



The Supreme Court of Texas

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November 18, 1999

The Supreme Court of Texas invites public comment on proposed Parental Notification Rules and Forms, which the Legislature has required be adopted under Chapter 33 of the Texas Family Code, to take effect in court proceedings January 1, 2000. The rules and forms are not final. They may be revised in response to comments received at the Court no later than December 10, 1999. Comments should be in writing and addressed to Mr. Bob Pemberton, Rules Attorney, Supreme Court of Texas, P.O. Box 12248, Austin, TX 78731. Comments may also be sent by e-mail to Parent.Note@courts.state.tx.us.

The Court will also hold a public hearing on the proposed rules and forms on Monday, December 6, 1999, at 2:00 p.m., in the Courtroom of the Supreme Court at 201 West 14th Street in Austin, TX. Persons who submit written comments on the rules and forms need not attend the hearing but are welcome to do so.

The proposed rules and forms implement Chapter 33 of the Texas Family Code enacted by the Legislature earlier this year. With certain exceptions, the statute prohibits a physician from performing an abortion on an unemancipated minor after January 1, 2000, without giving a parent of the minor, or any managing conservator or guardian, 48 hours' notice. One exception to the prohibition is that certain courts may issue an order authorizing the minor to consent to the abortion. The statute directs the Supreme Court to issue rules to govern such court proceedings and requires the Clerk of the Supreme Court to adopt forms to be used.

The proposed rules and forms are the product of exhaustive study and debate. Soon after Chapter 33 was enacted, the Supreme Court staff researched the statutes, rules, and case law of other states with similar parental notification procedures. Based on this research and a review of the debates and hearings in the Legislature that led to the passage of Chapter 33, the Court staff prepared a draft of rules and forms, identifying a number of issues to be resolved. The Court submitted this draft to a specially appointed subcommittee for study. The Special Subcommittee was chaired by Justice Ann Crawford McClure of the Court of Appeals for the Eighth District of Texas in El Paso. Subcommittee members also included three state district court judges (one each from Bexar County, Harris County, and Lubbock County), a statutory county court at law judge in Travis County, a probate court judge in Dallas County, a court of appeals clerk, a district clerk, a court reporter, a law professor, a lawyer representative of the Freedom

of Information Foundation, three physicians, the executive director of the Texas Board of Medical Examiners, the general counsel of the Department of Health, an attorney with the Department of Protective and Regulatory Services, and the director of public affairs and education of Planned Parenthood of Waco. Also, representatives of Senator Florence Shapiro and Representative Dianne Delisi, sponsors of the legislation, attended the Subcommittee's meetings and were consulted extensively with regard to the legislative history of Chapter 33. Representatives of the Senate Human Services Committee, which has been charged with interim oversight over the implementation of Chapter 33, were also invited to attend. The Subcommittee's meetings were open to the public.

After meetings and study, the Special Subcommittee reported a draft of rules and forms to the Supreme Court Rules Advisory Committee, a standing committee of the Court that historically has advised it on court rules. The Advisory Committee is chaired by Charles L. Babcock of Dallas. The Advisory Committee's fifty-three members are judges, lawyers, academics, legislators and their designees, court reporters, and court clerks from across the State with significant experience in various areas of the Texas legal system. The Subcommittee's draft was also furnished to Senator Shapiro, Representative Delisi, and the Senate Human Services Committee, and was made available to the public. After debate at a public hearing, the Advisory Committee recommended rules and forms to the Supreme Court for adoption. A record of the debate is available at the Supreme Court. The results of the meeting were reported to the Senate Human Services Committee.

The Supreme Court has carefully considered the recommendations of the Advisory Committee and the Special Subcommittee and has made revisions in the rules and forms. The Court now proposes them for public comment.

The Special Subcommittee and the Advisory Committee discussed whether various aspects of Chapter 33 comport with the United States Constitution and the Texas Constitution. Among the issues raised 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. The Supreme Court has concluded that it should not resolve such issues outside an adversarial proceeding with full briefing and argument. Thus, the proposed rules and forms track the statutory requirements of the Legislature. Adoption of the rules and forms does not imply that the Court has any view whether Chapter 33 or any part of it is constitutional.

Copies of the proposed rules and forms have been distributed to all courts with jurisdiction over Chapter 33 proceedings, the clerks of those courts, the Governor, the Attorney General, other affected state agencies, the members of the Legislature, the members of the Supreme Court's Advisory Committee and Special Subcommittee, the State Bar of Texas, and the press. The rules and forms are posted on the Supreme Court's website at www.courts.state.tx.us/rules/index.htm. Individual copies may be requested from the Clerk of the Supreme Court or from the Court's Rules Attorney, Bob Pemberton.

The Court encourages wide distribution of the proposed rules and forms and this letter.

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Members of the Special Subcommittee on Parental Notification Rules:

Chair: Justice Ann Crawford McClure, Eighth Court of Appeals, El Paso
Supreme Court Liaison: Justice James A. Baker, Supreme Court, Austin

Dr. Ralph J. Anderson, Fort Worth
Prof. Teresa Collett, South Texas College of Law, Houston
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Dr. Bruce Levy, Executive Director, Texas State Board of Medical Examiners, Austin
Judge Sam Medina, 237th District Court, Lubbock
Dr. Terry Moore, Denton
Judge Orlanda Naranjo, County Court at Law No. 2, Austin
Ms. Diane O'Neal, Clerk, Third Court of Appeals, Austin
Judge Elizabeth Ray, 165th District Court, Houston
Dr. Jane Rider, San Angelo
Ms. Marilyn Schramm, Esq., Department of Protective and Regulatory Services, Austin
Judge John J. Specia, Jr., 225th District Court, San Antonio
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Paul C. Watler, Esq., President, Freedom of Information Foundation, Dallas
Hon. Bonnie Wolbrueck, District Clerk of Williamson County, Georgetown
Ms. Trudy Woodson, Director of Public Affairs and Education, Planned Parenthood of Waco
Ms. Debbie Saienz, Court Reporter, 116th District Court, Dallas

Members of the Supreme Court Rules Advisory Committee:

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Vice-Chair: Gilbert I. Low, Esq., Beaumont
Supreme Court Liaison: Justice Nathan L. Hecht, Supreme Court, Austin

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PROPOSED FOR PUBLIC COMMENT

TEXAS PARENTAL NOTIFICATION RULES AND FORMS

EXPLANATORY STATEMENT

Chapter 33 of the Texas Family Code, adopted by Act of May 25, 1999, 76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466 (S.B. 30), provides for judicial authorization of an unemancipated minor to consent to an abortion in Texas without notice to her parents, managing conservator, or guardian. Chapter 33 applies to abortions performed on or after January 1, 2000. Section 2 of the Act states: “The Supreme Court of Texas shall 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 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 following rules and forms are promulgated as directed by the Act without 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 rules and forms merely track statutory requirements of the Legislature. Adoption of these rules does 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 (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 either of her parents or a managing conservator or guardian under Chapter 33, Family Code (or as amended). 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 assure 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(b).

- (b) ***Prompt actual notice required.*** Without compromising the confidentiality and anonymity required by statute and these rules, courts must serve orders, decisions, findings, and notices required under these rules in a manner designed to give prompt actual notice.

1.3 Anonymity of Minor Protected.

- (a) ***Generally.*** Proceedings under these rules must be conducted in a way that protects the anonymity of the minor.
- (b) ***No reference to minor's identity in proceeding.*** With the exception of the verification page required under Rule 2.1(d) and the communications required under Rule 2.2(d), no reference may be made in any order, decision, finding, notice, or other document, or on the record, or in any communication to or by the court 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 required to minor's attorney.*** With the exception of orders and rulings released under Rule 1.4(c), all service and communications from the court to the minor must be directed to the minor's attorney. This requirement takes effect when an attorney appears for the minor, or when the clerk has notified the minor of the appointment of an attorney.

1.4 Confidentiality of Proceedings Required.

- (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. 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, except as permitted by law.
- (b) ***Documents pertaining to the proceeding.*** As required by Chapter 33, Family Code, 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. But 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;

- (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 or clerk in the same or related proceedings.
- (c) ***Filing of court reporter's notes permitted.*** To assure confidentiality, court reporter notes, in whatever form, may be filed with other court documents in the proceeding.

1.5 Electronic Transmission of Documents; Hearings Conducted By Remote Electronic Means.

- (a) ***Electronic filing.*** Documents may be filed by facsimile or other electronic data transmission. Transmission of orders, rulings, notices, and other documents by the court may be by facsimile or other electronic data transmission. But a clerk must not allow documents to be filed or transmit documents by facsimile or other electronic data transmission without assuring that the confidentiality of the document will be maintained. The time and date of a transmission by the court is the time and date when it was initiated.
- (b) ***Hearings by electronic means.*** Consistent with the anonymity and confidentiality requirements of these rules, with the court's permission, hearings under these rules may be conducted by video conferencing, telephone, or other remote electronic means. However, the minor may appear only by a medium that enables the court to view the minor during the hearing sufficiently well to assess her credibility and demeanor.

1.6 Disqualification, Recusal, or Objection to a Judge.

- (a) ***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 instanter the appropriate authority for assigning another judge by local rules or by statute. That authority must instanter assign a judge or justice to the proceeding.
- (b) ***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 immediately refer the motion to the appropriate judge or justice, pursuant to local rule, rule, or statute, for determination. If the motion is granted, the judge or justice to whom the motion was referred must immediately assign a judge or justice to the proceeding.

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, 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 No Fees or Costs.** No filing fee or court cost may be assessed against a minor for any proceeding in a trial or appellate court.

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. Rule 1.3 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.

4. Rule 1.6(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 1.6(a) does not necessitate the provision of means for electronic filing.

5. 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.

RULE 2. PROCEEDINGS IN THE TRIAL COURT

2.1 How and Where to File an Application.

- (a) ***Counties in which an application may be filed.*** An application may be filed in any county, regardless of the minor’s residence or where the abortion sought is to be performed.
- (b) ***Courts in which an application may be filed.*** An application may be filed in the office of a clerk of a district court (including a family district court), a county court-at-law, or a court having probate jurisdiction. A clerk cannot refuse to accept an application because of any local rule that provides for filing and assignment of such applications but must accept the application and transfer it instanter to the proper clerk, advising the person tendering the

application where it is being transferred. An application is filed when it is actually received by a clerk.

(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 either of her parents or a managing conservator or guardian;
- (D) whether the minor has retained an attorney, and if so, the attorney’s name, address, and telephone number;
- (E) 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 by the person completing the application, and must state:

- (A) the minor’s full name and date of birth;
- (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) a telephone number — whether that of the minor or someone else (such as a physician, friend, or relative), including a pager — 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.

2.2 Clerk’s Duties.

- (a) ***Assistance in filing.*** The clerk must give prompt assistance — in a private, confidential setting — to persons seeking to file an application. If requested, the clerk must administer the oath required for the verification page or provide a notary public to do so. The clerk should also redact from the cover page any information identifying the minor. The clerk should ensure that both the cover page and the separate verification page are completed.
- (b) ***Filing procedure.*** The clerk must assign the application a cause number 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 to the appropriate court instanter. If appointment of a specific person as guardian ad litem has been requested, the clerk must also communicate the information to the appropriate court instanter.
- (d) ***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, the clerk must instanter give notice — as directed in the verification page and to each appointee — of the hearing time or appointment.
- (e) ***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 instanter issue a certificate to that effect, stating that the application is deemed by statute to be granted.

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;
- (b) appoint an attorney for the minor, who may be the same person appointed guardian ad litem if that person is an attorney admitted to practice law in Texas;
- (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. 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.

- (b) **Place.** The hearing should be held in a location, such as a judge’s chambers, that will assure confidentiality.
- (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.** If the minor appeals, or if there is evidence of past or potential abuse of the minor, the hearing must be transcribed.
- (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. 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 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;
 - (2) notifying 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
 - (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 of the ground in Rule 2.5(b) by a preponderance of the 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 court must rule on an application by 5:00 p.m. on the second business day after 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.

Notes and Comments

1. Section 33.003(b), Family Code, permits an application to be filed in “any county court at law, court having probate jurisdiction, or district court, including a family district court, in this state.” 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.

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; (3) an appropriate employee of the Department of 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. Appointment of an employee of the Department of 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, whether notification would not be in the best interest of the minor, or whether notification may lead to 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:

- C Whether the minor has been examined by a physician and given an accurate and complete statement of her medical history to the physician.

- C Whether the minor has been provided with information or counseling bearing on her decision to have an abortion.
- C Whether the minor desires further counseling.
- C Whether, based on the information or counseling provided to the minor, she is able to give informed consent.
- C Whether the minor is attending school, or is or has been employed.
- C Whether the minor has previously filed an application that was denied.
- C Whether the minor lives with her parents.
- C Whether the minor desires an abortion or has been threatened, intimidated or coerced into having an abortion.
- C Whether the pregnancy resulted from sexual assault, sexual abuse, or incest.
- C Whether there is a history or pattern of family violence.
- C 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 of the 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 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 file a notice of appeal with the clerk of the court that denied the application. 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 private, confidential setting — 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 instanter 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.
- (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 instanter 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.

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. If the court of appeals reverses the trial court order, it must also state in its judgment that the application is granted.
- (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 second business day after the application is filed, 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) ***Opinion.***

- (1) *Opinion optional.* A court of appeals may issue an opinion explaining its ruling, but it is not required to do so.
- (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 instanter 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.

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 and file a copy with the clerk of the court of appeals. 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 private, confidential setting, if possible — 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 instantly 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.