**LIST OF SUBCOMMITTEES BY RULE**
**2006-2008 TERM**

| 1-14c | 15-165a | 166-166a | 171-205 | 215 | 216-299a | 300-330 | 523-734 | 735-822 | Appellate | Evidence | E-Filing | Judicial Admin. | Legislative Mandates |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Baron** | **Orsinger** | **Peeples** | **Meadows** | **Duggins** | **Carlson** | **Duncan** | **Lawrence** | **Yelenosky** | **Dorsaneo** | **Low** | **Orsinger** | **Hatchell** | **Boyd** |
| Bland | Gilstrap | Munzinger | Christopher | Schenkkan | Peeples | Duggins | Boyd | Jefferson | Duncan | Brown | Jefferson | Duggins | Patterson |
| Garcia | Albright | Agosto | Albright | Baron | Chandler | Gilstrap | Fuller | Gilstrap | Baron | Benton | Bland | Albright | Bland |
| Pemberton | Carlson | Boyd | Bland | Benton | Dawson | Green | Hamilton | Harwell | Carlson | Carlson | Harwell | Duncan | Lopez |
| Wolbrueck | Cortell | Carlson | Brown | Christopher | Hamilton | Hatchell | | Lawrence | Gaultney | Hoffman | Jackson | Gray | Pemberton |
| | Dorsaneo | Cortell | Jackson | Lopez | Jacks | Jefferson | | Schenkkan | Gilstrap | Jacks | Lopez | Harwell | Schenkkan |
| | Hamilton | Storie | Ratliff | Meadows | Meadows | Tipps | | | Hatchell | Jennings | Wolbrueck | Kelly | Yelenosky |
| | Jacks | | Satterwhite | Perdue | Riney | Watson | | | Orsinger | Wade | *P. Vogel* | Tipps | |
| | Schenkkan | | Susman | | Sullivan | | | | Patterson | | *M. Bennett* | Wolbrueck | |
| | Wolbrueck | | | | | | | | Tipps | | | | |
| | | | | | | | | | Watson | | | | |

* Chair in bold
** Vice Chair underlined
*italics* - Non-Committee members

04/05/2006
2524787v.3 099908/00003

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 06-9019

## SUPREME COURT RULES ADVISORY COMMITTEE

**ORDERED:**

1. The Court's Order establishing the Supreme Court Rules Advisory Committee issued in Misc. Docket No. 03-9023 (April 2, 2003) is vacated, and this Order is substituted.

The Supreme Court Rules Advisory Committee, first created in 1940 and reconstituted at various times since then, assists the Supreme Court in the continuing study, review, and development of rules and procedures for the courts of Texas, taking into consideration the rules and procedures of other courts in the United States and proposals for changes from whatever source received. The Committee drafts rules as directed by the Court; solicits, summarizes, and reports to the Court the views of the bar and the public on court rules and procedures; and makes recommendations for change. The Court is not bound by the Committee's recommendations.

The meetings of the Committee are held after public notice and are open to the public. A record is made of all Committee proceedings. The expenses of the Committee are paid from funds appropriated by the Legislature, or by the State Bar of Texas.

Members of the Committee are appointed by the Supreme Court, which shall from time to time determine their number, qualifications, and terms of service. A Chair appointed by the Court to serve at its pleasure calls meetings with the approval of the Court, prepares an agenda in advance of each meeting, and presides over the meetings. The Court and each Committee member are given the proposals, drafts, and other materials to be discussed at each meeting.

2. The following persons are appointed to serve as members of the Supreme Court Rules Advisory Committee from the date of this Order until December 31, 2008:

| | | | |
|---|---|---|---|
| Bernardino Agosto, Jr. | Houston | Tommy Jacks | Austin |
| Prof. Alexandra W. Albright | Austin | David Jackson | Dallas |
| Charles L. Babcock | Houston | Lamont Jefferson | San Antonio |
| Pamela Stanton Baron | Austin | Hon. Terry Jennings | Houston |
| Hon. Levi Benton | Houston | Hugh Rice Kelly | Houston |
| Hon. Jane Bland | Houston | Hon. Tom Lawrence | Humble |
| Jeffrey S. Boyd | Dallas | Carlos Lopez | Dallas |
| Harvey Brown | Houston | Gilbert I. Low | Beaumont |
| Prof. Elaine A. G. Carlson | Houston | Robert E. Meadows | Houston |
| George E. Chandler | Lufkin | Richard G. Munzinger | El Paso |
| Hon. Tracy E. Christopher | Houston | Richard R. Orsinger | San Antonio |
| Nina Cortell | Dallas | Hon. Jan Patterson | Austin |
| Alistair B. Dawson | Houston | Hon. David Peeples | San Antonio |
| Prof. William V. Dorsaneo III | Dallas | Hon. Robert H. Pemberton | Austin |
| Ralph H. Duggins | Fort Worth | Jim M. Perdue, Jr. | Houston |
| Hon. Sarah B. Duncan | San Antonio | Shannon H. Ratliff | Austin |
| L. Hayes Fuller III | Waco | Thomas C. Riney | Amarillo |
| Roland Garcia, Jr. | Houston | Pete Schenkkan | Austin |
| Hon. David B. Gaultney | Beaumont | William E. (Gene) Storie | Austin |
| Frank Gilstrap | Arlington | Hon. Kent C. Sullivan | Houston |
| Hon. Tom Gray | Waco | Stephen D. Susman | Houston |
| Kathryn F. Green | Corpus Christi | Stephen G. Tipps | Houston |
| O. C. Hamilton | McAllen | William J. Wade | Lubbock |
| Hon. Andy Harwell | Waco | Charles R. Watson, Jr. | Amarillo |
| Michael A. Hatchell | Austin | Hon. Bonnie Wolbrueck | Georgetown |
| Prof. Lonny S. Hoffman | Houston | Hon. Stephen Yelenosky | Austin |

3. The following persons are appointed *ex officio* members of the Committee to serve at the pleasure of the Court: a Member of the Court of Criminal Appeals designated by that Court; a lawyer designated by the Lieutenant Governor; and a lawyer designated by the Speaker of the House.

4. Charles L. Babcock of Dallas is appointed chairman of the Committee. Gilbert I. Low is appointed vice-chairman of the Committee.

5. The Court's liaison to the Committee is Justice Nathan L. Hecht. The deputy liaison is Justice Scott Brister.

SIGNED AND ENTERED this 1st day of March 2006.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

J. Dale Wainwright, Justice

Scott A. Brister, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Supreme Court Rules Advisory Committee
April 14, 2006 meeting
Status Report from Justice Nathan L. Hecht

**Acknowledge former SCAC members' service**: William Edwards, Wendell Hall, Sen. Juan "Chuy" Hinojosa, John Martin, Anne McNamara, Luke Soules, Paula Sweeney, Robert Valadez.

- Former SCAC member Justice Scott Brister is now the Court's Deputy Liaison.

**Welcome 12 new SCAC members:**

- Bernardino "Bennie" Agosto, Jr. (Abraham Watkins, Houston);
- George Chandler (Chandler Law Offices, Lufkin);
- L. Hayes Fuller III (Naman Howell, Waco);
- Roland Garcia, Jr. (Greenberg Traurig, Houston);
- Kathryn Green (solo, Corpus Christi),
- Prof. Lonny Hoffman (U of H Law Center, visiting at UT Law School for 2005-06)
- Hugh Rice Kelly (solo, Houston);
- Jim Perdue, Jr. (Perdue Law Firm, Houston);
- Shannon Ratliff (Ratliff Law Firm, Austin);
- Thomas Riney (Gwinn & Roby, Amarillo);
- Gene Storie (Office of the Attorney General, Tax Division, Austin); and
- William J. Wade (Crenshaw, Dupree & Milam, Lubbock).
- New Ex Officio member appointed by House Speaker Tom Craddick: Rodney Satterwhite (Stubbeman, McRae, Sealy, Laughlin & Browder, Midland)

**Rules Update**

MDL Rule: On Nov. 29, 2005, the Court amended RJA 13, which governs transfers in asbestos- and silica-related claims for pretrial consideration in multi-district litigation. The amendments make MDL transfer procedures applicable to claims filed before September 1, 2003, in which medical impairment reports have not been submitted and trial had not begun by Nov. 30, 2005.

The Court is still considering:

- Electronic access rules (RJA 14-15)
- amendments to various TRCP to accommodate e-filing
- precedent to be applied in cases transferred between courts of appeals
- other recommended rule changes (TRE 514, various appellate rule changes, etc.)

**Other Rules-Related Developments**

Texas Rules of Professional Conduct:
The Supreme Court Task Force studying whether Texas should adopt 2002 changes to the ABA Model Rules of Professional Conduct issued its final report on December 30, 2005. The Court has asked the State Bar Committee on the Texas Rules of Professional Conduct, chaired by Prof. Linda Eads, to respond to the Task Force's recommendations by November 14, 2006; and for the Task Force to reply to the State Bar Committee's response by May 30, 2007.

Jury Assembly Task Force (see next page)

Jury Assembly Task Force

The Court hopes to issue an order fairly soon creating a TASK FORCE ON JURY ASSEMBLY & ADMINISTRATION. Texas' rules and statutes concerning jury assembly have not been reviewed in many years, and, as this committee has noticed, technological advances alone would warrant a review of our procedures. Many of the provisions need to be harmonized, and the Court feels strongly that jury assembly procedures should ensure that jurors are summoned randomly from a fair cross section of the community and that any opportunity for local manipulation which might undermine integrity and randomness is eliminated. Therefore, the committee will likely be charged with reviewing issues like:

- whether the existing procedures for merging voter registration and drivers license lists by Secretary of State should be revised and strengthened;
- whether the Secretary of State, rather than local officials, should be required to shuffle and randomize the lists each county uses;
- whether the local official who decides how many jurors to summon each week should be specified by statute or rule;
- whether the rules or statutes should be amended to expressly provide that county officials send jury panels to courtrooms in the exact random order of the list, without exception;
- whether the rules or statutes should mandate that counties maintain detailed records of no-shows, exemptions, reschedulings, etc.; and
- whether procedures for summoning jurors should be uniform in both civil and criminal cases.

Once the Task Force's work is complete, and any recommended statutory or rule changes are implemented, the Court may be inclined to revisit the issue of whether the jury shuffle should be eliminated.

**Texas Supreme Court Advisory Committee**
**April 14, 2006**

Report of the Sub-Committee on Legislative Mandates
Regarding Parental Notification Rules and Forms

## A. Background

1. Texas "Parental ***Notification*** Law" (eff. Jan. 1, 2000)

a. Tex. Family Code § 33.002(a): "a physician *may not perform* an abortion on a pregnant unemancipated minor *unless*:"

(1) the physician gives at least 48 hours ***notice***, in person or by telephone, to a parent or managing conservator of the minor; or
(2) a court issues an order authorizing the minor to consent to the abortion without ***notification*** to a parent or conservator, as provided by Section 33.003 or 33.004; or
(3) a court by its inaction "constructively" authorizes the minor to consent as provided by Section 33.003 or 33.004; or
(4) the physician concludes and certifies that an immediate abortion is necessary to avert the minor's death or irreversible physical impairment.

b. Tex. Family Code §§ 33.003, 33.004: provide process and standards by which a minor may seek, and trial and appellate courts may issue, an order authorizing the minor to consent without ***notification***. Under § 33.003(i), the trial court "shall" enter such an order if the court finds that:

- the minor is mature and sufficiently well informed to make the decision without ***notification*** to the parent or conservator, or
- ***notification*** would not be in the minor's best interest, or
- ***notification*** may lead to abuse of the minor.

2. Texas Parental Notification Rules and Forms (eff. Jan. 1, 2000)

Adopted as required by Legislature to ensure that "the process established by Sections 33.003 and 33.004 . . . may be conducted in a manner that will ensure confidentiality and sufficient precedence over all other pending matters to ensure promptness of disposition." Rules govern such things as expedition of decisions, anonymity, confidentiality, judicial disqualification and recusal, attorneys ad litem, amicus briefs, and hearings and rulings in the trial courts, courts of appeals, and Supreme Court.

3. Texas "Parental ***Consent*** Law" (eff. Sept. 1, 2005)

Tex. Occup. Code § 164.052(a)(19): "[a] physician or an applicant for a license to practice medicine *commits a prohibited practice* if that person . . . performs 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 . . .*,"
- unless the physician concludes that an immediate abortion is necessary to avert the minor's death or irreversible impairment *and* there is insufficient time to obtain a parent's consent.

4. Texas Supreme Court (Hecht, J. letter of March 7, 2005)

Does the enactment of Subsection (19) require revisions to the Parental Notification Rules? "The Supreme Court has tentatively concluded" that it does not, but requests that the SCAC provide "any counsel it may offer on the matter."

**B. Subcommittee's Analysis**

1. Enactment of Subsection (19) may raise issues for physicians:

a. Must physician obtain both consent and a court order?

b. To rely on the ground that an immediate abortion is necessary to avert the minor's death or irreversible physical impairment (i.e., in the absence of parental notification/consent or a court order), must physician both conclude and certify that such is the case (per section 33.003(a)(4)), and also conclude that "there is insufficient time to obtain a parent's consent" (per Subsection (19))?

c. To rely on the ground of parental notification/consent, must the physician *both:* (1) give at least 48 hours notice to the parent or conservator in person or by telephone (as required by section 33.002), *and* (2) obtain written consent (as required by Subsection (19))? In other words, if a minor presents herself to the physician with a valid written consent, can the physician perform the abortion then, or must he/she still contact the parent in person or by phone and wait 48 hours?

d. Does the court's failure to timely rule still result in "constructive authorization?"

2. And may raise some issues for the courts, i.e.:

If physician gives required notification but parent won't consent, can court still issue a bypass order?

3. But does not change the standards or procedures for a bypass order.

Under both section 33.002 and Subsection (19), the standard for a bypass is still based on "notification" under sections 33.003 and 33.004.

## C. Subcommittee's Preliminary Recommendations

1. It is not necessary or appropriate to revise the Parental Notification Rules and Forms to refer to Subsection (19).
2. It is not necessary or appropriate to revise the Parental Notification Rules and Forms to refer to the requirement of "written consent" instead of, or in addition to, the requirement of "notification."
3. It is not necessary to revise the Comments to the Parental Notification Rules; though it may be advisable to add an Explanatory Note, simply to advise judges and practitioners of the adoption of Subsection (19). For example:

   In 2005, in section 1.42 of Senate Bill 419, the Legislature amended the Texas Occupations Code to provide that "[a] physician or an applicant for a license to practice medicine commits a prohibited practice if that person . . . performs 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 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."

4. It is not within the Committee's current charge to consider issues that the adoption of Subsection (19) may raise for physicians, or to consider whether the Parental Notification Rules and Forms need any revisions unrelated to Subsection (19).
5. Because it is not necessary or appropriate to revise the Parental Notification Rules in light of Subsection (19), it is not necessary to solicit input for outside the Committee at this time.

H2 Amend #11 Hartnett

Amend **CSSB 419** by adding the following appropriately numbered section to Article 1 of the bill and renumbering the sections of that article accordingly:

SECTION _____. Section 164.052(a), Occupations Code, is amended to read as follows:

(a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;

(3) commits fraud or deception in taking or passing an examination;

(4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;

(6) uses an advertising statement that is false, misleading, or deceptive;

(7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;

(8) purchases, sells, barters, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;

(10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:

(A) fraudulently purchased or issued;

(B) counterfeited; or

(C) materially altered;

(11) impersonates or acts as a proxy for another person in an examination required by this subtitle for a medical license;

(12) engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;

(13) impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;

(14) directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or revoked;

(15) associates in the practice of medicine with a person:

(A) whose license to practice medicine has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of medicine in this state or elsewhere;

(16) performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion; [~~or~~]

(17) directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board; or

(18) performs 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 permitting the abortion.

H2 Amendment #13 Phil King

Amend Amendment No. 11 by Hartnett for **SB 419** as follows:

(1) On page 3, line 9, between "order" and "permitting" insert ", as provided by Sections 33.003 or 33.004, Family Code,"

(2) On page 3, line 10, after the word "abortion" and before the period insert ", 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".

# The Supreme Court of Texas

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

Chambers of
Justice Nathan L. Hecht


March 7, 2006

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
1401 McKinney #1900
Houston TX 77010

Re: Changes in Parental Notification Rules
in response to SB 419

Dear Chip:

Effective September 1, 2005, Senate Bill 419 prohibits a Texas physician from performing an abortion on an unemancipated minor absent parental consent or a court order. Act of May 30, 2005, 79th Leg., R.S., ch. 269, §1.42 (codified at TEX. OCC. CODE §164.052(a)(19)). The Supreme Court has tentatively concluded that this change in the law does not require amendments to the Parental Notification Rules. No procedural problems have been reported since the change took effect. Nevertheless, the Court requests the Advisory Committee for any counsel it may offer on the matter.

As you know, since the adoption of Chapter 33 of the Family Code effective January 1, 2000, except in certain emergencies, a Texas physician generally may not perform an abortion on an unemancipated minor without 48 hours' notice to the minor's parent, court-appointed managing conservator, or guardian, or a court order. TEX. FAM. CODE §33.002. To grant a minor's application for an order bypassing the notice requirement, a court must find either (1) that the minor is sufficiently mature and well-informed to obtain an abortion without notice to her parents, (2) that notification would not be in her best interests, or (3) that notification may lead to her physical, sexual, or emotional abuse. *Id.* §33.003(i). A minor may appeal from a decision denying her application, but a decision granting a minor's application is not appealable. *Id.* §33.004. The Parental Notification Rules provide for trial and appellate proceedings under Chapter 33.

SB 419 adds a requirement of parental consent but also provides a judicial bypass. It does so, however, not by amending Chapter 33, but by amending Section 64.052 of the Occupations Code and referencing Chapter 33. Section 64.052(a)(19) prohibits a Texas physician from performing an abortion on an unemancipated minor absent either (1) "the written consent of the child's parent, managing conservator, or legal guardian," or (2) "a court order, as provided by Section 33.003 or 33.004, Family Code, authorizing the minor to consent to the abortion," unless the minor's medical condition necessitates immediate abortion to avoid death or a serious risk of impairing a major bodily function. Thus, Section 64.052(a)(19) uses parental-*notification* bypass grounds and procedures to bypass the parental-*consent* requirement.

The fit is not perfect. For example, if parents have the notice required by statute but will not give consent, one could argue that the notification-bypass procedure to which Section 64.052(a)(19) refers is mooted. I am not aware of any indication that the Legislature did not intend the parental-consent requirement to apply in such a situation, but it is not clear how the three grounds in Section 33.003(i) would be used to determine whether to allow an abortion with notice but without consent. One possibility might be that the Legislature intended "consent" to be substituted for "notice" and "notification" in Section 33.003(i). But this is sheer speculation. I do not mean to suggest how the question might be decided should it arise.

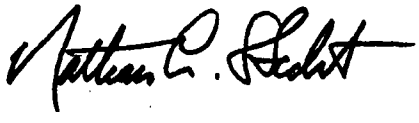
Rather, the issue is whether the Parental Notification Rules should be amended to address such situations or others that are now different because of the change in the law. The Court's tentative conclusion is that any difficulties in applying SB 419 inhere more in the statute than in the rules. The procedural framework for bypassing the parental-notification requirement appears to be equally well-suited to proceedings to bypass the parental-consent requirement.

The Court's Rules Attorney, Mr. Jody Hughes, has consulted with the offices of the principal legislators involved in the passage of SB 419, including: Senator Jane Nelson, the author of SB 419; Representative Burt Solomons, the House sponsor; Representative Will Hartnett, who sponsored the House amendment adding the parental-consent requirement; and Representative Phil King, who sponsored an amendment to Representative Hartnett's amendment adding the judicial bypass provision. None has suggested that the Legislature intended the Parental Notification Rules to be amended in response to SB 419. While individual legislators' views are not conclusive, they are helpful in the rules process.

The Committee may consider that the anomaly raised above, or the possibility of other situations that may be problematic, may warrant further study. The development of the Parental Notification Rules was aided in large part by the work of a subcommittee that included members from outside the Committee, some non-lawyers, who were familiar with the dynamics of the bypass process. The Committee may decide that such input would, or would not, be useful.

As always, the Court is grateful for the Committee's dedication to its work and for your leadership.

Sincerely,



Nathan L. Hecht
Justice

# THOMPSON & KNIGHT LLP

**MEMORANDUM**

**TO:** SCAC "SUBCOMMITTEE ON LEGISLATIVE MANDATES"
(Hon. Jan Patterson; Hon.. Jane Bland; Carlos Lopez; Hon. Bob Pemberton; Pete Schenkkan; Hon. Stephen Yelenosky)

**CC:** Chip Babcock

**FROM:** Jeffrey S. Boyd

**DIRECT-DIAL:** (512) 469-6109
**DIRECT-FAX:** (512) 482-5095
**EMAIL:** jeff.boyd@tklaw.com

**DATE:** April 5, 2006

**SUBJECT:** Parental Bypass Issue

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Chip Babcock has asked me to chair a SCAC Subcommittee on Legislative Mandates this term, and has informed me that he has appointed each of you as members of that Subcommittee. My thanks to each of you, and especially to Justice Patterson, who has agreed to serve as the Subcommittee's vice-chair.

At this time, Chip and Justice Hecht have assigned us one issue to address:

> *Whether the 2005 amendment of the Texas Occupations Code adding a "Parental Consent" requirement in section 164.052(a)(19) requires revisions to the Court's Parental Notification Rules and, if so, what revisions are required?*

Chip has asked that we come to the SCAC's April 14 meeting (next Friday) prepared to explain the issue to the full Committee and provide our preliminary thoughts. After receiving the full Committee's feedback, we will likely be requested to consider the issue further.

With apologies for the short notice, I would like for each of you to review the attached materials related to this issue, and then participate in a Subcommittee conference call next week. Would you please respond (see my contact info above) as soon as possible to let me know your availability for a 1-hour conference call on Wednesday or Thursday of next week. In the meantime, I am providing this memo and the attached materials to provide some background on the issue and some guidance for our discussion next week.

In 1999, the Texas Legislature adopted a "Parental ***Notification*** Law" to govern the performance of abortions on minors. Specifically, section 33.002 of the Family Code, which became effective January 1, 2000, provides that "a physician *may not perform* an abortion on a pregnant unemancipated minor *unless*:"

(1) the physician gives at least 48 hours ***notice***, in person or by telephone, to a parent or managing conservator of the minor; or
(2) a court issues an order authorizing the minor to consent to the abortion without ***notification*** to a parent or conservator, as provided by Section 33.003 or 33.004; or
(3) a court by its inaction "constructively" authorizes the minor to consent as provided by Section 33.003 or 33.004; or
(4) the physician concludes and certifies that an immediate abortion is necessary to avert the minor's death or irreversible physical impairment.

TEX. FAMILY CODE § 33.002(a). At the same time, the Legislature adopted sections 33.003 and 33.004 to provide the process and standards by which a minor may seek, and trial and appellate courts may issue, an order authorizing the minor to consent without ***notification***. For example, section 33.003(i) provides that the court "shall" enter such an order if the court finds that:

- the minor is mature and sufficiently well informed to make the decision without ***notification*** to the parent or conservator, or
- ***notification*** would not be in the minor's best interest, or
- ***notification*** may lead to abuse of the minor.

*Id.* § 33.003(i).

As required by the Legislature, the Supreme Court adopted the Texas Parental Notification Rules (also effective Jan. 1, 2000), to ensure that "the process established by Sections 33.003 and 33.004 . . . may be conducted in a manner that will ensure confidentiality and sufficient precedence over all other pending matters to ensure promptness of disposition." These Rules govern such things as expedition of decisions, anonymity, confidentiality, judicial disqualification and recusal, attorneys ad litem, amicus briefs, and hearings and rulings in the trial courts, courts of appeals, and Supreme Court.

Following the adoption of sections 33.002-.004 and the Parental Notification Rules, the Supreme Court issued several opinions construing the statutory requirements and procedures. *See In re Jane Doe 11*, 92 S.W.3d 511 (Tex. 2002); *In re Jane Doe 10*, 78 S.W.3d 338 (Tex. 2002); *In re Jane Doe 1(III)*, 19 S.W.3d 346 (Tex. 2000); *In re Jane Doe 4(II)*, 19 S.W.3d 337 (Tex. 2000); *In re Jane Doe 4*, 19 S.W.3d 322 (Tex. 2000); *In re Jane Doe 3*, 19 S.W.3d 300 (Tex. 2000); *In re Jane Doe 1(II)*, 19 S.W.3d 300 (Tex. 2000); *In re Jane Doe 2*, 19 S.W.3d 278 (Tex. 2000); *In re Jane Doe 1(I)*, 19 S.W.3d 249 (Tex. 2000). The Court did not reach any constitutional issues in these cases.

Last year, through section 1.42 of Senate Bill 419, the Legislature amended the Texas Occupations Code to adopt a "Parental ***Consent*** Law," which became effective on September 1, 2005. Specifically, the Legislature added Subsection (19) to section 164.052(a), to provide that "[a] physician or an applicant for a license to practice medicine *commits a prohibited practice* if that person . . . performs 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* . . .,"
- unless the physician concludes that an immediate abortion is necessary to avert the minor's death or irreversible impairment *and* there is insufficient time to obtain a parent's consent.

TEX. OCC. CODE § 164.052(a)(19) (hereinafter "Subsection (19)").

Subsection (19) seems to be inartfully drafted and raises numerous issues. For example, whereas section 33.002 says a physician cannot perform the abortion *unless* he/she gives the required notice *or* the court issues an order, Subsection (19) provides that a physician commits a prohibited act *if* he/she performs an abortion "without the written consent . . . or without a court order," which could be read to mean that the abortion is prohibited if either is absent (i.e., *both* are required). Also, because the Legislature did not amend or delete Family Code sections 33.002-.004, *both* provisions apparently now apply, which raises several additional issues. For example:

not a reasonable interpretation

- Apparently, to perform an abortion on the ground that an immediate abortion is necessary to avert the minor's death or irreversible physical impairment (i.e., in the absence of parental notification/consent or a court order):
  - under section 33.003(a)(4), the physician must not only conclude, but also *certify*, that such is the case, even though Subsection (19) does not require such certification; and
  - under Subsection (19), the physician must also conclude that "there is insufficient time to obtain a parent's consent," even though section 33.002 does not require such a conclusion.
- To perform the abortion based on the ground of parental notification/consent, must the physician *both:* (1) give at least 48 hours notice to the parent or conservator in person or by telephone (as required by section 33.002), *and* (2) obtain written consent (as required by Subsection (19))? In other words, if a minor presents herself to the physician with a valid written consent, can the physician perform the abortion then, or must he/she still contact the parent in person or by phone and wait 48 hours?

more logical interpretation would be can perform w/ valid consent

- Under section 33.003(h), a trial court that fails to timely issue a ruling, findings, and conclusions is deemed to have "constructively authorized" the abortion, thus permitting the physician to proceed as if an order had been entered. Section 32.002 expressly permits the abortion based on such constructive authorization. But Subsection (19) does not mention "constructive authorization," and expressly allows the abortion *only* if there's "written consent," "a court order," or a

conclusion that the abortion is immediately necessary. Did this omission indicate a legislative intent to remove the "constructive authorization" basis, or does section 32.002 still allow the physician to perform the abortion without an actual "court order?"

While these are interesting issues (as are the various constitutional issues that both 33.002 and Subsection (19) may create), they are probably (but perhaps not necessarily) outside of the scope of our Subcommittee's task. Our more narrow issue is whether the enactment of Subsection (19) requires revisions to the Parental Notification Rules. In a letter dated March 7, 2006, Justice Hecht has advised that "[t]he Supreme Court has tentatively concluded" that it does not, but requests that the SCAC provide "any counsel it may offer on the matter."

In preparation for our conference call next week, please be prepared to discuss, at least:

1. Whether and how the Parental Notification Rules (and/or Forms?) should be amended so that they refer to (or at least acknowledge the existence of) Subsection (19);[1]
2. Whether and how the Parental Notification Rules (and/or Forms?) should be amended so that they refer to the requirement of "written consent," instead of, or in addition to, the requirement of "notification;"[2]
3. Whether and how the Introduction and/or Comments to the Rules should be revised to provide guidance in light of the adoption of Subsection (19);
4. Whether the Rules (and/or Forms) need any revisions unrelated to Subsection (19) and, if so, whether we should consider those as part of our current task; and
5. Whether and how our Subcommittee (or the SCAC as a whole) should solicit input on these issues from practitioners, judges, legislators, or the public?

I look forward to working with all of you on this Subcommittee and appreciate, in advance, all of the time and thought you will devote to it. I know that each of you will have great input for consideration. (Justice Pemberton, for example, was the Rules Attorney when the Parental Notification Rules were originally adopted, and has prepared and delivered presentations on those Rules, so his background knowledge will certainly be helpful).

***Please respond as soon as possible regarding your availability next week.***

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[1] The current Rules refer to Chapter 33 of the Family Code, but not to Subsection (19).

[2] For example, Rule 2.1(c)(1)(C) requires the minor to submit to the court an application that states that she "wishes to have an abortion without *notifying* either of her parents or a managing conservator or guardian." At first glance, it may seem that this should be changed to require her to state that she wishes to have the abortion without "obtaining written consent." But section 33.003 expressly allows the court's order as an alternative to "notification," not "consent," and Subsection (19) does not alter section 33.003. So, for example, under section 33.003(i), the court "shall" enter the authorization order if the court finds that "*notification* would not be in the minor's best interest," or that "*notification*" may lead to abuse. Subsection (19) did not alter that. So under the statutes, in the absence of written consent, the court must still consider whether mere *notification* would not be in the minor's best interest, or may lead to abuse. Because the Rules address the process under sections 33.003 and 33.004, and because Subsection (19) did not revise those sections at all, it seems the Rules should also remain the same.

ATTACHMENTS:

1. March 7, 2006 Letter from Justice Hecht
2. Texas Family Code Chapter 33
3. Texas Parental Notification Rules
4. Texas Occupations Code § 164.052.

FAMILY CODE

CHAPTER 33. NOTICE OF ABORTION

Sec. 33.001. DEFINITIONS. In this chapter:

(1) "Abortion" means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant, with the intention that the termination of the pregnancy by those means will with reasonable likelihood cause the death of the fetus. This definition, as applied in this chapter, applies only to an unemancipated minor known by the attending physician to be pregnant and may not be construed to limit a minor's access to contraceptives.

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

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

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

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

(A) is unmarried; and

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

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

Sec. 33.002. PARENTAL NOTICE. (a) A physician may not perform an abortion on a pregnant unemancipated minor unless:

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

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

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

(2) the judge of a court having probate jurisdiction,

the judge of a county court at law, the judge of a district court, including a family district court, or a court of appellate jurisdiction issues an order authorizing the minor to consent to the abortion as provided by Section 33.003 or 33.004;

(3) a probate court, county court at law, district court, including a family district court, or court of appeals, by its inaction, constructively authorizes the minor to consent to the abortion as provided by Section 33.003 or 33.004; or

(4) the physician performing the abortion:

(A) 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 and irreversible impairment of a major bodily function; and

(B) certifies in writing to the Texas Department of Health and in the patient's medical record the medical indications supporting the physician's judgment that the circumstances described by Paragraph (A) exist.

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

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

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

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

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

(e) The Texas Department of Health shall prepare a form to be used for making the certification required by Subsection (a)(4).

(f) A certification required by Subsection (a)(4) is confidential and privileged and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. Personal or identifying information about the minor, including her name, address, or social security number, may not be included in a certification under Subsection (a)(4). The physician must keep the medical records on the minor in compliance with the rules adopted by the Texas State Board of Medical Examiners under Section 153.003, Occupations Code.

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

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

meaning and application assigned by Section 2.03, Penal Code.

(i) In relation to the trial of an offense under this section in which the conduct charged involves a conclusion made by the physician under Subsection (a)(4), the defendant may seek a hearing before the Texas State Board of Medical Examiners on whether the physician's conduct was necessary to avert the death of the minor or to avoid a serious risk of substantial and irreversible impairment of a major bodily function. The findings of the Texas State Board of Medical Examiners under this subsection are admissible on that issue in the trial of the defendant. Notwithstanding any other reason for a continuance provided under the Code of Criminal Procedure or other law, on motion of the defendant, the court shall delay the beginning of the trial for not more than 30 days to permit a hearing under this subsection to take place.

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

Sec. 33.003. JUDICIAL APPROVAL. (a) A pregnant minor who wishes to have an abortion without notification to one of her parents, her managing conservator, or her guardian may file an application for a court order authorizing the minor to consent to the performance of an abortion without notification to either of her parents or a managing conservator or guardian.

(b) The application may be filed in any county court at law, court having probate jurisdiction, or district court, including a family district court, in this state.

(c) The application must be made under oath and include:

(1) a statement that the minor is pregnant;

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

(3) a statement that the minor wishes to have an abortion without the notification of either of her parents or a managing conservator or guardian; and

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

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

(e) The court shall appoint a guardian ad litem for the minor. If the minor has not retained an attorney, the court shall appoint an attorney to represent the minor. If the guardian ad litem is an attorney admitted to the practice of law in this state, the court may appoint the guardian ad litem to serve as the minor's attorney.

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

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

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

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

(4) a member of the clergy; or

(5) another appropriate person selected by the court.

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

(h) The court shall rule on an application submitted under this section and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day

after the date the application is filed with the court. On request by the minor, the court shall grant an extension of the period specified by this subsection. If a request for an extension is made, the court shall rule on an application and shall issue written findings of fact and conclusions of law not later than 5 p.m. on the second business day after the date the minor states she is ready to proceed to hearing. If the court fails to rule on the application and issue written findings of fact and conclusions of law within the period specified by this subsection, the application is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification under Section 33.002. Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

(i) The court shall determine by a preponderance of the evidence 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. If the court finds that the minor is mature and sufficiently well informed, that notification would not be in the minor's best interest, or that notification may lead to physical, sexual, or emotional abuse of the minor, the court shall enter an order authorizing the minor to consent to the performance of the abortion without notification to either of her parents or a managing conservator or guardian and shall execute the required forms.

(j) If the court finds that the minor does not meet the requirements of Subsection (i), the court may not authorize the minor to consent to an abortion without the notification authorized

under Section 33.002(a)(1).

(k) The court may not notify a parent, managing conservator, or guardian that the minor is pregnant or that the minor wants to have an abortion. The court proceedings shall be conducted in a manner that protects the anonymity of the minor. The application and all other court documents pertaining to the proceedings are confidential and privileged and are not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other legal process. The minor may file the application using a pseudonym or using only her initials.

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

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

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

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

Sec. 33.004. APPEAL. (a) A minor whose application under Section 33.003 is denied may appeal to the court of appeals having jurisdiction over civil matters in the county in which the

application was filed. On receipt of a notice of appeal, the clerk of the court that denied the application shall deliver a copy of the notice of appeal and record on appeal to the clerk of the court of appeals. On receipt of the notice and record, the clerk of the court of appeals shall place the appeal on the docket of the court.

(b) The court of appeals shall rule on an appeal under this section not later than 5 p.m. on the second business day after the date the notice of appeal is filed with the court that denied the application. On request by the minor, the court shall grant an extension of the period specified by this subsection. If a request for an extension is made, the court shall rule on the appeal not later than 5 p.m. on the second business day after the date the minor states she is ready to proceed. If the court of appeals fails to rule on the appeal within the period specified by this subsection, the appeal is deemed to be granted and the physician may perform the abortion as if the court had issued an order authorizing the minor to consent to the performance of the abortion without notification under Section 33.002. Proceedings under this section shall be given precedence over other pending matters to the extent necessary to assure that the court reaches a decision promptly.

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

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

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

(f) An expedited confidential appeal shall be available to any pregnant minor to whom a court of appeals denies an order authorizing the minor to consent to the performance of an abortion without notification to either of her parents or a managing conservator or guardian.

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

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

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

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

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

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

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

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

Sections 107.003(b)(1)-(4).

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

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

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

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

(3) any court reporter's fees incurred.

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

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

Sec. 33.008. PHYSICIAN'S DUTY TO REPORT ABUSE OF A MINOR; INVESTIGATION AND ASSISTANCE. (a) A physician who has reason to believe that a minor has been or may be physically or sexually abused by a person responsible for the minor's care, custody, or welfare, as that term is defined by Section 261.001, shall immediately report the suspected abuse to the Department of Protective and Regulatory Services and shall refer the minor to the department for services or intervention that may be in the best interest of the minor.

(b) The Department of Protective and Regulatory Services shall investigate suspected abuse reported under this section and, if appropriate, shall assist the minor in making an application with a court under Section 33.003.

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

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

a confidential court proceeding held under this chapter to:

(1) any local or state law enforcement agency;

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

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

(4) an appropriate agency designated by the court.

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

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

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

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

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

# TEXAS PARENTAL NOTIFICATION RULES AND FORMS

*effective date January 1, 2000*

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## 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. 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(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 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(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 required to minor's attorney.* 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. 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; 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;

(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. (**2001 change**)

(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.

(d) ***Duty to report possible sexual abuse.*** A court, guardian ad litem, or attorney ad litem who reasonably believes, based on information obtained in the proceeding, that a violation of Section 22.011, 22.021, or 25.02, Penal Code, has occurred must report the information to the appropriate officials or agencies as required by Section 33.009, Family Code.

(e) ***Department of Protective and Regulatory Services to disclose certain information in proceeding.*** The Department of Protective and Regulatory Services 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 to such persons, and the Department must comply.

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

(a) ***Electronic filing.*** Documents may be filed by facsimile or other electronic data transmission. If the sender communicates directly with the clerk the time at which the transmission will occur, the clerk must take all reasonable steps to assure that the confidentiality of the received transmission will be maintained.

(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. But before the transmission is initiated, the sender must take all reasonable steps to assure 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) ***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 instanter. An objection to a judge or a motion to disqualify or recuse does not extend the deadline for ruling on the minor's application. **(2001 change)**

(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 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.

(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 instanter refer the motion to the appropriate judge or justice, pursuant to local rule, rule, or statute, for determination. The 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 instanter 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, 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. 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 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 of the Supreme Court of Texas, dated September 21, 1994, in Misc. Docket No. 94-9143, regarding mandatory reports of judicial appointments and fees.

(f) ***Confidentiality.*** When transmitting an order awarding costs to the Department of Health, the clerk must take reasonable steps to preserve its confidentially. 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.
**(2001 change)**

**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. The person must submit the original brief and the same number of copies required for other submissions to the court, and must serve a copy of the brief on the minor's attorney. 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 brief must not contain any information in violation of Rules 1.3 and 1.4. The person must submit the original brief and the same number of copies required for other 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 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 parties to the appeal of the existence of any brief filed under this subsection and must make the brief available for inspection and copying. Upon submission, the Clerk of the Supreme Court must, as soon as practicable, have the brief posted on the Texas Judiciary Internet site and make it available to the public for inspection and copying. **(2001 change)**

**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. **(2001 change)**

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 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.

6. 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.

7. 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.

8. 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. **(2001 change)**

9. Rule 1.10 adds a procedure for filing amicus curiae briefs uniquely designed for the expedited and confidential nature of parental notification cases. **(2001 change)**

## RULE 2. PROCEEDINGS IN THE TRIAL COURT

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

(a) ***Counties in which an application may be filed.*** An application for an order under Section 33.003, Family Code, 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; 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 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.

(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 either of her parents or a managing conservator or guardian, and the statutory ground or grounds on which she relies;

(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 or pager 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.

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

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 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 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. 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 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) *If judge of assigned court not present in county.* The clerk must determine instanter whether the judge of the court to which the application is assigned is present in the county. If that judge is not present in the county, the clerk must instanter notify the local administrative judge or judges and the presiding judge of the administrative judicial region and must send them any information requested, including the cover page and verification page.

(e) *Notice of hearing and appointments.* When the clerk is advised by the court of a time for 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. A court coordinator or other court personnel may give notice instead of the clerk.

(f) *Orders.* The clerk must provide the minor and the attorney 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 instanter 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:

(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 and there is no conflict of interest in the same person serving as attorney ad litem and guardian ad litem;

(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 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.*** If the minor appeals, or if there is evidence of past or potential abuse of the minor, the hearing must be transcribed instanter.

(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 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 grounds 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 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.

**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." 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; (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 litems 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:

- 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 nature of such proceedings, but they reflect general legislative intent concerning the responsibilities of ad litems.

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

## RULE 3. APPEAL FROM DENIAL OF APPLICATION

**3.1 How to Appeal.** To appeal the denial of an application, the minor must 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 instanter 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 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. 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. **(2001 change)**

(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 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) ***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 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 instanter 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.

OCCUPATIONS CODE

CHAPTER 164. DISCIPLINARY ACTIONS AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

* * *

Sec. 164.052. PROHIBITED PRACTICES BY PHYSICIAN OR LICENSE APPLICANT.

(a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

* * *

(19) performs 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.

* * *

(c) The board shall adopt the forms necessary for physicians to obtain the consent required for an abortion to be performed on an unemancipated minor under Subsection (a). The form executed to obtain consent or any other required documentation must be retained by the physician until the later of the fifth anniversary of the date of the minor's majority or the seventh anniversary of the date the physician received or created the documentation for the record. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., ch. 269, Sec. 1.42, eff. Sept. 1, 2005.

Draft rule printed 5/9/06

Texas Medical Board
Medical Records
Chapter 165

Medical Records

165.1.Medical Records.

(a) Contents of Medical Record. Each licensed physician of the board shall maintain an adequate medical record for each patient that is complete, contemporaneous and legible. For purposes of this section, an "adequate medical record" should meet the following standards:

(1) - (6) (No change.)

(7) any written consents for treatment or surgery requested from the patient/family by the physician.

(8) ~~(7)~~ Billing codes, including CPT and ICD-9-CM codes, reported on health insurance claim forms or billing statements should be supported by the documentation in the medical record.

(9) ~~(8)~~ Any amendment, supplementation, change, or correction in a medical record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change, or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

(10) ~~(9)~~ Records received from another physician or health care provider involved in the care or treatment of the patient shall be maintained as part of the patient's medical records.

(11) ~~(10)~~ The board acknowledges that the nature and amount of physician work and documentation varies by type of services, place of service and the patient's status. Paragraphs (1) - (11) [ ~~(10)~~ ] of this subsection may be modified to account for these variable circumstances in providing medical care.

(b) (No change.)

165.6.Medical Records Regarding an Abortion on an Unemancipated Minor.

(a) As used in this section:

(1) "Abortion" means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus (as defined at Section 33.001, Texas Family Code).

(2) "Unemancipated minor" means a minor who is not 18 years, unmarried and has not had the disabilities of minority removed under Chapter 31, Texas Family Code (as defined at Section 33.001, Texas Family Code).

(b) In the case of an unemancipated minor patient on whom a physician plans to perform an abortion, the physician shall obtain and maintain in the medical records one of the following:

(1) the written consent of one of the patient's parents, managing conservator, or legal guardian, in accordance with Section 164.052(a)(19), Medical Practice Act;

(2) a court order authorizing the minor to consent to the abortion, in accordance with Section 33.003 or 33.004, Texas Family Code;

(3) an affidavit of the physician authorizing the physician to perform the abortion as if the court had issued an order granting the application or appeal, in accordance with Section 33.005, Texas Family Code; or

(4) indications supporting the physician's judgment, if the physician concludes, on the basis of good faith clinical judgment, that 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 patient's parent, managing conservator, or legal guardian, in accordance with Section 164.052(a)(19), Medical Practice Act. The physician shall also maintain in the medical records a copy of the certification to the Department of State Health Services, as required by Section 33.002, Texas Family Code.

(c) Except in the case of a medical emergency, the physician shall obtain and maintain in the medical records a written consent signed by the patient that includes the requirements set forth in Sections 171.011 and 171.012, Texas Health and Safety Code.

(d) The physician must use due diligence in determining that any person signing a written consent for an abortion on an unemancipated minor is, in fact, who the person purports to be. In any disciplinary action before the board, based on allegations that a consent was not signed by the person purporting to sign it, the physician must show that the written consent is either

(1) witnessed in the office or clinic of the physician; or

(2) is notarized.

(e) The physician shall maintain the medical records required by this section until the later of the fifth anniversary of the date of the patient's majority or the seventh anniversary of the date the physician received or created the documentation for the record.

(f) Pursuant to Section 164.052(c), Medical Practice Act, the board adopts the following form for physicians to obtain the consent required for an abortion to be performed on an unemancipated minor:

# DISCLOSURE AND CONSENT FORM
# MEDICAL, SURGICAL, AND DIAGNOSTIC PROCEDURES

**PATIENT NAME:** _____ **DATE OF BIRTH:** _____ **AGE:** ____

This Form has been adopted by the Texas Medical Board in accordance with the requirements of Section 164.052(c), Texas Occupations Code and is published in 22 Texas Administrative Code, Section 165.6(f). The purpose of this Form is to allow the physician to obtain the required consents for an abortion to be performed on an unemancipated minor. This Form is available for downloading on the Texas Medical Board web site at "www.tmb.state.tx.us".

**Part I. Information about Patient Consent Requirements and Parental Consent Requirements.**

**TO THE PATIENT:** As the patient, you have the right to be given information about your health condition, our plans for your care, and the risks and hazards of the planned care. You have the right to provide written consent for the medical procedures agreed to be performed. As your physician, I am required by law to provide this information to you, and to have your consent, or permission, before we can start any medical procedure on you. This is called the "Patient Consent Requirement." Your signature at the bottom of Part IV. of this Form is your consent for me to perform the medical procedures that are checked below in Part II.

**TO THE PATIENT'S PARENT, LEGAL GUARDIAN, OR MANAGING CONSERVATOR:** As the parent, legal guardian, or managing conservator of a child, you have the right to be given information about your child or ward's health condition, our plans for her care, and the risks and hazards of the planned care. You are also required to provide written consent, or permission, for the medical procedures agreed to be performed on your child or ward, unless otherwise stated in law. This called the "Parental Consent Requirement".

A child includes each patient who is under 18 years old, unmarried, and has not had the disabilities of minority removed by court order. In Texas, this is called an "unemancipated minor." I am required by law to have the written consent of either one of the patient's parents, legal guardian, or managing conservator before we can perform an abortion on an unemancipated minor. The Parental Consent Requirement does not apply if the unemancipated minor has a court order waiving the parental consent requirement (a "judicial bypass order")

The Parental Consent Requirement has two parts. The first part requires one of the patient's parents, legal guardian, or managing conservator to initial each page of this Form. Their initials mean that they have had the chance to read this information (or to have it read to them) and to ask questions. The initialing of each page can be done at any time and at any location. The second part requires either one of the patient's parents, legal guardian, or managing conservator to sign the Parental Consent in Part V of this Form. This Form must be signed either in the physician's office or clinic in front of a witness, or in any location in front of a person who is a notary public. The purposes of these signing requirements are to help make sure that only those persons listed on the Parental Consent in Part V of this Form are the ones who actually sign it.

**Part II. Surgical and Medical Procedures.**

The surgical and/or medical procedures that are planned to be performed on the patient are the ones that are checked below. As used in this Form, "abortion" means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus.

Surgical Abortion Procedures:

_____ Dilatation and Curettage (D&C)

_____ Dilatation and Evacuation (D&E)

_____ Manual Vacuum Aspiration

_____Machine Vacuum Aspiration

Medical Abortion Procedures:

_____Methotrexate

_____Misoprostol

Other as listed:

_____

_____

**Part III. Risks and Hazards.**

There are risks and hazards related to the surgical and medical procedures planned for the patient. The following list is not meant to scare the patient, but to give her and her parent, legal guardian, or managing conservator adequate information to be used in making their decisions to have the physician perform the particular procedures checked above.

The patient should read and initial the following blanks. Her initials mean she has read the information (or had it read to her) and agrees with the statement.

_____ I have been told by the physician or physician's assistant about the following risks and hazards that may occur in connection with any surgical, medical, and/or diagnostic procedure:

(A) Potential for infection.
(B) Blood clots in veins and lungs.
(C) Hemorrhage.
(D) Allergic reactions.
(E) Even death.

_____ I have been told by the physician or physician's assistant about the followings risks and hazards that may occur with a surgical abortion:

(A) Hemorrhage (heavy bleeding).
(B) A hole in the uterus (uterine perforation) or other damage to the uterus.
(C) Sterility.
(D) Injury to the bowel and/or bladder.
(E) A possible hysterectomy as a result of complication or injury during the procedure.
(F) Failure to remove all products of conception that may result in an additional procedure.

_____ I have been told by the physician or physician's assistant about the followings risks and hazards that may occur with a medical/non-surgical abortion:

(A) Hemorrhage (heavy bleeding).
(B) Failure to remove all products of conception that may result in an additional procedure.
(C) Sterility.
(D) Possible continuation of pregnancy.

_____ I have been told by the physician or physician's assistant about the following risks and hazards that may occur with this particular procedure:

A) Cramping of the uterus or pelvic pain.
(B) Infection of the female organs: uterus, tubes, and ovaries.
(C) Cervical laceration, incompetent cervix.
(D) Emergency treatment for any of the above named complications.
(E) Other as written:

_____

_____

_____I have been told by the physician or physician's assistant about the following other information that is required by law to be discussed before I can give my voluntary and informed consent to an abortion: (See Sections 171.11 and 171.12, Tex. Health & Safety Code):

(1) the probable gestational age of the fetus;
(2) the medical risks associated with carrying the child to term;
(3) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;
(4) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion;
(5) public and private agencies provide pregnancy prevention counseling and media referrals for obtaining pregnancy medications or devices, including emergency contraception for victims of rape or incest; and
(6) the woman has the right to review the printed materials provided by the Texas Department of Health.

**Part IV. Patient's Consent for Surgical or Medical Procedures.**

To meet the Patient Consent Requirement, the patient must complete part IV of this Form. An initial on each blank means that the patient has read (or had the information read to her) and agrees with the statement. The patient's signature means that she is agreeing to have the abortion procedures set out above.

**Patient Consent Statement:**

_____I understand that my doctor_____(print the name of your doctor) is going to perform an abortion on me, which will end my pregnancy and will result in the death of the fetus.

_____I understand that I am not being forced to have this abortion and have the choice on whether to have this procedure.

_____I give my permission to this doctor and such other associates, technical assistants, and other health providers as the doctor thinks is needed to perform the abortion on me using the surgical and medical procedures checked above.

_____I understand that my physician may discover other or different conditions that require additional or different procedures than those planned.

_____I give my permission to my physician and such associates, technical assistants and other health care providers to perform such other procedures that are advisable in their professional judgment.

_____I ☐ **do** ☐ **do not give my permission for the use of blood** and blood products as deemed necessary.

_____I understand that my doctor cannot make any promise regarding the end results of the abortion or my care.

_____I understand that there are risks and hazards that could affect me if I have the surgical or medical procedures checked above.

_____I have been given an opportunity to ask questions about my condition, alternative forms of treatment, risk of non-treatment, the procedures to be used, and the risks and hazards involved.

_____ I understand that information about abortion that is included in the law as the Woman's Right to Know Act has been made available to me as required by Section 171.001, *et seq.*, Tex. Health & Safety Code.

_____ I believe that I have sufficient information to give this informed consent.

This Form has been fully explained to me. I have read it or have had it read to me, the blank spaces have been filled in, and I believe that I understand what it says. By my signature below, I give my voluntary consent to have the surgical and medical procedures performed on me that am listed above.

_____
Printed Name of Patient

_____ _____
Signature of Patient Date

**Part V. Parental Consent for Surgical or Medical Procedures.**

To meet the Parental Consent Requirement, one of the parents, the legal guardian, or the managing conservator of the patient must initial each page of this Form and complete part V. of this Form. An initial on each page blank means that the parent, legal guardian, or managing conservator has had the opportunity to read the information (or to have the information read to them) and has had the opportunity to ask questions to the physician or the physician's assistant about this information. The signature of the parent, legal guardian, or managing conservator means that the person signing is agreeing to have the abortion procedures performed on the patient as set out above.

**Parental Consent Statement:**

_____I understand that the doctor listed above is going to perform an abortion on the patient, which will end her pregnancy and will result in the death of the fetus.

_____ I have had the opportunity to read this Form (or have it read to me) and have initialed each page.

_____I have had the opportunity to ask questions to the physician or the physician's assistant about the information in this Form and the surgical and medical procedures to be performed on the patient.

_____ I believe that I have sufficient information to give this informed consent.

By my signature below, I state and affirm that I am the patient's:

☐ Father ☐ Mother ☐ Legal Guardian ☐ Managing Conservator

By my signature below, I give permission for _____ (print the name of the patient), who is an unemancipated female, to have the surgical or medical procedure set out above.

_____
Printed Name of Parent, Legal Guardian, or Managing Conservator

_____ _____
Signature of Parent, Legal Guardian, or Managing Conservator Date

**Part VI. Physician Declaration:**

I and/or my assistant have explained the procedure and the contents of this Form to the patient and her parent, legal guardian, or managing conservator as required and have answered all questions. To the best of my knowledge, the patient and her parent, legal guardian, or managing conservator have been adequately informed and have consented to the above-described procedure.

_____ _____
Signature of Physician Date

**Part VII. Authentication of Parent, Legal Guardian, or Managing Conservator.**

The signature of the parent, legal guardian, or managing conservator must be authenticated. This means that the parent, legal guardian, or managing conservator must sign Part V. of this Form in front of either a witness in the physician's office or clinic or in front of a person who is a notary public. These choices are explained below:

(A) The signing in front of a witness in the physician's office or clinic can occur at any time prior to the procedure. The signing may be done in the office or clinic of the physician performing the procedure. The signing may be done in the office or clinic of another physician who is involved with the care of the patient if the following conditions are met: (1) there is a referral and communication system in place between the physicians; and (2) there are trained medical personnel in the office where the signing is done who are easily accessible to answer any questions of the patient and/or the parent, legal guardian, or managing conservator.

OR

(B) The signing in front of a person who is a notary public can occur at any time and at any place prior to the procedure. The signed and initialed form with the notary statement than can be brought to the physician's office or clinic by the patient.

These signing requirements do not require the parent, legal guardian, or managing conservator to be present with the patient at the time of the procedure.

**Option (A) - To be completed by the person who witnesses the signing by the parent, legal guardian, or managing conservator in the physician's office or clinic:**

I witnessed the signature of the parent, legal guardian, or managing conservator on Part V. of this Form in the physician's office or clinic.

_____ _____

Printed Name of Witness Date

_____

Signature of Witness

**Option (B) – To be completed by the notary public who notarizes the signing by the parent, legal guardian, or managing conservator, as provided in Part V, above:**

State of Texas §

§

County of _____ §

This instrument was acknowledged before me on the _____ day of _____, A.D., 20____

by _____ (print name).

(SEAL)

_____

Notary Public, State of Texas

My commission expires: _____

# The Supreme Court of Texas

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November 22, 2005

Mr. Charles L. Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Referral of Various Process Server Review Board Matters

Dear Chip:

Justice Hecht has requested that the matters set forth below relating to the Process Server Review Board ("PSRB" or "Board") be referred to the Advisory Committee, specifically the subcommittee responsible for TRCP 103-107 concerning service of process:

- The Board's proposed Code of Professional Conduct for Certified Private Process Servers ("CPPSs") (attached as Appendix A);

- The Board's request to amend section 6(b) of the Supreme Court's order in Misc. Docket No. 05-9122 (June 29, 2005), to expand the Court's approval of the course offered by the Texas Process Servers' Association to courts in all 254 Texas counties. (As issued, the Court's June 29 order approves the TPSA course for all counties except Harris County). Electronically attached to this message as a PDF file in Adobe format is a letter to Justice Hecht from PSRB member Judge Lindsay, of the 280th District Court of Harris County, requesting that the Supreme Court approve civil process service courses only for counties other than Harris County, and to amend section four ("Returns") of the PSRB's proposed Code of Conduct. Electronically attached in MS Word format is a letter from Judge Lindsay to the Justices of the Supreme Court requesting a different amendment to the same section of the proposed Code of Conduct.

- The Board's proposed policy for investigating complaints against process servers (attached at Appendix B);

- The Board's proposal to implement curriculum guidelines for civil process service courses designed to satisfy the requirement of a minimum of seven hours of monitored instruction,

implemented by order of the Supreme Court in Misc. Docket No. 05-9122 (attached as Appendix C);

- The Board's proposal that a CPPS certified by the PSRB be required to complete a minimum of seven hours of continuing education per calendar year on subjects approved by the PSRB that pertain to the process server profession;

- the Board's proposed policy on conduct affecting process server certification, which was approved by the Board and recommended for adoption after being posted for public comment, and is attached as Appendix D; and

- The Board's recommendation to adopt a proposal from the Texas Process Servers Association to create identity cards for process servers. The Board's preference was to request that the Office of Court Administration provide the cards; however, in the alternative, the Board voted to request approval of TPSA's proposal, which is attached as Appendix E.

I will separately send to Richard Orsinger, the subcommittee chair for TRCP 15-165a, copies of any correspondence from members of the judiciary, the bar, and the general public that I have received regarding the above matters. Unless Richard requests otherwise, I will plan to forward such correspondence via the same medium (i.e., paper or electronic) in which it was received by the Court.

Thank you in advance for your thoughtful consideration of these matters. I look forward to meeting you in person and working with you on these and other rules-related issues.

Respectfully submitted,

Jody Hughes
Rules Attorney

## Appendix A

## CODE OF PROFESSIONAL CONDUCT (CPC) OF CERTIFIED PRIVATE PROCESS SERVERS (CPPS) PROMULGATED BY THE PROCESS SERVER REVIEW BOARD (PSRB)

(1) **RESPECT**

A CPPS shall treat with respect all persons with whom the process server interacts in a professional capacity, expressly including any person on whom service is attempted.

(2) **TRESPASSING**

A CPPS shall not trespass on any property in circumstances that could subject the process server to a criminal conviction, regardless of whether such a charge is filed or a conviction obtained. A CPPS shall not trespass on any property in circumstances that would subject the CPPS to civil liability, regardless of whether a civil lawsuit is filed.

(3) **TRUTHFULNESS**

A CPPS shall be completely candid and truthful concerning all process service matters, including, without limitation, the following:

(a) A process server shall not use, submit, or file any document, which is false in whole or in part.

(b) A CPPS shall not falsely swear or commit perjury in any communication to the PSRB or any federal or state regulatory or licensing authority or court.

- **RETURNS**

A CPPS shall comply with all applicable provisions of the Texas Rules of Civil Procedure relating to service of process. A CPPS shall make every effort to provide an accurate and correct-as-to-form return with regard to each document served. If the service performed does not exactly fit the usual form of return, the CPPS shall add or delete information to make the return completely accurate and disclose the true facts.

- **DISCLOSURE OF DUAL CAPACITY**

If a CPPS has a government job in which it is the CPPS's job to serve process in his official capacity, the CPPS shall disclose to the elected official for whom he works that

he also performs this work in a private capacity. A CPPS shall not accept payment privately for any service performed on time for which the CPPS is being paid in an official capacity.

- **WEARING OF OFFICIAL UNIFORMS OR DISPLAYING BADGE OR EMBLEM OF OFFICE**

A CPPS, who is serving papers in a private capacity, shall not serve or attempt to serve any document while wearing any official law enforcement officer uniform or wearing a uniform that resembles an official law enforcement uniform. A CPPS, who is serving papers in a private capacity, shall not display an official law enforcement badge or a badge that resembles an official law enforcement badge while serving or attempting to serve any document. A CPPS may display identification issued or authorized by the Supreme Court of Texas.

- **SERVICE BY LAW FIRM EMPLOYEES**

A CPPS shall not serve any document, other than a subpoena, in any case for a lawyer or law firm by whom the process server is otherwise employed.

- **EXAGGERATING AUTHORITY**

A CPPS shall not exaggerate his authority, nor his position or affiliation with a court or official agency.

- **CONTINUING EDUCATION**

A CPPS shall comply with the continuing education requirements adopted by the Supreme Court.

- **MISREPRESENTATION OF QUALIFICATIONS**

No person may advertise or represent that the person has the qualifications of a CPPS, including professional designations or membership in professional organizations, unless the person holds a then current certification under the terms of the Supreme Court order.

- **MAINTAINING CURRENT ADDRESS**

Each CPPS shall, at all times, keep the PSRB informed of the CPPS's current physical and mailing addresses. Such addresses shall be included on every license application and every license renewal form. In the absence of the submission of a specific written request to change a mailing address, which shall be separate from any other submission, the CPPS's current addresses are presumed to be the addresses on the most recent

registration form. Any request for a change of address shall be sent to the PSRB within 10 days after the change of address becomes effective.

- **COOPERATION WITH COMPLAINT INVESTIGATION**

A CPPS is required to cooperate with the investigation of all complaints within the purview of the PSRB and provide such information as is requested for completing such investigations. A CPPS shall provide to any requesting person the necessary information to file complaints with the PSRB about his or her services. The contact information shall include the current address, phone number, and internet address of the PSRB.

- **REPORTABLE EVENTS**

A CPPS shall report in writing to the PSRB the occurrence of any of the following events within ten (10) days of the date the process server has knowledge of these events:

  - Conviction or imposition of community supervision or deferred adjudication of the CPPS with regard to any of the following:
    - a felony or any crime of which fraud or dishonesty is an element; or
    - any crime involving moral turpitude; or
    - any crime related to the qualifications, functions, or duties of a process server
  - Any disciplinary action, including but not limited to revocation or suspension of a license, registration, or other authority to practice.
  - Refusal by another authority to grant or renew a license, registration, or other authority to deliver process or provide process service in another jurisdiction.
  - Finding of contempt by a state or federal court.

As used in this code, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not be actually imposed until all appeals are exhausted.

(14) **EXPOSE CORRUPT OR DISHONEST CONDUCT OF ANOTHER LICENSEE**

A CPPS shall report to the PSRB any violation of the Code of another CPPS, which can be supported in fact.

A CPPS shall not file a frivolous complaint with the Board.

(15) **MISCONDUCT**

(a) A CPPS shall not violate this Code, knowingly assist or induce another to do so, or violate this Code through the acts of another.

(b) A CPPS shall not engage in fraud or deceit.

(c) A CPPS shall not use or represent that he or she possesses any certificate, college degree, or title to which he or she is not entitled.

(d) A CPPS shall not commit any criminal act that reflects adversely on the CPPS's honesty, trustworthiness, or fitness as a CPPS.

(e) A CPPS shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(f) A CPPS shall not engage in conduct constituting obstruction of justice.

(g) A CPPS who has been held in contempt by a state or federal court is subject to review and/or disciplinary action by the PSRB.

(h) A CPPS shall not engage in the practice of process serving when the CPPS is on inactive status or when the authorization to serve process has been suspended or terminated, including but not limited to situations where a CPPS' right to serve process has been administratively suspended for failure to comply with the continuing education requirements as promulgated by the Supreme Court of Texas.

(i) A CPPS shall not engage the services of a CPPS who is on inactive status or whose process server certification to deliver process has been suspended or terminated.

(j) A CPPS shall not violate any laws of the State of Texas, other states, or of the United States, relating to the professional conduct of a CPPS or to the practice of process serving.

(k) A CPPS shall not violate any Rule promulgated by the Supreme Court of Texas.

(l) In connection with any felony or any crime involving fraud or dishonesty or other conduct involving moral turpitude, a CPPS shall be considered to have engaged in misconduct upon a final conviction, or imposition of community supervision, or the imposition of deferred adjudication.

(m) A CPPS shall be considered to have engaged in misconduct if the judge of any court makes a finding in connection with a case in that judge's court that the CPPS has filed a false return.

(n) A CPPS shall not fail to comply with a final order of any state or federal court unless said order has been lawfully stayed.

(o) A CPPS shall respond to a party's or client's inquiry within a reasonable time. Repeated failure to respond without good cause shall be misconduct.

(p) A CPPS shall not threaten or commit assault or retaliation against parties, make libelous or slanderous statements, or make public allegations of a lack of mental capacity regarding parties, which cannot be supported in fact.

(q.1) A CPPS shall not cause or be party to, directly or indirectly, a breach in the security of the private process server examination in any private process server course.

**Appendix B**

**Policy on Investigating Process Server Complaints**

## 1.0 Receipt of Complaints on Process Servers

All complaints received involving persons serving civil process will be directed to the Complaint Committee Chairman for investigation.

## 2.0 Formal Complaints

All complaints submitted in writing on the approved Texas Process Server Review Board complaint form shall be considered formal complaints and shall be investigated by the Complaint Review Committee until resolution.

2.1 Upon receipt of a formal complaint by the Complaint Committee Chair, the complaint shall be entered and assigned a case number into the PSRB Complaint Tracking System.

2.2 Investigation by the complaint committee members consists of collecting all statements, evidence, or affidavits necessary to make a determination or finding. The information collected should include, at a minimum:

a. Name, address and phone number of complainant.
b. Alternate numbers where complainant can be contacted.
c. Name of process server if known.
d. Date and time of contact.
e. Full description of the complaint.
f. Notarized signature of the complainant.

2.3 All evidence and material related to the complaint shall be available to the committee for determination of the complaint.

2.4 The Process Server will be provided a copy of all complaints as soon as possible and provided an opportunity to give a response to each allegation. Failing to cooperate or provide a response will not deter the investigation and will be treated as an admission of misconduct.

2.5 Any allegation of criminal activity will be referred to the appropriate law enforcement agency for investigation.

## 3. Informal Complaints

All complaints not submitted in writing or on the PSRB Complaint form shall be considered informal unless the incident leading to the complaint compels an independent investigation as determined by the PSRB Chairman. All informal complaints will be investigated to the point possible or necessary with available information.

**4. Findings**

A finding for the resolution of all investigations shall be applied to each complaint with recommendation by the complaint committee using the following guideline for disposition. The details of the investigation and evidence involved may be sensitive and are not to be shared outside the confines of the PSRB prior to disposition.

A. Unfounded –Allegation is false, or incident occurred, but was lawful.

B. Not Substantiated – Insufficient evidence to either prove or disprove.

C. Substantiated – Evidence is enough to prove the allegation.

D. Never Formalized – Complainant failed to submit a written complaint.

**5. Notification Upon Completion**

Upon completion of a review of the investigation on any complaint, the Chairman of the PSRB shall direct a response in writing on all formal complaints, advising the complainant and accused process server of the outcome or disposition on the complaint investigation.

**6. Recommendation For Disciplinary Action**

Upon completion of an investigation of a complaint by the Complaint Committee a recommendation for disposition shall be forwarded to the PSRB along with all accompanying reports, statements, or evidence to support the findings. Action taken by the Chairman of the PSRB will be upon final determination following a vote of the board. Disciplinary recommendations may follow one of the following categories:

A. Written reprimand

B. Probation

C. Temporary Suspension of Certification

D. Permanent Removal of Certification

## Appendix C

**Process Server Review Board**
**Education Curriculum Guidelines**

In accordance to Section 7 of the Supreme Court's Misc Docket number 05-9122:

A civil process service course that meets the following requirements, similar to the courses approved in paragraph 6, may apply to the Board for approval by the Supreme Court. For the course to be recommended for approval the following, at a minimum:

I. A minimum of 7 hours of monitored instruction definition of relevant terms instruction on applicable laws including the historical development of the law, with emphasis on practical training of proper service and return of service and instruction of but not limited to:

Rules governing service and return:
1.1. TCRP 1, Objective Rules
1.2. 6: No service on Sunday
1.3. 15,
1.4. 16, Endorsement of process,
1.5. 103, Who may serve
1.6. 105, Duty of officer or person receiving
1.7. 106, Alternate methods of service
1.8. 106b,
1.9. 107, Return of service using completion and evaluation of sample returns depicting both correct and incorrect returns of service
1.10. 108, Defendant without state
1.11. 108a, service in a foreign country
1.12. 109, citation by publication
1.13. 109a, other substitute service
1.14. 116,
1.15. 118, Amending returns

II. Justice Court Rules
2.1. 536, Who may serve and method of service
2.2. 536a, Duty of officer or person receiving and return of service

III. Articles of the Texas Business Corporation Act:
3.1. 2.11, Service of Process on Corporation
3.2. 8.10, Service of Process on Foreign Corporation

IV. Civil Practices and Remedies Code
4.1. 17.021, Service on Certain Non-corporate Business Agents
4.2. 17.022, Service on Partnership
4.3. 17.024, Service on Political Subdivision
4.4. 17.026, Service on Secretary of State
4.5. 17.062, Substituted Service on Chairman of Texas Transportation Commission
4.6. 22.001, Witness Fees
4.7. 22.002, Distance for Subpoenas
4.8. 22.003, Fees for Witnesses Summoned by a State Agency
4.9. 22.004, Fee for Production or Certification of Documents

V. Rules regarding subpoenas:
5.1. 176, Subpoenas
5.2. 176.1, Form
5.3. 176.2, Required Actions
5.4. 176.3, Limitations
5.5. 176.4, Who May Issue
5.6. 176.5, Service
5.7. 176.6, Response
5.8. 176.7, Protection of Person from Undue Burden and Expense
5.9. 176.8, Enforcement of Subpoena

VI. Instruction on a process server's exposure to criminal liability;

VII. Instruction on unique issues involving family law cases;
7.1. Texas Family Code Chapter 82, Subchapter A., Application for Protective Order
7.2. Texas Family Code Chapter 83, Temporary Ex Parte Orders
7.3. Texas Family Code 85.041, Delivery To Respondent

VIII. Basic competence testing upon completion of the course.

IX. The course curriculum and competence test shall be delivered to the PSRB along with the applicable answers in written format for review and recommendation to the Supreme Court for approval.

X. It will also be required that all courses offered shall give instruction on the Code of Professional Conduct for Private Process Servers, as approved by the Supreme Court.

XI. The methods and instruction for filing complaint against any private process server and the location for which such complaint forms may be found.

XII. The location and content of the Process Servers Review Board website.

XIII. The location of and instruction on completion of the Supreme Court of Texas Private Process Server Application.

XIV. The identification of the applicant or student of continuing education shall be verified both upon attendance and testing by examination of state photo identification.

## Appendix D

## POLICY ON CONDUCT AFFECTING CERTIFICATION TO SERVE PROCESS

### CRIMINAL HISTORY IN GENERAL

The Board may refuse to recommend process server certification to the Supreme Court of a person who has been convicted of (1) any felony or (2) any disqualifying misdemeanor as described herein.

In determining whether a criminal history should cause the rejection of an application the Board may consider the following factors among others:

1. the nature and seriousness of the crime;

2. the extent to which the approval might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

3. the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a Certified Process Server;

4. the extent and nature of the person's past criminal activity;

5. the age of the person when the crime was committed;

6. the amount of time that has elapsed since the person's last criminal activity;

7. the conduct and work activity of the person before and after the criminal activity;

8. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

9. other evidence of the person's fitness, including letters of recommendation.

In addition to fulfilling the requirements above, if the applicant has a criminal history reflecting a conviction for a felony or a misdemeanor other than traffic tickets the applicant shall furnish proof to the Board that the applicant has:

1. maintained a record of steady employment for the past five years;

2. supported the applicant's dependents; and

3. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

## MISDEMEANORS THAT MAY DISQUALIFY AN APPLICANT

The following shall be considered to be misdemeanors relating to the duties and responsibilities of a process server:

Misdemeanors as defined by the Texas Penal Code, which reflect dishonesty, fraud, deceit, misrepresentation, violence, or untrustworthiness, or any misdemeanor that indicates a clear and rational likelihood that the applicant will not properly discharge the responsibilities of a Certified Process Server

Multiple criminal convictions will always be reviewed. Multiple convictions may reflect a pattern of behavior that renders the applicant unfit for the certification from the Supreme Court of Texas

## VIOLATIONS OF THE CODE OF PROFESSIONAL CONDUCT

Behavior that would be in violation of the Code of Professional Conduct, if brought before the Board before an application is approved, may be considered in determining the applicant's fitness to be a process server.

A certified process server is subject to disciplinary action by the board for any violation of the Code of Professional Conduct. Disciplinary action may include A Warning; A warning coupled

with probation; A Suspension for a specified time, or a permanent disqualification to be certified as a process server.

**DISQUALIFICATION FOR FALSE APPLICATION**

Applicants will be automatically disqualified should they present false information on an application form, including intentionally omitting information regarding previous criminal behavior.

**Appendix E**

# Texas Process Servers Association

**P.O. BOX 743875**

**Dallas, Texas 75374-3875**

214.553.9990 / 866.553.9990

Facsimile: 214.340.0201

To: The Supreme Court of Texas
Process Server Review Board
PO Box 12248
Austin, TX 78611

Date: October 27, 2005

From: Gary Thornton

Subject: Suggestions for Process Server ID Cards

Many of the Texas Courts have historically provided ID cards to Process Servers approved to serve process. Attached are examples of the Denton and Harris county ID cards.

Also attached is a suggested prototype for consideration by the Supreme Court.

Private Process Servers have come to rely on these ID cards to properly identify themselves in situations where the public has a need to verify the process server's authorization to serve process. Many state, county and local facilities where process is served (i.e.: jail facilities) require proper identification for entry and service of process.

There is no question that the Private Process Server should be provided with an approved ID card.

Issues:

What information should be placed on the ID card?

How will the Supreme Court approve the ID card?

Should the ID card have a picture or a seal?

Which seal should be used?

How will the logistics and expenses of the ID card be handled?

How will security be maintained for issuance of ID cards?

Suggested Solutions to the issues:

It is suggested that the Process Server Review Board review the attached examples and prototype and approve the final wording for the ID card and forward to the Supreme Court for approval.

The question of picture or seal is actually an issue of logistics. The application of a picture to the ID card will require the process server to either submit a passport size photo, which will have to be laminated to the card or to electronically submit a photo to the producer of the card. This will inherently increase the expense.

If the court decides upon the seal as opposed to the picture, it should be decided whether to use the seal of the State of Texas or the seal of The Supreme Court of The State of Texas.

Working on the assumption that the Supreme Court is not inclined to become involved in the logistics of ID card production, the following are suggestions for logistics and security.

It is suggested that the Texas Process Server's Association be charged with the responsibility of producing and forwarding the cards to process servers as follows:

> The Texas Process Server's Association would contract with a reputable security card fulfillment company to produce the cards.

The TPSA would accept applications for the cards, check the applicant for Supreme Court authorization and forward the information to the fulfillment company. This process would be managed to the extent possible via email.

The fulfillment company would forward the card to the applicant.

The TPSA would make the cards available to members and non-members of the association at a reasonable fee, which would cover the costs of the card plus a reasonable margin to compensate the TPSA for handling the process.

Please let me know if I or any of the TPSA officers can be of assistance in moving this suggestion forward.

Regards,

Gary Thornton
Immediate Past President, TPSA
Chairman, Education Committee, TPSA

TONY LINDSAY
JUDGE 280TH DISTRICT COURT
CIVIL COURTS BUILDING
HOUSTON, TEXAS 77002
(713) 755-5518

October 27, 2005

Supreme Court of Texas
201 West 14th Street, Rm. 104
Austin, TX 78711

Attention: Chief Justice Wallace B. Jefferson
Justice Don R. Willett
Justice Dale Wainwright
Justice David Medina
Justice Phil Johnson
Justice Nathan L. Hecht
Justice Harriet O'Neill
Justice Scott Brister
Justice Paul W. Green

Dear Supreme Court Justices:

I respectfully request the Court to consider adding the following to the proposed "Rules of Professional Conduct (RPC) of Certified Private Process Servers (CPPS)," Section (4) "Returns":

> A process server shall promptly file with the appropriate court a complete return with regard to each document served.
> A process server may furnish a copy of the return to any person, but this is not a substitute for filing the return.

Rule 105 of Texas Rules of Civil Procedure says:

> The officer or authorized person to whom process is delivered shall endorse thereon the day and hour on which he received it, and shall execute and return the same without delay.

I submit that Rule 105 already requires the action outlined in the first paragraph above; but if I am correct, an express statement is needed because many process servers currently do not file the returns they generate. Instead, many process servers have a policy of delivering the returns to the attorney who paid for the service and relying on that attorney to either file or not file the return as the attorney chooses. Three arguments sometimes put forth in support of this procedure are:

(1) Because the attorney paid for the process and requested that the return be delivered to the attorney, a process server should be responsive to the attorney who hires the process server and should follow the wishes of the attorney.

(2) The attorney needs to receive the return before it is filed to decide if changes need to be made in the return.

(3) Attorneys may have their own reasons for not wanting the return to be promptly filed.

Texas law gives great weight to the presumed accuracy of filed returns. Even if a person was never served at all and knew nothing about the lawsuit until a constable arrived with a writ of execution, the unsuspecting defendant may not challenge the service without corroboration. See Primate Constr., Inc. v. Silver, 884 S.W.2d 151, 152 (Tex. 1994). Even with considerable corroboration, a trial court might nevertheless decide that the return was correct and the defendant was served. See Caldwell v. Barnes, 154 S.W.3d 93, (Tex 2004).

Surely the requirement that process be served by a disinterested person (Rule 103) is an important consideration in allowing such weight to be given to ordinary representations on a piece of paper called a "return". Allowing the process server to treat the attorney as an employer and the return as an item that the attorney has bought and paid for subverts this important basis for giving presumptive credibility to a return in the first place.

In addition, process servers sometimes do not file returns because the attorney has not paid the service fee; and the return is being held as sort of collateral. I submit that, once a process service has been performed, the process server owes a duty to the court to file the return directly and promptly with the court; and that other means of collection should be found (such as getting payment up front).

Sincerely,

Tony Lindsay

Tony Lindsay

CC: Joseph Hughes, Texas Supreme Court Rules Attorney

TONY LINDSAY
JUDGE, 280TH DISTRICT COURT
CIVIL COURTS BUILDING
HOUSTON, TEXAS 77002
(713)755-5518

Justice Nathan L. Hecht
Supreme Court of Texas
201 West 14th Street, Rm. 104
Austin, TX 78711

October 29, 2005

Re: Process servers
Two Requests

Dear Justice Hecht:

At the meeting yesterday, the Review Board voted over my objection to recommend to the Court the approval of various process server courses for all counties, including Harris County. The judges of Harris County very much appreciated the consideration given to Harris County by the Court's order, effective July 1, 2005, allowing Harris County to retain some control over the education of process servers who will serve process for Harris County courts.

**REQUEST #1:** I request that the Court NOT WITHDRAW that consideration almost as soon as it has begun by now approving all courses for all counties; but rather to approve the courses only for all counties other than Harris County.

The people who teach the courses in question are neither lawyers nor judges; and I find from feedback received at the Harris County course that some misleading or incomplete information is disseminated by these well-meaning folks. One of the alarming currently popular misconceptions that is either taught or allowed to be misunderstood is about the case of Dosamantes v. Dosamantes, 500 S.W. 2d 233 (Texarkana 1973), which says:

> Generally, one who is within jurisdiction has obligation to accept service when it is reasonably attempted and he is usually held to have been personally served if he physically refuses to accept papers and they are then deposited in an appropriate place in his presence or near him where he is likely to find them, but he must also be informed of nature of process and that service is being attempted. (copied from course material, not directly from opinion).

The above quotation is dicta in the opinion, but is represented as a holding of the court. The holding of the case was that the service was no good. The case gives little guidance as to what exactly would be close enough to be good.

My most recent brush with Dosamantes involved a process server who filed a return representing that he had performed delivery in person to a certain named defendant. After a phone call from the person's wife, a letter from the person's wife, and an oral hearing at which the process server testified, I concluded that the true facts were: (1) process server thought he knew defendant's address and he went to the address given; (2) process server knocked on the door and wife came to the door; (3) process server asked to speak to named defendant; (4) wife said her husband was not the named defendant and refused to call husband to the door; (5) process server dropped the citation in the yard and left.

I doubt that the foregoing described service would have been valid, even if the victim had actually been the named defendant, which he was not. If the wrong person's wife had not been responsible enough to call the court, an unsuspecting victim would have had a default judgment against him and might never have been able to prove by adequate corroboration that he was not served. This example demonstrates more than one violation of procedure; but one thing it shows is the notion loose out there among process servers that they are free to state on a return that they have delivered a citation "in person" if, in their own judgment, they think they have met Dosamantes standards. At the very least, if a process server is relying on Dosamantes to make his otherwise invalid service valid, the process server should describe in detail on the return what he actually did and said and what the target subject did and said so that the attorney and the trial judge can later decide whether service was good or not, if the issue comes up.

**REQUEST #2:** Please add to the Code of Professional Conduct in Section (4) "Returns":

> If a process server purports to deliver a document under circumstances the process server believes to be allowed under Dosamantes v. Dosamantes, the details shall be stated in the return, which may not recite merely that the document was delivered "in person."

Thank you for giving thought to my requests.

Sincerely,

Tony Lindsay

Tony Lindsay
Judge, 280th District Court



cc: Chief Justice Wallace B. Jefferson
Justice Don R. Willett
Justice Dale Wainwright
Justice David Medina
Justice Phil Johnson
Justice Harriet O'Neill
Justice Scott Brister
Justice Paul W. Green
Joseph Hughes, Texas Supreme Court Rules Attorney

# Process Service Review Board

## Origin & Mission

The Texas Supreme Court approved amendments to Rules 103 and 536(a) of the Texas Rules of Civil Procedure, effective July 1, 2005, governing statewide certification of process servers. The Court also issued a companion order to establish the framework for certification of those approved to serve process under the revised rules, to approve of certain existing civil process service courses, and to establish the framework for the Board to approve additional courses. The Court also approved a companion order that establishes the membership of the Process Service Review Board, and an order appointing Mr. Carl Weeks as Chair.

**The Mission of the Process Service Review Board is to improve the standards for persons authorized to serve process and to reduce the disparity among Texas civil courts for approving persons to serve process, by making recommendations to the Supreme Court of Texas on the certification of individuals and the approval of courses.**

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**PLEASE DO NOT SEEK GUIDANCE FROM THE STAFF OF THE SUPREME COURT OR THE OFFICE OF COURT ADMINISTRATION.**

The Process Service Review Board 's voicemail may be reached at **512.463.2713**. Please make sure you have read all the information on the website before you call the Board and allow at least 7 working days for a response from the Board.

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## Members & Committees

**Chairman:** Mr. Carl Weeks, Weeks and Associates, Austin

Honorable Tony Lindsay, Judge, 280 th Judicial District, Houston

Honorable Connie Mayfield, Justice of the Peace, Navarro County Precinct 4, Corsicana

Honorable Lois Rogers, District Clerk, Smith County, Tyler

Honorable Ron Hickman, Constable, Harris County Precinct 4, Houston

Mr. Eric Jarvis, Watts Law Firm LLP, McAllen

Mr. Jim Atwater, Atwater Enterprises, Midland

Mr. Justiss Rasberry, Brannon Rasberry and Associates Inc., El Paso

Mr. Mark P. Blenden, Blenden Law Firm, Bedford [ order ]

**At the initial meeting held August 12, 2005, the following committees were appointed:**

**Complaint Committee -** Chair Ron Hickman, members Jim Atwater and Connie Mayfield

**Code of Conduct Committee -** Chair Judge Lindsay, members Justiss Rasberry and Eric Jarvis

**Criminal History Effect Committee -** Chair Carl Weeks, members Judge Lindsay and Ron Hickman

**Curriculum Committee -** Chair Justiss Rasberry, members Judge Lindsay, Connie Mayfield, and Jim Atwater

**Process Service Review Board Meeting:**

**Fourth meeting of PSRB**
3rd Court of Appeals Courtroom
201 West 14th Street
Friday, April 28, 2006
**9:00 AM**

- Process service application [pdf]
- Board Member Application [pdf]
- Instruction sheet [pdf]
- Request for personal criminal history [pdf]
- Educational Postings [pdf]
- Agendas & Minutes
- Frequently Asked Questions
- P.S.R.B Complaint Form [pdf]
- Contact P.S.R.B

Complete Statewide list of certified process servers

**Alphabetical certified process servers list:** A B C D E F G H I J K L M N O P Q R S T U V W X Y Z





# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 05-9122

**CERTIFICATION OF PERSONS AUTHORIZED TO SERVE PROCESS UNDER RULES 103 AND 536(a), TEXAS RULES OF CIVIL PROCEDURE (AMENDED)**

Rules 103 and 536(a), Texas Rules of Civil Procedure, permit, among others, any person who is not a party to or interested in the outcome of a suit and who is certified under order of the Supreme Court of Texas to serve process. To improve the standards for persons authorized to serve process and to reduce the disparity among Texas civil courts for approving persons to serve process,

**IT IS ORDERED**:

1. To be certified to serve process under Rules 103 and 536(a), Texas Rules of Civil Procedure, a person must file with the Clerk of the Supreme Court a sworn application in the form prescribed by the Court. The application must contain a statement that the applicant has not been convicted of a felony or of a misdemeanor involving moral turpitude. Form applications may be obtained in the Clerk's office or on the Supreme Court website. The application must include a criminal history record obtained within the preceding 90 days from the Texas Department of Public Safety in Austin, Texas, and a certificate from the director of a civil process service course approved as provided by this Order that the applicant has completed the approved course within the prior year.

2. Applications will be reviewed and approved or rejected for good cause by the Texas Process Service Review Board, appointed by the Court. The Board will notify each applicant of its action, and for each person certified, will post on a list maintained on the Supreme Court website the person's name and an assigned identification number. The Office of Court Administration will provide clerical assistance to the Board.

3. Certification is effective for three years from the last day of the month it issues.

4. Certification may be revoked for good cause, including a conviction of a felony or of a misdemeanor involving moral turpitude. A person suffering such a conviction must immediately notify the Clerk of the Supreme Court and cease to serve process.

5. A person must not represent that he or she is certified under this Order if certification has not been approved, has expired, or has been revoked.

6. The following civil process service courses are approved:

a. the course now offered by the Houston Young Lawyer's Association, for certification for every state court;

b. the course now offered by the Texas Process Server's Association, for certification except for courts in Harris County;

c. a course offered by an academy or other provider licensed or approved by the Texas Commission on Law Enforcement, for certification for every state court.

7. A civil process service course that meets the following requirements, similar to the courses approved in paragraph 6, may apply to the Board for approval by the Court:

a. a minimum of 7 hours of monitored instruction;

b. instruction on applicable laws, including the historical development of the law, with emphasis on practical training of proper service and return of service (for example, using sample returns depicting both correct and incorrect returns of service);

c. instruction on a process server's exposure to criminal liability;

d. instruction on unique issues involving family law cases; and

e. basic competence testing upon completion of the course.

8. No non-governmental organization that offers an approved civil process service course may make membership in the organization a prerequisite to taking the course.

9. The effective date of this Order is July 1, 2005. A person who on that date is shown to have met the requirements for an approved private process server already in place in Dallas County, Denton County, or Harris County is considered to have been certified under this Order as if the person had complied with this Order on that date. Persons meeting the Harris County requirements will be certified to serve for all Texas courts. Persons meeting the requirements set for Dallas or Denton counties will be certified to serve all courts except for courts in Harris County.

SIGNED AND ENTERED this 29th day of June, 2005.

/s/
Wallace B. Jefferson, Chief Justice

/s/
Nathan L. Hecht, Justice

/s/
J. Dale Wainwright, Justice

/s/
Scott Brister, Justice

/s/
David M. Medina, Justice

/s/
Paul W. Green, Justice

/s/
Phil Johnson, Justice

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 05-9123

**APPOINTMENTS TO THE**
**PRIVATE PROCESS SERVER REVIEW BOARD**

The Supreme Court hereby appoints the following persons to the Texas Private Process Server Review Board:

Honorable Tony Lindsay, Judge, 280th Judicial District, Houston
Honorable Connie Mayfield, Justice of the Peace, Navarro County Precinct 4, Corsicana
Honorable Lois Rogers, District Clerk, Smith County, Tyler
Honorable Ron Hickman, Constable, Harris County Precinct 4, Houston
Mr. Eric Jarvis, Watts Law Firm, LLP, McAllen
Mr. Jim Atwater, Atwater Enterprises, Midland
Mr. Brad Bacom, Bacom Investigation Service, Beaumont
Mr. Justiss Rasberry, Brannon Rasberry and Associates Inc., El Paso
Mr. Carl Weeks, Weeks & Associates, Austin

The appointments are for three year terms and are effective July 1, 2005.

SIGNED AND ENTERED this 29th day of June, 2005.

/s/
Wallace B. Jefferson, Chief Justice

/s/
Nathan L. Hecht, Justice

/s/
J. Dale Wainwright, Justice

/s/
Scott Brister, Justice

/s/
David M. Medina, Justice

/s/
Paul W. Green, Justice

/s/
Phil Johnson, Justice

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 05-9137

## ORDER APPOINTING CHAIR OF THE PRIVATE PROCESS SERVER REVIEW BOARD

The Supreme Court hereby appoints Carl Weeks of Austin as chair of the Texas Private Process Server Review Board for a term of three years.

SIGNED AND ENTERED this 27th day of July, 2005.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

## Senneff, Angie

**From:** Sullivan, Judge Kent (DCA) [Kent_Sullivan@Justex.net]
**Sent:** Friday, April 07, 2006 4:25 PM
**To:** Babcock, Chip; 'Nathan Hecht'
**Cc:** Senneff, Angie
**Subject:** Supreme Court Advisory Committee - Potential Amendment of Rule 21
**Attachments:** Rule21Amendment.doc

Per our earlier discussion, I am writing with the request that we consider amending Rule 21 by enlarging the minimum notice requirement set forth in that rule. I believe that three days is an inadequate statewide minimum notice requirement for hearings consistent with the contemporary administration of justice. Candidly, I think it is inadequate preparation time for almost any event with potentially significant legal consequences. It is particularly inadequate, however, for the hearing of a motion that, in fairness, requires a substantive written response in advance of the hearing. There is little chance that a court will have the opportunity to receive, review, and digest a motion and response involving an issue of any complexity in so short a time period.

Our current rule is also particularly troublesome in a state as geographically large as Texas. This state is increasingly a forum for litigation of national and international significance. Consequently, it is not uncommon for a forum to be in a location relatively remote to some of the parties or their counsel. A three-day rule disproportionately burdens out-of-town litigants. An expanded notice period would help to avoid any appearance of parochialism or unfairness.

I have attached a draft of an amendment to Rule 21 for the consideration of the Committee. My student law clerks also prepared a chart setting forth some of the similar
notice provisions applicable in other jurisdictions. I thought I would forward it as well as a possible reference.

Thank you for your consideration.

KCS

Judge Kent C. Sullivan
80th District Court
Harris County Civil Courthouse
Houston, Texas 77002
(713) 368-6100

Rule 21 Filing and Serving Pleadings and Motions.

Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefor, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.

**Deleted:** An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three days before the time specified for the hearing, unless otherwise provided by these rules or shortened by the court.

If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney in charge.

The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application.

After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

---

[New]

Any motion [or any notice of hearing] filed shall be served upon all other parties not less than ten (10) days before the time specified for any hearing except:

(1) as otherwise provided for by these rules; NLH – other rules have 3-day notice requirements

(2) upon agreement of the parties; or

(3) upon written motion and leave of court for good cause shown.

Such motion shall include written notice of the date and time of any scheduled hearing. Any desired written response shall be filed and served upon all other parties not less than three (3) days before any hearing.

The term "hearing" as used in this rule includes written submission to the Court (if disposition is scheduled without oral argument) as well as an oral hearing.

[Add – something that specifically says this doesn't apply to mtns presented during trial / hearing]

## State Notice Requirements

| State | Minimum Notice Prior to Disposition: | Citation |
|---|---|---|
| Arizona | 10 days[i] | ARIZ. R. CIV. P. 7.1 |
| California | 16 days[ii] | CAL. CODE CIV. PROC. § 1005 (2006) |
| District of Columbia | 10 days[iii] | D.C. S.C.R. CIVIL Rule 5 (2006) |
| Florida | Reasonable time[iv] | FLA. R. CIV. P. 1.090 (2006) |
| Massachusetts | 7 days | MASS. R. CIV. P. 6(c) |
| Michigan | 9 days[v] | M.C.R. 2.119 (2006) |
| New York | 8 days[vi] | N.Y. C.P.L.R. 2214 (2006) |
| Ohio | 7 days | OHIO CIV. R. 6 (2006) |
| Pennsylvania | 20 days[vii] | PA. R.C.P. 208.3 (2005) |
| U.S. District Court, N.D. Tex. | 20 days[viii] | U.S.D.C. N.D. TX LR 7.1 (2005) |
| U.S. District Court, S.D. Tex. | 20 days[ix] | U.S.D.C. S.D.TX LR 7 (2005) |
| U.S. District Court, E.D. Tex. | 12 days[x] | U.S.D.C. E.D.TX LR CV 7 (2005) |
| U.S. District Court, W.D. Tex | 11 days[xi] | U.S.D.C. W.D. TX R. CV 7 (2005) |

[i] **Arizona**: Once a motion is filed and served the responding party has 10 days to file an answer. The moving party has 5 days thereafter to file a reply to the response. If service is made by mail 5 calendar days are to be added to the prescribed period.

[ii] **California**: All motions should be served and filed at least 16 days before the hearing. If notice is served by mail 5 days must be added if notice is sent within the state, 10 days if notice is sent to a state other than California, and 20 days must be added if notice is sent outside the U.S.

[iii] **District of Columbia**: Once a motion is filed the responding party has 10 days to file an answer or the motion may be deemed conceded.

[iv] **Florida**: Florida courts have held that notice of hearing served two working days before the date set for hearing was not reasonable and that a party must have actual notice and time to appear. *See, Harreld v. Harreld*, 682 So. 2d 635 (Fla. Dist. Ct. App. 2d Dist. 1996); *Donner v. Smith*, 517 So. 2d 622 (Fla. Dist. Ct. App. 4th Dist. 1984).

[v] **Michigan**: If a motion is served by mail the notice and motion must be served at least 9 days before the time set for hearing; if by delivery the motion and notice must be served within 7 days of the hearing.

[vi] **New York**: A motion and notice thereof should be served 8 days prior to the date set for hearing. Any response thereto should be filed at least 2 days before the date set for hearing. However, if the motion and notice are served 12 days prior to the hearing and the motion requests the responding party to answer at least 7 days prior to the hearing the responding party must acquiesce. Any reply to a response must be filed at least 1 day before the date set for the hearing.

[vii] **Pennsylvania**: Once a motion is filed and served the responding party has 20 days to file an answer to the motion unless the time requirement is modified by a court order or enlarged by a local rule.
[viii] **US District Court for the N.D. of Texas**: A response must be filed within 20 days from the date the motion is filed. A reply to the response must be made within 15 days from the date the response is filed.
[ix] **US District Court for the S.D. of Texas**: Opposed motions will be submitted to the judge 20 days from filing and any response thereto must be filed by the submission day.
[x] **US District Court for the E.D. of Texas**: A response must be filed within 12 days from the date the motion is served. A reply to the response must be made within 5 days from the date the response is served.
[xi] **US District Court for the W.D. of Texas**: A response must be filed within 11 days from the date the motion is filed. A reply to the response must be filed within 11 days from the date the response is served.