

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 00- 9171

ORDER APPROVING 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 dated December 22, 1999, in Misc. Docket No. 99-9247, are revised as follows:
 - a. Rules 1.4(b), 1.6(a), 1.9, and 3.3(b) are amended;
 - b. Comments 3 and 8 to Rule 1 and Comment 1 to Rule 2 are amended; and
 - c. Rule 1.10 and Comment 9 to Rule 1 are added.
2. The Texas Parental Notification Forms, adopted by Order dated December 15, 1999, in Misc. Docket No. 99-9243, are revised as follows:
 - a. Forms 1A, 2D, and 2F are amended; and
 - b. Forms 2G and 2H are added.
3. These changes, with any modifications made after public comments are received, take effect March 1, 2001.

4. In a proceeding under Chapter 33 of the Family Code in which the final ruling in the proceeding occurred on or before February 28, 2001, an order for the State to pay fees and costs under Rule 1.9, Texas Parental Notification Rules, is valid only if the order is signed by the judge and sent to the Texas Department of Health not later than May 30, 2001.

5. The Clerk is directed forthwith to:

- a. file a copy of this Order with the Secretary of State;
- b. to mail a copy of this Order to each member of the Legislature;
- c. to 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*; and
- d. to cause a copy of this Order to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

BY THE COURT, IN CHAMBERS, this 8th day of November, 2000.

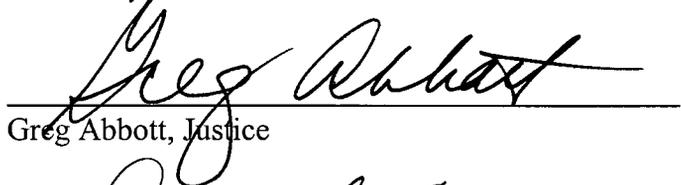

Thomas R. Phillips, Chief Justice

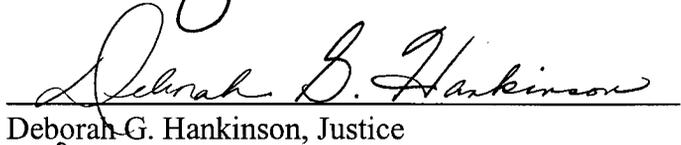

Nathan L. Hecht, Justice

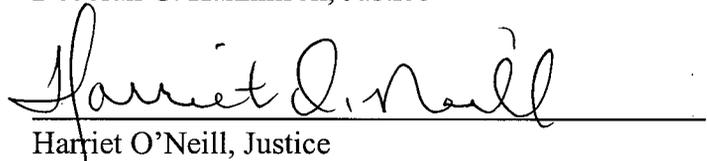

Craig T. Enoch, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice


Deborah G. Hankinson, Justice


Harriet O'Neill, Justice


Alberto R. Gonzales, Justice

1.4 Confidentiality of Proceedings Required; Exceptions.

(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.

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.

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 confidentiality. The confidentiality of an order awarding costs — as prescribed by Chapter 33, Family Code — is not affected by its transmission to the Comptroller, Texas Department of Health, or the Office of Court Administration, nor is the order subject to public disclosure in response to a request under any statute, rule, or other law. But these rules do not preclude the Comptroller, Texas Department of Health, and the Office of Court Administration from disclosing summary information from orders assessing costs for statistical or other such purposes.

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.

Notes and Comments

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.

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.

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

RULE 2. PROCEEDINGS IN THE TRIAL COURT

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.

3.3 Proceedings in the Court of Appeals.

- (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.

INSTRUCTIONS FOR APPLYING TO THE COURT FOR A WAIVER OF PARENTAL NOTIFICATION

(Form 1A)

Your situation and the law

If you are younger than 18 and have not been legally “emancipated,” you are “unemancipated,” which means that you are legally under the custody or control of your parent(s), managing conservator, or guardian. (A “managing conservator” is a parent, other adult, or agency appointed by a court to have custody or control of you.)

If you are pregnant, unemancipated, and younger than 18, you cannot get an abortion in Texas unless:

- your doctor first informs your parent(s), managing conservator, or guardian at least 48 hours before you can have an abortion,

or unless

- a judge issues an order that “waives,” or removes, the requirement that you must let your parent(s), managing conservator, or guardian know about your planned abortion.

How to get a waiver of parental notification

• Fill out the application

To get a court order waiving the requirement that you tell your parent(s), managing conservator, or guardian about your planned abortion, you or someone acting on your behalf must complete Forms 2A and 2B, *Confidential Application for Waiver of*

Parental Notification. Form 2A is the “Cover Page” for the Application; it requests basic information about why you are seeking the order. Form 2B is the “Verification Page,” which requests information about you.

On the Verification Page, you will be asked to tell the court how you may be contacted quickly and confidentially. It is very important that you provide this information because the court may later need to contact you about your application. If you cannot be contacted, your application will be denied. You may list a phone, pager, beeper, or fax number, or other way that you can be contacted. You can but need not give your own number — instead, you can ask the court to contact you through someone who is helping you or acting on your behalf. You may also list a second person who may be contacted on your behalf.

You or someone acting on your behalf must deliver the forms to the clerk in the district court, county court-at-law, county court, or probate court to be filed. The court clerk can help you complete and file the application, and can help you get a hearing on your request. However, the clerk cannot give you legal advice or counsel you about abortion.

All of the information you put on the

application is confidential. You do not have to pay a fee to file this application.

• **Your hearing**

The court will tell you when to come to the courthouse for your “hearing.” In your hearing, you will meet with a judge to discuss your request. The court will hold your hearing within two days (not counting weekends and holidays) after you file your application.

After you file your application, the court will appoint a person to meet with you before the hearing and help the judge decide your application. The person is called a “guardian ad litem.” In your application you may ask the court to appoint someone you want to be your guardian ad litem (who can be a relative, clergy, counselor, psychiatrist or psychologist, or other adult), but the court is not required to appoint this person.

You must have a lawyer with you at your hearing. You may hire your own lawyer, or you may ask the court to appoint one to represent you for free. The person appointed to be your lawyer might also be appointed to be your guardian ad litem.

• **Keeping it confidential**

Your hearing will be confidential and private. The only persons allowed to be there are you, your guardian ad litem, your lawyer, court staff, and any person whom you request to be there.

You already know that your application stays confidential. So will everything from your hearing: all testimony, documents and other evidence presented to the court, and any order given by the judge. The court will keep everything sealed. No one else can inspect the evidence.

• **The court’s decision**

The court must “rule” — issue a decision on your application — before 5:00 p.m. on the second day after the day you filed your application, not counting weekends and holidays.

If the court fails to rule within that time, it counts as an “OK” to you — it is an automatic waiver of the requirement that you inform your parent(s), managing conservator, or guardian about your planned abortion. If this happens, you can get a certificate from the court clerk that says that your request is “deemed granted,” which means that your application was approved.

If the court *does* rule within the required time, the court issues an order that does one of the following four things:

(1) Approves your request because the court finds that you are mature enough and know enough to choose on your own to have an abortion;

(2) Approves your request because it is in your best interests to *not* notify your parent(s), managing conservator, or guardian

before getting the abortion;

(3) Approves your request because notifying your parent(s), managing conservator, or guardian before getting the abortion may lead to physical, sexual, or emotional abuse of you; or

(4) Denies your request because the court does not find (1), (2) or (3).

If you say, or if there is evidence, that you have been or may be sexually abused, the court must treat your claim as a very serious matter and may be required to refer it to the police or other authorities for investigation.

• **Appealing the court's decision**

If the court denies your request, you may ask another court to hear your case. This request is called an "appeal," and the new court will be the Court of Appeals.

To appeal the first court's decision, have your own lawyer or your court-appointed lawyer fill out Form 3A, *Notice of Appeal in Parental Notification Proceeding*. The lawyer must file it with the clerk of the court that denied your request for a waiver of parental notification.

You will *not* have to go to the Court of Appeals. Instead, the Court of Appeals will review the written record and will issue a written ruling on your appeal no later than 5:00 p.m. on the second day after the day you file the *Notice of Appeal*, not counting

weekends and holidays.

The Court of Appeals will provide its ruling to you, the lawyer, your guardian ad litem, or any other person designated by you to receive the ruling.

The same guardian ad litem and lawyer who helped you with your first hearing can help with your appeal.

• **Getting the forms you need**

Forms 2A and 2B, the Cover Page and Verification Page to the *Confidential Application for Waiver of Parental Notification*, and Form 3A, *Notice of Appeal in Parental Notification Proceeding*, should all be attached to these instructions.

If these forms are not attached to these instructions, you can get them from the clerk of the district, county court-at-law, county, or probate court or Court of Appeals. These forms are also available on the Texas Judiciary Internet website at www.courts.state.tx.us.

**JUDGMENT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON APPLICATION IN PARENTAL NOTIFICATION PROCEEDING
(Form 2D)**

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____ COUNTY, TEXAS

This matter was heard on this _____ day of _____, _____. Based on the testimony and evidence presented, this court finds:

1. The applicant is pregnant.
2. The applicant is unmarried and under 18 years of age.
3. The applicant has not had her disabilities as a minor removed under Chapter 31 of the Texas Family Code.
4. The applicant wishes to have an abortion without her doctor notifying either of her parents, her managing conservator or guardian.
5. A preponderance of the evidence supports the following [State "yes" beside any issue for which the court finds in favor of the applicant by a preponderance of the evidence. If any one issue is decided in favor of the applicant, the court need not consider other issues]:

_____ The applicant is mature and sufficiently well informed to make the decision to

have an abortion performed without notification to either of her parents, her managing conservator or guardian.

Findings of Fact/Conclusions of Law: _____

_____ Notifying either of the applicant's parents, managing conservator or guardian would not be in her best interest.

Findings of Fact/Conclusions of Law: _____

_____ Notifying either of the applicant's parents, managing conservator or guardian may lead to physical, sexual, or emotional abuse of the applicant.

Findings of Fact/Conclusions of Law: _____

THEREFORE, IT IS ORDERED

_____ The application is GRANTED and the applicant is authorized to consent to the performance of an abortion without notifying either of her parents or a managing conservator or guardian.

_____ The application is DENIED. The applicant is advised of her right to appeal under Rule 3 of the Texas Parental Notification Rules and will be furnished a Notice of Appeal form, Form 3A.

All costs shall be paid by the State of Texas pursuant to Family Code Chapter 33.

Judge Presiding

**ORDER THAT COSTS IN PARENTAL NOTIFICATION PROCEEDING
BE PAID BY STATE PURSUANT TO TEXAS FAMILY CODE §33.007
(Form 2F)**

Notice: To guarantee reimbursement, this Order must be served on the Director, Fiscal Division, Texas Department of Health, within the deadlines imposed by Tex. Paren. Notif. R 1.9(b).

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____ COUNTY, TEXAS

ORDER

In this proceeding filed under Texas Family Code § 33.003, the court heard evidence on the _____ day of _____, _____, concerning court costs. Based on the evidence presented, pursuant to Texas Family Code § 33.007, the State of Texas is ordered to pay:

1. Reasonable and necessary attorney ad litem fees and expenses of \$ _____ to:

Name:

State Bar No.

Address:

Telephone:

Federal Tax ID:

2. Reasonable and necessary guardian ad litem fees and expenses of \$ _____ to:

Name:

Address:

Telephone:

Federal Tax ID:

3. Court reporter's fees certified by the court reporter to:

Name:

Address:

Telephone:

Federal Tax ID:

4. All court costs certified by the clerk.

Judge Presiding

**CLERK'S CERTIFICATION OF COURT COSTS AND FEES AND
TRANSMISSION OF ORDER FOR PAYMENT IN PARENTAL
NOTIFICATION PROCEEDING
(Form 2G)**

Director, Fiscal Division
Texas Department of Health
1100 West 49th Street
Austin TX 78756

Re: *In re Jane Doe*

Cause No. _____

Court: _____

County: _____

Dear Sir or Madam:

Please find enclosed a certified copy of an Order issued on _____, 20____, in the referenced case. Please pay the amounts to the payees as stated in the Order.

In accordance with the Order, I certify the following fees and costs for payment as follows:

Amount: \$ _____

Name of the Clerk: _____

Address : _____

Tax Identification No.: _____

Thank you.

Sincerely,

[seal]

Name: _____

Encl: Certified copy of Order

Position: _____

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**ORDER APPOINTING INTERPRETER FOR
CHAPTER 33, FAMILY CODE PROCEEDINGS
(Form 2H)**

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____ COUNTY, TEXAS

ORDER

ORDERED that for good cause, the following person is appointed an interpreter to assist the applicant in applying for relief under Chapter 33, Family Code:

Name: _____ State Bar No. _____

Address: _____

Telephone: _____ Federal Tax ID: _____

Signed: this _____ day of _____, 20____.

Judge

OATH FOR INTERPRETER

I, _____, do swear or affirm that I am competent and well versed in the _____ language and shall: (1) make a true interpretation of all the proceedings to the applicant; (2) repeat verbatim all statements, questions, and answers of all persons who are a part of the proceeding, to applicant, counsel, the court, and others in the English language and in the _____ language, using my best skill and judgment.

I shall not: (1) participate in any manner other than as an interpreter in the decision making or adjudicative process; (2) communicate with any other person regarding the proceedings except a literal translation of questions, answers, or remarks made during the proceeding, or (3) disclose or discuss any of the proceedings with any person following entry of judgment.

Print Name: _____

Address: _____

Telephone: _____

SWORN TO AND SUBSCRIBED before me on _____, 20__

[seal]
