

# TEXAS PARENTAL ~~NOTIFICATION~~ CONSENT JUDICIAL BYPASS

## RULES AND FORMS

effective date ~~March~~ January 1, 2007 ~~2007~~ 2016

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### EXPLANATORY STATEMENT

Chapter 33 of the Texas Family Code, adopted ~~by Act of May 25, in~~ 1999, ~~76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466 (S.B. 30), and later amended in 2005 and 2015,~~ provides for judicial authorization of an unemancipated minor to consent to an abortion in Texas without ~~notice to her parents~~ notification and consent of a parent, managing conservator, or guardian, under certain circumstances, as provided by Section 33.003 or 33.004, Family Code (a “judicial bypass”). Section 2 of the 1999 Act states: “required the Supreme Court of Texas ~~shall to~~ “issue promptly such rules as may be necessary in order that the process established by Sections 33.003 and 33.004, Family Code, as added by this Act, may be conducted in a manner that will ensure confidentiality and sufficient precedence over all other pending matters to ensure promptness of disposition.” *See also* Tex. Fam. Code §§ 33.003(l), 33.004(c). Section 6 of the 1999 Act adds: “The clerk of the Supreme Court of Texas shall adopt the application form and notice of appeal form to be used under Sections 33.003 and 33.004, Family Code, as added by this Act, not later than December 15, 1999.” *See also* Tex. Fam. Code §§ 33.003(m), 33.004(d). The Texas Medical Board has adopted the forms necessary for physicians to obtain the consent required by law to perform an abortion upon an unemancipated minor. See Tex. Occ. Code §164.052(c). Those forms are published at 22 Tex. Admin. Code §165.6(f) and are available on the Texas Medical Board’s website, at [www.tmb.state.tx.us/page/board-rules](http://www.tmb.state.tx.us/page/board-rules).

~~The following~~ These rules and forms ~~are were~~ promulgated as directed by the Act ~~without in~~ 1999, and amended in 2007 and 2015, and merely provide a process for the judicial bypass, tracking the statutory requirements. These rules and forms do not include any determination that the Act or any part of it comports with the United States Constitution or the Texas Constitution. ~~During the public hearings and debates on the rules and forms, questions were raised concerning the constitutionality of Chapter 33, among which were whether the statute can make court rulings secret, and whether the statute can require courts to act within the specified, short deadlines it imposes,~~ because such issues should not be resolved outside an adversarial proceeding with full briefing and argument, ~~the.~~ These rules and forms ~~merely track statutory requirements of the Legislature. Adoption of these rules does do~~ not, of course, imply that abortion is or is not permitted in any specific situation. *See, e.g., Roe v. Wade*, 410 U.S. 113 (1973); Tex. Rev. Civ. Stat. Ann. art. 4495b, § 4.011 Health & Safety Code § 170.002 (restrictions on third trimester abortions of viable fetuses).

~~In 2005, the Legislature amended the Texas Occupations Code to prohibit a~~

~~physician from performing an abortion on an unemancipated minor~~

~~without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code, authorizing the minor to consent to the abortion, unless the physician concludes that on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there is insufficient time to obtain the consent of the child's parent, managing conservator, or legal guardian.~~

~~Act of May 27, 2005, 79th Leg., R.S., ch. 269, §1.42, 2005 Tex. Gen. Laws 734 (S.B. 419) (codified at Tex. Occ. Code §164.052(a)(19)). The parental consent law does not direct the Supreme Court to provide procedural rules implementing its provisions but instead expressly references the judicial bypass provisions in the parental notification law as providing an exception to the parental consent requirement. The procedures governing application for a judicial bypass to the parental notification requirement are set forth in the existing Parental Notification Rules. In addition, the parental consent law requires the Texas Medical Board to adopt the forms necessary for physicians to obtain the consent required by law to perform an abortion upon an unemancipated minor. *See id.* (codified at Tex. Occ. Code §164.052(c)). Those forms are published at 22 Tex. Admin. Code §165.6(f) and are available on the Texas Medical Board's website, at [www.tmb.state.tx.us/rules/docs/Current%20Rules%20-%20%2014-07.doc](http://www.tmb.state.tx.us/rules/docs/Current%20Rules%20-%20%2014-07.doc).~~

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 consent from either of her parents or a managing conservator or guardian under Chapter 33, Family Code ~~(or as amended)~~. 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, regardless of whether the minor applied for a continuance, to the extent necessary to assure ensure that applications and appeals are adjudicated as soon as possible and within the time required by Rules 2.4(a), 2.5(d), and 3.3(c).
- (b) ***Prompt actual notice required.*** Without compromising the confidentiality ~~and anonymity~~ 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.
- (c) ***Instanter.*** “Instanter” means immediately, without delay. An action required by these rules to be taken instanter should be done at the first possible time and with the most expeditious means available.

### **1.3 Anonymity Confidentiality of Identity of Minor Protected.**

- (a) ***Generally.*** Proceedings under these rules must be conducted in a way that protects the anonymity 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 service and communications from the court to the minor must be directed to the minor's attorney with a copy to the guardian ad litem. A minor's attorney must serve on the guardian ad litem *instanter* 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 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 court is confidential and expeditious. Except as permitted by law, no officials 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.
- (b) ***Documents and information pertaining to the proceeding.*** 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. But documents and information may be disclosed when expressly authorized by these rules, and an order, ruling, opinion, or clerk's certificate may be released to:
- (1) the minor;
  - (2) the minor's guardian ad litem;
  - (3) the minor's attorney;
  - (4) a person designated in writing by the minor to receive the order, ruling, opinion, or certificate, including her physician;
  - (5) a governmental agency or governmental attorney, in connection with a criminal or administrative action seeking to assert or protect the minor's interests; or
  - (6) another court, judge, or clerk in the same or related proceedings.
- (c) ***Filing of court reporter's notes—permitted.*** To assureensure confidentiality, court reporter notes, in whatever form, maymust be filed

with other court documents in the proceeding.

(d) ***Duty to report possible ~~sexual~~ abuse. A-***

(1) *Duty of the court, guardian ad litem, A judge or attorney ad litem justice* who reasonably believes, based on information obtained in the proceeding, that a ~~violation of Section 22.011, 22.021, minor has been~~ or ~~25.02, Penal Code, has occurred~~ may be physically or sexually abused must report the information to the appropriate officials or agencies as required by Sections 33.0085 and 33.009, Family Code, and other law.

(2) *Duty of the attorney or guardian ad litem. An attorney or a guardian ad litem must report possible physical or sexual abuse as required by* Section 33.009, Family Code, and other law.

(e) ***Department of Protective and Regulatory Services to disclose certain information in proceeding.*** The Department of Protective and Regulatory Services or local law enforcement agency may disclose to the court, the attorney ~~ad litem~~, and the guardian ad litem any information obtained under Section 33.008, Family Code, without being ordered to do so. The trial court may order ~~the Department to disclose~~ such information be disclosed to such persons, and the Department or local law enforcement agency must comply.

**1.5 Electronic Transmission of Documents; Hearings Conducted By Remote Electronic Means; Electronic Record Allowed When Necessary.**

(a) ***No electronic filing.*** Documents must not be filed through the electronic filing manager established by the Office of Court Administration. Documents may be filed in paper form, by facsimile fax, or other electronic data transmission. If the sender communicates directly with by email. The clerk of a court must designate a fax number and an email address for the time at which the transmission will occur, the clerk filing of documents in cases governed by these rules and must take all reasonable steps to assure that maintain the confidentiality of the ~~received transmission will be maintained~~ filings.

(b) ***Electronic transmission by court and clerk.*** The court and clerk may transmit orders, rulings, notices, and other documents ~~by facsimile or other electronic data transmission electronically.~~ But before the transmission is initiated, the sender must take all reasonable steps to ~~assure~~ ensure that the

confidentiality of the received transmission will be maintained. The time and date of a transmission by the court is the time and date when it was initiated.

- (c) ***Participation in hearings by electronic means.*** Consistent with the ~~anonymity and~~ confidentiality requirements of these rules, with the court's permission, the attorney ~~ad litem~~, the guardian ad litem, and any witnesses may participate in hearings under these rules by video conferencing, telephone, or other remote electronic means. The minor must appear before the court in person ~~unless the court determines that the minor's appearance by video conferencing will allow the court to view the minor during the hearing sufficiently well to assess her credibility and demeanor.~~
- (d) ***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.*** An objection to a trial judge, or a motion to recuse or disqualify a trial judge, must be filed before 10:00 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 or her attorney, whichever is later. An objection to an appellate judge, or a motion to recuse or disqualify an appellate judge must be filed before 10 a.m. of the first business day after a notice of appeal is filed. A judge who chooses to recuse voluntarily must do so instantan. An objection to a judge or a motion to disqualify or recuse does not extend the deadline for ruling on the minor's application.
- (b) ***Voluntary disqualification or recusal, or objection.*** A judge to whom objection is made under Chapter 74, Government Code, or a judge or justice who voluntarily does not sit, must notify instantan the appropriate authority for assigning another judge by local rules or by statute. That authority must instantan assign a judge or justice to the proceeding.
- (c) ***Involuntary disqualification or recusal.*** A judge or justice who refuses to remove himself or herself voluntarily from a proceeding in response to a motion must instantan refer the motion to the appropriate judge or justice, pursuant to ~~local rule, rule, or statute, for determination.~~ The other law,



including Tex. R. Civ. P. 18a, Tex. R. App. P. 16, and Tex. Gov't Code 25.00255. The presiding judge or justice 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 or justice to whom the motion was referred must instantly assign a judge or justice to the proceeding.

- (d) ***Only one objection or motion to recuse permitted.*** A minor who objects to a judge assigned to the proceeding may not thereafter file a motion to recuse or disqualify, and a minor who files a motion to recuse or disqualify a judge may not thereafter object to a judge assigned to the proceeding.
- (e) ***Issues on appeal.*** Any error in the denial of a motion to recuse or disqualify, or 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 copy of these rules, and a copy of the attached forms in English and Spanish, must be made available to any person without charge in the clerk's offices of all courts in which applications or appeals may be filed under these rules, on the Texas Judiciary Internet site at [www.courts.state.tx.us](http://www.courts.state.tx.us), and by the Office of Court Administration upon request. A copy of a court's local rules relating to proceedings under Chapter 33, Family Code, must be made available to any person without charge in the office of the clerk for that court where applications may be filed. Rules and forms may be copied.

**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) but do not include the fees or expenses of a witness. Court costs do not include fees which 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 but should be sent by the clerk 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 costs. The order must protect the confidentiality of the identity of the minor. A trial court may use Forms 2F and 2G, but it is not required to do so.
  - (4) *Time for signing and sending order.* ~~To be valid,~~ The order for fees 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, whether the application is granted, ~~deemed granted,~~ or denied, or the proceeding is dismissed or nonsuited.
- (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 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 costs in a proceeding under Chapter 33, Family Code. Such orders are not subject to ~~the Amended Order~~ any orders of the Supreme Court of Texas, ~~dated September 21, 1994, in Misc. Docket No. 94-9143,~~ regarding mandatory reports of judicial appointments and fees. Pursuant to Government Code Section 36.003(2), such orders are not subject to reporting under Chapter 36 of the 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, Texas Department of Health, and the Office of Court Administration from disclosing summary information from orders assessing costs for statistical or other such purposes. Such reports shall not be by county, but shall be by court of appeals district. All transmissions of orders and reports of such orders must protect the confidentiality of all minors and judges that are the subject of the report.

**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, ~~and.~~ 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. ~~Such a~~ 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, ~~the original and eleven copies of the brief, plus a computer disk containing an electronic~~ one copy of the brief, must ~~also~~ be submitted to the Supreme Court of Texas. When an appeal of a proceeding is filed, the clerk of the court of appeals or the Supreme Court must notify the minor's attorney and guardian ad litem of the existence of any brief submitted under this subsection and must make the brief available for inspection and copying. Upon receipt of an electronic copy 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 ~~Internet site~~ website and make it available to the public for inspection and copying.

## 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. Section 33.008, Family Code, requires a physician who suspects that a minor has been physically or sexually abused ~~by a person responsible for the minor’s care~~ to report the matter to the Texas Department of Family and Protective ~~and Regulatory~~ Services. That section also requires the Department to investigate ~~and to assist the minor in making an application, if appropriate~~. Section 33.010 makes confidential — “[n]otwithstanding any other law” — all information obtained by the Department under Section 33.008 except to the extent necessary to prove certain criminal conduct. Rule 1.4(e) construes Section 33.010 in harmony with Section 33.008. ~~If Section 33.010 precluded the Department from disclosing information obtained under Section 33.008 to the court, the attorney ad litem, and the guardian ad litem in proceedings under section 33.003, the Department’s statutorily mandated role in such proceedings would be seriously impaired. The Department could be required by Section 33.008 to assist a minor in filing an application but prohibited by Section 33.010 from providing the court with information supporting the application. The disclosure permitted and required by Rule 1.4(e) avoids this result.~~

5. ~~Rule 1.5(a) constitutes the approval required by Section 51.803, Government Code, for electronic filing of documents in proceedings under these rules. To facilitate expedition of proceedings, restrictions imposed on electronic filing in other~~

~~cases are not imposed here. However, electronic filing is only permitted, not required, and Rule 1.5(a) does not necessitate the provision of means for electronic filing. A person filing by electronic means cannot, of course, expect that the document will be treated confidentiality upon receipt unless the recipient has been told the time the transmission will occur.~~

~~65. 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. But the rule incorporates the referral and reassignment processes otherwise applicable by local rule, rule, or statute.~~

~~76. 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.~~

~~87. Because orders awarding costs contain information made confidential by Chapter 33, Family Code, that confidentiality should not be affected by the transmission to the Texas Department of Health and 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, Texas Department of Health, or the Office of Court Administration from disclosing total amounts paid for all proceedings, or average amount per proceeding, or other such statistical summaries or analyses which do not impair the confidentiality of the proceedings- and comply with 33.003(1-2).~~

9. Rule 1.10 adds a procedure for filing amicus curiae briefs uniquely designed for the expedited and confidential nature of parental notification cases.

## **RULE 2. PROCEEDINGS IN THE TRIAL COURT**

### **2.1 Where to File an Application; Court Assignment and Transfer; Application Form.**

(a) ~~(a) Counties in which an application may be filed.~~ An application for an order under Section 33.003, Family Code, ~~may~~must be filed in ~~any county, regardless of the minor's county of residence or where the abortion sought is to be performed., except:~~

(i) Counties with a population of less than 10,000. If a minor resides in a county with a population of less than 10,000 residents according to the most recent U.S. Census, an application may be filed in the minor's county of residence, or a county contiguous to the minor's

county of residence, or the county in which the facility at which the minor intends to obtain the abortion is located.

(ii) *Minor's parent is a presiding judge.* If the minor's parent, managing conservator, or guardian is a presiding judge of a court described by subsection (b)(1), an application may be filed in the minor's county of residence, or a county contiguous to the minor's county of residence, or the county in which the facility at which the minor intends to obtain the abortion is located.

**(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 provides for filing and assignment application and transfer it instant 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 that files an application — whether the district clerk or the county clerk — must assign it as follows:
  - (i) to a district court, if the active judge of the court, or a judge assigned to it, is then present in the county;
  - (ii) if the application cannot be assigned under (i), then to a statutory county or probate court, if the active judge of the court, or a judge assigned to it, is then present in the county;
  - (iii) if the application cannot be assigned under (i) or (ii), 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 then present in the county;

- (iv) if the application cannot be assigned under (i), (ii), or (iii), then to the district court.

(5) *Judges who may hear and determine applications.* An application may be heard and determined (i) by the active judge of the court to which the application is assigned, or (ii) by any judge authorized to sit for the active judge, or (iii) 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.

(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)~~

(D) that, concerning her current pregnancy, the minor has not previously filed an application that was denied, or if so, that the current application is filed with the court that previously denied the application and that there has been a material change in circumstances since the time the previous application was denied;

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

(F) whether the minor has retained an attorney, and if so, the attorney’s name, address, and telephone number; and

- (~~EG~~) whether the minor requests the court to appoint a particular person as her guardian ad litem; ~~and~~
- (~~F~~) ~~whether, concerning her current pregnancy, the minor has previously filed an application that was denied, and if so, where the application was filed.~~
- (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 under oath or by unsworn declaration in compliance with Section 132.001 of the Texas Civil Practice & Remedies Code by the person completing the application, which may be the minor's attorney, and must state:
- (A) the minor's full name current residence, including the physical address, mailing address and date of birth; 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 or pager/mobile 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) *Declaration of attorney.* If any attorney assists the minor in filing the application, the attorney who represents the minor shall sign the verification page. An attorney's declaration shall be made to the best of the attorney's knowledge, information, and belief formed after reasonable inquiry.
- (d) *Time of filing.* An application is filed when it is actually received by the district or county clerk.
- (e) *Non-suit.* A minor who has filed an application may not withdraw or otherwise non-suit her application without permission of the court.

## 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 ~~and anonymity~~ — to persons seeking to file an application. If requested, the clerk must administer the oath required for the verification page or provide a person authorized to do so. The clerk ~~should~~must also redact from the cover page any information identifying the minor. The clerk ~~should~~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 and affix it to both the cover page and the verification page, ensuring that the case number and style preserve the confidentiality of the minor, the court, and the assigned judge. 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 instantner. If appointment of a specific person as guardian ad litem has been requested, the clerk must also communicate the information to the appropriate court instantner.
- (d) ***If judge of assigned court not ~~present in county~~ available.*** The clerk must determine instantner whether the judge of the court to which the application is assigned is ~~present in~~available to hear the county application within the prescribed time period. If that judge is not ~~present in the county~~available, the clerk must instantner notify the local administrative judge ~~or judges~~ and the presiding judge of the administrative judicial region for assignment of a judge who is available 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 hearing or an appointment of a guardian ad litem or attorney ad litem, if any, the clerk must instantner 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 33.002(g) and (h), Family Code, upon the minor's request, the clerk must instantly issue a certificate to that effect, stating that the application is deemed by statute to be granted. 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~~instantly~~:

- (a) appoint a qualified person to serve as guardian ad litem for the minor applicant;
- ~~(b) appoint an attorney for the minor, who may not be the same person appointed guardian attorney ad litem if that person is an attorney admitted to practice law in Texas and there is no conflict of interest in the same person serving as attorney ad litem and guardian ad litem;~~
- (b) appoint an attorney ad litem for the minor, unless she has stated on the cover page (Form 2A) that she has retained an attorney;
- (c) set a hearing on the application in accordance with Rule 2.4(a); and
- (d) advise the clerk of the appointment or appointments and the hearing time.

## **2.4 Hearing.**

- (a) **Time.** The court must conduct a hearing in time to rule on the application as required by Rule 2.5(d). But the minor may postpone the hearing by written request to the clerk when the application is filed or thereafter. 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 as required by Rule 2.5(d).
- (b) **Place.** The hearing should be held in a location, such as a judge's chambers, that will ~~assure~~ensure confidentiality. The hearing may be held away from the courthouse.
- (c) **Persons attending.** Hearings must be closed to the public. Only the judge, the court reporter and any 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 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's attorney and the guardian ad litem (and the minor if the minor requested the record) at the telephone numbers shown on Form 2I or 2J and make it available to them. The record must be prepared and made available instantly if it has been requested for appeal ~~or~~ if a belief that there is evidence of past or potential abuse of the minor is stated on the record or submitted to the court in writing. 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 applicants 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 ~~a preponderance of the~~ clear and convincing evidence, that:
  - (1) the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notifying either of the minor's parents, the minor's managing conservator, or the minor's legal guardian, as the case may be; on which the court must consider the minor's experiences, perspective and judgment, and may consider factors listed in section 33.003(i-1)(1)-(3); or
  - (2) notifying and obtaining consent from either of the minor's parents,

the minor's managing conservator, or the minor's legal guardian, as the case may be, would not be in the minor's best interest; or, on which the court may consider the factors listed in section 33.003(i-2).

~~(3) — notifying either of the minor's parents, the minor's managing conservator, or the minor's legal guardian, as the case may be, may lead to physical, sexual, or emotional abuse of the minor.~~

- (c) ***Grounds for denying application.*** If the minor can establish ~~none~~neither of the grounds in Rule 2.5(b) by ~~a preponderance of the~~clear and convincing evidence, the court must deny the application. If the court, the guardian ad litem, or the attorney ~~ad litem~~ are unable to contact the minor before the hearing despite diligent attempts to do so, or if the minor does not attend the hearing, the court must deny the application without prejudice.
- (d) ***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.~~ The court must rule on an application by 5:00 p.m. on the ~~second~~fifth business day after the day the application is filed, or if the minor requests a postponement, after the date the minor states she is ready for the hearing, ~~and that if the court does not rule within this time, the application is deemed to be granted.~~
- (e) ***Notification of 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.

## **2.6 Motion for Expedited Relief**

- (a) ***Motion.*** If the minor or her attorney determines that she cannot or will not obtain a ruling within the time required by statute due to any one or more of the grounds stated in subsection (b), she may file a motion for expedited relief with the Supreme Court of Texas. If the facts stated in the motion are within the personal knowledge of the attorney filing the motion, the motion need not be sworn. Otherwise, the facts set out in the motion must be supported by affidavit or unsworn declaration in compliance with Section 132.001 of the Texas Civil Practice & Remedies Code. The motion may be submitted on Form 2D, but use of the form is not required. A copy of the motion must be filed with the clerk of the court in which the application was filed.
- (b) ***Grounds for granting motion.*** The minor is entitled to expedited relief by

appropriate writ if she establishes that:

(1) No judge is available to hold a hearing within five days of the date the application was filed and the court clerk has not arranged for another judge to hold a hearing, in violation of Rule 2.2(d);

(2) The assigned judge did not set a hearing instantler, in violation of 2.3(d);

(3) The assigned judge did not appoint a guardian ad litem instantler, in violation of Rule 2.3(a);

(4) The assigned judge did not appoint a guardian ad litem instantler, in violation of Rule 2.3(b);

(5) The assigned judge did not rule within the time required by statute, in violation of Rule 2.5(d);

(6) The application was denied, but the court reporter or clerk did not complete the appellate record instantler after notice, in violation of Rule 2.4(d).

### **Notes and Comments**

1. Section 33.003(b), Family Code, permits an application to be filed in “~~anya~~ county court at law, court having probate jurisdiction, or district court, including a family district court, ~~in this state.~~” in the minor’s county of residence” subject to the venue restriction. 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. **(2001 change)**

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 ~~the Psychologist's Licensing Act, Article 4512c, Vernon's Texas Civil Statutes~~Chapter 501, Occupations Code; (3) an appropriate employee of the Department of ~~Family and Protective or Regulatory~~ 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 litem and may provide general guidance concerning the nature of those qualifications:[check ch. 107 changes]. Appointment of an employee of the Department of ~~Family and Protective and Regulatory~~ 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 either of her parents or a managing conservator or guardian, or whether notification and obtaining consent would not be in the best interest of the minor, ~~or whether notification may lead to including any risk of~~ physical, sexual, or emotional abuse of the minor. In making these determinations, the following factors have been considered in other jurisdictions with similar parental notification statutes:

- 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.
- 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 litem.

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 simultaneously 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 or attorney ad litem appointed by the trial court.

### 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. Such assistance must include assuring 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 instantan forward to the clerk of the court of appeals the notice of appeal, the clerk’s record (original papers or copies) excluding the verification page, and the reporter’s record. The trial court clerk must not send the record to the clerk of the court of appeals by mail but must, if feasible, deliver it by hand or transmit it by facsimile or other electronic means. If neither of these methods is feasible, then the record may be sent by overnight delivery.
- ~~(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, upon the minor’s request, the clerk of the court of appeals must instantan issue a certificate to that effect, stating that the trial court’s order is reversed and judgment is rendered that the application is deemed by statute to be granted. 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 5:00 p.m. on the secondfifth business day after the notice of appeal is filed with the court that denied the application, or if the minor requests a postponement, after the date the minor states she is ready to proceed,~~and that if the court does not rule within this time, the appeal is deemed to be granted.~~
- (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) ***Motion for expedited relief upon 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, the minor may file a motion for expedited relief with the Supreme Court of Texas. If the facts stated in the motion are within the personal knowledge of the attorney filing the motion, the motion need not be sworn. Otherwise, the facts set out in the motion must be supported by affidavit or unsworn declaration in compliance with Section 132.001 of the Texas Civil Practice & Remedies Code. A copy of the motion must be filed with the clerk of the court of appeals.
- (e) ***Opinion.***
  - (1) ***Opinion optional.*** A court of appeals may issue an opinion explaining its ruling, but it is not required to do so. Any published opinion 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) *Confidential transmission to Supreme Court.* When the court of appeals issues an opinion, the clerk must confidentially transmit it instant to the Supreme Court and to the trial court.

### 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 prescribes the appellate standard of review.

~~4. Although publication of appellate court opinions is prohibited by statute, the Supreme Court may amend these rules to address issues arising from their application and interpretation.~~

4. Chapter 33, Family Code, allows publication of court of appeals opinions if written in a way to preserve confidentiality and identity of the pregnant minor. Doing so entails not just omitting the minor's name and other directly identifying information but also requires describing those facts necessary to the opinion's reasoning in a such a general way that those who know the minor and her family cannot 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 simultaneously 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 or attorney ad litem appointed by the trial court.

#### **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 persons seeking to file an appeal. Such assistance must include assuring 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 instantaner have forwarded 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.