

Supreme Court of Texas

Misc. Docket No. 22-9091

Preliminary Approval of Texas Rules of Civil Procedure 21d and 500.10 and of Amendments to Texas Rules of Civil Procedure 21, 500.2, 501.4, and 505.1 and Texas Rule of Judicial Administration 7

ORDERED that:

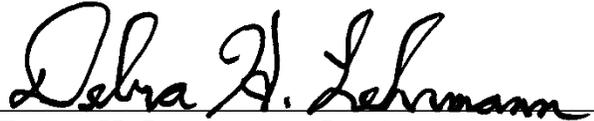
1. The Court invites public comments on proposed new Texas Rules of Civil Procedure 21d and 500.10 and on the proposed amendments to Texas Rules of Civil Procedure 21, 500.2, 501.4, and 505.1 and Texas Rule of Judicial Administration 7.
2. The amendments to Texas Rules of Civil Procedure 21, 500.2, 501.4, and 505.1 and Texas Rule of Judicial Administration 7 are demonstrated in redline form. New Texas Rules of Civil Procedure 21d and 500.10 are demonstrated in clean form.
3. Comments regarding the proposed new and amended Texas Rules of Civil Procedure should be submitted in writing to rulescomments@txcourts.gov by January 1, 2023. Comments regarding the proposed amendments to Texas Rule of Judicial Administration 7 should be submitted in writing to rulescomments@txcourts.gov by March 1, 2023.
4. The Court will issue an order finalizing the rules after the close of the comment period. The Court may change the rules in response to public comments. The Court expects the new and amended Texas Rules of Civil Procedure to take effect on February 1, 2023. The Court expects the amendments to Texas Rule of Judicial Administration 7 to take effect on April 1, 2023.
5. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

- c. send a copy of this Order to each elected member of the Legislature; and
- d. submit a copy of this Order for publication in the *Texas Register*.

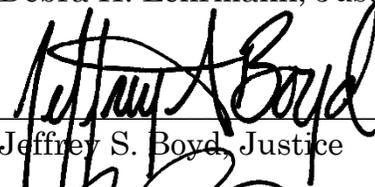
Dated: October 14, 2022.



Nathan L. Hecht, Chief Justice



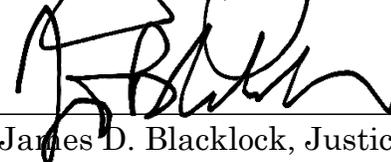
Debra H. Lehrmann, Justice



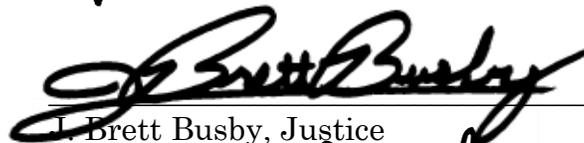
Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

Texas Rules of Civil Procedure

PART II - RULES OF PRACTICE IN DISTRICT AND COUNTY COURTS

Section 1. General Rules

RULE 21. FILING AND SERVING PLEADINGS AND MOTIONS (Redline Form)

- (b) Service of Notice of ~~Hearing~~Court Proceeding. An application to the court for an order and notice of any ~~hearing thereon~~court proceeding, as defined in Rule 21d(a), not presented during a ~~hearing or trial~~court proceeding, must be served upon all other parties not less than three days before the time specified for the ~~hearing~~court proceeding, unless otherwise provided by these rules or shortened by the court. Notice of any court proceeding must contain all information needed to participate in the proceeding, including the location of the proceeding or instructions for joining the proceeding electronically, the court's designated contact information, and instructions for submitting evidence.

Comment to 2022 change: Rule 21(b) is amended to clarify requirements for notices. A court should publish the information needed to participate in its proceedings.

RULE 21d. APPEARANCES AT COURT PROCEEDINGS (Clean Form)

- (a) Definitions.
- (1) "Court proceeding" means an appearance before the court, such as a hearing or trial.
 - (2) "Participant" means any party, attorney, witness, court reporter, juror, or judge who participates in a court proceeding.

(b) Method of Appearance.

(1) Unless the notice of court proceeding states otherwise, a person who participates in a court proceeding does so by physical presence in the courtroom. Upon appropriate notice by a party or the court, a court may allow or require a participant to appear at a court proceeding by videoconference, teleconference, or other available electronic means, except as otherwise provided in (2).

(2) A court must not require:

(A) a party or lawyer to appear electronically for a court proceeding in which oral testimony is heard, absent good cause or the agreement of the parties; or

(B) a lawyer, party, or juror to appear electronically for a jury trial, absent the agreement of the parties.

(c) Objection. A party may object to any method of appearance, stating good cause for the objection. The objection must be made within a reasonable time after the party receives notice of the appearance. Before proceeding by the objected-to method of appearance, the court must rule on the objection and timely communicate the ruling to the parties in a written order or on the record.

(d) Factors. In determining good cause under this rule, the court should consider factors such as:

(1) case type;

(2) court proceeding type;

(3) the number of parties and witnesses;

(4) the complexity of the legal and factual issues;

(5) the type of evidence to be submitted, if any;

(6) technological restrictions such as lack of access to or proficiency in necessary technology;

(7) travel restrictions such as lack of transportation, distance, and inability to take off work;

- (8) whether a method of appearance is best suited to provide necessary language access services for a person with limited English proficiency or accommodations for a person with a disability; and
 - (9) any previous abuse of a method of appearance.
- (e) Open Courts. If a court conducts a court proceeding in which all participants appear electronically, the court must:
- (1) provide reasonable notice to the public of the method of appearance; and
 - (2) provide the public the opportunity to observe the court proceeding, unless the court has determined that it must close the court proceeding to protect an overriding interest, considered all less-restrictive alternatives to closure, and made findings on the record adequate to support closure.

Comment to 2023 change: New Rule 21d clarifies procedures for appearances at court proceedings. Paragraph (a) defines “court proceeding” and “participant.” The judge is included in the definition of participant to clarify that the judge may appear by electronic means. Even if appearing electronically, the judge must conduct the court proceeding from a location required by other law. *See, e.g.*, TEX. CONST. art. V, § 7(d); TEX. GOV'T CODE §§ 24.030(a), 26.002(c). Paragraph (b) governs the method of appearance. Certain statutes expressly prohibit electronic appearances, in which case the governing statute applies. Paragraph (c) addresses objections to any method of appearance, and paragraph (d) addresses good-cause factors. Paragraph (e) recognizes the public’s right to reasonable notice of and access to a fully electronic proceeding unless there is an overriding interest. A court should rarely close a court proceeding from public observation, and in such an exceptional case, the court must use the least restrictive measure to protect the overriding interest.

PART V - RULES OF PRACTICE IN JUSTICE COURTS

RULE 500. GENERAL RULES

RULE 500.2. DEFINITIONS (Redline Form)

In Part V of these Rules of Civil Procedure:

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

(gh) “Cross-claim” is a claim brought by one party against another party on the same side of a lawsuit. For example, if a plaintiff sues two defendants, the defendants can seek relief against each other by means of a cross-claim.

(hi) “Default judgment” is a judgment awarded to a plaintiff when the defendant fails to answer and dispute the plaintiff’s claims in the lawsuit.

(ij) “Defendant” is a party who is sued, including a plaintiff against whom a counterclaim is filed.

(jk) “Defense” is an assertion by a defendant that the plaintiff is not entitled to relief from the court.

(kl) “Discovery” is the process through which parties obtain information from each other in order to prepare for trial or enforce a judgment. The term does not refer to any information that a party is entitled to under applicable law.

(lm) “Dismissed without prejudice” means a case has been dismissed but has not been finally decided and may be refiled.

(mn) “Dismissed with prejudice” means a case has been dismissed and finally decided and may not be refiled.

(no) “Judge” is a justice of the peace.

(op) “Judgment” is a final order by the court that states the relief, if any, a party is entitled to or must provide.

(pq) “Jurisdiction” is the authority of the court to hear and decide a case.

(qr) “Motion” is a request that the court make a specified ruling or order.

(rs) “Notice” is a document prepared and delivered by the court or a party stating that something is required of the party receiving the notice.

(t) “Participant” is any party, attorney, witness, or juror who participates in a court proceeding.

- (~~t~~u) “Party” is a person or entity involved in the case that is either suing or being sued, including all plaintiffs, defendants, and third parties that have been joined in the case.
- (~~t~~v) “Petition” is a formal written application stating a party’s claims and requesting relief from the court. It is the first document filed with the court to begin a lawsuit.
- (~~u~~w) “Plaintiff” is a party who sues, including a defendant who files a counterclaim.
- (~~v~~x) “Pleading” is a written document filed by a party, including a petition and an answer, that states a claim or defense and outlines the relief sought.
- (~~w~~y) “Relief” is the remedy a party requests from the court, such as the recovery of money or the return of property.
- (~~x~~z) “Serve” and “service” are delivery of citation as required by Rule 501.2, or of a document as required by Rule 501.4.
- (~~y~~aa) “Sworn” means signed in front of someone authorized to take oaths, such as a notary, or signed under penalty of perjury. Filing a false sworn document can result in criminal prosecution.
- (~~z~~ab) “Third party claim” is a claim brought by a party being sued against someone who is not yet a party to the case.

500.10 APPEARANCES AT COURT PROCEEDINGS (Clean Form)

- (a) *Method of Appearance.* A judge may allow or require a participant to appear at a court proceeding by videoconference, teleconference, or other available electronic means.
- (b) *Factors.* In determining whether to allow or require electronic participation, the judge should consider factors such as:
 - (1) case type;
 - (2) the number of parties and witnesses;
 - (3) the type of evidence to be submitted, if any;

- (4) technological restrictions such as lack of access to or proficiency in necessary technology;
 - (5) travel restrictions such as lack of transportation, distance, and inability to take off work;
 - (6) whether a method of appearance is best suited to provide necessary language access services for a person with limited English proficiency or accommodations for a person with a disability;
 - (7) any previous abuse of a method of appearance; and
 - (8) any agreement or objection by the parties.
- (c) *Notice.* If the judge allows or requires a participant to appear electronically, the judge must provide reasonable notice of the electronic participation and include the notice in the papers of the case. The notice must contain all information needed to participate in the proceeding, including instructions for joining the proceeding electronically, the court's designated contact information, and instructions for submitting evidence to be considered in the proceeding.
- (d) *Open Courts.* If the judge conducts a court proceeding at the judge's office in which all other participants appear electronically, then the court must:
- (1) provide reasonable notice to the public of the method of appearance; and
 - (2) provide the public the opportunity to observe the court proceeding, unless the judge has determined that the proceeding must be closed to protect an overriding interest, considered all less-restrictive alternatives to closure, and made findings in a written order adequate to support closure.

Notes and Comments

Comment to 2023 change: New Rule 500.10 clarifies procedures for appearances at court proceedings. Paragraph (a) governs the method of appearance. A judge in any justice court proceeding may appear electronically, but the judge must preside over it from the judge's office at times prescribed by the commissioner's court. TEX. GOV'T CODE § 27.051(b). Paragraph (b) addresses factors that a judge should consider in determining the method of appearance. Paragraph (c) clarifies requirements for notices. Paragraph (d) recognizes the public's right to reasonable notice of and access to a fully electronic proceeding unless there is an overriding interest. A judge should rarely close a court proceeding from public observation, and

in such an exceptional case, the judge must use the least restrictive measure to protect the overriding interest.

RULE 501. CITATION AND SERVICE

RULE 501.4. SERVICE OF PAPERS OTHER THAN CITATION (Redline Form)

- (b) *Timing.* If a document is served by mail, 3 days will be added to the length of time a party has to respond to the document. Notice of any hearingcourt proceeding requested by a party must be served on all other parties not less than 3 days before the time specified for the hearingcourt proceeding.

RULE 505. JUDGMENT; NEW TRIAL

RULE 505.1. JUDGMENT (Redline Form)

- (c) *Form.* A judgment must:
- (1) clearly state the determination of the rights of the parties in the case;
 - (2) state who must pay the costs;
 - (3) be signed by the judge;
 - (4) be dated the date of the judge's signature; ~~and~~
 - (5) state: "You may challenge this judgment by filing a bond, making a cash deposit, or filing a Statement of Inability to Afford Payment of Court Costs within 21 days after this judgment was signed. See Texas Rule of Civil Procedure 506."; and
 - (56) if it awards monetary damages, state: "If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property. / Si usted es una persona física

(y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio www.texaslawhelp.org/exempt-property.”

Rules of Judicial Administration

Rule 7. Administrative Responsibilities. (Redline Form)

a. A district or statutory county court judge ~~shall~~must:

(~~1~~4a) diligently discharge the administrative responsibilities of the office;

(~~2~~3b) rule on a case within three months after the case is taken under advisement;

(~~3~~4c) if an election contest or a suit for the removal of a local official is filed in ~~his~~the judge's court, request the presiding judge to assign another judge who is not a resident of the county to dispose of the suit;

(~~4~~5d) on motion by either party in a disciplinary action against an attorney, request the presiding judge to assign another judge who is not a resident of the administrative region where the action is pending to dispose of the case;

(~~5~~6e) request the presiding judge to assign another judge of the administrative region to hear a motion relating to the recusal or disqualification of the judge from a case pending in his court; and

(~~6~~7f) to the extent consistent with ~~safeguarding the rights of litigants to the just processing of their causes~~due process, ~~consider~~utilizeusing methods to expedite the disposition of cases on the docket of the court, including:

(~~a~~1) adherence to firm trial dates with strict continuance policies;

(~~b~~2) the use of ~~telephone or mail~~teleconferencing, videoconferencing, or other available means in lieu of personal appearance ~~by attorneys~~ for motion hearings, pretrial conferences, scheduling, and ~~the setting of trial dates~~other appropriate court proceedings;

(~~e~~3) pretrial conferences to encourage settlements and to narrow trial issues;

(~~d~~4) taxation of costs and imposition of other sanctions authorized by the Rules of Civil Procedure against attorneys or parties filing frivolous motions or pleadings or abusing discovery procedures; and

(e5) local rules, consistently applied, to regulate docketing procedures and timely pleadings, discovery, and motions.
