Yale, and Harvard. Professor Rachlinski's research interests primarily involve the application of cognitive and social psychology to law with special attention to judicial decision making. He has presented his research on judicial decision making to audiences in attendance at over 70 judicial education conferences, which have included over 5,000 judges in a dozen states and three countries.

provided funding to the Center for the Elimination of Disproportionalities and Disparities to bring Undoing Racism trainings to communities across the state as part of a pilot project.

Implicit Bias Conferences (2010 – 2013)

The Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families (Children's Commission) and the Texas Center for the Judiciary hosted the Implicit Bias Conference for four consecutive years. The goal of the conference was to educate judges about the effect of implicit biases on decision making and how these biases have contributed and continue to contribute to disparate outcomes for African American, Native American and Hispanic youth and families involved in the judicial system. Some of the nation's pre-eminent experts led discussions on race and racism, including its history in the United States, the effects of unintentional biases, current research, and tools judges can use to effect change in their courtrooms. Course titles and objectives are listed below.

Presentations Dedicated Solely to Implicit Bias (2010 – Present)

2020

Many conferences have been canceled due to COVID-19. Implicit bias training will be included in the College for New Judges, in-person or virtually.

2019

College for New Judges
Implicit Judgment – 1 hr

> Explored how implicit bias based on gender, race/ethnicity, and a whole host of other individual traits can affect judgments in both civil and criminal cases, in the courtroom and beyond.

DWI Court Teams Advanced Conference
Culturally Informed Practice: Making Implicit Bias Visible – 1 hr

> Reviewed emerging research on the science of implicit bias and consequent outcomes such as micro aggressions, and offered strategies to better understand members of diverse communities.

2018

College for New Judges

Implicit Judgment – 1 hr

Explored how implicit bias based on gender, race/ethnicity, and a whole host of other individual traits can affect judgments in both civil and criminal cases, in the courtroom and beyond.

Child Welfare Judges Conference

Cultural Competency – 1 hr

Through personal and professional experiences about interacting with the various and diverse populations which come before their courts, two Texas judges discussed how they created a respectful environment in which collaboration, family empowerment, and strength-based solutions contributed to fair and positive treatment of all involved.

2017

College for New Judges

Implicit Judgment – 1 hr

Explored how implicit bias based on gender, race/ethnicity, and a whole host of other individual traits can affect judgments in both civil and criminal cases, in the courtroom and beyond.

DWI Court Teams Advanced Conference

Addressing Disparities: Cultural and Gender Issues – 1 hr

Focused on helping courts provide equivalent access, retention, treatment, incentives and sanctions, dispositions, and stress the importance of providing team training on race, ethnicity culture, diversity and becoming a culturally competent and responsive program.

2016

College for New Judges

Implicit Judgment – 1 hr

Explored how implicit bias based on gender, race/ethnicity, and a whole host of other individual traits can affect judgments in both civil and criminal cases, in the courtroom and beyond.

2014

College for New Judges

Implicit Bias – 1 hr

> Exlpored how implicit bias based on gender, race/ethnicity, and a whole host of other individual traits can affect judgments in both civil and criminal cases, in the courtroom and beyond.

Annual Judicial Education Conference

The Impact of Race and Gender on Judicial Decision-Making: The Empirical Evidence in Employment Discrimination Cases – 2hrs

> Reviewed research that has shown how unconscious preferences can affect reactions and judgments, then explored the complex race and gender dynamics in judicial decision-making and their consequences.

Texas College for Judicial Studies

Justice for All: Creating a Bias-Free Court– 1.5 hrs

> Presented a plan for creating a bias free court using the human relations approach. Focusing on communications tools, diversity issues were presented and discussed.

Child Welfare Judges Conference

Neuroscience of Judicial Decision-Making – 1.25 hrs

> Analyzed emerging research in neuroscience and discussed how unconscious processes can affect decision-making and identified ways to increase sounded decision-making and fairness.

DWI College for Court Teams

Cultural Competency 101 & Cultural Competency Discussion – 1.5 hrs

> Discussed how cultural filters can impact a client's motivation and how being aware of these when creating a treatment plan can increase the likelihood of a successful outcome.

2013

Education Summit

Mandatory Reporting and Disproportionality – .5 hr

> Focused on the impact that mandatory reporters have on disproportionate representation of children of color in the child welfare and juvenile justice systems and projects that have been implemented across the state to increase awareness of this issue.

Implicit Bias Conference

Disproportionality and Disparities in Texas: an Overview – .75 hr

Discussed the Texas specific data on disproportionality in its child welfare system as well as the move to a broader effort to improve equity across all systems.

Video Presentation: Race – The Power of an Illusion – 1 hr

Challenged the assumption of race as biology and explores how the social understandings and the implications of race have changed over time. Also scrutinized the effect that changing ideas about race have had on institutions.

Power, Privilege and Race – 2.5 hrs

Explored the historic construction of race and power in the United States and examined why these inequalities endure and what can be done to correct them.

The Science of Implicit Bias – 1.5 hrs

Provided information about the state of the science of implicit bias as well as detailed methods of measuring and understanding unconscious prejudices.

Helping Courts Address Implicit Bias – 1.75 hrs

Introduced research-based methods that can alter automatic mental processing to improve fairness in decision-making and will identify techniques for overriding unconscious bias.

Mobilizing Communities to Address Inequalities – .75 hrs

Experts identified ways that the judiciary, CPS, and the community work together to develop solutions to disproportionality and disparities.

2012

College for New Judges

Implicit Bias – 1.5 hrs

Used Texas-specific data to illustrate the existence and extent of disproportionality in the criminal justice system and how this can affect the role of a judge.

Family Violence Conference

The Neuroscience and Psychology of Judicial Decision-Making in Family Violence Cases – 1 hr

Dr. Kim Papillon analyzed the relationship between a person's brain, preferences and judicial decision-making in the context of cultural and gender differences in nonverbal

communication. She then offered methods and tools that can alter automatic mental processes to improve fairness and identify techniques for overriding unconscious bias.

Implicit Bias Conference

The Texas Story – 1 hr

Described the institutional change Texas made to reduce disproportionality within the child welfare system, which included the voices of those whose lives have been changed by these efforts.

What Blood Won't Tell: A History of Race on Trial in America– 1.75 hrs

Reviewed the legal history of racial identity, showing how the relationships of race have affected claims of citizenship over the past 150 years.

Analyzing Power – 1.75 hrs

Explored the historic construction of race and power in the United States and examined the systems external to the community that create the internal realities that many people experience on a daily basis.

Racial Wealth Gap – 1.25 hrs

Addressed how disparities in family assets along with continuing discrimination in critical areas such as homeownership dramatically impacts the lives of black families, perpetuating the cycle of poverty.

Uneven Justice – 1.25 hrs

Discussed the collateral effects of high incarceration in communities of color, including family stress and dissolution.

Intersection of Criminal Justice and Child Welfare – 1 hr

Focused on how parental involvement in the criminal justice system is a much higher risk factor for children of color.

The Neuroscience and Psychology of Decision-Making – 1.25 hrs

Dr. Kim Papillon analyzed the relationship between a person's brain, preferences and judicial decision-making in the context of cultural and gender differences in nonverbal communication. She then offered methods and tools that can alter automatic mental processes to improve fairness and identify techniques for overriding unconscious bias.

2011

Texas College for Judicial Studies

Justice for All: Creating a Bias-Free Court– 1.5 hrs

Presented a plan for creating a bias free court using the human relations approach. Focused on communications tools, diversity issues are presented and discussed.

CPS & Associate Judges Conference

How Implicit Bias Affects Decision-Making – 1 hr

Described how the way information is processed impacts decision-making, taking into account implicit bias - what it is, how it works, and how to address it to improve decision-making from the bench.

Implicit Bias Conference

The Texas Story – .25 hr

Described the institutional change Texas made to reduce disproportionality within the child welfare system.

Leading with the Data – 1 hr

Texas-specific data was used to illustrate the existence and extent of disproportionality in the child welfare system and how it increases at each stage of service.

Video Presentation: Race – The Power of an Illusion – 2 hrs

Challenged the assumption of race as biology and explores how the social understandings and the implications of race have changed over time. Also scrutinized the effect that changing ideas about race have had on institutions.

Analyzing Power – 1.75 hrs

Explored the historic construction of race and power in the United States and examined the systems external to the community that create the internal realities that many people experience on a daily basis.

Anthropology of Race – 1.5 hrs

Examined assumptions about race and biology, analyzed the difference between looking at race as a social idea versus a scientific one, and discussed other explanations for why individuals look different from each other.

Colorblindness – 1.5 hrs

Explored racial paradigms and how they contribute to a system of white privilege socially and legally defended by restrictive definitions of what counts as race and racism, and what doesn't, in the eyes of the law.

Structural Racism – 1.5 hrs

Explored the practices, cultural norms, and institutional arrangements that help create and maintain disparate racialized outcomes.

Courts Catalyzing Change – 1.5 hrs

Reviewed a study that investigated disproportionate representation and disparate outcomes for children and families of color in child protection courts.

2010

Implicit Bias Conference

The Texas Story – .75 hr

Described the institutional change Texas made to reduce disproportionality within the child welfare system.

Race: The Power of an Illusion Video Presentation – 1 hr

Challenged the assumption of race as biology and explores how the social understandings and the implications of race have changed over time.

History of Racism in America– 2.25 hrs

Examined how racism has distorted, suppressed, and denied the histories of people of color and white people.

Implicit Bias in Decision-Making – 1 hr

Explored how implicit biases work and how despite pretexts of "color blindness," racism still results in disproportional treatment in all major social institutions, including child welfare.

Training and Strategies: Judges Role – 3 hrs

Explored how racial bias or cultural misunderstanding by judges, social workers, and attorneys perpetuates disproportionality in child welfare; and provided an opportunity to develop an understanding of cultural and sub-cultural context.

The Travis County Story on Disproportionality – .25 hr

Reviewed Travis County disproportionality data and discussed strategies and efforts being implemented by the local DFPS Disproportionality Task Force and Travis County Model Court to address and eradicate racial disproportion in the child welfare population.

Presentations that Incorporate Implicit Bias as a Part of the Subject Matter (2010 – Present)

2019

College for New Judges

Role of a Judge – 1 hr

Examined the role of the judge in the justice system and a judge's ability to affect and improve his or her community by being fair and equitable to all that come before the Court.

Self-Represented Litigants – 1 hr

Addressed issues relating to judicial sensitivity to self-represented litigants and how judicial responses might be interpreted as unethical or displaying bias and lack of sensitivity.

Ethics In and Out of the Courtroom – 1 hr

Explored moral, legal and ethical obligations imposed by Texas Judicial Code of Conduct.

2018

College for New Judges

Role of a Judge – 1 hr

Examined the role of the judge in the justice system and a judge's ability to affect and improve his or her community by being fair and equitable to all that come before the Court.

Self-Represented Litigants – 1 hr

Addressed issues relating to judicial sensitivity to self-represented litigants and how judicial responses might be interpreted as unethical or displaying bias and lack of sensitivity.

Ethics In and Out of the Courtroom – 1.5 hrs

Explored moral, legal and ethical obligations imposed by Texas Judicial Code of Conduct.

Child Welfare Judges Conference
The Power of Perception and The Positive Impact of Humanizing Justice – .5 hr

Discussed the concept of procedural fairness, and why having a humane and fair courtroom process has more impact on the parties than the actual decision.

2017

College for New Judges
Role of a Judge – 1 hr

Examined the role of the judge in the justice system and a judge's ability to affect and improve his or her community by being fair and equitable to all that come before the Court.

Self-Represented Litigants – 1 hr

Addressed issues relating to judicial sensitivity to self-represented litigants and how judicial responses might be interpreted as unethical or displaying bias and lack of sensitivity.

Ethics In and Out of the Courtroom – 1.5 hrs

Explored moral, legal and ethical obligations imposed by Texas Judicial Code of Conduct.

Child Welfare Judges Conference
Recognizing Judicial Leadership and Innovate Practices – 1 hr

Judge Cyndi Wheless discussed her long-time efforts to address disproportionality and her use of the National Council of Juvenile and Family Court Judges Courts Catalyzing Change bench card. Judge Carlos Villalon presented on the Collaborative Family Engagement program and the difference it has made in his community, along with docketing practices and becoming a trauma-informed courtroom. Judge Katrina Griffith discussed involving youth in the decisions affecting their lives and moving youth to permanent homes and relationships.

2016

College for New Judges

Role of a Judge – 1 hr

Examined the role of the judge in the justice system and a judge's ability to affect and improve his or her community by being fair and equitable to all that come before the Court.

Self-Represented Litigants – 1 hr

Addressed issues relating to judicial sensitivity to self-represented litigants and how judicial responses might be interpreted as unethical or displaying bias and lack of sensitivity.

Ethics In and Out of the Courtroom – 1.5 hrs

Explored moral, legal and ethical obligations imposed by Texas Judicial Code of Conduct.

2015

College for New Judges

Role of a Judge – 1 hr

Examined the role of the judge in the justice system and a judge's ability to affect and improve his or her community by being fair and equitable to all that come before the Court.

Self-Represented Litigants – 1 hr

Addressed issues relating to judicial sensitivity to self-represented litigants and how judicial responses might be interpreted as unethical or displaying bias and lack of sensitivity.

Ethics In and Out of the Courtroom – 1.5 hrs

Explored moral, legal and ethical obligations imposed by Texas Judicial Code of Conduct.

Child Welfare Judges Conference

Handling Well-Being Issues From the Bench – 2.25 hrs

Foster youth discussed their experiences, specifically related economic, social, and emotional well-being, and judges engaged in a Q & A forum that included the subtopic of disproportionality.

2014

College for New Judges

Role of a Judge – 1 hr

Examined the role of the judge in the justice system and a judge's ability to affect and improve his or her community by being fair and equitable to all that come before the Court.

Self-Represented Litigants – 1 hr

Addressed issues relating to judicial sensitivity to self-represented litigants and how judicial responses might be interpreted as unethical or displaying bias and lack of sensitivity.

Ethics In and Out of the Courtroom – 1.5 hrs

Explored moral, legal and ethical obligations imposed by Texas Judicial Code of Conduct.

Texas College for Judicial Studies

Public Perception of the Courts through Media – 1.5 hrs

Compared how movies have portrayed judges, the concepts of fairness and justice depicted in courtroom scenes, and showed movie examples of unethical behavior by judges.

Constructive Communication – 3 hrs

Identified courtroom events that included nonverbal messages, addressed personal nonverbal styles and self-monitoring, and presented tools to help judges develop strategies for managing nonverbal perceptions and problems.

Child Welfare Judges Conference

Laws and Policies Affecting Limited English Proficient People in Texas Courts – .5 hr

Reviewed statutes and rules addressing the appointment of court interpreters as well as available resources and information to assist courts with this process to ensure due process.

2013

College for New Judges

Role of a Judge – 1 hr

Examined the role of the judge in the justice system and a judge's ability to affect and improve his or her community by being fair and equitable to all that come before the Court.

Self-Represented Litigants – 1 hr

Addressed issues relating to judicial sensitivity to self-represented litigants and how judicial responses might be interpreted as unethical or displaying bias and lack of sensitivity.

Ethics In and Out of the Courtroom – 1.5 hrs

Explored moral, legal and ethical obligations imposed by Texas Judicial Code of Conduct.

Child Welfare Judges Conference

Criminal Convictions and Kinship Placements – 1 hr

Examined the higher rates of incarceration of African Americans and what effect it had on the child welfare system, as well as the potential implications of criminal justice involvement on children and families this question as well as the effect of criminal convictions on kinship/relative placements and permanency.

2012

College for New Judges

Role of a Judge – 1 hr

Examined the role of the judge in the justice system and a judge's ability to affect and improve his or her community by being fair and equitable to all that come before the Court.

Self-Represented Litigants – 1 hr

Addressed issues relating to judicial sensitivity to self-represented litigants and how judicial responses might be interpreted as unethical or displaying bias and lack of sensitivity.

Ethics In and Out of the Courtroom – 1.5 hrs

Explored moral, legal and ethical obligations imposed by Texas Judicial Code of Conduct.

Child Welfare Judges Conference

Procedural Fairness in CPS Cases – 1 hr

Provided recommendations and ideas to improve the perception of procedural fairness by all parties in child welfare cases.

2011

College for New Judges

Role of a Judge – 1 hr

Examined the role of the judge in the justice system and a judge's ability to affect and improve his or her community by being fair and equitable to all that come before the Court.

Self-Represented Litigants – 1 hr

Addressed issues relating to judicial sensitivity to self-represented litigants and how judicial responses might be interpreted as unethical or displaying bias and lack of sensitivity.

Ethics In and Out of the Courtroom – 1.5 hrs

Explored moral, legal and ethical obligations imposed by Texas Judicial Code of Conduct.

Annual Judicial Education Conference

When Justice Fails – 1.5 hrs

Analyzed the impact of judicial decisions and implications of judges' position as the branch of government charged with maintaining order. When significant actions by the executive or legislative branch threaten to encroach on the freedoms of citizens, it is up to the judiciary to enforce the principles of law and the constitution.

Texas College for Judicial Studies

Creative Sentencing – 1 hr

Examined factors judges rely on when sentencing offenders, highlighting factors that they may not be aware they are taking into consideration, including race and gender. You may not even be aware of the factors influencing your decision.

Public Perception of the Courts through Media – 1 hr

Compared how movies have portrayed judges, the concepts of fairness and justice depicted in courtroom scenes, and showed movie examples of unethical behavior by judges.

Constructive Communication – 3 hrs

Identified courtroom events that included nonverbal messages, addressed personal nonverbal styles and self-monitoring, and presented tools to help judges develop strategies for managing nonverbal perceptions and problems.

2010

College for New Judges

Role of a Judge – 1 hr

Examined the role of the judge in the justice system and a judge's ability to affect and improve his or her community by being fair and equitable to all that come before the Court.

Self-Represented Litigants – 1 hr

Addressed issues relating to judicial sensitivity to self-represented litigants and how judicial responses might be interpreted as unethical or displaying bias and lack of sensitivity.

Ethics In and Out of the Courtroom – 1.5 hrs

Explored moral, legal and ethical obligations imposed by Texas Judicial Code of Conduct.

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www.txcourts.gov/tjc/committees/criminal-justice-committee/

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4

JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

August 16, 2021

Hon. Gavin Newsom
Governor of California
State Capitol Building
Sacramento, California 95814

Hon. Toni G. Atkins
Senate President pro Tempore
State Capitol, Room 205
Sacramento, California 95814

Hon. Anthony Rendon
Speaker of the Assembly
State Capitol, Room 219
Sacramento, California 95814

Hon. Thomas J. Umberg, Chair
Senate Judiciary Committee
State Capitol, Room 5094
Sacramento, California 95814

Hon. Mark Stone, Chair
Assembly Judiciary Committee
State Capitol, Room 3146
Sacramento, California 95814

Dear Governor Newsom, President pro Tempore Atkins, Speaker Rendon, Senator Umberg, and Assembly Member Stone:

In March of this year, I convened a Judicial Council workgroup to examine successful court practices adopted during the pandemic and recommend those that demonstrate the most promise to increase access to justice, modernize services, and promote consistency and uniformity throughout the state. The workgroup has issued its first interim report focused on remote access to courts,

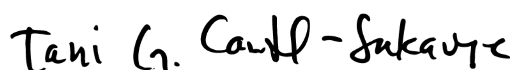
which, unsurprisingly, has emerged as a central issue with strong support for maintaining extensive remote access to court proceedings. The report, outlining considerations for addressing both judicial proceedings and court operations, is attached. (Additional recommendations building on other court practices and procedures developed during the pandemic will be forthcoming as the workgroup continues its efforts.)

This interim report on remote access was informed by meetings held with court users representing 46 different groups—including civil and criminal attorneys, law enforcement, legal aid attorneys, dependency counsel, and court staff—who presented their input on changes to court processes instituted due to the pandemic, including their experiences with remote hearings.

The workgroup recommends that California expand and maximize remote access on a permanent basis for most court proceedings and should not roll back the increased access to the courts made possible by remote technology to pre-pandemic levels of in-person operations. It further recommends that the Judicial Council encourage and support courts in substantially expanding remote access, while adopting policies that ensure consistency and fairness statewide with the flexibility to meet local needs.

Remote technology increases equity and fairness in our court system by allowing court users more ways to access court services and participate in court proceedings. Recognizing that remote technology should not replace all in-person court hearings, Californians should have the freedom of choice to conduct their business remotely whenever appropriate. I welcome the support of the Administration and the Legislature in accomplishing these changes to benefit the public we serve.

Sincerely,



Tani G. Cantil-Sakauye
Chief Justice of California

TCS/tc
Attachment
cc: Hon. Marsha G. Slough, Chair, Workgroup on Post-Pandemic Initiatives
Mr. Martin Hoshino, Administrative Director, Judicial Council
Ms. Shelley Curran, Director, Criminal Justice Services, Judicial Council
Mr. Cory Jasperson, Director, Governmental Affairs, Judicial Council

Interim Report: Remote Access to Courts

WORKGROUP ON POST-PANDEMIC INITIATIVES

AUGUST 16, 2021

REMOTE ACCESS TO COURTS

Overcoming bureaucracy, updating the museum pieces of governance, revealing the real people who make up our government, restoring trust: technology can help us do all of these crucial things, if we allow ourselves to embrace it.

Governor Gavin Newsom, *Citizenville*

We need to reinvest in justice. We need that reinvestment to institute what I call "Access 3D," three-dimensional access. Access should be physical, remote, and equal.

Chief Justice Tani Cantil-Sakauye, *2013*

CHIEF JUSTICE'S AD HOC WORKGROUP ON POST-PANDEMIC INITIATIVES

In March 2021, Chief Justice Tani G. Cantil-Sakauye appointed the Ad Hoc Workgroup on Post-Pandemic Initiatives (Workgroup). The purpose of the Workgroup is to identify, refine, and enhance successful court practices that emerged during the COVID-19 pandemic to increase access to justice, modernize services, and promote uniformity and consistency in these practices going forward.

To date, the Workgroup has heard from 76 individuals representing 46 entities. Those who presented to the group represented court users in all case types, judicial officers, court staff, criminal and civil attorneys, and legal aid attorneys representing low-income litigants. A full list of the presenters and the organizations they represent can be found in Attachment A.

The Workgroup asked presenters to comment on practices adopted by courts during the pandemic to provide continued access to justice while maintaining the health and safety of court users, judicial officers, and staff. Remote access to the courts was chosen as the subject for this first interim report because it was the central issue raised in nearly every presentation to the Workgroup. This report summarizes the many and varied considerations for remote access to the courts in both judicial proceedings and court operations touched on by those presenters who addressed the topic. With few exceptions, presenters spoke of the value in continuing to provide court users with remote access in all case types. Future reports will cover other topics under consideration by the Workgroup.

EXECUTIVE SUMMARY

The COVID 19 pandemic highlighted many access to justice issues especially for low-income individuals, communities of color, children, the elderly, victims of crime, and other vulnerable populations. Remote access to the courts can increase equity, fairness, and transparency for both the public and the media.

The majority of judicial branch users and stakeholders who presented to the Ad Hoc Workgroup on Post-Pandemic Initiatives expressed strong support for the expansion of remote access to court proceedings during the pandemic, and for maintaining extensive remote access going forward. This input confirmed that remote proceedings allow individuals who face barriers in accessing the courts (such as having to travel long distances to court or take time off work) to efficiently resolve their court matters, and that providing access to the courts through the use of remote technology is an access to justice issue.

Expanding the use of remote technology also addresses many other important public policy concerns. Approximately 40 million individuals entered California courts in person annually before the pandemic, often traveling significant distances in private vehicles and on public transportation to appear at hearings or to otherwise conduct their court business. During the pandemic, with the use of remote technology for handling cases, the number of individuals who entered courthouses in person dropped to 12 million. When provided the option for remote access to court services, 75 percent of self-help visitors chose to obtain services remotely. This reduction in the number of individuals who had to travel to courthouses reduced traffic and air pollution and will continue to have a positive climate impact going forward. Remote proceedings allowed pro bono attorneys and legal aid providers to serve more clients with greater efficiency, and increased transparency and access to court proceedings for the public and the media. The need for remote access to the courts is likely to increase significantly in the coming months as California pursues more equity and inclusion initiatives and works to manage the anticipated rise in evictions.

Given the importance of addressing the use of remote technology as an access to justice issue, the Workgroup makes the following interim recommendations:

- California courts should expand and maximize remote access on a permanent basis for most proceedings and should not default to pre-pandemic levels of in-person operations.

- The Judicial Council should encourage and support courts to substantially expand remote access through all available technology and should work to promote consistency in remote access throughout the state to ensure that Californians have equal access to the courts while providing flexibility to meet local needs.

This interim report provides a condensed, selective summary of comments the Workgroup received from a wide variety of judicial branch stakeholders on the use of remote technology to provide access to the courts. It includes the benefits identified, areas of concerns, and considerations that will need to be addressed in making remote access to court processes fair, consistent, and permanent.

BACKGROUND

On March 28, 2020, at the start of the COVID-19 pandemic, the Judicial Council directed superior courts to make use of available technology to conduct judicial proceedings and court operations remotely, when possible, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. On March 30, Chief Justice Tani G. Cantil-Sakauye issued an order, consistent with Governor Newsom's Executive Order N-38-20, suspending the California Rules of Court to the extent that any rule prevented a court from using technology to conduct judicial proceedings and court operations remotely.

On April 6, 2020, the Judicial Council of California adopted emergency rule 3 of the California Rules of Court, which generally provides that courts may require judicial proceedings and court operations to be conducted remotely. Emergency rule 3 will remain in effect until 90 days after the Governor declares the state of emergency related to the COVID-19 pandemic lifted, or until the rule is amended or repealed by the Judicial Council.

Emergency rule 3 provides courts with broad authority to conduct essential court functions—including arraignments, preliminary hearings, restraining orders, juvenile proceedings, and general civil and mental health hearings—remotely to implement the social-distancing measures necessary to limit the spread of COVID-19. For criminal proceedings, courts must receive the consent of the defendant to conduct the proceeding remotely.

The rule provides that courts may conduct proceedings remotely, which includes:

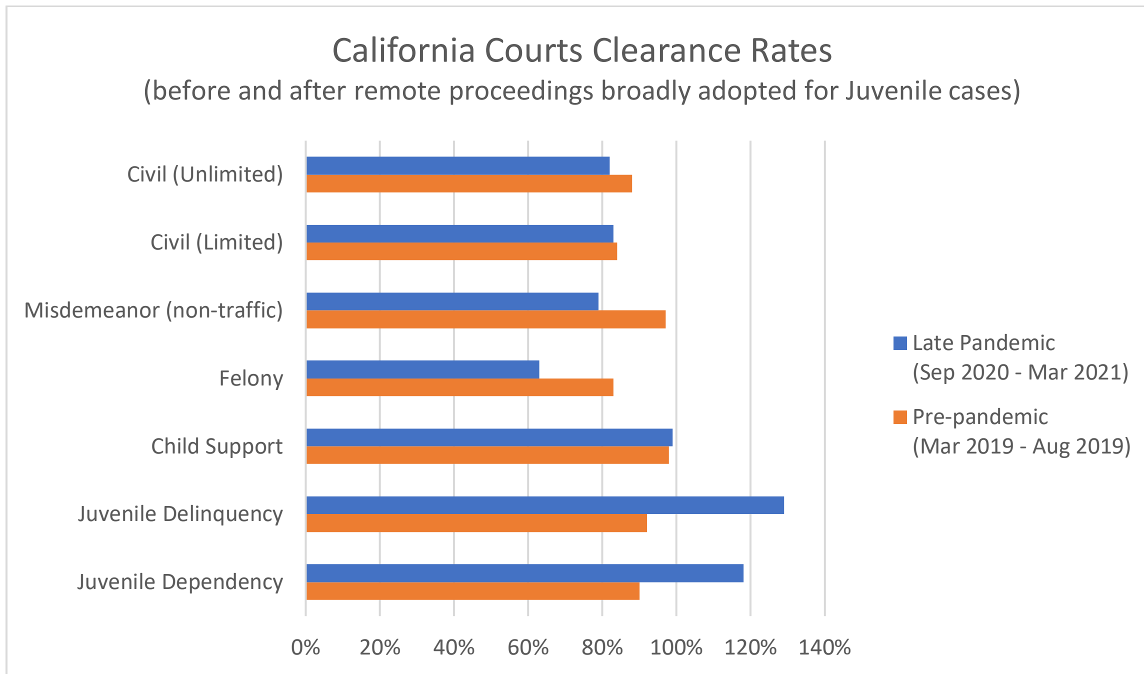
- Video, audio, and telephonic means for remote appearances;
- Electronic exchange and authentication of documentary evidence;
- E-filing and e-service; and
- Remote interpreting, remote court reporting, and electronic recording of court proceedings to make the official record.

In June 2020, a Judicial Council working group published the *Pandemic Continuity of Operations Resource Guide*. The guide includes considerations and approaches to help the state's trial courts with their pandemic continuity of operations while providing a safe environment for court users, staff, and justice partners. By December 2020, almost all courts were providing remote proceedings in at least one case type and 38 courts made remote proceedings available in all case types. In February 2021, the *Pandemic Continuity of Operations Resource Guide* was updated to include promising practices from the courts regarding their experiences with remote proceedings.

The use of technology for remote proceedings has been instrumental in enabling courts to continue to serve the public and provide access to justice during the pandemic. The courts have been successful in these efforts, as indicated by the rate of case dispositions to case filings. Typically, court case filings exceed case dispositions. Before the pandemic, court clearance rates, defined as dispositions as a percentage of filings, averaged 86 percent. During the early part of the pandemic, March–August 2020, the clearance rate dropped to 73 percent.

However, in case types where courts were able to increase the use of technology during the pandemic, the case clearance rate simultaneously increased. In juvenile cases, which have transitioned almost entirely to video remote proceedings, clearance rates have exceeded 100 percent as courts have been able to address both current and backlogged cases; child support matters had an approximately 10 percent increase in clearance rates. In criminal cases and other case types where remote technology and practices have not been implemented as broadly, clearance rates have decreased by approximately 20 percent. (See Figure 1, below.)

Figure 1. California Courts Clearance Rates



BENEFITS

Most individuals and organizations that presented to the Workgroup voiced strong support for maintaining extensive remote access to court proceedings.

Remote Technology Promotes Greater Access for Court Users

Many presenters provided examples of how technology increased access to the courts in all case types and noted that remote access has been particularly positive in the following areas:

- Family law
- General Civil matters
- Restraining orders, both domestic violence and other civil
- Small claims
- Juvenile law
- Probate (conservatorships and guardianships)
- Collaborative courts (both adult and juvenile)
- Child support

Offering remote options provides court users with access to the courts they otherwise would not have. Existing access divides were made more apparent by the pandemic and were addressed by remote proceedings. Before the expansion of remote access, individuals faced significant barriers to participation in court proceedings because of job constraints, childcare needs, transportation issues, traffic congestion in urban areas, and length of travel for rural communities. Remote technology can increase access and save on travel time and costs by allowing a court user to attend a hearing while on a

break at work rather than lose a full day of work (and pay) to appear in person. This is especially true for self-represented litigants, who constitute a large portion of court users, particularly in family law, restraining order proceedings, traffic, and small claims cases.

In collaborative courts, providing remote appearances has allowed participants to receive better continuity of treatment (drug treatment, medical, etc.) without having to interrupt these important services to attend a hearing. For some collaborative court participants, including those with mental health or substance use disorders, the experience of coming to court can be overwhelming, so participants can be better served by allowing them to appear remotely from their own home or treatment setting. To accomplish these remote appearances effectively, the base technological support must be in place.

In the family court arena, online mediation tools have worked well for those in the military and out of state. These tools have enabled people to participate by video conference rather than just by phone, which has allowed the court and other participants to communicate on important family law issues more easily. In dependency, delinquency, and family law cases, remote appearance options have led to increased participation, and generally outcomes are much better when the family is engaged.

In juvenile law cases, remote options have been positive for those with nontraditional work schedules, for incarcerated parents, and for youth who are able to participate without taking time from school. (In one jurisdiction, it is a 176-mile drive over a mountain pass to get to court, so safety is a concern whenever youth must be driven to court.)

Victims often prefer to have the option of attending or appearing in remote proceedings

Remote arraignments that do not require defendants to be brought into the courthouse are a safer model for victims and other court users. Remote options also reduce transportation barriers and the amount of time necessary for victims to appear in court.

Court staff have received from vulnerable victims (such as the elderly and those who have experienced domestic violence) feedback that they appreciated the remote options and reports of decreased anxiety and stress from knowing that they would not have to appear in the same physical space as the person who abused them.

Availability of expert and other witness testimony is increased through remote options

Counsel in both civil and criminal proceedings have reported that experts and other witnesses have had greater interest and willingness to testify because they do not need to set aside a whole day to travel and appear in court, which makes scheduling of contested hearings much easier. For traffic and criminal cases, some law enforcement offices have created a “Zoom Room”—a dedicated room for remote testimony by law enforcement personnel. This approach has been extremely helpful in addressing and avoiding technology issues and has allowed officers to use their time more efficiently while waiting to testify. Historically, officers could wait in court for two to three hours before being called to testify. Remote appearances allow them to be available as needed and to complete paperwork and other work while waiting to be called.

Providing a virtual visitation option promotes improved relationships and increased participation

Many families involved in family law and dependency court proceedings also face housing issues and tend to change residences during the life of their cases, which can make it difficult to appear in court

and to maintain in-person visitation. Some parents who live out of state and previously had been unable to participate in proceedings or visitation are now able to do so remotely. Those working with families have been able to utilize technology to improve connections between youth and their family members or other adults in their lives.

In the dependency arena, offering an option for virtual visitation promotes relationships between birth parents and foster parents and helps children to stay in touch with parents and other supportive adults in their lives. Research on parents deployed in the military shows that children can have meaningful contact via virtual visits. In addition to a weekly in-person visit, the option for children to touch base with parents more regularly via technology is important.

Remote options increase participation and promote efficiency in all case types

> *For child support matters involving the Department of Child Support Services, it would not be uncommon to have 17 matters calendared and have both parties in attendance at only 10 of the matters. With remote hearings, it's more common that both parties are in attendance in 16 out of 17 matters.*
>
> Hon. Danielle K. Douglas, Superior Court of Contra Costa County

In the criminal arena, remote appearances for arraignments are more efficient overall for counsel, court staff, and correctional staff who are not required to transport defendants and manage their presence in public areas of courthouses and in courtrooms. Defense counsel noted that remote arraignments and preliminary hearings are efficient, emphasizing the importance of ensuring access to materials in advance and of defense counsel's ability to communicate confidentially with the client before and during the arraignment. Arraignment calendars have been handled more efficiently in jurisdictions that have used this approach. However, there is currently no consistency in the way these proceedings are handled from county to county and court to court.

Before the pandemic, pretrial conferences in both civil and criminal cases took a great deal of time for judges and attorneys. Providing remote options and allowing for client appearances to be waived for date setting or progress report hearings has been beneficial; the same is true for stipulated continuances. Although support is strong for the use of remote technology, there is agreement that it can be beneficial and efficient to conduct more substantive parts of both criminal and civil cases in person.

Many jails have instituted a remote meeting process for criminal defense counsel to have access to their in-custody clients, and this process has generally demonstrated a significant benefit. In many counties, the jail is a 30-minute drive from the court and counsel offices, and it can take a long time for counsel to get processed for entering the jail. After meeting with clients in person a few times to establish trust, it is possible and more efficient for counsel to conduct Zoom meetings with their clients.

The ability to conduct hearings remotely has reduced default or failure-to-appear rates in many courts, and at the same time courts have seen efficiencies in work for staff, with less down time in courtrooms. Courts were initially concerned that holding remote hearings could hinder access to justice, but some courts have seen participation increase by 20–30 percent.

In the juvenile arena, courts saw increased participation from youth who had previously been AWOL (absent without leave) but were more willing to participate in remote hearings. Failures to appear have dropped in juvenile matters because youth do not fear that they will immediately be taken into custody

if they appear remotely. For youth in custody, remote appearances have improved the efficiency of service delivery in the institutions. Programming and other responsibilities take up most of their day, every day, so for youth to attend court remotely and then seamlessly return to their programs is beneficial and efficient.

Court users expect and want courts to provide remote options

> *We learned that the pace of change can be much quicker than we thought; we now know that we can work faster than we thought we could.*
>
> Cecilia Rivas, Youth Law Center

Throughout the pandemic, and even before it, courts received criticism for requiring people to appear in person for something that could have easily been handled remotely. Increasingly, court users expect that if the courts can serve people equally or better remotely, the courts should have those options available. Some court users, including litigants in civil matters, have indicated that going back to in-person appearances, at least for short cause matters, would be very problematic and decrease access to justice because of the inconvenience and costs—considerations that are especially important to low-income court users. Some jurors have indicated they preferred remote trials because of the convenience factor, especially in places where transportation issues make travel to and from court difficult and because parking at the courthouse is limited and expensive.

Youth are generally quite comfortable with being online, so in the family and juvenile arenas participating virtually in court proceedings may be easier for them because it is familiar, is a bit more distanced, and feels safer. At the same time, courts should be thoughtful about the best approach to use with each child or youth, based on developmental considerations.

CONCERNS

In addition to the benefits identified by the individuals who presented to the Workgroup, several concerns were noted. These concerns generally relate to implementation challenges and include the digital divide and other technology issues, challenges in setting an appropriate virtual courtroom environment, and the effect of remote proceedings on the ability of all participants to responsibly perform their roles. Most of these issues can be resolved with adequate funding, infrastructure, and education to provide all court users with the necessary support for ensuring adequate access to the courts.

The Digital Divide

> *Problems for clients in rural areas are exacerbated because they are in remote areas and often do not have access to technology. They are distant from any location where they may have access to technology, particularly for farmworkers, who work long hours.*
>
> Ilene J. Jacobs, CA Rural Legal Assistance, Inc.

Although the expansion of the use of remote technology increased access to justice in many areas as outlined above, those who presented to the Workgroup identified some specific concerns related to the digital divide that must be addressed as remote access to the courts is expanded.

Internet bandwidth is a concern, particularly in rural counties and counties that have experienced fires in recent years. The lack of equity is apparent: 83 percent of Californians have access to broadband, but

only 52 percent have broadband with more than a minimal connection speed, and 28 percent of tribal lands have no broadband network at all. In addition to individual tribal members' lack of access to broadband, some tribes as a whole lack access to broadband, preventing them from participating in state court hearings remotely. Some tribes may not have the infrastructure, finances, or IT support to navigate online virtual hearings.

During the pandemic, the issue of affordability surfaced, as well; the digital divide is not just about connectivity but also about the ability to *afford* connectivity. In addition, not all court users can navigate the technology needed for remote appearances. These are genuine concerns about the increasing digital divide between various court users and its impact on access to justice.

In some areas, the impact of the digital divide on limited-English-proficient (LEP) individuals was not considered, and at times LEP individuals could not fully participate or get access to their lawyers. This circumstance resulted in remotely conducted matters that were inappropriate for virtual remote interpreting. With virtual hearings in dependency cases, LEP parents faced with losing custody rights had the extra stress of being unsure about how much of the remote proceeding they would be able to hear and understand.

Rural areas also have some special issues that tend to be overlooked because of a more common focus on urban low-income populations. Residents in both rural and urban areas may not have access to an attorney or legal services, as well as lacking internet access.

Court reporters stated that technology problems can result in less accurate court records

Individuals representing court reporters expressed concerns that use of video conferencing can make the court record less accurate because of problems with dropped calls or parties running out of minutes on their phones, particularly on government-funded phones with limited minutes. They noted that the record will be substandard if it includes comments such as "you're on mute" and half sentences where people talk over each other due to technology glitches.

Court reporter representatives also stated that when two attorneys with masks on are in the same frame, it is difficult for court reporters to tell who is speaking. They noted that court reporters are required to provide a full, complete court record, and at times, because of technology glitches and other difficult issues, preparing the required record of a remote hearing is a challenge for them.

Challenges in creating a virtual courtroom

At the start of the pandemic, some courts were not as technologically advanced as others. During the first several months of COVID, court users were scrambling to find a point person at some of the courts for assistance with technology troubleshooting. Courts also reported issues with court participants, parents or caregivers, and others recording remote proceedings in violation of the law or court directives.

Court users in remote proceedings sometimes speak out of turn and it is more difficult for the court to control the courtroom or for their attorney to assist in the same way they would at an in-person hearing. In some remote proceedings, the lack of courtroom decorum was a significant concern.

There were instances in remote proceedings where witnesses turned off their cameras so the judge could not ensure that the witness was paying attention or determine whether the witness was looking

at documents or checking notes when they were not supposed to be. There were also concerns that, in some cases, there was someone else in the room who was potentially coaching the witness. For children, testifying from home can have a chilling effect, even if they are safe there, because they may not have a completely private space available.

Concerns specific to criminal matters

There are concerns about remote proceedings in criminal cases. Some people have the perspective that remote proceedings are not constitutionally permissible for critical stages.

Throughout the pandemic, figuring out how in-custody defendants can participate in interviews with their attorneys has been a challenge, as jails have also been trying to cope with the impact of COVID on their institutions. These issues related to access to counsel have been one of the biggest obstacles with remote hearings in criminal cases.

One presenter expressed concerns that providing for defendant consent to remote appearance opens the door to claims of ineffective assistance of counsel. The concern is that the reduction in court time for remote appearances could provide an economic incentive for attorneys to take on more clients and proceedings than they can reasonably handle, so there may be a need to account for potentially unethical attorneys who provide ineffective assistance.

In-person interaction has benefits that may outweigh efficiency

Some have noted that, in many types of proceedings, to have the judge in the same room as the person who will be affected by the judge's decision is helpful. Although many proceedings can be done remotely, there is reason to be thoughtful about moving away completely from the humanity of in-person proceedings for the sake of efficiency.

The value of remote juvenile proceedings has limits. For example, addressing questions that arise midstream from youth in remote proceedings can be challenging.

In dependency and family court matters, it is important to have children present for hearings so they can have a sense of the court, who the participants are, and who makes the decisions. That context is challenging to accomplish with remote proceedings. In court, counsel can be right next to the child and help them understand, which informs the child about the process and strengthens their bond with counsel. In remote proceedings, counsel may not be able to be physically present with their client, and even when they are, they may have more difficulty explaining the various roles given that each person appears in a nearly identical Zoom box rather than in various spaces around the courtroom.

One benefit of in-person dependency and other hearings is that they provide people with the opportunity to make the choice to go into treatment as they leave the courthouse after the judge has stated in court that it would be beneficial for their case; that immediate enrollment in treatment is not possible with virtual hearings. This quick entry into treatment is a critical benefit that can follow from in-person hearings when the next steps the person takes will have an impact on the outcome of their case, such as whether they regain custody of their children.

CONCLUSION

Given the importance of addressing the use of remote technology as an access to justice issue, the Workgroup makes the following interim recommendations:

- California courts should expand and maximize remote access on a permanent basis for most proceedings and should not default to pre-pandemic levels of in-person operations.
- The Judicial Council should encourage and support courts in substantially expanding remote access through all available technology and should promote fairness by adopting balanced policies and encouraging consistency in remote access throughout the state to ensure that Californians have equal access to the courts while providing flexibility to meet local needs.

Individuals and organizations that presented to the Workgroup identified policy and implementation questions that must be considered to improve remote access as it is made permanent. Effective partnerships between the three branches of government at the state and local levels; coordination among the courts and justice partners; and adoption of rules, practices, and procedures—together with education and training for judges, court staff, and court users—will address many of the concerns.

Attachment A: Ad Hoc Workgroup on Post-Pandemic Initiatives Presenters

April 19, 2021

Trial Court Presiding Judges Advisory Committee (TCPJAC)
- Hon. Joyce D. Hinrichs, Superior Court of Humboldt County, TCPJAC Chair
- Hon. Tara M. Desautels, Superior Court of Alameda County, TCPJAC Vice-Chair

Court Executives Advisory Committee (CEAC)
- Ms. Nancy CS Eberhardt, Superior Court of Orange County, CEAC Chair
- Mr. Kevin Harrigan, Superior Court of Tehama County, CEAC Vice-Chair

May 3, 2021

American Board of Trial Advocates, California Chapter
- Walter M. Yoka, Yoka & Smith, LLP, President

California Defense Counsel
- Christopher E. Faenza, Yoka & Smith, LLP, President
- Michael D. Belote, Legislative Advocate

California Lawyers Association
- Emilio Varanini, President
- Ona Dosunmu, Executive Director

Conference of California Bar Associations
- Oliver Q. Dunlap, Chair

Consumer Attorneys of California
- Deborah Chang, Athea Trial Lawyers LLP , President
- Nancy Drabble, Chief Executive Officer

American Federation of State, County and Municipal Employees
- Christoph Mair, Legislative Advocate
- Cole Querry, Political Action Representative

California Court Reporters Association
- Sandy Walden, Chair of Legislative Committee and Immediate Past President

California Federation of Interpreters (CFI)
- Michael Ferreira, President, CFI Local 39000

Service Employees International Union
- Brigitte Jackson, Court Clerk Representative
- Michelle Caldwell, Court Reporter Representative
- Libby Sanchez, Government Relations Advocate

May 17, 2021

Bay Area Legal Aid

- Genevieve Richardson, Executive Director
- Hilda Chan, Supervising Attorney

Bet Tzedek Legal Services

- Diego Cartagena, Esq, President & CEO

California Rural Legal Assistance, Inc.

- Ilene J. Jacobs, Director of Litigation, Advocacy and Training

Central California Legal Services

- Brandi M. Snow, Housing Team Lead Attorney

Disability Rights California

- Christian Abasto, Legal Advocacy Unit Director

Legal Aid Foundation of Los Angeles

- Juliana Lee, Staff Attorney

Legal Aid Society of San Diego

- Joanne Franciscus, Managing Attorney

OneJustice

- Amy Kaizuka, Senior Staff Attorney, Pro Bono Justice Program

Western Center on Law & Poverty

- Madeline Howard, Senior Attorney
- Tina Rosales, Policy Advocate

California Apartment Association

- Heidi Palutke, Policy, Compliance, Education, and Legal Counsel
- Susan E. Greek, CAA Member and Partner, Kimball, Tirey & St. John, LLP

May 28, 2021

Association of Certified Family Law Specialists

- David Lederman, Director of Technology
- Justin O'Connell, Associate Director of Legislation

Dependency Legal Services

- Julia Hanagan, Staff Attorney
- Mikaela West, Attorney

Children's Law Center of California

- Leslie Starr Heimov, Executive Director
- Cassandra Hammon, Attorney

County Welfare Directors Association of California

- Diana Boyer, Director of Policy for Child Welfare and Older Adult Services

Indian Child and Family Preservation Program

- Liz Elgin DeRouen, Executive Director

Youth Law Center

- Cecilia Rivas, Implementation Manager, National Quality Parenting Initiative

June 14, 2021

California District Attorneys Association

- Ryan Couzens, Chief Deputy District Attorney, Yolo County
- Tracy Prior, Chief Deputy District Attorney, San Diego

California Public Defenders Association

- Matthew Sotorosen, Deputy Public Defender, San Francisco County
- Maureen Pacheco, Juvenile Division, Alternate Public Defenders Office, Los Angeles County

California Attorneys for Criminal Justice

- Anthony P. Capozzi, Attorney, Law Offices of Anthony Capozzi
- Marketa Sims, Writs and Appeals Attorney, Independent Juvenile Defender Program, Los Angeles County Bar Association

California Judges Association

- Hon. Danielle K. Douglas, Superior Court of Contra Costa County
- Hon. Anita L. Santos, Superior Court of Contra Costa County
- Hon. Brad Seligman, Superior Court of Alameda County

California Highway Patrol (CHP)

- Assistant Chief Mike Alvarez, CHP Legislative Director

California Police Chiefs Association

- Chief Abdul Prigden, President, Seaside Police Department

Peace Officers Research Association of California

- Deputy Sheriff Joe Dutra, Lake County Sheriff's Office

California State Sheriffs' Association

- Captain Rustin Banks, Solano County Sheriff's Office

Chief Probation Officers of California

- Chief Brian J. Richart, Chief Probation Officer, El Dorado Probation Department
- Chief John Keene, Chief Probation Officer, San Mateo Probation Department

June 28, 2021

State Digital Divide

- Amy Tong, Director and State Chief Information Officer, California Department of Technology

Judicial Council of California Technology

- Hon. Kyle S, Brodie, Chair, Judicial Council Technology Committee
- Heather L. Pettit, Chief Information Officer, Judicial Council

The Legal Aid Association of California

- Alison Corn, Esq., Technology and Legal Design Fellow

Neighborhood Legal Services of Los Angeles County

- Ana Maria Garcia, Vice President of Access to Justice Programs

Superior Court of Santa Clara County, Self Help Center/Family Law Facilitator's Office

- Fariba R. Soroosh, Supervising Attorney

Court Commissioners

- Hon. Glenn Mondo, Superior Court of Orange County (Civil Harassment Restraining Orders)
- Hon. Laura Cohen, Superior Court of Los Angeles County
- Hon. Jonathan Fattarsi, Superior Court of San Joaquin County (Traffic)
- Hon. Leslie Kraut, Superior Court of San Luis Obispo County (Family and Traffic)
- Hon. Jennifer Lee, Superior Court of Contra Costa County (Various Calendars)
- Hon. Myrlys Stockdale Coleman, Superior Court of Sacramento County (Family and Traffic)
- Hon. Julia A. Snyder, Superior Court of Ventura County (Unlawful Detainers)

California Tribal Families Coalition

- Mica Llerandi, Staff Attorney

California Indian Legal Services

- Dorothy Alther, Executive Director

California Partnership to End Domestic Violence

- Krista Niemczyk, Public Policy Director

July 6, 2021

Superior Court of San Francisco County—Jury Program

- Hon. Christopher C. Hite, Judge
- Hon. Vedica Puri, Judge
- Mr. T. Michael Yuen, Court Executive Officer

Superior Court of San Diego County—Jury Program

- Hon. Michael S. Groch, Assistant Supervising Judge, Criminal

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Judicature

Vol. 106 No. 1

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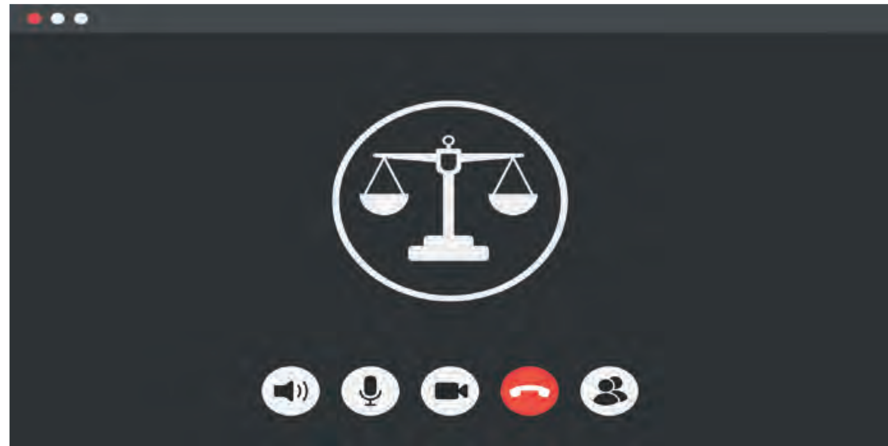

Do remote hearings help — or hurt — access to justice?

Beginning in March 2020, courts transformed how they conduct business by rapidly transitioning to online platforms. Moving business entirely online required courts to train judges, court staff, prosecutors, lawyers, and litigants; establish new policies and protocols; and purchase and issue new equipment and software licenses — all in a very short period of time, and often while people were working remotely. But by the summer of 2020, courts throughout the nation were routinely conducting remote hearings, and many courts continued to conduct at least some, if not most, court hearings online well into 2021.

In the spring of 2021, Rulo Strategies, in collaboration with the National Center for State Courts (NCSC) and Wayne State University, initiated a large-scale, national examination of remote court hearings practices in treatment court settings. The research team selected treatment courts for study because they require frequent court hearings. Over 1,350 participants in judicially led diversion programs across 27 states completed the online survey between February 2021 and July 2021. Respondents indicated that about 30 percent of the court hearings they participated in during this time were in-person only; 70 percent included both in-person and remote proceedings. The following is a summary of some of the findings; the full report is available at https://bit.ly/3LW7AHi.

INTERACTIONS WITH THE JUDGE

Court users enrolled in treatment courts were asked to rate their agreement with a series of statements about their experiences with in-person court and virtual court. The responses of those who had only experienced virtual court were compared to the group of those respondents who had transitioned from in-person court to virtual court. Options for responses to each statement were 1 (strongly disagree), 2 (disagree), 3 (neither), 4 (agree), and 5 (strongly agree), with averages reported for each statement.

Survey responses suggested that remote sessions may be more user-friendly than in-person sessions. Respondents who had transitioned from in-person to virtual hearings rated their comfort level for in-person hearings lower (3.88) than for virtual

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hearings (4.06). This difference was statistically significant. Respondents who only attended court virtually rated their comfort participating in court sessions highest (4.37). The difference between the virtual-only participants (4.37) and the group that transitioned from in-person to virtual hearings (3.88) was also statistically significant.

Respondents who attended both in-person court and virtual court provided similar responses about their ability to be open and honest with the judge for both settings (in person 4.24 compared to virtual 4.26). Respondents who only attended court virtually rated their ability to be open and honest during virtual hearings higher (4.41). The difference is statistically significant.

Across most measures, court users who only experienced virtual court sessions consistently reported more positive feelings about virtual sessions than those who experienced both in-person and virtual sessions. One interpretation of the results is that the recollection of positive in-person services taints the perception of virtual services. A limitation of our study is its retrospective, cross-sectional nature; in other words, participants answered questions based on their recollections, which may or may not accurately reflect how they felt about in-person services at the time they were delivered.

Overall, 45 percent of respondents indicated they would prefer to attend court 100 percent virtually; 29 percent indicated they would prefer a hybrid of in-person and remote court hearings. Just 20 percent said they'd prefer in-person sessions only. (See Figure 1, next page.)

Respondents indicated their top three reasons for preferring remote court hearings were: 1) they were more comfortable talking in a virtual setting; 2) they were less anxious when they attended court remotely; and 3) remote hearings saved them or their loved ones time. Court users who preferred in-person court gave these reasons: 1) they were more comfortable talking in person; 2) they liked seeing their peers in court; and 3) they felt disconnected from the court when they participated remotely.

Overall, 45 percent of respondents indicated they would prefer to attend court 100 percent virtually; 29 percent indicated they would prefer a hybrid of in-person and remote court hearings. Just 20 percent said they'd prefer in-person sessions only.

The research team also conducted a companion survey of more than 850 court professionals and found that court staff, including judges, shared some of the same observations as court users about virtual services in treatment courts but were generally more pessimistic about remote hearings. When researchers asked court professionals about the quality of information when court hearings were offered in person vs. virtually, 83 percent rated the quality of information as "high" when court was held in person, and 52.6 percent rated the quality of information as "high" when court was held virtually. More than half of practitioners, 60 percent, said the quality of information did not change when their court transitioned from in-person to virtual sessions. (Read the full report at https://bit.ly/3rmQDOj.)

Researchers also asked court staff to rate the judge's ability to form meaningful connections during in-person and virtual sessions. In general, court professionals expressed concern about the judge's ability to form connections virtually compared to in person: 87 percent of staff respondents rated judges' ability to form connections with court participants as "high" when court was held in person; just 41.4 percent rated judges "high" on the same metric when court was held virtually.

ADDRESSING ACCESS TO JUSTICE

A common critique of treatment court and other diversion programs is that they are not accessible to everyone who is eligible to participate. Virtual service delivery has the potential to increase the number of individuals eligible to participate in such programs because it may mitigate obstacles that have historically been barriers to participation, such as lack of transportation to court or competing work or family obligations.

To address the assumption that in-person attendance may be a hurdle to treatment court users, the research team asked survey participants about attendance when court hearings were offered in person and virtually. Court professionals indicated that attendance was a little more likely to be "high" when court was held in person (75.7 percent) compared to virtual (72.8 percent).

This is surprising given that the survey was administered at the height of the COVID-19 pandemic. Court users reported a variety of negative experiences during the pandemic: Nearly half (45.7 percent) had experienced increased mental health symptoms ▸

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during the pandemic; 42.4 percent lost their job or income; and 11.9 percent reported loss of housing. These experiences can easily become barriers to participating in court when sessions are held in person. One court participant said, "I appreciate all the help. I don't know how I would have attended all the classes, court appearances, and urinalysis due to gas and living in my car when I lost my apartment if we did not go virtual."

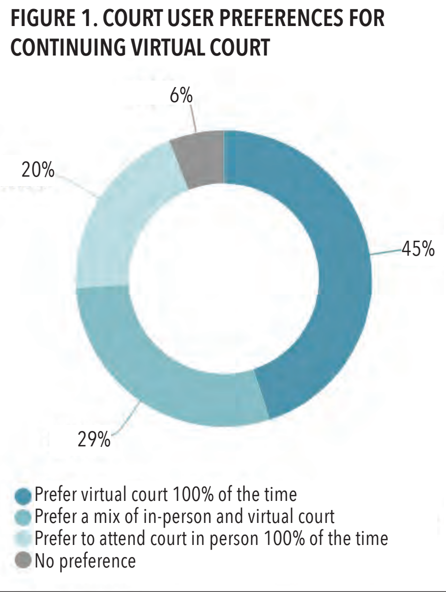
Other studies have supported the idea that court attendance improves in virtual hearings. In some parts of North Dakota, appearance rates for criminal warrant hearings went from 80 percent before the pandemic to nearly 100 percent. New Jersey reported its failure-to-appear rate in criminal cases dropped from 20 percent to 0.3 percent starting the week of March 16, 2020, when courts there began to conduct virtual hearings. Michigan's failure-to-appear rate went from 10.7 percent in April 2019 to 0.5 percent in April 2020.

Though the full picture on data for attendance in virtual vs. in-person court proceedings is not yet clear, courts should continue to consider how technology access may inhibit or help participants' ability to attend virtual proceedings.

THE DIGITAL DIVIDE

Access to broadband internet service has become a vital tool for staying connected in the digital era, particularly in the recent years of the pandemic. Although virtual service delivery has the potential to increase access to court, preliminary survey results from this study suggest some treatment court participants do face technological barriers to access when participating in remote court hearings. For example, 4 percent of court users reported not having reliable wi-fi or internet service to participate in services by video, and 3 percent indicated they lacked the necessary equipment to participate in services by video. Still, these numbers were lower than court practitioners expected and should be considered in the context of the barriers reported for in-person court hearings.

FIGURE 1. COURT USER PREFERENCES FOR CONTINUING VIRTUAL COURT



Furthermore, courts are finding creative ways to address these gaps in technology. Some are establishing courthouse "Zoom rooms" — physical rooms in courthouses that are free to use and are outfitted with the equipment needed to participate in online court hearings. Some courthouses also offer free guest wi-fi.

LIMITATIONS AND FUTURE RESEARCH NEEDS

Additional research is needed to determine how litigants in other matters, including civil and criminal cases, prefer to attend court; how virtual hearings impact perceptions of procedural justice; and how to appropriately expand the use of remote technology while addressing key constitutional and legal issues.

This study provides a foundation for further exploration of court-user preferences and experiences with remote services and for additional research on ways judges and other court practitioners can overcome any loss of meaningful connection as noted here by court professionals. It also offers some indication that virtual hearings may be helpful in boosting attendance and access to the courts. But the data on technology availability makes clear that there is no one answer for every situation.

Flexibility in offering virtual and in-person alternatives could prove helpful in accommodating the various needs of individual court users and is in keeping with what many court users prefer. Despite the fact that court professionals tended to view interaction and rapport as better for in-person court compared to virtual, nearly half (46.8 percent) of the court staff respondents reported strong support for continuing virtual hearings, with many preferring a hybrid approach.

For court staff, holding more administrative meetings remotely may present an opportunity to increase efficiency. Sixty-one percent (61.2 percent) of court staff respondents reported strong support for continuing virtual pre-court staffings to discuss matters pertaining to ongoing cases.

As the pandemic continues, court leaders are likely to use studies like this one as well as their own experiences to determine what processes might continue remotely and what really needs to be done in person.

– **TARA KUNKEL** is executive director of Rulo Strategies, and **KRISTINA BRYANT** is principal court consultant at the National Center for State Courts.

1 *Will remote hearings improve appearance rates?* National Center for State Courts (May 13, 2020), https://www.ncsc.org/newsroom/at-the-center/2020/may-13.

2 *Id.*

3 *Id.*

Tab G

Report to the Supreme Court Advisory Committee (SCAC)
On Proposed Revisions to Texas Rule of Civil Procedure
Regarding Remote Proceedings

Submitted on Behalf of the Texas Access to Justice Commission
August 15, 2022

I. INTRODUCTION

The Supreme Court of Texas Liaison to the Texas Access to Justice Commission ("the Commission"), Justice Brett Busby, has requested that SCAC be provided feedback from an access to justice perspective on its latest proposals concerning remote proceedings rules for JP courts. A group comprised of the Chair of the Rules Committee, Lisa Hobbs, and Judge Nicholas Chu, Judge Roy Ferguson,[1] Kennon Wooten, Trish McAllister, Cathryn Ibarra, Briana Stone, and Harriet Miers reviewed the proposals concerning JP courts rules before SCAC. This report recommends changes to the current draft rules under SCAC's consideration. Specifically, the Report provides feedback on what constitutes "good cause," particularly when poor and unrepresented parties are involved in a proceeding, and what tools can be used to adequately advise poor and unrepresented litigants about how to participate in remote proceedings effectively. The Report ends with important information about how remote proceedings can improve access to justice for poor and unrepresented parties and includes an appendix of relevant materials.

By way of background, the Supreme Court of Texas established the Texas Access to Justice Commission in 2001 to serve as the statewide umbrella organization for all efforts to expand access to justice in civil legal matters for the poor. It is the Commission's role to assess national and statewide trends on access to justice issues facing the poor, and to develop initiatives that increase access and reduce barriers to accessing the justice system.[2] The Commission appreciates greatly the many ways the Supreme Court of Texas, the State Bar of Texas, and the lawyers of

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[1] A letter from Judge Ferguson outlining his experiences, including anecdotes, is included as Attachment D.
[2] Supreme Court of Texas Misc. Docket 01-9065, Order Establishing the Texas Access to Justice Commission, April 26, 2001.

Texas have embraced the work of the Commission and the need to increase access to justice in our State for those Texans among us who have unmet and many time dire legal needs.

The Commission, with the assistance of its members and its committees, helps identify access to justice issues for low-income Texans that may be resolved by new or modified rules, legislation, policies, and procedures. The Commission is deeply grateful for SCAC's thoughtful approach to addressing remote proceedings, which are a critical component to achieving access to justice in Texas courts. The Commission also is grateful for SCAC's willingness to review the submitted suggestions as it works to address these proceedings under Texas Rules of Civil Procedure 500.2(g) and 500.10, and then integrates those comments into the district and county rules. Full Commission approval of the suggestions will be sought at the next meeting of the Access to Justice Commission on August 29, 2022.

Across the United States, as is well-known, courts and judges have faced great challenges presented by the Covid Pandemic. Many courts and judges have seized this opportunity to open new pathways for litigants to resolve their legal issues, including greatly increased use of remote proceedings. As early as June 2020, lasting changes to our judicial system were evident. Bridget Mary McCormack, Chief Justice of the Michigan Supreme Court, noted to a congressional subcommittee that "in three months, [the courts] have changed more than in the past three decades."[3] Texas Chief Justice Nathan Hecht has suggested that with the expansion of remote court proceedings, "the American justice system will never be the same."[4] Chief Justice has emphasized: "We should heed this summons to bring the justice system into the 21st century adhering firmly to our ancient values and answering to the demands of our changing culture for more accessibility while deepening our own dedication to justice for all."

In fact, the advent of remote hearings has been an enormous leap forward in access to justice, especially in cases involving self-represented litigants (SRLs) and low-income Texans who cannot afford an attorney. Parties increased participation in

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[3] Federal Courts During the Covid-19 Pandemic: Best Practices, Opportunities for Innovation, and Lessons for the Future: Hearing Before the Subcomm. on Cts., Intell. Prop., & the Internet of the H. Comm. on the Judiciary, 116th Cong. 1 (2020) (testimony of Bridget M. McCormack, Chief Justice, Michigan Supreme Court).

[4] Meera Gajjar, "The American Justice System Will Never Be the Same," Says Texas Supreme Court Chief Justice Nathan Hecht, THOMSON REUTERS (Apr. 24, 2020), https://www.thomsonreuters.com/en-us/posts/government/texas-supreme-court-chief-justice-nathan-hecht/ [https://perma.cc/69JS-AG79] (interviewing Nathan Hecht, chief justice, Supreme Court of Texas).

proceedings that are held remotely has demonstrated that past assumptions on lack of litigant participation in certain case types is just wrong. It is not due to apathy or indifference, but rather the lack of the patron's ability to access the physical courthouse.

In December 2021, the National Center for State Courts (NCSC) released a report based on Texas data that supports how effective remote hearings have been. [5] (*See* Section IV. Remote Proceedings Can Improve Access to Justice.) The study found that although remote hearings tend to take longer, they increase access to justice and ultimately help more people. Some people who have historically been unable to participate in the traditional, in-person legal process are now actively participating in remote proceedings because the remote hearings are easier to attend. Remote hearings have also led to the reduction of stubbornly high default rates in case types commonly involving low-income persons, such as evictions and debt collection. While technology problems and a lack of litigant preparation were cited in the NCSC report as reasons for longer hearings, these issues can be mitigated by creative solutions, such as, tech kiosks, and providing litigants with plain-language information and instructions on how to prepare for and participate in remote proceedings.

As has been learned, under the appropriate circumstances, and with the necessary protections and supports in place, remote proceedings can significantly advance access to justice in Texas. As the Supreme Court of Texas considers how to implement remote proceedings on a permanent basis, it is important for the Court to consider the barriers to both in-person hearings, such as employment and caregiving constraints, and remote hearings, such as access to technology, and to do its best to resolve them by creating a justice system that, as a whole, is more responsive to the typical needs and lived experiences of Texans.

II. RECOMMENDATIONS FOR PROPOSED RULE

The Committee reviewed the proposed drafts of TRCP 500.2 (g) and 500.10 presented to SCAC on March 25, 2022, and May 27, 2022, for access to justice implications. Our recommendations are solely focused on 500.10 (b) and the accompanying comment. The Committee edited the May 27, 2022 draft to make its recommendations. A clean copy of the Committee's recommendations can be

[5] National Center for State Courts. The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload, December 2021. https://www.ncsc.org/newsroom/public-health-emergency/texas-remote-hearings

referenced in Attachment A. A redline version can be found in Attachment B. A summary of the proposed changes follows:

TRCP 500.10 (b) Request to Appear by Alternate Means

Draft Discussed by SCAC: (**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.

The Committee's 's Recommendations: (**b) Request to Appear by Alternate Means.** A party may 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 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 documented in the ruling denying the request.

The Committee recommends removing the references to filing a request because judges and courts receive requests via email and other means of communication, not just through official "filing". The Committee believed that the court should grant the request unless it finds there is good cause to deny the request, which allows for greater judicial discretion in determining the best course of action in the particular situation. We also did not want to reduce judicial efficiency by including a mandate that might prompt some judges to try to exhaust consideration of the good cause factors set forth in the comment before deciding how to proceed with a request.

Comment to 2022 Change

Draft Discussed by SCAC: **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.

The Committee's Recommendations: **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 of language access services; (10) the court's ability 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.

1. Good Cause: A court should consider several factors in determining whether good cause exists to deny a remote or hybrid hearing request and that those listed in the comment are not meant to be comprehensive or a *de facto* test

that a judge must apply or weigh when making the determination. We also propose adding some common factors that impact remote hearings and using plain language to make the list clearer and more usable by the public, who undoubtedly will need to reference the rule. For example, instead of using "…. the court should consider factors, including but not limited to, the following:" we suggest using "…. the court should consider relevant factors, such as.…" to use fewer words and clauses and read more like a layperson speaks.

2. (1) the court's capability to conduct a hybrid hearing: In a hybrid hearing, fairly balancing the needs of in-person litigants and court participants with parties participating remotely presents unique challenges and opportunities. It is important to ensure that everyone can hear, be heard, and have access to whatever evidence is being used.

   Different courts have different abilities to implement hybrid hearings. In the urban areas, there is strong, plentiful internet and most courts already have the appropriate technology and AV systems needed to effectively hold hybrid hearings. However, in some rural areas, a judge may lack the same infrastructure. Their courts may not be equipped with AV, screens, mics, and the like, due to budget constraints or lack of facilities. Staff should also be available to address questions or issues that arise before and during the hearing.

3. (2) the complexity of the case, including number of witnesses

   Developing guidelines to determine which types of hearings should be in-person or remote would encourage uniformity and consistency. More complicated matters may not lend themselves to remote technology and may be more efficient when conducted in-person. The needs of litigants should also be considered when determining the form of a hearing. For example, there may be instances where community witnesses or family support can only be available virtually.

4. (3) the financial burden associated with the method of appearance, such as litigation costs or potential risk of loss of employment

   Virtual hearings eliminate historic barriers, such as driving several hours to get to the courthouse or the need to take time off from work when you need the

money to make ends meet or might get fired for doing so. They are particularly helpful for low- and moderate-means clients, who may have less flexible job schedules, or no paid leave to take care of legal and personal issues.

5. (4) representation by a pro bono or legal aid lawyer

   Texas ranks 44th in access to civil legal aid lawyers, according to the National Center for Access to Justice.[6] There is approximately one Legal Services Corporation funded program lawyer for every 12,200 low-income Texans who qualify for civil legal aid. There are many Texas counties that do not have a legal aid office or even a lawyer living in them. Remote proceedings allow legal aid and pro bono organizations to serve previously underserved parts of the state and to handle more cases more efficiently because they are not driving all over the state to get to hearings.

6. (5) scheduling conflicts

   Court efficiency increases when courts can schedule hearings in a more time-certain window while also considering litigant participation. Virtual dockets allow judges to preside in multiple counties in a single day if needed, lawyers to represent clients across the state, and are less disruptive to litigants' daily lives.

7. (6) the inability to appear remotely due to a lack of technological access or proficiency

   Across the nation, a persistent socioeconomic digital divide exists that affects a person's ability to afford technology and their ability to access technology, such as living in or near a dead zone. Courts have overcome this by providing easily accessible technology for litigant use and planning for real-time glitches that occur during hearings. Some courts use "technology bailiffs" who help better prepare participants in advance of their remote proceeding and address tech problems that arise during the hearing.

   Access to broadband internet service has become a vital tool for staying connected in the digital era, particularly in the recent years of navigating COVID-19. However, we know that some court participants, particularly self-

[6] National Center for Access to Justice, Justice Index, https://ncaj.org/state-rankings/2020/attorney-access

represented litigants, face technological barriers to access when participating in remote hearings.[7]

Courts are finding creative ways to address these gaps in technology. Some are establishing courthouse kiosks or physical rooms that are free to use and are prepared with the equipment needed to participate in online court hearings. Others are partnering with public libraries and legal aid providers to establish similar kiosks or rooms for use in remote hearings that may be more accessible. Some courthouses also offer free guest Wi-Fi.

8. (7) the ability to submit or view evidence

One of the challenges for virtual hearings is related to managing evidence — sharing and accessing documents and multimedia files, organizing evidence, and being able to access it when needed during a hearing. On a NSCS Tiny Chat, Judge Emily Miskel stated that self-represented litigants are starting to sign up for our electronic filing system in Texas.[8] Before the pandemic, SRLs did not use a lot of evidence when they participated in hearings because everything was on their cell phones and not in a format that could be given to the court reporter, saved, and preserved. When Texas switched to holding remote hearings, evidence was electronically submitted a day or more before the hearing. Participants were more easily able to digitally submit the evidence stored on their phones by email and Judge Miskel started seeing an uptick in evidence submitted by SRLs. Judge Miskel also noted that initially there was a concern that using this remote technology would interfere with unsophisticated users' ability to access courts, but in many cases, SRLs are more comfortable with adopting this technology than with going to a courtroom.

[7] SRLN Brief: Addressing Remote Hearing Access and Digital Divide for SRLs (2020). https://www.srln.org/node/1431/srln-brief-addressing-remote-hearing-access-and-digital-divide-srls-srln-2020. As courts moved to remote access, issues have emerged for SRLs, including but not limited to the following: lack of tech support, lack of devices, limited data and phone minutes, spotty internet access, slow internet speeds, confusion over the interface and application, lack of technical requirements to download or operate application, lack of notice because of issues on either the court or SRL side (email trapped in spam, SRL lacks email, court fails to send notice, court has not confirmed email, 3rd party access to email results in deletion, email account fails, ISP down, email hacked), excessive wait times in zoom waiting rooms, burning minutes/data and possibly exceeds a person's availability, inability to submit evidence, and lack of courtroom assistance.

[8] National Center for State Courts. Tiny Chats 90: Virtual Hearings in Mexico and Texas. https://vimeo.com/showcase/8536177/video/714568190 (Interviewing Judge Emily Miskel and Dr. Laurence Pantin on how courts responded to the pandemic and the adoption of courtroom technology).

Courts should consider guidelines for submission of evidence, especially in justice courts when the rules of evidence do not apply, including when evidence should be submitted, what to do when a party has evidence but is not able to digitally submit it, or what to do when a person can only participate by phone and is unable to view evidence that has been submitted but a person is unable to view it. It is a good idea for courts to offer live and digital on-demand technology training sessions to all participants so they may familiarize themselves with the technology before the hearing.

9. (8) health or safety risks

The COVID-19 pandemic raised our awareness of the impact of in-person proceedings on the health of immunocompromised or vulnerable court participants. Health considerations and the physical safety of participants should always be a consideration in determining when to hold a remote proceeding.

10. (9) the need for language access services

Just as remote technology has expanded access to justice for many Texans since March 2020, it also holds the potential to advance language access in our courts. With the right equipment and thoughtful implementation of existing law and best practices, many courts have easier, more cost-effective access to qualified interpreters than ever before. LEP litigants, particularly self-represented who may be less familiar with remote technology, may encounter challenges using the interpreter features on virtual platforms, so courts should make sure to provide plain language instructions for LEP individuals on how to use those features. Courts must also ensure that their protocols contemplate the needs of LEP litigants and that their staff is trained and prepared to assist LEP litigants if necessary.[9]

[9] For guidance on best practices for language access in remote proceedings, see Best Practices for Courts in Zoom Hearings Involving Self Represented Litigant Appendix B & C. https://www.txcourts.gov/media/1449639/1-best-practices-for-courts-in-zoom-hearingsplusaccessibilitypluslanguage-access-final.pdf

11. (10) the court's ability to provide a reasonable accommodation for a person with a disability

Ensuring accessibility for persons with disabilities is essential for creating an inclusive justice system operating remotely. Remote technology is not appropriate for people who are unable to use it and can even affect a person's physical health by causing dizziness, nausea, and other issues. On the other hand, some persons with disabilities may be more comfortable using their own technology at home, increasing their ability to actively and effectively participate. At a minimum, remote technology should have critical and fundamental accessibility features like closed captioning, keyboard accessibility, automatic transcripts, and screen reader support. Remote access is also a reasonable accommodation if mobility or transportation create a barrier for a litigant with a disability.

12. (11) the ability to travel to the courthouse

Texas is vast. Sometimes, the required travel distance to attend an in-person hearing in Texas can be prohibitive. Not all participants have access to a reliable mode of transportation, even if geography is not an obvious obstacle. Asking someone to walk even a few miles does not contemplate the extreme heat of Texas summers, potential road hazards, or disabilities.

13. (12) caretaking responsibilities

People who have primary caretaking responsibilities, like foster parents, kinship caregivers, single guardians, are less likely to attend an in-person hearing. However, remote hearings that give precise login times are more manageable and less disruptive to these responsibilities. Finding someone to cover caretaking responsibilities for an entire day is often not financially achievable but finding someone to do so for a few hours might be.

III. COURT PROVISION OF INFORMATION TO LITIGANTS

The Commission supports the May 27, 2022 version of the proposed rule discussed by SCAC requiring courts to provide litigants with information on how to participate remotely or in person.

TRCP 500.10 (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.

In the event that it is helpful, the Commission has provided its Best Practices for Courts in Virtual Hearings, Best Practices for Courts in Virtual Hearings with SRLs, additional best practices for courts regarding disability accommodations and language access, and information for self-represented litigants on how to get ready for a remote hearing and how to use an interpreter in Zoom in Attachment C. A sample notice and information to attach to a citation is also included.

Any information provided should be in plain language so that it's clear and easily understood in both English and Spanish, as well as in any other language commonly spoken in the county. Courts should consider:

- Developing a simple and accessible process for people to inform the court if they are unable to participate in a virtual proceeding due to a disability, lack of technology, or other reason.
- Providing plain language information regarding the process and procedures involved in remote proceedings that is attached to the citation, contained in any notice of remote hearing, and easily accessible on the court's website or in a central repository for such information.
- Providing information on needed technology for litigants and witnesses to participate remotely and how to access needed technology if they do not have it.
- Developing a mechanism for people to obtain information about the process and get answers to procedural questions and technical assistance to minimize the need to go to the courthouse and ask questions.

The sample notice was created early in the pandemic and could use the keen eye of the SCAC to revise—and possibly other stakeholders who regularly work with low-income Texans.

IV. REMOTE PROCEEDINGS CAN IMPROVE ACCESS TO JUSTICE

Finally, and more generally, one of the requests from Justice Busby was whether any data exists on how remote proceedings increase access to justice. The NCSC

Texas study was the first national review of data and confirms what judges anecdotally shared about remote hearings before and during the pandemic. The 12-month study analyzed 1.25 million minutes of judicial data and focus group feedback from judges and court leaders in eight counties across Texas.[10] Their findings report the benefits remote hearings have on improving access to justice despite certain challenges. In addition, further consideration by others and experience have contributed more information and analysis supporting the value of using remote hearings to increase access to justice to low-income Texans.

Types of Proceedings Vary Across Practice Areas and Courts

The types of cases and hearings that work well with remote proceedings vary across practice areas and jurisdictions. Virtual dockets are utilized in Justice Courts, District Courts, and even the Texas Supreme Court. Some types of hearings, however, are more suited to remote proceedings than others, especially when considering access to justice issues.

In the last two years, remote hearings have been used effectively in virtually all of the most common situations in Texas courts, including case types that may be considered sensitive. For example, remote hearings are appropriate for addressing critical needs and interests of the public, such as evictions, temporary restraining orders, child custody disputes, health care, or debt collection. These kinds of cases deal with essential aspects of life that require timely attention and frequently have other contributing access factors like personal safety concerns, emergency child custody matters, or the health of the parties or their children.

Remote hearings are especially well-suited to other types of hearings, such as uncontested divorces, simple probate proceedings, and guardianships, that allow litigants to keep get on with their lives instead of being on-hold waiting for an in-person hearing. Short hearings with specific functions, like status hearings, motions, summary judgments, preliminary pretrial conferences, discovery hearings, or, provided proper notice, even default judgments, can also be efficiently conducted virtually.

[10] *Id.*

Increased Efficiency Increases Justice

Remote proceedings have the potential to increase the overall efficiency for the justice system. Using technology for virtual hearings allows for more efficient use of resources, including physical space of courtrooms and the travel time necessary for circuit judges to move between courthouses.

Texas has very dense urban centers that sometimes necessitate multiple judges sharing a courtroom. Most of our 254 counties, however, are rural. Prior to the pandemic, judges traveled between multiple courthouses for in-person proceedings that took place on limited days. As the NCSC report notes, the lack of a need for a physical courtroom provides more flexibility in scheduling hearings and enables proceedings to be held in a timelier fashion regardless of location.

Beyond judicial efficiency, virtual proceedings also improve the time utilization of court reporters, interpreters, and counsel – both paid and pro bono. The ability to participate virtually makes efficient use of scarce human resources and increases the number of hearings that can be scheduled because all the participants don't have to be in the same place physically when the hearings occur.

Removal of Associated Costs

Going to the courthouse takes time, costs money, and has an emotional component than can incite fear or create confusion. Virtual proceedings can eliminate many of the associated costs of in-person proceedings, such as taking time off work, the expenses associated with traveling many miles to the courthouse, paying for childcare, or compensating an attorney or expert witness for their travel expenses and time waiting for a proceeding to occur. The reduction in time and cost benefits everyone in the system, not just low-income Texans.

In-person proceedings can also present both real and perceived risks. Remote proceedings can protect the physical safety of some litigants, such as victims of

domestic violence or sexual assault.[11] They can also assuage a generalized fear of the court system itself.

Remote proceedings allow more people to engage with the judicial system by reducing or removing these types of barriers.

Increased Accessibility

Remote access can be a significant benefit for people with disabilities by reducing traditional obstacles for participation, such as limited mobility issues or transportation to the courthouse. The Center for Disease Control reports that 26% of adults Texans have some form of disability, with 11% having a disability related to mobility.[12] According to the Legal Services Corporation, 82% of low-income households with disabilities experienced at least one civil legal problem in the past year and 48% experienced at least five.[13]

Remote hearings can also be a bridge to increased language access for persons with limited-English proficiency (LEP). Outside of the major metro areas, it can be hard to find qualified interpreters for in-person proceedings and the associated costs are often prohibitive. With remote hearings, Texas courts can use high quality video remote interpreting systems, which are especially helpful for courts with limited access to qualified interpreters and for languages other than Spanish.

Procedural Justice

Procedural justice occurs when people perceive that a decision process is fair, transparent, and allows them to participate in a meaningful way. Other factors include the perception that the judge was impartial, they have been treated with respect, everyone's needs have been considered, and the outcome has been explained. When a person perceives that procedural justice has occurred,

[11] Ashley Carter and Richard Kelley "Remote Court Procedures Can Help Domestic Abuse Victims" (October 18, 2020). https://www.law360.com/articles/1315788/remote-court-procedures-can-help-domestic-abuse-victims ("Paramount is the fact that virtual hearings increase feelings of physical and emotional safety for victims because they do not have to be in the same room with their abuser."

[12] Centers for Disease Control and Prevention. 2022. *Disability Impacts Texas.* https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/pdfs/Texas_Disability.pdf

[13] Legal Services Corporation. 2022. *The Justice Gap: The Unmet Civil Legal Needs of Low-income Americans.*

they are more likely to accept the outcome of their case, comply with orders, and have a more positive view of the justice system.[14] The advent of remote hearings has allowed the public to have greater participation in the justice system, likely increasing the public's perception that procedural justice has occurred.[15]

As previously mentioned, remote hearings have lowered default rates, which is significant. A high default rate is a known indicator that there is a barrier to access to justice. When all parties participate in the legal process, it promotes just outcomes because the judge has all versions of the facts in front of them. The overall credibility of our justice system is enhanced because people feel like they can participate and engage with the process.

V. CONCLUSION

Remote hearings not only improve access to justice, they also improve the overall court experience for many court users, including their perception that the justice system is fair regardless of the outcome. With this comes a renewed sense of trust in the judicial system.

We welcome the opportunity to discuss these issues with you further or to answer any questions that you have. Thank you for your work on this issue and for your commitment to increasing access to justice in Texas courts.

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[14] National Center for State Courts. The Use of Remote Hearings in Texas State Courts: The Impact on Judicial Workload, December 2021. https://www.ncsc.org/newsroom/public-health-emergency/texas-remote-hearings

[15] **Conference of Chief Justices and Conference of State Court Administrators. Resolution 2: In Support of Remote and Virtual Hearings.** Adopted as proposed by the CCJ/COSCA Access and Fairness Committee and the CCJ/COSCA Public Engagement, Trust, and Confidence Committee at the CCJ/COSCA 2021 Annual Meeting on July 28, 2021. https://www.ncsc.org/__data/assets/pdf_file/0016/67012/Resolution-2_Remote-and-Virtual-Hearings.pdf

Tab G1

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 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 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 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. 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 court's ability 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.

Tab G2

ATTACHMENT B
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~~ 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 ~~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. When evaluating a request under Subpart (b), ~~references good cause not to grant a request to appear by alternate means. When evaluating the request,~~ the court should consider relevant factors, such as~~including, but not limited to, the following~~: (1) ~~whether~~ 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~~5~~) the inability to appear remotely ~~a person who is the subject of the request may be unable to appear remotely~~ due to a lack of ~~access to the needed~~ technological access or ~~y or~~ ~~a lack of~~ proficiency ~~in technology that would prevent meaningful participation in the proceeding;,~~ (7~~6~~) ~~whether a person~~the ability to ~~who is the subject of the request~~

~~lacks the technology, or proficiency in use of technology, to~~ submit or view evidence ~~electronically~~; (872) ~~whether in-person participation could compromise one's~~ health or safety risks; (983) the need for language access services~~whether the court can provide language access services for a person with limited English proficiency through the manner of appearance requested~~; ~~and~~ (1094) ~~whether~~ the court's ability ~~can~~ to provide a reasonable accommodation for a person with a disability ~~to participate in the proceeding, in the particular manner requested~~; ~~(10) whether in-person participation would pose a financial burden or risk a loss of employment;~~ (11) the ability to travel to the courthouse; and (12) ~~whether a person who is subject of the request may be unable to appear remotely due to a) the travel distance from the courthouse or access to reliable transportation or b)~~ 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.

Tab G3

General Virtual Hearing Best Practices for Courts

Here are some quick tips on best practices for handling cases on a remote basis. We have also developed tips specifically for proceedings involving self-represented litigants because those can raise additional concerns that may not be applicable in proceedings where all parties have counsel.

1. Notice of Hearing
    a. **Contents of Notice of Hearing:** Make sure your notice state that the hearing will occur by video conferencing software such as Zoom, and that the parties should not appear in person at the courthouse. A sample notice is attached in Appendix D.
    b. **Contact Person**: Provide a phone number and email address for a person who can assist parties and participants in a timely manner if needed. An email address alone is not sufficient as people who lack access to the internet may not be able to access email.
    c. **Information on Court Procedure**: Provide information on court procedure for virtual hearings, including how to submit exhibits for the hearing.
    d. **Provide a way for parties to inform the court of the following:**
        i. Whether they need any ADA accommodations (See Appendix A regarding disability accommodations in remote proceedings);
        ii. Whether they, or a witness, needs an interpreter, and if so, what language(s) (See Appendix B & C regarding language services in remote proceedings);
        iii. How many witnesses they want to testify on their behalf; and
        iv. Any other information relevant to the logistics of the proceeding.

2. Hearings:
    At the beginning of the hearing address potential technical difficulties.
    a. Ask parties and participants about the reliability of their computer, internet, or phone.
    b. Tell parties and participants what to do if they experience problems with their internet, computer, or phone, such as instructing the litigant to click on the Zoom link again if their connection drops, or to call back into the Zoom number provided.
    c. Provide parties and participants with a call back number not associated with the Zoom hearing in case they cannot reconnect.
    d. Obtain the parties' and participants' phone numbers or other emergency contact information in case it is needed.

Best Practices for Virtual Hearings
Involving Self-Represented Litigants

In many ways, cases involving self-represented litigants (SRLs) are no different than any other case. However, because SRLs are typically not trained in the law or court processes, they typically need more information about processes and expectations than a party who has counsel. Here are some quick tips on best practices for handling cases involving SRLs on a remote basis.

1. Important Information:
    a. **Lack of Internet or Reliable Internet**: Many people do not have access to the internet, or reliable internet, in the home. Public access to the internet via libraries, coffee shops, and other local options is problematic due to privacy issues and may not always be available
    b. **Limited Phone Data/Call Minutes**: Some people may only have phones with a limited number of call minutes or data plan minutes, so they may not be able to use their phones to participate in a video hearing or even to participate by phone. You may need to work with the litigant to determine how they can have meaningful participation in the hearing. We do not have a solution for this problem and welcome your ideas.
    c. **Email**: Some SRLs may not have email. Those who have an email address may not be able to check their email due to a lack of internet access. Those who have access to their email may not understand the importance of checking their email regularly for information about their case. Please explain the need to check email daily or arrange an alternative way to contact SRLs for notice of upcoming hearings. Develop an alternative method for those without email or reliable internet to submit evidence.
    d. **Consequences of Failing to Act**: Many people do not understand the consequences of failing to respond to a case or act timely in a case. Please explain these consequences to litigants.
    e. **Plain Language**. When communicating orally or in writing with an SRL, please use language at a 3rd-grade reading level when possible. Short, clear sentences are best. Avoid legalese (for example, most people do not know what "default" means), terms of art, and acronyms. The National Association for Court Management developed a Plain Language Guide in 2019 on how to incorporate plain language into court forms, websites, and other materials that may be useful to you.
    f. **Caretaker Responsibilities and Privacy Concerns**: Be sensitive to a litigant's ability to participate in a hearing without interruption. Privacy concerns are especially important in cases involving domestic violence or children in the household. Make reasonable accommodations to address privacy concerns and a litigant's need to give medication to a family member, feed a baby, etc.

2. Notice of Hearing and Materials to Provide with Notice to SRLs
    a. **Send written notice in plain language by mail and email to the addresses on file**.
        i. Comment: Email notice alone may not suffice for the above-mentioned reasons.
    b. **Contents of Notice of Hearing.**
        i. Make sure your form notices state that the hearing will occur by video conferencing software such as Zoom and that the party should not appear in person at the courthouse.
        ii. Make sure to include basic information on what technology and equipment will be needed to participate in the hearing – such as reliable access to the internet, a phone,

laptop, tablet, desktop, etc. – and what to do if they do not have access to those things. A sample notice is attached in Appendix D.

    iii. Include a short notice in Spanish and any other languages that are common in your court, instructing SRLs with limited English proficiency to contact the court to get language assistance such as translation of the notice and the materials provided with the notice.

c. **Instructions on How to Use Zoom + Contact Person**: Provide step-by-step instructions in plain language on how to access and use Zoom, including contact information for a person who can assist them if needed. Email alone is not helpful for those without internet. A sample instructions sheet is attached in Appendix E.

d. **Information on Court Procedure + Contact Person**: Provide step-by-step information in plain language on court procedure for hearings, including how to submit exhibits for the hearing and contact information for a person who can assist them if needed. Be sure to let them know the alternative method for submission of evidence if they do not have the technological means or ability to do so.

e. **Provide a way for SRLs to inform the court of the following:**
    i. Their phone number and email address, if any;
    ii. Lack of internet or reliable internet;
    iii. Lack of ability or limited ability to access the hearing by phone;
    iv. Lack of ability to submit evidence electronically;
    v. Lack of childcare or coverage for other caregiver responsibilities;
    vi. Whether they are ready to have the hearing or need a continuance;
    vii. How long they think the hearing or trial will take to present their side of the story, including witnesses and evidence;
    viii. Whether they need any ADA accommodations (See Appendix A regarding disability accommodations in remote proceedings);
    ix. Whether they, or a witness, needs an interpreter, and if so, what language(s) (See Appendix B & C regarding language services in remote proceedings. There is also an instructions sheet attached as Appendix F); and
    x. How many witnesses they want to testify on their behalf.

f. **Provide a list of legal resources serving your area:**
    i. *State Bar Referral Directory*. The Legal Access Division of the State Bar of Texas publishes a list of local and statewide legal aid and pro bono providers as well as lawyer referral services in their Referral Directory.
    ii. *Texas Law Help*. The Texas Legal Services Center, a legal aid organization, hosts Texas Law Help, a website that provides free information and resources, including a LiveChat feature for low-income people.

3. Hearings:

    a. **At the beginning of the hearing**:
        i. *Address potential technical difficulties*.
            1. Ask litigants about the reliability of their computer, internet, or phone.
            2. Tell litigants what to do if they experience problems with their internet, computer, or phone, such as instructing the litigant to click on the Zoom link again if their connection drops, or to call back into the Zoom number provided.
            3. Provide the litigant with a callback number not associated with the Zoom hearing in case they cannot reconnect.

        4. Obtain the litigant's phone number or another emergency contact in case it is needed.
    ii. *Assess the need for disability accommodations or an interpreter*.
        1. Ask the litigant if they need disability accommodations or an interpreter.
        2. Address as needed.
    iii. *Caretaker responsibilities and privacy issues*.
        1. Ask the litigant if there are any caregiver responsibilities or privacy issues.
        2. Invite them to let you know if these issues arise during the hearing.
    iv. *Overview of hearing*.
        1. Review what will happen during the hearing in plain language.
        2. Provide information about the proceeding and any procedural requirements involved, including how to upload evidence. If the litigant is participating by phone only, tell the litigant how to provide their evidence to the court.

b. **During the hearing:**
    i. *Oath*. If a party is unable to participate by video, have them recite the oath while on the phone rather than require a notary. If the litigant does not have access to the internet at home or a computer, they likely do not have the funds to pay a notary.
    ii. *Reasonable Accommodations*. A judge may make reasonable accommodations to ensure all litigants the right to be heard without violating the duty to remain impartial. A judge may consider the totality of the circumstances, including the type of case, the nature and stage of the proceeding, and the training, skill, knowledge, and experience of the persons involved when making reasonable accommodations. For example, a judge may:
        1. Construe pleadings and briefs liberally,
        2. Ask neutral questions to elicit or clarify information,
        3. Modify the mode and order of evidence as permitted by the rules of procedure and evidence, including allowing narrative testimony,
        4. Explain the basis for a ruling, and/or
        5. Inform litigants what will be happening next in the case and what is expected of them.

c. **At the end of the hearing:**
    i. *Litigant's email address*.
        1. If the litigant has access to reliable internet at home (not through a library or public place), ask the litigant if they have an email address.
        2. If so, tell them that notices of future court hearings will be emailed to the email address they gave you.
        3. Tell them to check it daily and warn them of the consequences of missing a hearing.
        4. Tell them how to contact the court if their access to the internet or phone number changes while their case is pending. If they lose access to the internet, they will need to receive notices by mail.
    ii. *Review next steps*. Tell the litigants what will happen next, and what is expected of them, and inform them of the next hearing date, if known.

Appendix A
Accommodations for Persons with Disabilities
By Brian East, Senior Attorney, Disability Rights Texas

1. Introduction

The ADA and other laws apply to state and local courts,[1] as well as to attorneys.[2] These laws prohibit disability discrimination and generally require that courts and lawyers provide equal access and an equal experience. Specific obligations include:

- Providing auxiliary aids and services (e.g., interpreters, captioning) to ensure effective communication
- Providing accessible electronic and web content
- Providing reasonable modifications to policies and practices
- Avoiding criteria or methods of administration that have a discriminatory impact (whether done directly or via contracts, etc.)

2. Give instructions for requesting modifications or auxiliary aids and services

- Invite people to ask for any modifications or auxiliary aids and services.
- Describe in detail how parties should make the request.
- Do not require a specific form or rigid adherence to the court's preferred process for requesting accommodations.
- Avoid inflexible deadlines if possible.
- Make sure the information is available in accessible formats.

3. When an attorney, party, or witness is blind or has low vision

- Ensure that web pages are accessible to and usable by screen-reader technology.[3]
- Use a video platform that is usable by screen-reader technology (Zoom is considered generally accessible to blind individuals who use screen readers).
- Make sure that any documents being used, including exhibits, are in accessible formats.
    - Word and PowerPoint documents have built-in accessibility checkers.
    - PDF documents are only accessible if the Select Text function works (i.e., OCR).
- Ensure, to the extent possible, that any documents are circulated in advance.
    - Understand that Share Screen functions may not work for individuals who are blind.
    - Understand that functions done during the hearing such as zooming in and highlighting may not translate.
- Design any kiosks with accessible features (e.g., "talking," etc.).[4]

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[1] 42 U.S.C. § 12131(1).
[2] 42 U.S.C. § 12181(7)(F).
[3] An accessible website generally means it complies with WCAG 2.0 Level AA. See 1 T.A.C. § 206.70(a). *See also* Accessibility Policy of the Texas Judicial System is online at https://www.txcourts.gov/site-policies/accessibility-policy/.
[4] For an example of an accessible kiosk, see the 2010 ADA Standards for Accessible Design, Sec. 707 ("Automatic Teller Machines and Fare Machines"), available online at https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm#pgfId-1006537.

4. **When an attorney, party, or witness is deaf or hard of hearing**
    - Determine the primary or preferred method of communicating (e.g., American Sign Language; Signed Exact English, real-time captioning [CART], etc.).
    - Have ongoing contracts with interpreting and captioning services.
    - When the primary method of communication is sign language:[5]
        - Remember state law requirements for interpreters.[6]
        - Arrange for the interpreter team to join the video hearing as official interpreters.
        - Ensure that interpreters are court-certified and fluent in the relevant sign language.
        - Do not use the telephone "relay" service for interpreting.
        - Do not use back-and-forth writing with deaf individuals unless they request it.
        - Do not rely on lip-reading.
        - Avoid using TTD or TTY machines.
    - If the deaf individual has an attorney or advocate:
        - Ask the attorney/advocate if she will be using a "table" interpreter (i.e., a separate interpreter for private discussions).
        - Be prepared to place the advocate, client, and table interpreters into a private "room" for confidential discussions.
    - For real-time captioning:[7]
        - Use a professional CART provider rather than assuming a court reporter can do it.
        - Avoid automated captioning services or programs.
    - Lip-reading:
        - Do not rely on lip-reading for deaf individuals who primarily communicate by sign.
        - Occasionally, individuals who are hard of hearing (and particularly those who do not sign) do use lip-reading as part of their communication process. If that is the case, make sure that speakers are close enough to the camera and well-lit.

5. **Other Common Modifications/Accommodations**
    - Recognize that some individuals will use a telephone to connect and may have no webcam.
    - Ensure that materials and information use plain language.
    - Even after courts re-open, consider remote attendance if needed as a reasonable accommodation because some people have the needed equipment at home and prefer to use it due to familiarity, etc.
    - If remote attendance is impossible, consider continuing the hearing to a time that minimizes the risk of exposure to COVID-19.
    - If remote attendance is impossible, consider relocating to a place that allows more distancing.

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[5] The ABA's Commission on Disability Rights has published step-by-step instructions for using interpreters on the Zoom platform, available online at https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/covid/zoomaccessibility.pdf.

[6] *See* https://www.txcourts.gov/lap/.

[7] The ABA's Commission on Disability Rights has published step-by-step instructions for providing Closed Captioning on the Zoom platform, available online at https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/covid/zoomaccessibility.pdf.

Appendix B
Language Access and Remote Interpretation

Litigants and other court patrons who have limited English proficiency (LEP) need language assistance services such as interpretation and translation to access the courts and resolve their legal problems. The same laws and rules about language access in Texas courts still apply when courts are partially closed and many proceedings are virtual. Below is a recap of the relevant law and some quick tips on best practices for how to provide meaningful access to justice for LEP persons in remote hearings. Many of these recommendations are also best practices in a courtroom setting.

1. Important Terms
   - **Limited English Proficient** – Individuals who do not speak English as their primary language and who have limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP." It is important to note that someone can be English proficient in certain contexts but not in others. For example, they may know enough English to accomplish basic tasks like small talk and grocery shopping, but not enough to understand what the teacher is saying at a parent conference or participate in a court proceeding. The English proficiency needed in legal settings is much higher than what most people need in typical daily encounters, which is why legal information and court proceedings can be difficult even for many native English speakers to understand, and why people who know some English often need language assistance services in court. See below for some sample questions to help you assess whether a person would benefit from an interpreter in court.
   - **Language access** – An umbrella term encompassing the idea that people with limited English proficiency (LEP) are entitled to meaningful access to programs and services. It implies the existence of laws and policies and the availability of services and supports to ensure that access is not significantly restricted, delayed, or inferior as compared to English proficient individuals.
   - **Interpretation** – When a competent interpreter listens to something in one language (source language) and orally translates it into another language (target language).
   - **Translation** – When a competent translator renders written text from one language (source language) into an equivalent written text in another language (target language).
   - **Sight translation** - The reading of text written in one language (source language) by a competent interpreter who orally translates it into another language (target language).
   - **Vital document** - A document that contains information critical for obtaining access to justice. Some examples of vital documents that courts may need to translate to ensure that LEP individuals are provided meaningful access can include information about and applications for programs, benefits, or services; intake forms; court forms; consent or complaint forms; notices of rights; letters or notices that require a response or responsive action; or orders that prohibit or compel conduct; and information about language assistance services.
   - **Simultaneous interpretation** - When a competent interpreter listens to something in one language (source language) and orally translates it into another language (target language) in real-time without pauses.
   - **Consecutive interpretation** – When a competent interpreter listens to something in one language (source language) and orally translates it into another language (target language) while the speaker pauses to allow for the interpretation before continuing.

2. State and Federal Law

- **Title VI of the Civil Rights Act of 1964**
  Title VI and its implementing regulations prohibit national origin discrimination in court programs and services, whether criminal, civil, or administrative.[1] The regulations prohibit discriminatory conduct such as providing a service or benefit that is different, or provided in a different manner, from what is provided to others under the program or that restricts in any way the enjoyment of any advantage or privilege enjoyed by others under the program on the basis of national origin.[2] The regulations also prohibit administering programs in a manner that has the effect of discriminating in those ways or "substantially impairing accomplishment of the objectives of the program" based on national origin.[3] In 1974, the U.S. Supreme Court held that Title VI's prohibition against discrimination on the basis of national origin includes discrimination against LEP individuals based on language.[4]

  This means that courts must "ensure that LEP parties and witnesses receive competent language services … At a minimum, every effort should be taken to ensure competent interpretation for LEP individuals during all hearings, trials, and motions during which the LEP individual must and/or may be present." In situations where courts typically rely on written communication, translating documents that are vital to providing meaningful access is also required.[5] Language assistance must be provided free of charge.[6]

- **Texas Government Code Chapter 57**
  Section 57.002 defines when a judge must appoint a licensed court interpreter[7] and when a judge may appoint an unlicensed court interpreter. It also describes the minimum criteria an unlicensed interpreter must meet to be appointed in a court proceeding. It applies to all courts and both civil and criminal proceedings. Because the language of the statute has become somewhat convoluted over the years, we have summarized its requirements in the charts below for simplicity's sake.

  The first chart illustrates when a judge is required to appoint an interpreter and when the judge has discretion to appoint an interpreter. The second chart is for after a judge decides to appoint an interpreter either because a motion was filed, a request was made, or the judge decided *sua sponte* that an interpreter is needed to provide meaningful access to the proceeding for an LEP person. It illustrates when a judge must appoint a licensed court interpreter and when a court has discretion to appoint an unlicensed court interpreter. It also shows what minimum criteria an unlicensed court interpreter must meet to interpret in a Texas court proceeding.

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[1] 42 U.S.C. § 2000, *et seq*
[2] 28 C.F.R. § 42.104(b)(1) (Aug. 26, 2003).
[3] 28 C.F.R. §§ 42.104(b)(2), 42.203(e) (1966).
[4] *Lau v*. Nichols, 414 U.S. 563, 569 (1974).
[5] *Id.* at 41,463.
[6] *Id.* at 41,462.
[7] There are two types of licenses for Texas court interpreters: a basic license that authorizes you to interpret in municipal and justice courts, and a master license that authorizes you to interpret in any Texas court. When you hire a licensed interpreter, be sure they hold the appropriate license for your court.

When are you required to appoint an interpreter?

When to Appoint an Interpreter According to Tex. Gov. Code § 57.002	
Court **must** appoint an interpreter	Court **may** appoint an interpreter
When a party files a motion for an interpreter or a witness requests an interpreter in a civil or criminal proceeding.[8] [9]	Upon its own motion for an LEP person.[10]

[8] Tex. Gov. Code. Sec. 57.002(a).
[9] Tex. Gov. Code Sec. 57.001(7) states a "court proceeding" "includes an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution."
[10] Tex. Gov. Code Sec. 57.002(b). Note the statute does not specify that the person must be a party or a witness. An example of a situation where a court may elect to appoint an interpreter for an LEP person who is not a party or witness is when the parent of a minor who is a party or witness has limited English proficiency and needs an interpreter to comprehend the proceeding affecting his or her child. In some cases involving minors, state law includes parents and guardians in the definition of "party" or "plaintiff," but the court may appoint an interpreter for the parent even in cases where they are not explicitly a "party."

Step Two: Does the interpreter have to be licensed? If not, what criteria must the interpreter meet?

Appointing a Licensed v. Unlicensed Court Interpreter According to Tex. Gov. Code § 57.002			
	County with population of **at least 50,000**[11]	County with a population **under 50,000**	County to which Section 21.021 of Tex. Civ. Prac. Rem. Code applies[12]
Must appoint a **licensed** court interpreter	When language is Spanish	No	No
May appoint an **unlicensed** court interpreter	1. When language is not Spanish; 2. The judge **makes a finding** that there is no licensed court interpreter available within 75 miles; and 3. If the interpreter is: a. qualified by the court as an expert under the Texas Rules of Evidence; b. at least 18 years of age; and c. not a party to the proceeding.	If the interpreter is: a. qualified by the court as an expert under the Texas Rules of Evidence; b. at least 18 years of age; and c. not a party to the proceeding.	If the interpreter is: a. qualified by the court as an expert under the Texas Rules of Evidence; b. at least 18 years of age; and c. not a party to the proceeding.

[11] The counties with a population over 50,000 that aren't subject to Tex. Civ. Prac. Rem. Code Sec. 21.021 are Anderson, Angelina, Bastrop, Bell, Bexar, Bowie, Brazoria, Brazos, Cherokee, Collin, Comal, Coryell, Dallas, Denton, Ector, Ellis, Fort Bend, Grayson, Gregg, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hood, Hunt, Johnson, Kaufman, Kerr, Liberty, Lubbock, McClennan, Midland, Montgomery, Nacogdoches, Orange, Parker, Potter, Randall, Rockwall, Rusk, San Patricio, Smith, Tarrant, Taylor, Tom Green, Travis, Van Zandt, Victoria, Walker, Wichita Williamson, and Wise.

[12] At this time, Sec. 21.021 applies to Cameron, Culberson, El Paso, Galveston, Hidalgo, Hudspeth, Jefferson, Maverick, Nueces, Starr, Terrell, Val Verde, Webb, and Zavala counties.

- **Code of Criminal Procedure 38.30**

  Requires a court to appoint an interpreter upon a party's motion or upon the court's motion if the accused or a witness does not have English proficiency.13 Before Section 57.002 became law, "any person" could be appointed as an interpreter in criminal proceedings regardless of their qualifications. However, as of 2001, when a court appoints an interpreter in a criminal proceeding, the interpreter must fulfill the requirements of 57.002.14 The statute also requires the county to pay for the interpreter in criminal proceedings.

- **Texas Rule of Civil Procedure 183**

  A court may appoint an interpreter and may tax the interpreter fee as costs unless the law provides otherwise or the litigant has filed an uncontested Statement of Inability to Afford Payment of Court Costs pursuant to Tex. R. Civ. Proc. 145.

- **Texas Rule of Civil Procedure 145**

  A party who files a Statement of Inability to Afford Payment of Court Costs cannot be required to pay costs except by order of the court supported by detailed findings that the declarant can afford to pay costs issued after an oral evidentiary hearing. "Costs" as defined by Rule 145 include the fees for an interpreter or translator. Therefore, LEP parties who file a Statement of Inability to Afford Payment of Court Costs must not be charged for the language assistance services they need to have meaningful access to the court.

3. Remote Hearings

Zoom

Interpretation can be provided remotely in virtual proceedings on Zoom both simultaneously and consecutively.[15] Zoom allows for simultaneous interpretation by providing a separate audio channel that only the LEP person will hear. You can also use "breakout" rooms when an interpreter is needed for an attorney and client to have a private conversation during a proceeding. See *How to Use Simultaneous Interpretation in Zoom Proceedings* for detailed instructions about remote interpretation in Zoom for more information about scheduling the proceeding with an interpreter and using the interpreter controls during the proceeding.

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[13] Tex. Code of Crim. Proc. Art. 38.30(a).

[14] *Ridge v. State,* 205 S.W.3d 591, 596-597 (Tex. App.—Waco 2006, pet. ref'd) (holding that a trial court has an independent duty to appoint a *licensed* interpreter if the court is made aware that a defendant or witness does not understand the English language, unless the defendant expressly waives the right to a *licensed* interpreter); *Franco v. State*, No. 04–16–00090–CR, 2017 WL 781033 at *1-*2 (Tex. App.—San Antonio 2017, pet. ref'd) (the appointment of an interpreter by a trial court is governed by section 57.002 of the Texas Government Code and article 38.30 of the Texas Code of Criminal Procedure). *See also* Op. Tex. Att'y Gen. No. JC-0584 (2001) (concluding that when a court appoints a spoken-language interpreter in a criminal case, chapter 57 establishes the requisite interpreter qualifications. Therefore, the interpreter must be licensed under chapter 57 unless the section 57.002(c) exception applies.).

[15] Most Texas courts are using Zoom for remote proceeding so we are focusing on Zoom here. If your court is using a different platform such as WebEx and you need help developing protocols for remote interpretation, you may contact the Texas Access to Justice Commission by emailing atjmail@texasatj.org.

What to do Before the Proceeding

- **Notice** – As mentioned in the *Best Practices for Court in Zoom Hearings Involving SRLs*, include with your notice Spanish (and any other languages common in your jurisdiction) instructions about how to contact the court for language assistance. Using an interpreter icon can also help LEP persons who speak languages other than Spanish or who have low literacy. Language assistance may include translation or sight translation of the notice and interpretation for the proceeding(s).
- **The LEP Person** – When you learn an LEP person will need an interpreter for a remote proceeding, confirm their preferred language to ensure you select an interpreter that will be able to communicate with them. Be sure to find out if they need any specific dialect. Some languages vary greatly between dialects. Also determine if the person has the technology they need to participate remotely. The simultaneous interpretation feature in Zoom will only work if the LEP person is able to join via the internet through a computer or other device. **It will not work if they call in over the phone**. They will need stable access to the internet and the latest version of Zoom to participate.[16] If they don't, you can still use a remote interpreter via Zoom, but the interpretation will need to be consecutive instead of simultaneous and you will need to plan for a longer proceeding.
- **The Interpreter**
    - Selecting an Interpreter: After confirming the preferred language of the LEP person, you will need to select an interpreter. If you already have an interpreter for your court in the language you need, this will be easy. If not, you may be able to find an interpreter through an existing contract your court or county already has, or you may need to hire an interpreter independently. If the language is Spanish and the proceeding is going to be short, you can use OCA's Texas Court Remote Interpreter Service (TCRIS) to schedule a free interpreter. For remote proceedings you also have the option of hiring licensed interpreters from anywhere in the state.[17] Similarly, where the law allows you to hire an unlicensed interpreter and a licensed one is not available, you can hire an interpreter from anywhere without incurring travel costs. Just remember that even unlicensed interpreters must meet the minimum requirements in Section 57.002.
    - Sample Questions to Help Assess Interpresters: These questions can be used to assess an interpreter you are considering hiring for a proceeding or to assess an interpreter prior to appointing them and swearing them in during the proceeding.[18]
        - Are you a Texas licensed court interpreter?
        - What is your license level and number?
        - How long have you been an interpreter?
        - How many times have you interpreted in court?
        - What credentials or specialized training do you hold?
        - Describe the Texas Code of Ethics and Professional Responsibility for Licensed Court Interpreters.

[16] Some of the earlier versions of Zoom do not include the interpreter function.
[17] Other options for finding competent interpreters are the Texas Association of Judiciary Interpreters and Translators, Metroplex Interpreters and Translators Association, Houston Interpreters and Translators Association, El Paso Interpreters and Translators Association, Austin Area Translators and Interpreters Association, National Association of Judiciary Interpreters and Translators, and American Translators Association.
[18] Here is an example video of assessing an interpreter prior to appointing them and swearing them in: Example of Court Interpreter's Interview to Verify Credentials.

- Best Practice Tip: Please note that if the proceeding is expected to be long or complex, the best practice is to hire two interpreters to interpret as a team by switching off approximately every 30 minutes. This is because the cognitive load of interpreting for long stretches is very taxing and the longer an interpreter interprets, the more likely they are to make mistakes. In fact, the accuracy of most interpreters begins to show a measurable decline after 30 minutes of interpreting. The cognitive load of remote interpretation is even higher than on-site interpretation, so team interpretation may be even more useful for longer remote proceedings. Taking regular breaks is another option if you are unable to use an interpreter team for a long or complex proceeding.
- Technology Needs for Interpreter: In addition to ensuring that the interpreter you select meets the requirements of Section 57.002, for remote proceedings you will also want to ensure that they have what they need to minimize the chances of any problems with the technology that could cause a delay. For example, they will need a computer or other device, webcam, headset and the latest version of Zoom on their device, as well as stable internet access and a place to work with minimal background noise and distractions. If they have never used Zoom for remote interpretation before, you may wish to arrange a practice run with them prior to the proceeding to ensure everything is going to work properly.[19]
- Provide Pleadings or Documents: Provide the interpreter with the pleadings or other documents that are relevant to the proceeding to familiarize themselves with names, parties, and unique vocabulary.
- Inform Litigant: Once you have arranged for the interpreter, let the litigant know in their preferred language that you have done so. Knowing there will be an interpreter can help reduce the anxiety for the litigant and give them an opportunity to focus on other aspects of preparing for their proceeding.

During the Proceeding

- See *How to Use Simultaneous Interpretation in Zoom Proceedings* for detailed information about using the interpretation features and conducting a remote hearing in Zoom.
- Explain the role of the interpreter to the LEP person including the following:
    - The interpreter will interpret everything said in the proceeding with no additions, omissions, explanations, or personal input.
    - The interpreter cannot give advice, make suggestions, or engage in private conversation with the LEP person.
    - The LEP person should raise a hand if s/he has a question or does not understand something during the proceeding rather than asking the interpreter to explain it.
- Perform a sound check including allowing the interpreter and LEP party to assess whether they can hear and understand each other.
- Instruct participants on these best practices before you begin:
    - Speak slowly, clearly, and one at a time. Whenever possible use plain language and avoid "legalese" and unnecessary terms of art.
    - Speak directly to the participants as you normally would in court, not to the interpreter.
    - Do not ask the interpreter to explain or restate what the LEP person said.

[19] You may wish to share this video from the University of Arizona National Center for Interpretation with the interpreter. It is geared toward interpreters and provides a detailed explanation of using Zoom for remote interpretation: Expanding your Toolbox: Using Zoom for Remote Simultaneous Interpreting (RSI).

- During consecutive interpretation such as witness testimony, use short, complete sentences and pause after each complete thought to allow for interpretation.
- Open any statement to the interpreter with "Mr./Ms./Mx. [Interpreter Name]" or "Mr./Ms./Mx. Interpreter" to alert the interpreter that they are being addressed.
- Encourage the interpreter to request repetitions or clarifications as needed throughout the proceeding.
- Attorneys representing LEP litigants may use a Zoom breakout room to consult with their client if necessary. If they need an interpreter, the interpreter will be able to join them in the breakout room.
- Immediately alert the court if they are unable to hear or understand the participant who is speaking, or if the equipment they are using is not working properly.
- Instruct all participants about what to do if they get disconnected due to a problem with the internet or other technology including providing contact information for a staff person who will be responsive if needed.
- Give basic instructions about what the participants can expect and need to do to use the interpreter mode in Zoom.

- Ask the interpreter to say and spell their name for the record and what type of license they hold, if any, and to state their license number for the record.
- Administer the interpreter's oath.[20]
- Red Flags: During simultaneous interpretation only the LEP person will hear the interpretation, but during consecutive interpretation be aware of these red flags that may indicate poor quality interpretation:
  - The interpretation is much longer or much shorter than what was said in the source language.
  - The LEP person repeatedly asks for repetition or clarification.
  - The LEP person appears to be correcting or disagreeing with the interpreter.
  - The LEP person attempts to speak in English without using the interpreter.
  - The interpreter doesn't seem to have a strong command of English.
  - There are non-verbal cues on the part of the interpreter or LEP person that indicate there is some sort of problem.
  - The interpreter doesn't appear to take notes, especially for names, numbers, and long segments of speech.
  - The interpreter seems to be engaging in side conversations.
  - The interpreter has an inappropriate facial expression or tone. This could indicate the interpreter is not neutral or is biased in some way that could affect the accuracy of the interpretation.
  - The interpreter answers for the LEP person or attempts to explain or elaborate on the LEP person's answer.
  - The interpreter attempts to modify or discredit the LEP person's answer.
  - The LEP person appears unusually uncomfortable or confused or has an inappropriate facial expression or tone.
- When Party or Witness Has Difficulty Communicating: If you are in a proceeding without an interpreter and a litigant or witness is having difficulty communicating, these are some

[20] Tex. R. Evidence 604 requires that interpreters are qualified and take an oath. Sample interpreter's oath: "Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Code of Ethics and Professional Responsibility; follow all official guidelines established by this court for legal interpreting; and discharge all of the duties and obligations of legal interpretation?"

questions you can ask to assess whether an interpreter may be needed. Avoid questions that can be answered with a yes or no and try using questions that are slightly more complex to approximate the type of language that is common in court. If the person has difficulty answering these questions in a meaningful way, an interpreter is recommended.

- Please tell the court your name.
- How did you arrive at court today?
- In what language do you feel most comfortable speaking and communicating?
- Tell me about your education.
- How comfortable are you proceeding with the matter as we are communicating now?
- What is the purpose of your court hearing today?
- To help me evaluate your English language proficiency, would you be willing to describe for me a scenario in which you may have found it challenging to communicate effectively in spite of familiarity with the content?

After the Proceeding

If there is a written decision or order, especially one that prohibits or compels action of any kind, enumerates rights or responsibilities, or requires a response or action to be taken, it is probably a vital document that needs to be translated for the LEP person.[21]

[21] *See State of Vermont v. Onix Fonseca-Citron*, No. 2018-197 (Vt. June 12, 2020) (order granting Defendant's request for translation of the Supreme Court's opinion affirming his conviction pursuant to Title VI of the Civil Rights Act of 1964). *See also* Michael W. Finigan, Ph.D. and Theresa Herrera Allen, Ph.D., Evaluation of the Introduction of Plain Language Forms with a Spanish Translation in Two Family Court Settings (October 2016), https://richardzorza.files.wordpress.com/2016/11/plain-language-report_10-24-16.pdf (Spanish-speakers in Travis County, Texas who did not receive their protective orders in Spanish were three times more likely to violate them than those who received their order in Spanish. The reduction in enforcement proceedings saved the court over $100,000 in a six week period.).

Appendix C
How to Use Simultaneous Interpretation in Zoom Proceedings

1. **Simultaneous Interpretation Function**[1]
Zoom offers a language interpretation feature that allows interpreters to interpret in the simultaneous mode2 while the LEP individual listens to the interpretation on a separate audio channel. When this feature is enabled, the other participants do not hear the interpretation.[3]

2. **Language Interpretation Setup**
To allow Hosts/Schedulers of meetings on your Zoom account to use the interpretation features, enable these features in your account settings.
    - Sign in to the Zoom web portal and click Settings.
    - Enable Language Interpretation under the In Meeting (Advanced) heading.

3. **Scheduling a Proceeding with an Interpreter**
    - Navigate to Meetings and click Schedule a New Meeting.
    - Click Generate Automatically next to Meeting ID. This setting is required for language interpretation.
    - Check the box to Enable Language Interpretation for the meeting.
    - If you do not know whom the assigned interpreter will be, just click "Schedule" for now.

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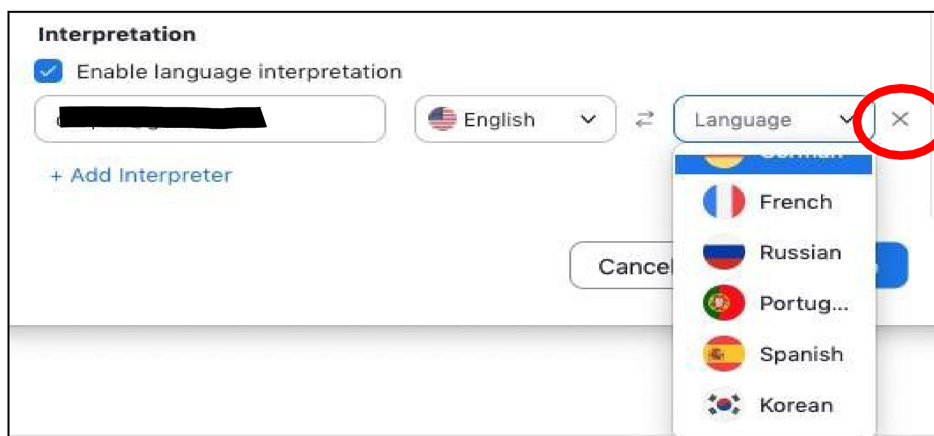
[1] Prerequisites
Business, Education, or Enterprise Account; or Webinar add-on plan
Zoom Desktop Client
Windows: 4.5.3261.0825 or higher
macOS: 4.5.3261.0825 or higher
Zoom Mobile App
Android: 4.5.3261.0825 or higher
iOS: 4.5.0 (3261.0825) or higher
Meeting with an automatically generated meeting ID

[2] Simultaneous interpretation is a competent interpreter listening to something in one language (source language) and orally translating it into another language (target language) in real-time without pauses. Consecutive interpretation is a competent interpreter listening to something in one language (source language) and orally translating it into another language (target language) while the speaker pauses to allow for the interpretation before continuing.

[3] This video demonstrates most of what is covered in these instructions: Using Zoom's Interpretation Features.

- If you know whom the interpreter will be, click "+ Add Interpreter" to display the screen below. Enter the interpreter's email address and the language in the second dropdown box keeping the first dropdown box as English. The interpreter will need to log on with the same email address you enter here, so you may want to confirm that this is the correct email address for their Zoom account.[4] Click "Schedule" when done.



You can also click the "X" to close out these fields and then click "Schedule." You MUST remember to send the interpreter a Zoom meeting invitation along with the rest of the invitees.

NOTE: Zoom has several pre-set language choices including Chinese, Japanese, German, French, Russian, Portuguese, Spanish, and Korean. If you need a language other than one of these choices, you will need to designate one of these languages as a "catch-all" language. In other words, you can use the interpretation feature even if your language isn't listed, but you will need to be sure everyone involved knows that the controls in Zoom will list a different language than what the interpreter will actually be interpreting to ensure that everyone selects the correct options in the following steps.

4. <u>Joining the Zoom Proceeding</u>

Joining a Zoom proceeding that will involve interpretation works just like joining any other Zoom proceeding. The best practice is to download and log into the latest version of Zoom prior to the proceeding, but it is possible to download and run Zoom when the meeting is launching.

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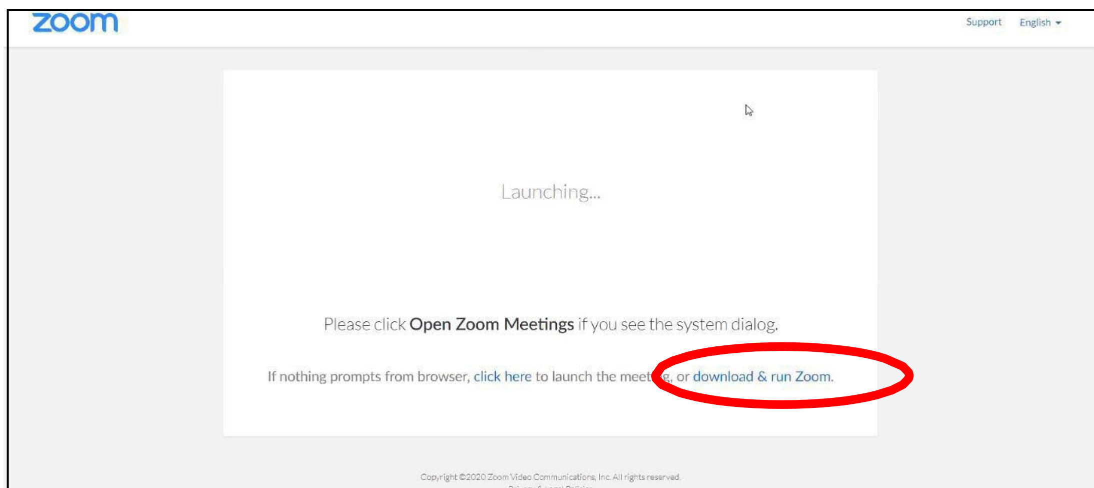
[4] Interpreters may use the interpreter features with a Basic (free) account as long as the Host has the prerequisite Zoom service. See fn 1.



If any of the following situations occur, Zoom's simultaneous interpretation function **WILL NOT** work and you will need to conduct the hearing with the interpreter using the consecutive mode:

- Participant joins by telephone only (no video).
- Participant joins by Zoom for video but is using a telephone for audio.
- Participant joins through the meeting link via their web browser.
- Participant joins using a Chromebook.[5]

5. Getting Started

Once the hearing begins but before the Host enables the simultaneous interpretation function, the Host should provide instructions to all participants explaining what they will need to do. Following is an example:

- Go on the record and call the case.
- The Interpreter
  - Ask the interpreter to say and spell their name for the record.
  - Ask the interpreter what type of license they hold, if any, and to state their license number for the record.
  - If they are unlicensed, ask them a short set of questions to establish they meet the requirements of Section 57.002.[6]
  - Administer the interpreter's oath.[7]
  - Give participants instructions. The interpreter will interpret these in consecutive mode.
    - *"The Court will be using the services of a remote court interpreter."* [pause for

[5] This functionality may be added for Chromebook, but is not available at publication.

[6] Under Tex. Gov. Code § 57.002, even when you are allowed to appoint an unlicensed interpreter to interpret a court proceeding, that interpreter must still be qualified by the court as an expert under the Texas Rules of Evidence; at least 18 years of age; and not a party to the proceeding. Here is an example of how it is done in federal court that could easily be adapted for Texas courts and the requirements of § 57.002.

[7] Tex. R. Evidence 604 requires that interpreters are qualified and take an oath. Sample interpreter's oath: "Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Code of Ethics and Professional Responsibility; follow all official guidelines established by this court for legal interpreting; and discharge all of the duties and obligations of legal interpretation?"

interpretation]

- *"Once I turn on the simultaneous interpretation function, the only person who will hear the interpretation will be Mr./Ms./Mx. [LEP Person]."* [pause for interpretation]
- *"The role of the interpreter is to interpret everything said in the proceeding with no additions, omissions, explanations, or personal input.* [pause for interpretation]
- *The interpreter cannot give advice, make suggestions, or engage in private conversation with you Mr./Ms./Mx. [LEP Person] or with anyone else.* [pause for interpretation]
- *Mr./Ms./Mx. [LEP Person], Raise your hand to let us/your attorney know if you have a question or do not understand something during the proceeding. Please do not ask the interpreter to explain it to you or for any advice."* [pause for interpretation]
- *"Mr./Ms./Mx. Interpreter, after the interpretation function is turned on you will see a welcome screen that says 'You've been assigned as an interpreter' and you should click 'OK.'"* [pause for interpretation]
- *Once you click OK, you should see a screen that will allow you to switch back and forth between [non-English language] and English.* [pause for interpretation]
- *When you are on the [non-English] channel, only Mr./Ms./Mx. LEP person will hear you.* [pause for interpretation]
- *If you need to ask for repetition or clarification or need us to pause or anything else, please raise your hand and switch to the English channel to address the Court.* [pause for interpretation]
- *Whenever you are on the English channel, please interpret in the consecutive mode* [pause for interpretation]
- *"For the rest of you, if you're joining on a computer, you should see a notification that says 'Interpretation is available' over an 'Interpretation' icon that looks like a globe."* [pause for interpretation]
- *"If you're joining on a smart phone, you may find the 'Language Interpretation' option under 'More' over some dots."* [pause for interpretation]
- *"Everyone must click on the interpretation icon to select your preferred language."* [pause for interpretation]
- *"Mr./Ms./Mx. [LEP Individual], you should click on the "[Non-English language]" which will be the [2nd/ 3rd/etc.] on the list of options.* [pause for interpretation]
- *"Once I turn on the simultaneous interpretation you will hear us speaking English in the background at about 20% volume and you will hear the interpreter at about 80% volume over that.* [pause for interpretation]
- *If you prefer to hear only the interpreter, there is an option to "mute original audio" right under where you select [Non-English language]. Once I turn on the simultaneous interpretation, let us know if you have any trouble getting it to work the way you want it to.* [pause for interpretation]

- *"Everyone else should click 'English.'"* [pause for interpretation]
- *Before I turn on the simultaneous interpretation, does anyone have any questions about what I've said so far?* [pause for interpretation]
- *"I'm going to turn on the simultaneous interpretation function now."* [pause for interpretation]

b. Enable the Simultaneous Interpretation function.

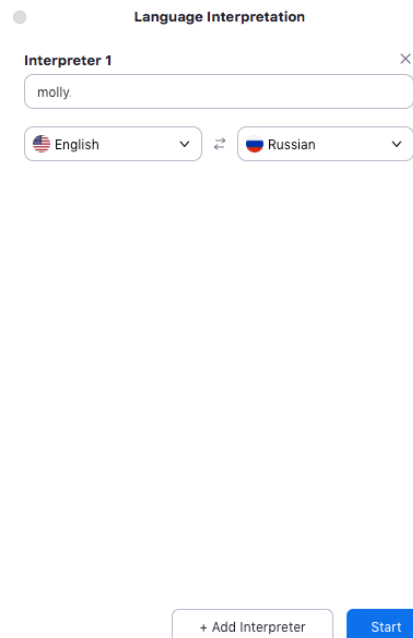
- [Once the simultaneous interpretation is on and you have given everyone a moment to select the appropriate options] Confirm all the participants can hear.
  "Can everyone hear the language that they selected? Please raise your hand if you can hear the language you want to hear."
- If everyone can hear, begin with some additional instructions regarding interpretation.
  "Now that we are in simultaneous mode, I want to give some brief additional instructions to help make this go as smoothly as possible."
- *Speak slowly, clearly, and one at a time. Whenever possible use plain language and avoid "legalese" and unnecessary terms of art.*
- *Speak directly to the person you are addressing as you normally would in court, not to the interpreter.*
- *Do not ask the interpreter to explain or restate what Mr./Ms./Mx. [LEP individual] said.*
- *During consecutive interpretation such as witness testimony, use short, complete sentences and pause after each complete thought to allow for interpretation.*
- *Open any statement to the interpreter with "Mr./Ms./Mx. [Interpreter Name]" or "Mr./Ms./Mx. Interpreter" to alert the interpreter that they are being addressed.*
- [If there is an attorney representing the LEP individual] *Mr./Ms./Mx. [Attorney name], if you need to confer with your client, please raise your hand to let us know. You can use a breakout room. If you need the interpreter to join you, please let us know. Only consecutive interpretation mode is available in the breakout rooms.*
- *Immediately raise your hand if you are unable to hear or understand the person speaking, or if the equipment you are using is not working properly.*
- [Instruct all participants about what to do if they get disconnected due to a problem with the internet or other technology including providing contact information for a staff person who will be responsive if needed.]
- Begin the proceeding as you normally would.

6. <u>Enabling the Simultaneous Interpretation Function</u>

The simultaneous interpretation option appears at the bottom of the Host's screen as an icon that looks like a globe. **Only the Host can enable this function, not a Co-Host**.

Host's Screen

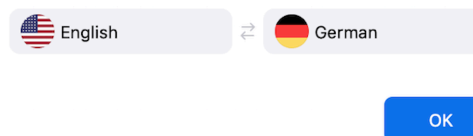
When the Host clicks on the "Interpretation" icon, a "Language Interpretation" screen will pop-up. The Host should start typing the name of the interpreter, which should populate the interpreter field or display a dropdown list of choices.



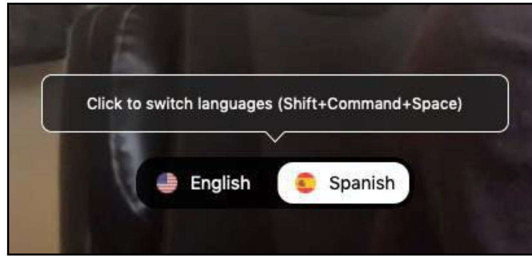
Once the interpreter's name appears in the interpreter field, the Host must select the appropriate non-English language and then click "Start." The Host can assign multiple interpreters as needed.

Interpreter's Screen

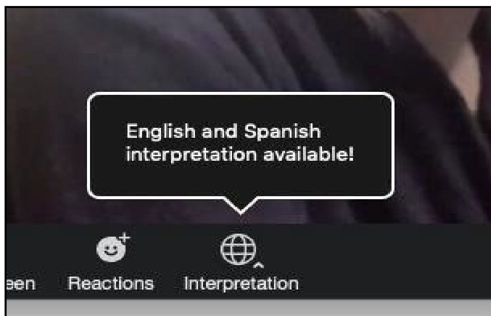
After the Host clicks "Start," the interpreter will see a Welcome screen that is visible only to the interpreter. When the interpreter clicks "OK," Zoom automatically chooses the non-English language for them.

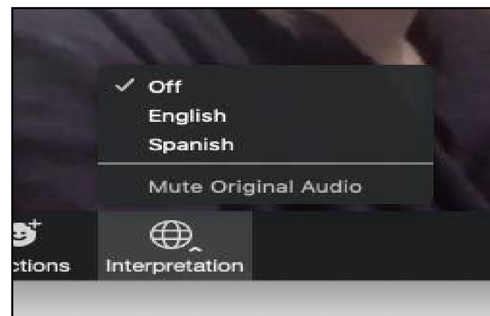


After the interpreter clicks "OK," the interpreter sees a screen that allows them to toggle back and forth between English and the non-English language audio channels.

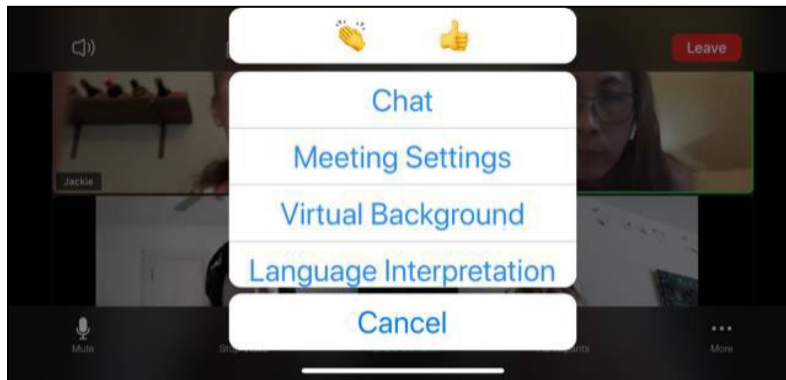


Participant's Computer Screen
Once the simultaneous interpretation feature has been activated by the Host, the other Participants will see a pop-up notice on their screens indicating, "interpretation is available" or "language interpretation." The Host should remind participants of the instructions to click on the Interpretation icon (not the message bubble) to select their preferred language.





Participant's Smart Phone Screen

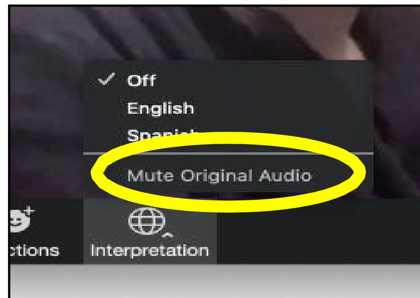


The court, staff, and attorneys should choose "English" while the LEP individual chooses the [Non-English] language. Once all of the participants have chosen their preferred language channel, simultaneous interpreting can begin.

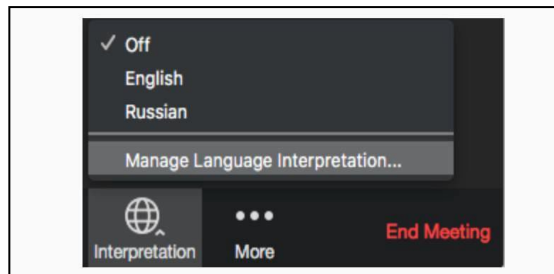
Confirm all the participants can hear by saying, "Can everyone hear the language that they selected? Please raise your hand if you can hear." Instruct participants to alert the Court if anybody has difficulties hearing by raising their hand at any point during the proceeding.

During the Hearing
When the simultaneous interpreting function is on, the interpretation will not be audible to anyone except the

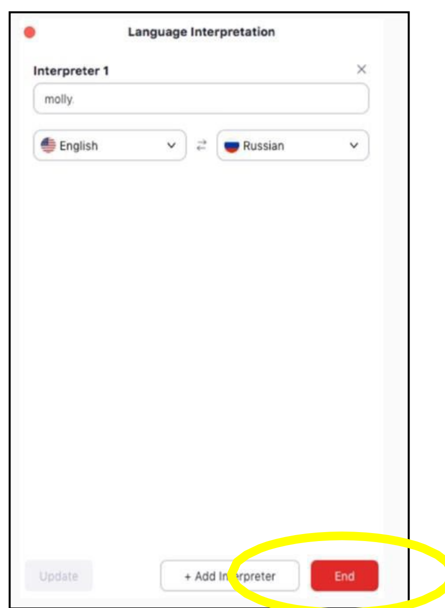
LEP individual and anyone else who has selected the non-English audio channel. The LEP individual should hear the English speakers at about 20% volume while the interpretation will be heard at about 80% volume. It may be helpful for the court to inform the LEP individual that if they want to hear only the interpretation, they can click "Mute Original Audio."



Ending the Simultaneous Interpreting Option
To stop the Simultaneous Interpretation function at any time, the Host can click the "Interpretation" icon and choose "Manage Language Interpretation."



Once the language interpretation screen is displayed, the Host should click "End" to stop the interpretation. The Host can stop and restart the interpretation function as often as necessary. Interpretation should be in consecutive mode when the simultaneous function is turned off.



Livestreaming on YouTube

If the court is planning on livestreaming the proceeding on YouTube and the simultaneous interpretation function is enabled, viewers will NOT be able to hear the interpretation audio channel, only the original audio channel. Cloud recordings will also only record the original audio, not the interpreter audio channel. Proceedings recorded on a local computer will record any audio channels that the person recording it can hear.

Breakout Rooms

If the court needs to send an attorney and their LEP client into a breakout room with the interpreter, the simultaneous interpretation function will not work in the breakout room. Before sending participants into a breakout room, the Host should turn off the interpretation function as described above. Interpretation in a breakout room will be conducted in the consecutive mode, which is the method that mimics an in-person encounter. If the simultaneous interpretation feature is needed after participants return from the breakout room, the Host can turn the feature back on and instruct participants to choose their audio channel again.

Two Interpreters Working as a Team

Two interpreters working as a team can share one audio channel and switch off while interpreting in the simultaneous mode. Both the active and resting interpreter will listen to the English speakers and switch off as needed with only one interpreter interpreting at a time. When interpreters are working as a team, they are not able to hear the other interpreter's interpretation. It may be helpful for them to have an opportunity to communicate prior to the proceeding to agree on how they will communicate and switch off. They may need to pause the proceedings for a moment while they switch off.

Appendix D
Sample Notice of Hearing and
Information to Send with the Notice of Hearing

FOR USE IN CIVIL CASES

When Notice of Hearing Issues at the Same Time as the Citation:

- It is a best practice to include the information regarding technology, accessibility, interpreters, or other needs in the Notice of Hearing and attach more detailed information on what to expect in the upcoming hearing to the citation.
- Courts should provide parties with both a telephone number and an email address where parties will receive a prompt and timely response. Some parties do not have access to the internet and cannot send email.

When Notice of Hearing Issues After the Citation Issues:

- When a notice of hearing will be sent later in the case after citation issues, it is a best practice to send information on what to expect in any upcoming hearing in a separate letter.
- If the information and the notice of hearing is sent by USPS and is returned as undeliverable, the court is urged to contact the party by alternative methods, if available (e.g., if the party listed their phone number or email address on their answer). The Court should also appropriately consider whether the information was received by the party when hearing the case.

See page 2 for a suggested Notice of Hearing template.

See page 3 for suggested information on Zoom hearings to send to parties.

Notice of Hearing

Your case is set for a court hearing on [date] at [time] with Justice of the Peace Court, Precinct [#]. The court hearing will be held online using a video conferencing program called [Zoom/WebEx]. **Please do not come to the courthouse**.

At least 5 days before the hearing, please read the attached instructions on how to participate in the hearing using Zoom. The instructions include information on how to submit evidence and what to do if you are not able to participate in the hearing using Zoom.

On the date and time of your hearing, type the web address listed below "Join Zoom Meeting" to attend your hearing:

[Insert Zoom Meeting Information]
JOIN ZOOM MEETING
[insert Zoom link]

MEETING ID: XXX-XXX-XXX

PASSWORD (if using): XXXXXXXX

PHONE AUDIO CALL
+1xxxxxxxxxx
+1xxxxxxxxxx

If you have any questions or have any of the following circumstances, please contact [the court coordinator, clerk, etc] immediately at (xxx) xxx-xxxx or [email address]: [*NOTE – Make sure to list a telephone number. People without access to internet cannot email you this information]*

1. You do not have the technology or ability to participate by Zoom (See information attached to the citation for details);
2. You need reasonable accommodations for yourself or a witness with disabilities;
3. You need an interpreter for yourself or a witness, including which language(s) are needed;
4. You have evidence to help prove your side of the facts but are not able to send it to the judge and opposing party in the way we've asked for it to be sent (See attached information for details); or
5. You are asking the court to delay the hearing for a good reason.

The court will do its best to accommodate parties and witnesses with disabilities or other specific needs, or who have a good reason why they cannot participate in the hearing.

Respectfully,

[Clerk of the Justice Court]
[Name of Justice of the Peace]
[Justice of the Peace, Precinct X]

Important Information on Remote Hearings in Civil Cases

1. A lawsuit involving you has been filed: A lawsuit has been filed against you in Justice Court, Precinct [X] or you have filed a lawsuit in Justice Court, Precinct [X]. If a court hearing is held in your case, you will be sent a notice of hearing telling you the date and time that a judge will hear your case. In some cases, like evictions, the notice of hearing is attached to the packet of information that is served on you by a sheriff, constable, or process server. Always check to see if a notice of hearing was included in that information.

2. Your court hearing will be held online, not at the courthouse: Your court hearing will be held online through a software application called [Zoom/WebEx]. Please do not go to the courthouse.

3. Contact the court **immediately** if you cannot participate in the hearing for the following reasons: Please contact [the court coordinator, clerk, etc] at (xxx) xxx-xxxx or [email address] if:
    a. You do not have the technology or ability to participate by Zoom (See attached information for details);
    b. You need reasonable accommodations for yourself or a witness with disabilities;
    c. You need an interpreter for yourself or a witness, including which language(s) are needed;
    d. You have evidence to help prove your side of the facts but are not able to send it to the judge and opposing party in the way we've asked you to send it (See attached information for details); or
    e. You are asking the court to delay the hearing for a good reason.

4. If you do not attend the hearing, there could be serious consequences: If you fail to attend any remote or in-person hearing, the court is likely to rule against you or dismiss your case if you are the one who filed it.

How to Participate in a Remote Court Hearing and What to Expect

1. Contact the Court with your email address and phone number: Please contact [the court coordinator, clerk, etc] at (xxx) xxx-xxxx or [email address] and provide the following information:
    a. *[Personalize for your court's requirements]*
    b. *[IF APPLICABLE]* Your Email Address: The court must have your email address **no later than noon at least three business days before your hearing** (e.g., if your hearing is on a Monday, the court needs it by noon on the Wednesday before your hearing. If one of those days is a holiday, then it's needed by noon on the Tuesday before your hearing).
        i. The court may email you about your case, such as letting you know about a delay in the hearing date. The opposing party may email you evidence they have against you.
        ii. It is important to check your email daily for information about your case. Check your spam or junk folders in your email account too, in case emails from the court or opposing party get sent to those folders.
        iii. You will need to email the judge and the opposing party any evidence you have that helps prove your side of the case.
    c. *[IF APPLICABLE]* Your Phone Number: The court must have your phone number **at least one business day before the hearing**. The court will call your phone number if there are any technical difficulties during the hearing.

2. How to Participate in the Hearing Using Zoom: It's best to use the video function of Zoom because it allows you to see the judge, the other party, the witnesses, and the evidence that is used against you. If you're unable to use the video function, or if you experience a technical problem with the video feature, you can also participate in the hearing by calling the Zoom phone number provided. If you call in to the hearing, you do not need anything more than your phone and the ability to make a call.
   a. Items Needed: To use Zoom's video function, you need to have a computer, tablet, or cell phone that has a video camera, a microphone/speaker, and reliable access to the internet. **If you do not have these items, please contact the [court coordinator] at (xxx) xxx-xxxx or [email address].** [*Note to courts – Please list a telephone number and an email address because they cannot email you if they lack the equipment/internet and are unlikely to have a phone with data.*]
   b. Download Zoom: Download Zoom on your computer or smartphone at https://zoom.us/. You do not need to set up a Zoom account to use Zoom for the hearing. Another way to download Zoom is to click on the Zoom link provided by the court. It is best to download Zoom at least a day before the hearing in case you have any difficulty.
   c. Join the Court Hearing:
      i. Go to https://zoom.us/join (or open up Zoom on your device or computer) and enter the Meeting ID to the Zoom link listed in your notice of hearing, then click the "Join" button.
      ii. Enter your name as it appears on the notice of hearing.
      iii. If a meeting password was provided to you, enter the meeting password.
      iv. Choose either "Call using Internet Audio" to use the speakers in your computer or "Dial In" if you'd prefer to use your phone to speak and listen to the hearing.
      v. When you first join, you may be placed in a "waiting room" until the judge starts the hearing. You cannot see or hear the proceedings from the waiting room. The judge and/or the court coordinator can see you are in the waiting room and will allow you into the hearing when it's time for you to participate.
      vi. The judge will make sure you can hear and talk and go over all the rules.
      vii. You will see each person and their name on the call. If someone does not have a video camera and is only participating by phone, you will only see their name. The person who is speaking will be highlighted by a green square box.
      viii. Be aware that background noise can cause problems. It is best to mute yourself when you are not speaking.
      ix. Your hearing is live and may be recorded. Everyone can hear what you say and the hearing may be open to the public. If recorded, it should be deleted after the hearing.
      x. The judge will decide most cases at the end of the hearing or will tell you when a decision on the case will be made.

3. What Happens if You Do Not Show Up at a Trial:
   a. If the person who files the lawsuit (the Plaintiff) does not show up, the case may be dismissed.
   b. If the person who was sued (the Defendant) does not show up, the court is likely to issue a "default judgment," which means that everything the Plaintiff says is assumed to be true and the Defendant will lose the case.
   c. If you have a good reason that you cannot be at the hearing on the date and time that it is set, you should contact the court and the opposing party and ask for the hearing to be set on another day and time.

4. Evidence:
   a. What is Evidence?: Evidence is information that proves something or explains why you disagree with what the other party is telling the court, such as documents, pictures, or video. It can also include testimony from witnesses or the parties.
   b. Email Your Evidence by [Insert your court's requirements]: If you have any documents or pictures that help you prove your case, you must email them to the court at [insert email address] and to opposing parties (or their lawyers) using the contact information listed in the court documents **no later than [insert your court's requirements].** If you don't, the court may not allow your evidence to be considered at the hearing. [*Note to courts: Requirements regarding the submission of evidence for a remote hearing should mirror the requirements of the submission of evidence for in-person hearings as much as possible. For example, if your court allows participants to submit evidence during an in-person hearing, participants should be allowed to do so during a remote hearing.*]
   c. Evidence Too Large to Email: If you have evidence that is too large to email, such as a video, contact [the court, etc] at [xxx-xxx-xxxx] for information on how to submit that evidence.
   d. How to Email Your Evidence:
      i. Scan the evidence or take a photograph of it with your cell phone/camera. Some free apps on phones such as CamScanner, Scanbot, or Adobe Scan can also help you scan documents so you can send them by email. Once they're scanned, check to make sure the documents can be easily read or seen.
      ii. Create an email to the court and the opposing parties (or their lawyers). List the full Cause Number of your case (the unique number assigned to your case that is listed at the top of the petition, which was attached to the citation you received), and "[Your Name]'s Exhibits" in the subject line.
      iii. Upload or attach your evidence to the email.
      iv. Make sure to put your name and the name of all the parties in the email and state that you will be using the attached documents as evidence in your hearing.
      v. Send your email, and if possible, save a copy to prove that you sent it. You can find emails that you send in the "sent" folder of your email. You can send yourself the email by putting your email address in the "To:" or "Cc:" line when you send the email to other parties, their lawyers, or the court.
   e. No Ability to Email?: If you do not have the technology or ability to email your evidence, contact [the court] at [xxx-xxx-xxxx] or [email address] for information on how to submit your evidence in another way.

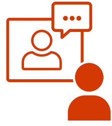
5. Witnesses:
   a. If you have any witnesses to help you prove your case, they **must** attend the Zoom hearing.
   b. Unless they are calling in by phone to the Zoom number, it is your responsibility to make sure all witnesses have:
      i. Access to the internet and a separate computer, tablet, and laptop with a video camera and speaker. If everyone is sharing the same setup, everyone must be able to be clearly seen and heard;
      ii. The correct Zoom link and meeting information;
      iii. Access to any evidence that you or the opposing party have; and
      iv. A valid form of identification to verify their identity over the video feed.

c. If any witness needs an interpreter, contact [the court] at [xxx-xxx-xxxx] at least [X] days before the hearing.

6. Other Helpful Resources, Forms, and Information
   a. **State Bar Referral Directory**. It is always best to have a lawyer represent you. If you cannot afford a lawyer, you may want to contact legal aid and pro bono organizations in your area for help. The Legal Access Division of the State Bar of Texas publishes a list of local and statewide legal aid and pro bono providers as well as lawyer referral services in their Referral Directory at https://www.texasbar.com/Content/NavigationMenu/LawyersGivingBack/LegalAccessDivision/ReferralDirectory.pdf. *[Note to courts - If you know them, it's best to list the local legal aid organizations with their phone number instead of linking to the Referral Directory, which is a very large and somewhat daunting publication.]*
   b. **Texas Law Help**. https://texaslawhelp.org/ is a website that provides free legal information and resources to the public. It also has a LiveChat feature for low-income people. It is hosted by the Texas Legal Services Center, a nonprofit legal aid organization.
   c. **The Texas Justice Court Training Center** has useful information and forms for justice courts at https://www.tjctc.org/SRL.html.
   d. **Tips for Self-Represented Litigants in Zoom Hearings:** The Texas Access to Justice Commission developed some tips for people who are representing themselves in an online court hearing which can be found at https://www.txcourts.gov/media/1447320/texasatj-tips-for-self-represented-litigants-on-zoom-hearings-and-court-processes-procedures.pdf.
   e. ***[Note to courts - Add any other low-cost or free legal resources in your area, including any forms, brochures, information, etc., that your court provides.]***

Appendix E

Remote Court Hearings



A remote court hearing is when some or all of the people participate by video or by phone. Read below to know how to prepare for a remote hearing.

How do I know if I have a remote hearing?

The court will notify you if your hearing is remote. They may contact you by U.S. mail, email, or phone. They will also notify the other parties in your case.

What if I don't have Internet or a phone?

Contact the court as soon as possible. They may:

- Postpone the hearing until everyone can participate safely, or
- Help you find a way to participate, such as free hot spots, or access to a free phone or Internet.

What if I cannot join at the scheduled hearing time?

You must have a good reason why you cannot be present at the scheduled time. And you must tell the court *before* the hearing. Go to your court's website. It will explain how to contact the court.

Will the court tell me how to join the remote hearing?

Yes. The court will send you instructions on how to join your remote hearing by video or by phone.
Courts may use different apps and processes. Visit your court's website or call your court to find out how your court does remote hearings.

How to Get Ready for Your Remote Hearing

Make sure you have good Internet connection.

Download Zoom (or other app your court uses). Practice with the app so you feel comfortable.

Charge your computer or mobile device. If you are calling in by phone, make sure you have enough minutes.

Use earbuds or headphones, if you can. This frees up your hands, and improves sound quality.

Email the court any evidence, like documents or photos.

Tell the court if you have witnesses. The court will tell them how to join the hearing.

Tell the court if you need an interpreter or a reasonable accommodation. The court will arrange it for you.

Get Your Space Ready!

- Find a quiet place where no one will interrupt you.
- Have all your papers ready, including a list of what you want to say to the judge.
- Know what time your hearing starts and how to log on or what number to call.

Look Good!

- Set the camera at your eye level. If using your phone, prop it up so you can look at it without holding it.
- Look at the camera, not the screen, when you speak.
- Dress neatly. Wear soft solid colors.
- Sit in a well-lit room, not too dark, not too bright. No bright lights behind you.

Sound Good!

- Pause before speaking in case there is any audio/video lag.
- Mute yourself when not speaking to improve sound quality.
- Say your name each time you speak.
- Talk slowly and do not interrupt.

What should I expect during the hearing?

1. When you first join, the judge will take you from a "waiting room" to the "hearing room." Only the people in your case will be in your hearing room.
2. The judge will make sure you can hear and talk, and go over all the rules.
3. You will see a picture or name of each person in your hearing on your screen. The first one you see is the person who is speaking.
4. Your hearing is live and may be recorded. Everyone there can hear what you say. It may even be open to the public.
5. The judge decides most cases at the end of the hearing.

Important! You may be connecting from home, but it is still a court hearing. Pay attention, and follow all rules.

Need legal help?

TexasLawHelp.org

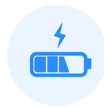
Adapted for Texas from a Transcend.net resource

How to Use ZOOM with Interpreting for your Court Hearing

Many court hearings are now remote. That means some or all of the people participate by video or by phone. Read below to learn about interpreters in your remote court hearing on Zoom.

1 Get ready *before* the meeting!

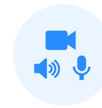
Make sure you have good Internet connection.



Charge your computer or device.

Download the most recent version of Zoom to your computer, tablet, or smart phone.

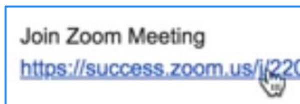
Practice the steps below.



Make sure your camera, microphone, and speakers work.

2 Connect Early!

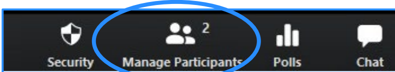
1. Click the Zoom meeting link you received at least **10 minutes** early. (You must join by clicking the *link* – do NOT call the *phone number!)*



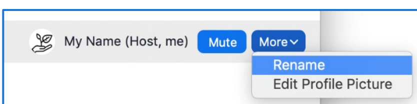
For the best experience, use Zoom from a computer.

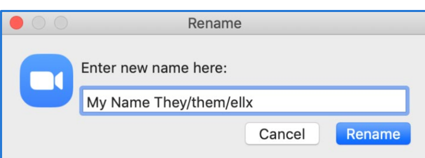
2. Click **Mute** and **Start Video**.

3. Click **Manage Participants**,

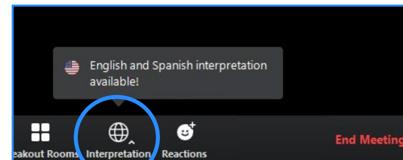


Then **More** and **Rename** to insert your *name* and *gender pronoun*.

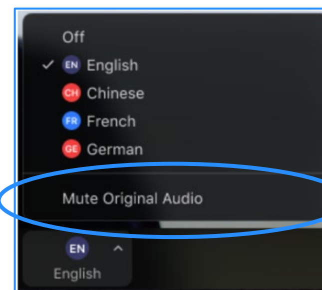




4. Once the Court turns the interpretation function on, click on the **globe**. Select the **language** you want to speak in and hear. It is best to speak *only* this language during the meeting.



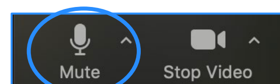
5. Select **Mute Original Audio**.*



* If you do not click **Mute Original Audio** you will hear the interpreter *and* the person speaking in the other language.

Talk slowly. Pause often. The interpreter needs time to interpret. Do **NOT** interrupt anyone.

6. Click **Mute** when you are not speaking.



Learn more about Zoom with interpreting at:
https://www.youtube.com/watch?v=I...

Adapted for Texas from a Transcend.net resource

Tab G4

August 14, 2022

TO: Supreme Court Advisory Committee (SCAC)

FROM: Hon Roy B. Ferguson, 394th District Court

IN RE: Remote Court Proceedings

I preside over the 394th Judicial District, which includes five counties in far west Texas, covering roughly 20,000 square miles. It is a rural court of true general jurisdiction. We transitioned to remote proceedings within a week of the March 13, 2020 lockdown, and as a result never ceased operations. Although I fully reopened for in-person proceedings in 2021, over 95% of my current docket remains remote, by request of the litigants and attorneys. Attorneys in my court *overwhelmingly* want remote proceedings to continue. In a poll I conducted last year, 98.3% of all attorneys who appeared remotely in the 394th District Court during the lock-down wanted remote proceedings to continue post-pandemic. Justice Busby asked that we share our experiences with remote proceedings over the last three years. As a Commissioner of the Texas Access to Justice Commission, a member of the Remote Proceedings Task Force, and an early adopter of remote proceedings, I am pleased to do so.

I have observed three major impacts of implementing remote proceedings in the 394th Judicial District Court: (1) greatly increased litigant participation, (2) transformed court efficiency, and (3) expanded options for representation. Many people in rural areas are for the first time able to access the court system in a meaningful way. Remote proceedings have revolutionized the legal system, and constitute the greatest improvement in access to justice since *Gideon* gave every criminal defendant the right to free legal representation.

I have seen a fundamental shift in appearance rates in all areas of litigation. Default judgments, failures to appear, criminal bond forfeitures, and DWOPs are all down. This results in higher quality of justice, and in turn frees up the Court's time to focus on resolving cases rather than chasing down missing parties.

In child welfare cases, parents and foster families now appear for almost every hearing. Historically, having both parents at a hearing was rare. One parent may be incarcerated or in a rehab center. And as rare as it was to have both parents attend in person, having foster families in the courtroom was even more so. It almost never happened. Most foster placements are outside of the District, hours away from the courthouse of venue. The home may have multiple foster children attending school. Foster parents have the statutory right to address the court at each hearing. With in-person hearings, it was effectively impossible for them to do so. Furthermore, all attorneys usually reside outside the county of venue – most (including the CPS representatives) traveling up to 3 hours from El Paso to the courthouse. Those attorneys must leave their homes at 5 am to make a 9 am in-person setting. Expecting a foster family to make the same trip was not realistic. Now, I require that foster families have Zoom access in order to receive a placement in my jurisdiction. They appear at over 90% of our hearings, vastly

improving the court's ability to monitor the child and quickly address problems. I've had same-day emergency hearings numerous times, and once I was able to remove a child from an out-of-county foster placement within hours of a violent incident. I am also able to hold more frequent permanency hearings, helping all involved better respond to and protect the needs of the child. And the child can now appear remotely for all settings without missing two days of school.

In other family law cases, the Texas Family Code requires that the court review all agreed property divisions and custody orders to confirm that they are just and right, and in the best interest of the child, respectively. The trial court should also never enter void orders, or ones that violate Texas law. These requirements take on greater importance with the many self-represented litigants who attempt to use the Supreme Court's family law forms. Self-represented litigants now account for a majority of family law parties in my jurisdiction. Nonlawyers typically do not understand the Family Code, and usually make major mistakes in preparing their documents. I've seen nonparties awarded custody of the children, unenforceable possession orders, requirements that the ex-husband vet the ex-wive's future boyfriends, and child support orders that allow the paying parent access to the primary parent's bank records in order to veto expenditures of the child support funds. In addition, "agreed" orders may serve to perpetuate abuse of a powerless spouse. I've seen and corrected indigent mothers who get custody of the children "agreeing" to waive child support; parties unwittingly forfeiting separate property; violently abusive spouses strongarming 100% of the marital estate; and registered sex offenders and drug addicts getting unrestricted standard possession. Historically, only one party appeared to "prove-up" the agreement, which hampered the court's ability to correct erroneous orders. Now, both parents appear remotely for the final hearing—sometimes even from other countries. As a result, the average pro-se divorce in my court is completed within 75 days (two weeks after expiration of the statutory "cooling-off period"). I am better able to detect and correct violations of Texas law or proposed orders that potentially harm children, which results in a dramatically higher quality of justice and avoids future corrective litigation that unnecessarily bogs down court dockets.

My criminal caseload has enjoyed an even greater positive impact. The 394th includes over 20% of the US-Mexico border, and contains numerous Border and Customs checkpoints. The main checkpoint on Interstate 10 between El Paso and Sierra Blanca lies within Hudspeth County and historically results in approximately 500 felony indictments per year. As a result, over 90% of those cases involve out-of-state defendants. The vast majority are low-level drug charges resolved by misdemeanor plea bargains with small fines. Without the option for remote proceedings, these defendants must return, in person, up to three times at great expense, to enter a plea agreement—wasting funds that they could use to pay fines and resolve cases more quickly. A substantial number of out-of-state defendants who *wanted* to resolve the charges were financially unable to make the trip. This resulted in bond forfeitures and warrants, requiring extradition to Texas from their home states—not because they were dangerous, but because they were poor.

Approximately 75% of our felony criminal defendants qualify for court-appointed counsel under the Court's indigency standards, but there are few private attorneys in the District available for

felony court-appointments—none in Hudspeth County, none in Culberson County, one in Presidio County, one in Jeff Davis County, and two in Brewster County—in an area larger than nine states and bisected by an interstate highway. We therefore created the Far West Texas Regional Public Defender Office four years ago to provide low-income defendants with representation. However, in cases involving multiple defendants, the PDO can only represent one defendant. Drug conspiracy cases, and, most recently, dozens of human trafficking cases, involve multiple co-defendants, all of whom require their own attorney. Without remote proceedings, I am unable to find enough attorneys who are willing to assist for the paltry funds paid for such representation. The counties cannot afford to pay travel costs and time, and I cannot compel unwilling attorneys to accept such representation. Having the option of remote proceedings in the last two years enabled the court to move these cases, because we could appoint attorneys anywhere in the State. I hold writ hearings and grant mandatory release of unconstitutionally incarcerated defendants on a daily basis for the four jails in the District, rather than waiting until I have a free day to make it to that county—even when sitting by assignment in other parts of the State. Finally, by allowing defendants to appear for court from jail or prison in other counties, cases are resolved more quickly without forcing law enforcement to transport prisoners back and forth on competing bench warrants. Remote appearances are faster, cheaper, more efficient, and better for all aspects of the justice system. Both defendants and attorneys strongly favor continuation of remote proceedings in criminal cases in far west Texas.

Remote proceedings revolutionized multicounty court efficiency, where one judge presides in multiple courthouses. Previously, I would travel every day, up to four hours per day, from county to county, holding hearings and dockets. This meant that approximately three weeks per month were filled with mundane settings and driving, leaving only one week per month available for jury trials. Now, through remote proceedings, those regular dockets are stacked with multiple counties on the same day, without lost travel time, and are often all completed within a week to ten days, leaving two or even three weeks for jury trials and other contested matters. Unlike many Texas courts, my dockets are current, and my jury trial backlog is shrinking rapidly. (Although I held one fully remote jury trial during the lock-down, it was by agreement and request of the parties. I do not intend to force remote jury trials on anyone. All my jury trials are in-person.)

Far west Texas is a "legal desert." Two of my counties have no attorneys in private practice at all. In order for residents to obtain legal representation, they must retain lawyers from outside the District. Prior to the lockdown, only the wealthiest litigants could afford to hire these lawyers, and if the case dragged on, the litigant with the deepest pockets often won simply through attrition. (We called it, "out money'ing the other side.") With remote proceedings, we now have lawyers (many board-certified in their practice areas) appearing in cases here from Dallas, Houston, Austin, and San Antonio, for litigants who would otherwise struggle to find and afford representation. These lawyers often call the clerk to find out whether we are still using remote proceedings before accepting representation. I've been told by those lawyers that if I go back to in-person, they will withdraw from pending cases and refuse all future representation in the area. The travel time is simply cost-prohibitive for their clients, for most residents of the region, and for *all* low-income residents. (It's important to note that the same result would occur if lawyers

were given control over whether a proceeding was remote or in person. Remote proceedings would be weaponized against lower-income Texans, and in-person proceedings would be reduced to a litigation tactic.)

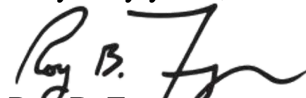
This cost savings is not unique to rural areas. When I practiced in Houston, I would commonly get on the highway before sunrise to make an 8:30 am setting downtown, and would then sit and wait for half a day or more for my case to be called—all at the expense of one client. With remote proceedings, we eliminated cattle-call dockets. Lawyers know what time their case will be called, and can appear, participate, and leave with a minimum of wasted time. In remote rural areas, this can save as much as 90% of legal fees for each hearing. For most Texans, this alone is the difference between having representation, and not. And to my recollection, I have not had a single withdrawal of counsel for nonpayment since implementing remote proceedings.

The attorneys and parties strongly favor remote proceedings for *evidentiary hearings* as well. For the last six months, I have offered lawyers and litigants the option of remote or in-person format for all requested evidentiary hearings. To date, they have requested in-person proceedings less than 5% of the time, and when notified by the court that a hearing would be in-person anyway, at least one party has objected *every* time.

Simply put, litigants, lawyers, court staff, clerks, jails, and law enforcement are better served in rural areas through the availability of remote proceedings.

I would be happy to attend a Committee meeting (remotely or in-person) and discuss my experiences with remote proceedings, if requested. Until then, I remain,

Very truly yours,



Roy B. Ferguson
Judge, 394th Judicial District Court

Tab H

The Supreme Court of Texas

CHIEF JUSTICE
NATHAN L. HECHT

JUSTICES
DEBRA H. LEHRMANN
JEFFREY S. BOYD
JOHN P. DEVINE
JAMES D. BLACKLOCK
J. BRETT BUSBY
JANE N. BLAND
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CLERK
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GENERAL COUNSEL
NINA HESS HSU

EXECUTIVE ASSISTANT
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October 25, 2021

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters.

Texas Rule of Civil Procedure 76a. Since its adoption in 1990, the Court has received a number of complaints about Texas Rule of Civil Procedure 76a. Courts and practitioners alike complain that the Rule 76a procedures are time consuming and expensive, discourage or prevent compliance, and are significantly different from federal court practice. The Committee should draft any rule amendments that it deems advisable and, in making its recommendations, should take into account the June 2021 report of the Legislative Mandates Subcommittee.

Texas Rule of Civil Procedure 162. In the attached email, Judge Robert Schaffer proposes amendments to Texas Rule of Civil Procedure 162. The Committee should review and make recommendations.

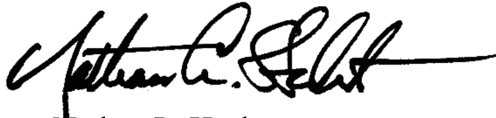
Texas Rule of Civil Procedure 506.1(b). Texas Rule of Civil Procedure 506.1(b) states in part: "A plaintiff must file a $500 bond. A defendant must file a bond in an amount equal to *twice the amount of the judgment*." (Emphasis added.) The Court asks the Committee whether the bond amount—double the judgment—is too high, especially as justice court jurisdiction has increased. The Court also asks the Committee to consider other changes that would clarify whether attorney fees are included in calculating the bond amount.

Texas Rule of Evidence 404(b). In the attached memorandum, the State Bar Administration of Rules of Evidence Committee proposes amendments to Texas Rule of Evidence 404(b). The Committee should review and make recommendations.

Texas Rule of Evidence 601(b). In the attached memorandum, the State Bar Administration of Rules of Evidence Committee proposes the repeal of Texas Rule of Evidence 601(b). The Committee should review and make recommendations.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,



Nathan L. Hecht
Chief Justice

Attachments

Tab I

Memorandum

TO: **Supreme Court Advisory Committee**

FROM: **Subcommittee on Rule 16-165a, Chair Richard R. Orsinger, Vice-Chair Honorable Ana Estevez**

RE: **Proposed Changes to Tex. R. Civ. P 76a**

DATE: **August 12, 2022**

I. Matter Referred to Subcommittee:

On October 25, 2021, Chief Justice Nathan Hecht sent a letter to SCAC Chairman Chip Babcock referring the following matter to this Subcommittee:

> **Texas Rule of Civil Procedure 76a.** Since its adoption in 1990, the Court has received a number of complaints about Texas Rule of Civil Procedure 76a. Courts and practitioners alike complain that the Rule 76a procedures are time consuming and expensive, discourage or prevent compliance, and are significantly different from federal court practice. The Committee should draft any rule amendments that it deems advisable and, in making its recommendations, should take into account the June 2021 report of the Legislative Mandates Subcommittee.

II. Background

This topic was referred to the Subcommittee on Rules 16-165a on November 2, 2021. Since that time, the Subcommittee and interested persons who volunteered to work on the project, has met several times via zoom to discuss what changes, if any, should be made to Rule 76a. The Subcommittee has also engaged in email discussions. It should be noted that there are different perspectives on sealing court records among the Subcommittee members and others who volunteered to help. The proposed changes to Rule 76a that the Subcommittee presents do not reflect the consensus of the Subcommittee because of many diverse views, including some opposition to sealing court records under any circumstances. Several drafts of the proposed changes to Rule 76a were circulated, ultimately resulting in a proposed draft, which is a composite of different perspectives.

III. Issues for Discussion/Proposed Changes

The Subcommittee and volunteers identified the following areas of Rule 76a that should be discussed and possibly changed. * Some Subcommittee members do not support some of these suggested changes.

A. Whether there should be some types of information that should not have a presumption of openness to the general public and should have a less burdensome process available to be sealed. These specific areas include:

1. trade secrets;
2. information that is confidential under a constitution, statute, or rule;
3. information subject to a confidentiality agreement or protective order;
4. information subject to a pre-suit non-disclosure agreement with a non-party; and
5. an order changing the name of a person to protect that person from a well-founded fear of violence.

These categories are called "Paragraph 3 information in this memo." The Subcommittee process led to a suggestion that advance notice should be given before Paragraph 3 Information is filed unsealed.

B. If an easier process is adopted for information that is not presumed to be open to the general public, what should be changed? The Subcommittee suggests two processes depending on the type of information that is being sealed. This permits a party or non-party

1. The current Rule 76a standard to seal would apply to all information that is not included within Paragraph 3 of the proposed new Rule 76a draft.

   a. notice requirements – less burdensome notice suggested
   b. hearing requirements – remain the same
   c. changes in process to unseal documents
   d. actual notice requirements for non-parties interested in the unsealing

2. Information that is not presumed to be open to the general public (Paragraph 3 Information)

   a. less burdensome notice requirement
   b. no hearing requirement, unless requested; burden changes
   c. changes in process to unseal documents
   d. actual notice requirements for non-parties interested in the unsealing
   e. requires a notice of intent to file confidential information before filing the information unsealed

IV. Discussion

A. **Information that should be presumed to meet the standard of sealing** and should be treated differently than other information. The Subcommittee process identified five areas of information that should not have a presumption of openness to the general public and, therefore, the burden on whether the information should be sealed should be shifted in favor of sealing (for Paragraph 3 information).

1. **Trade secrets** – presumption of openness in 76a does not apply to trade secrets – *see HouseCanary, Inc. v. Title Source, Inc.*, 622 S.W.3d 254 (Tex. 2021).

2. **Information that is confidential under a constitution, statute, or rule -** Every individual has a privacy interest in avoiding the disclosure of certain personal matters under both the United States and Texas Constitutions. *See Nguyen v. Dallas Morning News, L.P.,* No. 02-06-00298 –CV, 2008 WL 2511183 at *14 (Tex. App.—Fort Worth June 19, 2008, no pet.) (mem op.).

3. **Information subject to a confidentiality agreement or protective order –** The Subcommittee recognizes the potential for overuse or misuse if litigants enter into confidentiality agreements for areas of information that do not truly contain confidential, privileged, or protected information. In order to deter abuse, the Subcommittee has included a sanctions paragraph in Rule 76a.

4. **Information subject to a pre-suit non-disclosure agreement with a non-party-** The Subcommittee recognizes that in commerce parties enter into non-disclosure agreements as part of a contracting process, unrelated to a pending lawsuit. When a party possessing another party's confidential information becomes involved in litigation, notice should be given to the contracting non-party before the non-party's information is filed unsealed.

5. **An order changing the name of a person to protect that person from a well-founded fear of violence.**

B. Two different procedures to seal information

1. **The existing Rule 76a with a few modifications (except for information included in the new proposed Paragraph 3) would still be used for sealing in some circumstances.**
   - Information is presumed to be open to the general public. For information to be sealed the movant must show a specific, serious and substantial interest which clearly outweighs the presumption of openness, any probable adverse effect that sealing will have upon the general public health or safety, and that no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

   a. Less Burdensome Notice

      i. Public notice – Rule 76a currently requires posting the notice at the place where notices for meetings of county governmental bodies are required to be posted.
      The proposed change would require posting of the notice at the website maintained by the State of Texas for posting public notices (https//topics.txcourts.gov/).

      ii. Filing of notice – Rule 76a currently requires filing a verified copy of the posted notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas.
      The proposed change would eliminate this requirement.

   b. Requires a hearing not less than 14 days after the motion is filed and notice is posted. The movant must show that no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted. Some participants say that having a hearing within 14 days is not always possible, due to the press of other court business. Should we have a longer period for a hearing? What period of time to rule?

   c. The proposed change to Rule 76a would require public notice on the website before sealing or unsealing records.

   d. Changes in actual notice requirements in a Motion to Unseal – When a party intends to file Paragraph 3 information unsealed, that party must give notice to other parties, to the public, and to any non-party whose Paragraph 3 information would be filed unsealed. This preliminary notice requirement would allow the

court (and not a party acting unilaterally) to determine whether information should be filed unsealed. It would also give non-parties the opportunity to protect their own Paragraph 3 information. For example: Company X previously provides confidential information under an NDA to Company A. At a later time, Company A negotiates to acquire Company B. The deal falls apart and Company B sues Company A, claiming that Company A breached an agreement to purchase Company B. Company B then seeks discovery from Company A regarding any other potential acquisitions, including confidential information provided to Company A by Company X. The proposed rule change would require advance notice to Company X before Company X's confidential information is filed unsealed.

2. **Information Presumed to Meet the Standard of Sealing** (New Paragraph 3) To have information sealed, the movant need only initially show that the information is included within the categories of Paragraph 3. See Section IV.A above.

   a. Less Burdensome Notice

      i. Public notice – Rule 76a currently requires posting the notice at the place where notices for meetings of county governmental bodies are required to be posted.
      The proposed change would require posting of the notice at the website maintained by the State of Texas for posting public notices (https//topics.txcourts.gov/).

      ii. Filing of notice – Rule 76a currently requires filing a verified copy of the posted notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas. The proposed change would eliminate this requirement.

   b. Allows sealing without a hearing if no hearing has been requested within 14 days from the day of notice. If a hearing is requested, a person objecting to sealing or moving to unseal the information must show that sealing, or failure to unseal, would have a probable adverse effect upon the general public health or safety. The judge should also determine whether the information does not meet the requirements of Paragraph 3, in which event the presumption of openness would apply.

c. The proposed change to Rule 76a would require public notice on the website before unsealing records.

d. Changes in actual notice requirements in a Motion to Unseal – When a person files a motion to unseal, each party must forward the Motion to Unseal to any third-party who produced the document and to any other person or entity known by that party to have an interest in opposing the Motion to Unseal. Notice must also be given to all persons whose confidential information was obtained through pretrial discovery in the case. This added notice would protect those who are not involved in the litigation and would have no way of knowing that anyone was seeking to unseal their confidential information.

e. Notice of Intent to File Confidential Information: This provision requires parties and non-parties to file a notice of intent to file confidential information if they are not going to request that the information that is described in Paragraph 3 be filed under seal. It also requires that they give actual notice to those who have an interest in the information that they intend to file. This allows for those other persons to intervene before their confidential information is released to the general public.

C. Subsequent Motions to Seal or Unseal

The proposed rule continues the procedure of the ability to file a later motion to seal or unseal records, but the concept of res judicata is changed. Under the current Rule 76a.7, Continuing Jurisdiction, a ruling on a motion to seal or unseal has res judicata effect only on a party or intervenor with actual notice of the hearing. An exception applies upon a showing of changed circumstances materially affecting the order. [One suggestion is to add: "or if the public interest requires reconsideration."] Under the proposed Rule change, the res judicata effect applies to everyone, even non-parties with no notice of the prior hearing on sealing. The rationale is that courts should not have to relitigate matters already considered by them, regardless of who brings the later motion. In other words, res judicata applies to the circumstances previously adjudicated, not just participants in that hearing or non-parties who had notice but did not appear.

D. Sanctions

The proposed Rule does not create a new rule for imposing sanctions. It refers to the existing sanctions Rule 13 and Chapters 9 and 10 of the Texas Civil Practice and Remedies Code. The reminders are deemed advantageous because it reminds lawyers of their duty to be accurate and reminds Judges of their power to sanction lawyers who misuse the safe harbor of Section 3 information.

Tab I1

Subcommittee's Proposed Revision of Rule 76a**. Sealing Court Records**

8-16-22

1. **Standard for Sealing Court Records**. Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed, except as provided below. Information in other court records, except for information under Paragraph 3, is presumed to be open to the general public and may be sealed only if there is a showing of all of the following:

(a) a specific, serious and substantial interest which clearly outweighs:

(1) this presumption of openness;

(2) any probable adverse effect that sealing will have upon the general public health or safety;

(b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

2. **Court Records.** For purposes of this rule, court records are:

(a) all documents of any nature filed, or sought to be sealed before filing, in connection with any matter before any civil court, except:

(1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;

(2) documents to which access is otherwise restricted by law;

(3) court orders required to be sealed by statute

(4) documents filed in an action originally arising under the Family Code;

(b) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government.

(c) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.

3. **Information Presumed to meet the Standard of Sealing**.

(a) It is presumed that the following information within a court record meets the standard for sealing as prescribed in Paragraph 1:

(1) trade secrets or other proprietary information of a party or non-party;

(2) information that is confidential under a constitution, statute, or rule;

(3) information subject to a confidentiality agreement or protective order;

(4) information subject to a pre-suit non-disclosure agreement with a non-party; and

(5) an order changing the name of a person to protect that person from a well-founded fear of violence.

(b) After fourteen days from the date of the notice required under Paragraph 5, the information shall be ordered sealed unless a hearing has been requested or the judge determines that the information is not any of those listed in Paragraph 3(a). If a hearing is requested, the information shall be ordered sealed unless a person objecting to sealing or moving to unseal the information shows that sealing would have a probable adverse effect on the general public health or safety. If the judge determines that Paragraph 3(a) does not apply, the movant may file a new motion that does not rely on the presumption in Paragraph 3.

4. Notice of Intent to File Confidential Information Unsealed: Any party or person who intends to file information described in Paragraph 3 without requesting that it be sealed must give notice to all parties, to any third-party who produced the document in discovery, to those whose interest in the confidentiality of the information is evident from the document containing the information, and to those whose probable interest in the confidentiality of the information is otherwise known. The information may not be filed unsealed for 14 days from the date of the notice, and the notice must state that the recipient has until then to file a motion to seal. If a timely motion to seal is filed, Paragraph 5 applies.

5. Motion to Seal and Notice: A request for a final sealing order is made by filing a stand-alone motion. A motion to seal must give a brief but specific description of both the nature of the case and the records which are sought to be sealed and must state that any person may request a hearing to be heard in opposition to the motion. The motion must be electronically filed on the website maintained by the State of Texas for posting public notices (https://topics.txcourts.gov/) for at least 14 days before any judge may enter a final order sealing the records.

6. Motion to Unseal and Notice: A request for an order unsealing court records is made by filing a stand-alone motion. A party or person who files a motion to unseal must attach the original motion to seal and the sealing order. The motion must be electronically filed on the website maintained by the State of Texas for posting public notices (https://topics.txcourts.gov/) for at least 14 days before any judge may enter an order unsealing the records. Within three days of receiving a motion to unseal, each party must forward it to any third-party who produced the document in discovery, to those whose interest in the confidentiality of the information is evident from the document containing the information, and to those whose probable interest is otherwise known. If a hearing is requested within 14 days of the public notice, a judge may not sign an order unsealing the records until the hearing has been held.

7. **Hearing.** If a hearing is requested, a hearing, open to the public, shall be held in open court as soon as practicable, but not less than fourteen days after the motion is filed and notice is posted. Any party to the case, any non-party who filed a motion to seal or unseal, and any person who

requested the hearing may participate in the hearing in a manner determined by the court. At the court's discretion, other members of the public may speak on the issue before the court.

8. **Temporary Sealing Order**. A temporary sealing order may issue only if there is a showing of a compelling need from specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant. The temporary order shall direct the movant to immediately give the public notice required by Pparagraph 5. A temporary sealing order expires after 14 days, and if no final sealing order has been filed, the clerk shall unseal the information as soon as the clerk becomes aware of the expiration.

9. **Order.** An order sealing or unsealing a court record must be filed and open to the public. It must state the applicable standard and burden and give specific reasons for finding and concluding whether that standard has or has not been met by the party with the burden. An order that seals a court record must also reference the specific portions of court records which are to be sealed by document title, exhibit number, paragraph number, or redaction shown in the context of the unsealed portion. A sealing order must also state the time period for which the sealed portions of the court records are to be sealed, which may be permanently, subject to the court's continuing jurisdiction. An order that unseals a court record shall include the record within the order or attached to the order, or by reference to its location within the court files. The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.

10. Continuing Jurisdiction. Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records. A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. If a court has previously ruled on a request to seal or unseal filed documents, the movant who seeks to seal or unseal the filed documents at a later time must show a material and substantial change in circumstances affecting the prior ruling since the time of the prior ruling. Such circumstances need not be related to the case in which the order was issued. If there is a showing of material and substantial change in circumstances, the court must then consider the request to seal or unseal the filed documents under the appropriate standard applying to the documents at issue.

11. **Appeal**. Any order (or portion of an order or judgment) relating to sealing or unsealing court records shall be deemed to be severed from the case and a final judgment which may be appealed by any party, any non-party who filed a motion to seal or unseal, and any person who requested the hearing and participated in the hearing preceding issuance of such order it. The appellate court may abate the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings.

12**. Application**. Access to documents in court files not defined as court records by this rule remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to:

(a) all court records filed or exchanged after the effective date;

(b) any motion to alter or vacate an order restricting access to court records, issued before the effective date.

13. **Sanctions**. Non-compliance with this rule is subject to sanctions pursuant to rule 13 and Chapters 9 or 10 of the Texas Civil Practice and Remedies Code. Non-compliance subject to sanctions includes, but is not limited to, misrepresentations to the court regarding the nature of information sought to be sealed and filing information presumed to meet the standard for sealing, described in Paragraph 3, without an order permitting it.

Comment: The presumption of openness to the general public, when it applies to the information at issue, requires a judge to consider the merits of a motion without regard to any agreement of counsel. A judge has this responsibility because the general public is not represented by anyone in the proceeding, though some members of the public may participate, and no member of the public can see the information sought to be sealed.

Comment: Paragraph 3(a) resolves the conflict between the rule's prohibition on sealing court orders and legal requirements that an order be sealed or that some information within an order be concealed. For example, Chapter 82 of the CPRC gives the plaintiff the option of concealing her identity by using a pseudonym. Though not otherwise required by law, Paragraph 3(a)(5) permitting certain name change orders to be sealed, like Chapter 82, is intended to protect a person from violence.

Tab I2

Subcommittee's Proposed Revision of Rule 76a**. Sealing Court Records**

8-16-22

1. **Standard for Sealing Court Records**. Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed**, except as provided below. Information in other** court records, **except for information under Paragraph 3, is** presumed to be open to the general public and may be sealed only **if there is** a showing of all of the following:

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(a) a specific, serious and substantial interest which clearly outweighs:

(1) this presumption of openness;

(2) any probable adverse effect that sealing will have upon the general public health or safety;

(b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

2. **Court Records.** For purposes of this rule, court records **are**:

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(a) all documents of any nature filed**, or sought to be sealed before filing,** in connection with any matter before any civil court, except:

(1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;

(2) documents to which access is otherwise restricted by law;

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(3) court orders required to be sealed by statute

(4) documents filed in an action originally arising under the Family Code**;**

(b) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government.

(c) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.

3. **Information Presumed to meet the Standard of Sealing.**

(a) It is presumed that the following information within a court record meets the standard for sealing as prescribed in Paragraph 1:

(1) trade secrets or other proprietary information of a party or non-party;

(2) information that is confidential under a constitution, statute, or rule;

(3) information subject to a confidentiality agreement or protective order;

(4) information subject to a pre-suit non-disclosure agreement with a non-party; and

(5) an order changing the name of a person to protect that person from a well-founded fear of violence.

(b) After fourteen days from the date of the notice required under Paragraph 5, the information shall be ordered sealed unless a hearing has been requested or the judge determines that the information is not any of those listed in Paragraph 3(a). If a hearing is requested, the information shall be ordered sealed unless a person objecting to sealing or moving to unseal the information shows that sealing would have a probable adverse effect on the general public health or safety. If the judge determines that Paragraph 3(a) does not apply, the movant may file a new motion that does not rely on the presumption in Paragraph 3.

4. Notice of Intent to File Confidential Information Unsealed: Any party or person who intends to file information described in Paragraph 3 without requesting that it be sealed must give notice to all parties, to any third-party who produced the document in discovery, to those whose interest in the confidentiality of the information is evident from the document containing the information, and to those whose probable interest in the confidentiality of the information is otherwise known. The information may not be filed unsealed for 14 days from the date of the notice, and the notice must state that the recipient has until then to file a motion to seal. If a timely motion to seal is filed, Paragraph 5 applies.

5. Motion to Seal and Notice: A request for a final sealing order is made by filing a stand-alone motion. A motion to seal must give a brief but specific description of both the nature of the case and the records which are sought to be sealed **and must state that any person may request a hearing to be heard in opposition to the motion. The motion must be electronically filed on the website maintained by the State of Texas for posting public notices (https://topics.txcourts.gov/) for at least 14 days before any judge may enter a final order sealing the records.**

6. Motion to Unseal and Notice: A request for an order unsealing court records is made by filing a stand-alone motion. A party or person who files a motion to unseal must attach the original motion to seal and the sealing order. The motion must be electronically filed on the website maintained by the State of Texas for posting public notices (https://topics.txcourts.gov/) for at least 14 days before any judge may enter an order unsealing the records. Within three days of receiving a motion to unseal, each party must forward it to any third-party who produced the document in discovery, to those whose interest in the confidentiality of the information is evident from the document containing the information, and to those whose probable interest is otherwise known. If a hearing is requested within 14 days of the public notice, a judge may not sign an order unsealing the records until the hearing has been held.

7. Hearing. If a hearing is requested, a hearing, open to the public, shall be held in open court as soon as practicable, but not less than fourteen days after the motion is filed and notice is posted. Any party **to the case, any non-party who filed a motion to seal or unseal, and any person who requested the hearing** may participate in the hearing **in a manner determined by**

Deleted: Court records may be sealed only upon a party's written motion, which shall be open to public inspection. The movant shall post a public notice at the place where notices for meetings of county governmental bodies are required to be posted, stating: that a hearing will be held in open court on a motion to seal court records in the specific case; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case;

Deleted: ; and the identity of the movant. Immediately after posting such notice, the movant shall file a verified copy of the posted notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas.

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the court. At the court's discretion, other members of the public may speak on the issue before the court.

8. Temporary Sealing Order. A temporary sealing order may issue **only if there is** a showing of **a** compelling need from specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant. The temporary order shall direct the movant **to** immediately give the public notice required by **P**paragraph **5**. **A** temporary **sealing order expires after 14 days, and if no final sealing order has been filed, the clerk shall unseal the information as soon as the clerk becomes aware of the expiration.**

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9. **Order**. **An order** sealing or unsealing **a** court **record must** be **filed and** open to the public. **It must** state the **applicable standard** and **burden and give** specific reasons for finding and concluding whether **that standard** has **or has not** been **met by the party with the burden. An order that seals a court record must also reference** the specific portions of court records which are to be sealed **by document title, exhibit number, paragraph number, or redaction shown in the context of the unsealed portion. A sealing order must also state** the time period for which the sealed portions of the court records are to be sealed**, which may be permanently, subject to the court's continuing jurisdiction. An order that unseals a court record shall include the record within the order or attached to the order, or by reference to its location within the court files.** The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.

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10. Continuing Jurisdiction. Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records. A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. **If a** court **has previously ruled** on **a request to seal or unseal filed documents, the movant** who **seeks to seal or unseal** the **filed documents at a later time must show a material and substantial change in** circumstances affecting the **prior ruling since the time of the prior ruling.** Such circumstances need not be related to the case in which the order was issued. **If there is a showing of material and substantial change in circumstances, the court must then consider the request to seal or unseal the filed documents under the appropriate standard applying to the documents at issue.**

11. Appeal. Any order (or portion of an order or judgment) relating to sealing or unsealing court records shall be deemed to be severed from the case and a final judgment which may be appealed by any party**, any non-party who filed a motion to seal or unseal, and any person who requested the hearing and** participated in the hearing preceding issuance of such order **it**. The appellate court may abate the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings.

12. Application. Access to documents in court files not defined as court records by this rule remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to:

(a) all court records filed or exchanged after the effective date;

(b) any motion to alter or vacate an order restricting access to court records, issued before the effective date.

13. Sanctions. Non-compliance with this rule is subject to sanctions pursuant to rule 13 and Chapters 9 or 10 of the Texas Civil Practice and Remedies Code. Non-compliance subject to sanctions includes, but is not limited to, misrepresentations to the court regarding the nature of information sought to be sealed and filing information presumed to meet the standard for sealing, described in Paragraph 3, without an order permitting it.

Comment: The presumption of openness to the general public, when it applies to the information at issue, requires a judge to consider the merits of a motion without regard to any agreement of counsel. A judge has this responsibility because the general public is not represented by anyone in the proceeding, though some members of the public may participate, and no member of the public can see the information sought to be sealed.

Comment: Paragraph 3(a) resolves the conflict between the rule's prohibition on sealing court orders and legal requirements that an order be sealed or that some information within an order be concealed. For example, Chapter 82 of the CPRC gives the plaintiff the option of concealing her identity by using a pseudonym. Though not otherwise required by law, Paragraph 3(a)(5) permitting certain name change orders to be sealed, like Chapter 82, is intended to protect a person from violence.

Deleted: An order sealing or unsealing

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Tab I3

SIDE-BY-SIDE COMPARISON of RULE 76a
Current & Proposed
8-16-22

<u>Current Rule 76a</u>	**<u>Proposed Rule 76a</u>**
1. Standard for Sealing Court Records. Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed. Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following:	1. Standard for Sealing Court Records. Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed **<u>except as provided below. Information in other court records, except for information under Paragraph 3</u>** **<u>is</u>** presumed to be open to the general public and may be sealed only **<u>if there is</u>** a showing of all of the following:
(a) a specific, serious and substantial interest which clearly outweighs: (1) this presumption of openness; (2) any probable adverse effect that sealing will have upon the general public health or safety; (b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.	(a) a specific, serious and substantial interest which clearly outweighs: (1) this presumption of openness; (2) any probable adverse effect that sealing will have upon the general public health or safety; (b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.
2. Court Records. For purposes of this rule, court records means: (a) all documents of any nature filed in connection with any matter before any civil court, except:	2. Court Records. For purposes of this rule, court records **<u>are</u>**: (a) all documents of any nature filed, **<u>or sought to be sealed before filing,</u>** in connection with any matter before any civil court, except:
(1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;	(1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents,
(2) documents in court files to which access is otherwise restricted by law;	(2) documents to which access is otherwise restricted by law;
	<u>(3) court orders required to be sealed by statute;</u>
(3) documents filed in an action originally arising under the Family Code.	**<u>(4)</u>** documents filed in an action originally arising under the Family Code.
(b) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public	(b) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public

health or safety, or the administration of public office, or the operation of government. (c) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.	health or safety, or the administration of public office, or the operation of government. (c) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases that involve bona fide trade secrets or other intangible property rights. **3. Information Presumed to meet the Standard of Sealing.** **(a) It is presumed that the following information within a court record meets the standard for sealing as prescribed in Paragraph 1:** **(1) trade secrets or other proprietary information of a party or non-party;** **(2) information that is confidential under a constitution, statute, or rule;** **(3) information subject to a confidentiality agreement or protective order;** **(4) information subject to a pre-suit non-disclosure agreement with a non-party; and** **(5) an order changing the name of a person to protect that person from a well-founded fear of violence.** **(b) After fourteen days from the date of the notice required under Paragraph 5a, the information shall be ordered sealed unless a hearing has been requested or the judge determines that the information does not meet the requirements of this Paragraph. If a hearing is requested, the information shall be ordered sealed unless a person objecting to sealing or moving to unseal the information shows that sealing would have a probable adverse effect upon the general public health or safety. If the judge determines that Paragraph 3(a) does not apply, the movant may file a new motion that does not rely on the presumption in Paragraph 3**. **4. Notice of Intent to File Confidential Information Unsealed: Any party or person who intends to file information described in Paragraph 3 without requesting that it be sealed must give notice to all parties, to any third-party**

	who produced the document in discovery, to those whose interest in the confidentiality of the information is evident from the document containing the information, and to those whose probable interest in the confidentiality of the information is otherwise known. The information may not be filed unsealed for 14 days from the date of the notice, and the notice must state that the recipient has until then to file a motion to seal. If a timely motion to seal is filed, Paragraph 5 applies.
3. Notice. Court records may be sealed only upon a party's written motion, which shall be open to public inspection. The movant shall post a public notice at the place where notices for meetings of county governmental bodies are required to be posted, stating: that a hearing will be held in open court on a motion to seal court records in the specific case; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case; a brief but specific description of both the nature of the case and the records which are sought to be sealed; and the identity of the movant. Immediately after posting such notice, the movant shall file a verified copy of the posted notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas.	**5. Motion to Seal and Notice: A request for a final sealing order is made by filing a stand-alone motion. A motion to seal must give** a brief but specific description of both the nature of the case and the records which are sought to be sealed **and must state that any person may request a hearing to be heard in opposition to the motion. The motion must be electronically filed on the website maintained by the State of Texas for posting public notices (https://topics.txcourts.gov/) for at least 14 days before any judge may enter a final order sealing the records.** **6. Motion to Unseal and Notice: A request for an order unsealing court records is made by filing a stand-alone motion. A party or person who files a motion to unseal must attach the original motion to seal and the sealing order. The motion must be electronically filed on the website maintained by the State of Texas for posting public notices (https://topics.txcourts.gov/) for at least 14 days before any judge may enter an order unsealing the records. Within three days of receiving a motion to unseal, each party must**

	forward it to any third-party who produced the document in discovery, to those whose interest in the confidentiality of the information is evident from the document containing the information, and to those whose probable interest is otherwise known. If a hearing is requested within 14 days of the public notice, a judge may not sign an order unsealing the records until the hearing has been held.
4. Hearing. A hearing, open to the public, on a motion to seal court records shall be held in open court as soon as practicable, but not less than fourteen days after the motion is filed and notice is posted. Any party may participate in the hearing. Non-parties may intervene as a matter of right for the limited purpose of participating in the proceedings, upon payment of the fee required for filing a plea in intervention. The court may inspect records in camera when necessary. The court may determine a motion relating to sealing or unsealing court records in accordance with the procedures prescribed by Rule 120a.	**7.** Hearing**. If a hearing is requested**, a hearing open to the public shall be held as soon as practicable, but not less than fourteen days after the request for the hearing**. Any party to the case, any non-party who filed a motion to seal or unseal, and any person who requested the hearing may participate in the hearing in a manner determined by the court. At the court's discretion, other members of the public may speak on the issue before the court**.
5. Temporary Sealing Order. A temporary sealing order may issue upon motion and notice to any parties who have answered in the case pursuant to Rules 21 and 21a upon a showing of compelling need from specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant before notice can be posted and a hearing held as otherwise provided herein. The temporary order shall set the time for the hearing required by paragraph 4 and shall direct that the movant immediately give the public notice required by paragraph 3. The court may modify or withdraw any temporary order upon motion by any party or intervenor, notice to the parties, and hearing conducted as soon as practicable. Issuance of a temporary order shall not reduce in any way the burden of proof of a party requesting sealing at the hearing required by paragraph 4.	**8. Temporary Sealing Order**. A temporary sealing order may issue **only if there** is a showing of a compelling need from specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant. The temporary order shall direct the movant to immediately give the public notice required by Paragraph 5. **A temporary sealing order expires after 14 days, and if no final sealing order has been filed, the clerk shall unseal the information as soon as the clerk becomes aware of the expiration.**

6. Order on Motion to Seal Court Records. A motion relating to sealing or unsealing court records shall be decided by written order, open to the public, which shall state: the style and number of the case; the specific reasons for finding and concluding whether the showing required by paragraph 1 has been made; the	9**. Order.** **An order** sealing or unsealing a court record must be filed and open to the public. **It must** state the **applicable standard and burden and give** specific reasons for finding and concluding **whether that standard has or has not been met by the party with the burden.**
specific portions of court records which are to be sealed;	**An order that seals a court record must also reference the specific portions of court records which are to be sealed by document title, exhibit number, paragraph number, or redaction shown in the context of the unsealed portion. A sealing order must also state** the time period for which
and the time period for which the sealed portions of the court records are to be sealed.	the sealed portions of the court records are to be sealed**, which may be permanently, subject to the court's continuing jurisdiction. An order that unseals a court record shall include the record within the order or attached to the order, or by reference to its location within the court files.**
The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.	The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.
7. Continuing Jurisdiction. Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records. A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. An order sealing or unsealing court records shall not be reconsidered on motion of any party or intervenor who had actual notice of the hearing preceding issuance of the order, without first showing changed circumstances materially affecting the order.	10. **Continuing Jurisdiction**. Any person may intervene as a matter of right at any time before or after judgment to seal or unseal court records. A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. **If a court has previously ruled on a request to seal or unseal filed documents, the movant who seeks to seal or unseal the filed documents at a later time must show a material and substantial change in circumstances affecting the prior ruling since the time of the prior ruling.**
Such circumstances need not be related to the case in which the order was issued. However, the burden of making the showing required by paragraph 1 shall always be on the party seeking to seal records.	Such circumstances need not be related to the case in which the order was issued. **If there is a showing of material and substantial change in circumstances, the court must then consider the request to seal or unseal the filed documents under the appropriate standard that applies.**
8. Appeal. Any order (or portion of an order or judgment) relating to sealing or unsealing court records shall be deemed to be severed from the	11. Appeal. Any order (or portion of an order or judgment) relating to sealing or unsealing court records shall be deemed to be severed from the case and a final judgment which may be appealed

case and a final judgment which may be appealed by any party or intervenor who participated in the hearing preceding issuance of such order. The appellate court may abate the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings. 9. Application. Access to documents in court files not defined as court records by this rule remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to: (a) all court records filed or exchanged after the effective date; (b) any motion to alter or vacate an order restricting access to court records, issued before the effective date.	by any party **any non-party who filed a motion to seal or unseal, and any person who requested the hearing and participated in it.** The appellate court may abate the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings. 12. Application. Access to documents in court files not defined as court records by this rule remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to: (a) all court records filed or exchanged after the effective date; (b) any motion to alter or vacate an order restricting access to court records, issued before the effective date. **13. Sanctions. Non-compliance with this rule is subject to sanctions pursuant to Rule 13 and Chapters 9 or 10 of the Texas Civil Practice and Remedies Code. Non-compliance subject to sanctions includes, but is not limited to, misrepresentations to the court regarding the nature of information sought to be sealed and filing information presumed to meet the standard for sealing, described in Paragraph 3, without an order permitting it.** **Comment: The presumption of openness to the general public, when it applies to the information at issue, requires a judge to consider the merits of a motion without regard to any agreement of counsel. A judge has this responsibility because the general public is not represented by anyone in the proceeding, though some members of the public may participate, and no member of the public can see the information sought to be sealed.** **Comment: Paragraph 3(a) resolves the conflict between the rule's prohibition on sealing court orders and legal requirements that an order be sealed or that some information within an order be concealed. For example, Chapter 82 of the CPRC gives the plaintiff the option of concealing**

	her identity by using a pseudonym. Though not otherwise required by law, Paragraph 3(a)(5) permitting certain name change orders to be sealed, like Chapter 82, is intended to protect a person from violence.