

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9008

ORDER AMENDING TEXAS RULE OF CIVIL PROCEDURE 277

ORDERED that:

1. House Bill 7, enacted by the 85th Legislature, directs interested parties to “review the form of jury submissions” and to “make recommendations . . . regarding whether broad-form or specific jury questions should be required in suits affecting the parent-child relationship filed by” the Department of Family and Protective Services (“DFPS”). Act of May 30, 2017, 85th Leg., R.S., ch. 317, § 6 (H.B. 7) (codified at TEX. FAM. CODE § 105.002(d)).
2. The Task Force for Procedural Rules in Suits Affecting the Parent-Child Relationship filed by a Governmental Entity—appointed by the Court in Miscellaneous Docket No. 17-9070 to address this directive and other issues—recommended requiring specific jury questions in both private and DFPS-filed parental termination cases. The Task Force also drafted a pattern jury charge.
3. After consideration, the Court accepts the Task Force’s recommendation to require specific jury questions in both private and DFPS-filed parental termination cases and approves the following amendments to Rule 277 of the Texas Rules of Civil Procedure.
4. The amendments take effect May 1, 2020 and supersede *Texas Department of Human Services v. E.B.*, 802 S.W.2d 647 (Tex. 1990).
5. The amendments may be changed before May 1, 2020 in response to public comments. Written comments should be sent to rulescomments@txcourts.gov. The Court requests that comments be sent by April 1, 2020.
6. The Task Force’s pattern jury charge is referred to the Texas Pattern Jury Charges Family and Probate Committee (“PJC Committee”) for consideration. The PJC Committee should also consider the work of the Supreme Court Advisory Committee. The pattern jury charge approved by the PJC Committee should:

- a. submit a separate question on each individual statutory ground for termination of the parent-child relationship, TEX. FAM. CODE § 161.001(b)(1), as to each parent and each child;
 - b. submit a separate question on whether termination of the parent-child relationship is in the best interest of the child, TEX. FAM. CODE § 161.001(b)(2), as to each parent and each child; and
 - c. predicate the best-interest question on an affirmative answer to at least one termination-ground question.
7. The Clerk is directed to:
- a. file a copy of this order with the Secretary of State;
 - b. 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*;
 - c. send a copy of this order to each elected member of the Legislature; and
 - d. submit a copy of the order for publication in the *Texas Register*.

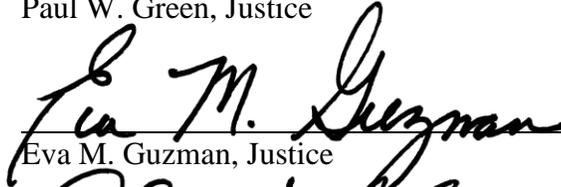
Dated: January 8, 2020



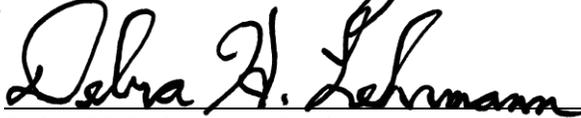
Nathan L. Hecht, Chief Justice



Paul W. Green, Justice



Eva M. Guzman, Justice



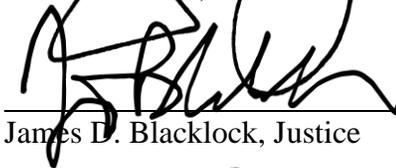
Debra H. Lehrmann, Justice



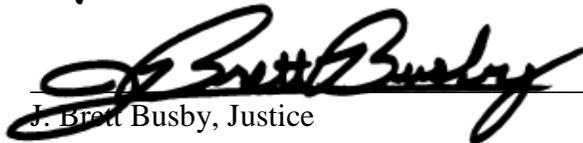
Jeffrey S. Boyd, Justice



John F. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

RULE 277. SUBMISSION TO THE JURY

In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions. The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict.

Inferential rebuttal questions shall not be submitted in the charge. The placing of the burden of proof may be accomplished by instructions rather than by inclusion in the question.

In any cause in which the jury is required to apportion the loss among the parties the court shall submit a question or questions inquiring what percentage, if any, of the negligence or causation, as the case may be, that caused the occurrence or injury in question is attributable to each of the persons found to have been culpable. The court shall also instruct the jury to answer the damage question or questions without any reduction because of the percentage of negligence or causation, if any, of the person injured. The court may predicate the damage question or questions upon affirmative findings of liability.

In a suit in which termination of the parent-child relationship is requested, the court shall submit separate questions for each parent and each child on (1) each individual statutory ground for termination of the parent-child relationship and (2) whether termination of the parent-child relationship is in the best interest of the child. The court shall predicate the best-interest question upon an affirmative finding of at least one termination ground.

The court may submit a question disjunctively when it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists.

The court shall not in its charge comment directly on the weight of the evidence or advise the jury of the effect of their answers, but the court's charge shall not be objectionable on the ground that it incidentally constitutes a comment on the weight of the evidence or advises the jury of the effect of their answers when it is properly a part of an instruction or definition.

Comment to 2020 change: Rule 277 is revised to require a jury question on each individual statutory ground for termination as to each parent and each child without requiring further granulated questions for subparts of an individual ground for termination. Rule 277 is also revised to require a separate question on best interest of the child as to each parent and each child that is predicated on an affirmative answer to at least one termination-ground question. The revisions supersede *Texas Department of Human Services v. E.B.*, 802 S.W.2d 647 (Tex. 1990).