

IN THE SUPREME COURT OF TEXAS

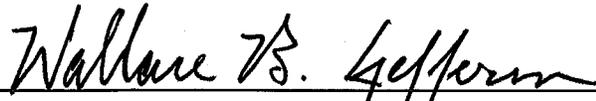
Misc. Docket No. 07-9035

FINAL APPROVAL OF AMENDMENTS TO TEXAS PARENTAL NOTIFICATION RULES AND FORMS FOR USE IN PROCEEDINGS UNDER CHAPTER 33 OF THE FAMILY CODE

ORDERED that:

1. The Texas Parental Notification Rules, adopted by Order of Misc. Docket No. 99-9247 (Dec. 22, 1999) and amended by Order of Misc. Docket No. 00-9171 (Nov. 8, 2000), are revised by amending the Explanatory Statement that prefaces the Rules, and Rules 1.1, 1.3(c), 1.10, 2.2(f), 2.3(a), and 2.4(d), as follows.
2. The Texas Parental Notification Forms, adopted by Order of Misc. Docket No. 99-9243 (Dec. 15, 1999) and amended by Order of Misc. Docket No. 00-9171 (Nov. 8, 2000), are revised by adding Forms 2I and 2J as follows.
3. As ordered in Misc. Docket No. 06-9143, these changes take effect March 1, 2007.
4. The Clerk is directed to:
 - a. post a copy of this Order on the Court's Internet website at www.courts.state.tx.us
 - b. file a copy of this Order with the Secretary of State;
 - c. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - d. send a copy of this Order to each member of the Legislature; and
 - e. submit a copy of the Order for publication in the *Texas Register*.

SIGNED AND ENTERED this 27th day of February, 2007.



Wallace B. Jefferson, Chief Justice



Nathan L. Hecht, Justice



Harriet O'Neill, Justice

J. Dale Wainwright, Justice



Scott Brister, Justice

David M. Medina, Justice



Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice

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).

In 2005, the Legislature amended the Texas Occupations Code to prohibit a physician from performing an abortion on an unemancipated minor

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

Act of May 27, 2005, 79th Leg., R.S., ch. 269, §1.42, 2005 Tex. Gen. Laws 734 (S.B. 419) (codified at Tex. Occ. Code §164.052(a)(19)). The parental consent law does not direct the Supreme Court to provide procedural rules implementing its provisions but instead expressly references the judicial bypass provisions in the parental notification law as providing an exception to the parental consent requirement. The procedures governing application for a judicial bypass to the parental notification requirement are set forth in the existing Parental Notification Rules. In addition, the parental consent law requires the Texas Medical Board to adopt the forms necessary for physicians to obtain the consent required by law to perform an abortion upon an unemancipated minor. See *id.* (codified at Tex. Occ. Code §164.052(c)). Those forms are published at 22 Tex. Admin. Code §165.6(f) and are available on the Texas Medical Board's website, at www.tmb.state.tx.us/rules/docs/Current%20Rules%20-%20%201-4-07.doc.

The notes and comments appended to the rules are intended to inform their construction and application by courts and practitioners.

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). All references in these rules to “minor” refer to the minor applicant. Other Texas court rules — including the Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, Rules of Judicial Administration, and local rules approved by the Supreme Court — also apply, but when the application of another rule would be inconsistent with the general framework or policy of Chapter 33, Family Code, or these rules, these rules control.

1.3 Anonymity of Minor Protected.

(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 with a copy to the guardian ad litem. A minor's attorney must serve on the guardian ad litem instanter a copy of any document filed with the court. A guardian ad litem must serve on a minor's attorney instanter a copy of any document filed with the court. ~~This~~ These requirements takes effect when an attorney appears for the minor, or when the clerk has notified the minor of the appointment of an attorney or guardian ad litem.

1.10 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 and guardian ad litem. The court to which the brief is submitted must maintain the brief as part of the confidential case file in accordance with Rule 1.4.

(b) **Public or General Briefs.** Any person may submit a brief addressing any matter relating to proceedings under Chapter 33, Family Code. Such a 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 an electronic copy of the brief, must also be submitted to the Supreme Court of Texas. When an appeal of a proceeding is filed, the clerk of the court of appeals or the Supreme Court must notify the ~~parties to the appeal~~ minor's attorney and guardian ad litem of the existence of any brief ~~filed~~ submitted under this subsection and must make the brief available for inspection and copying. Upon ~~submission~~ receipt of an electronic copy of an amicus brief submitted under this subsection, the Clerk of the Supreme Court must, as soon as practicable, have the brief posted on the Texas Judiciary Internet site and make it available to the public for inspection and copying.

2.2 Clerk's Duties.

(f) **Orders.** The clerk must provide the minor's ~~and the attorney~~ and the guardian ad litem with copies of all court orders, including findings of fact and conclusions of law.

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 applicant;

2.4 Hearing.

(d) *Record.* ~~If the minor appeals, or if there is evidence of past or potential abuse of the minor, the hearing must be transcribed instant.~~ The court, the minor's attorney, or the guardian ad litem may request that the record — the clerk's record and reporter's record — be prepared. A request by the minor's attorney or guardian ad litem must be in writing and may be, but is not required to be, on Form 2I (if an appeal will be taken) or 2J (if an appeal will not be taken). The court reporter must provide an original and two copies of the reporter's record to the clerk. When the record has been prepared, the clerk must contact the minor's attorney and the guardian ad litem at the telephone numbers shown on Form 2I or 2J and make it available to them. The record must be prepared and made available instant if it has been requested for appeal or if a belief that there is evidence of past or potential abuse of the minor is stated on the record or submitted to the court in writing. When a notice of appeal is filed, the clerk must forward the record to the court of appeals in accordance with Rule 3.2(b).

Form 2I: NOTICE TO CLERK AND COURT REPORTER TO PREPARE RECORDS

CAUSE NO. _____

IN RE JANE DOE:

This matter was heard on the _____ day of _____, _____. The Court has issued a final judgment. **Jane Doe may desire to appeal.** Jane Doe requests the court reporter and appropriate clerk to prepare instant a record of the trial proceedings and make it available to:

(Name and address of guardian ad litem)

(Name and address of minor's attorney)

Immediately upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

(Telephone number for guardian ad litem)

(Telephone number for minor's attorney)

A copy of this notice has been given to both the appropriate clerk and court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the _____ day of _____, _____ at _____ [time] a.m./p.m [circle one]

ATTORNEY

GUARDIAN AD LITEM

Caution: no officials or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.

Form 2J: NOTICE TO CLERK AND COURT REPORTER TO PREPARE RECORDS

CAUSE NO. _____

IN RE JANE DOE:

This matter was heard on the _____ day of _____, _____. The Court has issued a final judgment and **no appeal will be taken**. Jane Doe's attorney/guardian ad litem requests the court reporter and appropriate clerk to prepare a record of the trial proceedings and make it available to:

(Name and address of guardian ad litem)

(Name and address of minor's attorney)

Upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

(Telephone number for guardian ad litem)

(Telephone number for minor's attorney)

A copy of this notice has been given to both the appropriate clerk and court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the _____ day of _____, _____ at _____ [time] a.m./p.m [circle one]

ATTORNEY

GUARDIAN AD LITEM

Caution: no officials or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings—including the minor's parent, managing conservator, or legal guardian—that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.