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December 27, 2022

Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Re: Proposed Rule 21d, Texas Rules of Civil Procedure

To the Honorable Members of the Supreme Court of Texas:

Thank you for the opportunity to offer our comments on proposed amendments to the Texas Rules of Civil Procedure governing the use of remote proceedings.

The Texas Civil Justice League (“TCJL”) is a non-profit association of Texas businesses, health care providers, professional and trade associations, and individuals dedicated to maintaining a fair, stable, and predictable civil justice system based on the impartial administration of justice. TCJL has long participated in the rulemaking process when it will have a significant and pervasive impact on our membership and the Texas business climate, and we are grateful to this Court for inviting all stakeholders to the table when it considers new or amended rules.

We believe that the proposed rule takes a significant step in the right direction when compared to the original proposal authorizing a trial court to order parties to appear remotely in general. The preservation of in-person jury trials is of fundamental importance to the state’s business community, and we could not be more pleased that the proposed rule recognizes this. Thank you for making this change.

We also appreciate the addition of a “good cause” standard for a party’s objection to holding other proceedings by remote means. We continue to have some concerns that the standard as applied could disadvantage one or the other party absent mutual agreement. For example, it is not hard to imagine that in some trial courts around the state, a plaintiff or plaintiff’s witness could be allowed to appear remotely, while the corporate representative of the defendant is required to appear in person (or vice versa). The rule could thus be gamed and become part of a party’s trial tactics rather than what is intended, which is to make proceedings more efficient and accessible for everybody. Perhaps this issue could be addressed by providing that if a trial court commands a party’s witness to appear in person, it must require all witnesses to appear in person, unless the parties agree otherwise.

As you know, the Texas Judicial Council recently passed a resolution calling for the 88th Legislature to “remove statutory barriers to allow remote proceedings to continue to increase access to justice and enhance court efficiency.” We are concerned that this resolution appears to give proponents of unfettered judicial authority to order remote proceedings a green light to override SCOTX’s proposed rule by legislation. We recognize that the pandemic forced the courts into a remote posture and that, according to the TJC, more than 2.5 million remote proceedings occurred through the end of August 2022. But these aggregate numbers tell us nothing about the types of proceedings and cases involved. They also don’t tell us anything about whether the mass use of remote proceedings actually enhances judicial efficiency and, if it does, in what particular ways. In our discussions with the TCJL members about their experience with remote proceedings, particularly those involving oral testimony, a universal consensus emerged that they introduce a significant degree of confusion and delay without any concomitant benefits. Granted, TCJL members are generally engaged in high stakes tort and contract actions, often with voluminous discovery and frequent contested pretrial hearings, so our view is partial. But we can all agree that more granular data is necessary to better inform policymaking in this area.

With respect to access, there is no doubt that remote proceedings have immense value, but without qualitative analysis of the *effectiveness* of remote proceedings in the myriad contexts in which they have been used, there is no way to be sure that increased access equals better justice. We should tread carefully in vastly expanding the use of remote proceedings in our courts until we know more about specific outcomes in specific types of cases. In this regard, TCJL will do everything we can to obtain sufficient funding for the Office of Court Administration to undertake this task.

Thank you again for your careful attention to our previous comments and accounting for them in the proposed rules. Thank you also for your dedicated service to the citizens of Texas.

Sincerely,

George S. Christian