

Rules and Forms for a Judicial Bypass of Parental Notice and Consent Under Chapter 33 of the Family Code

Explanatory Statement

Chapter 33 of the Texas Family Code provides for judicial authorization of an unemancipated minor to consent to an abortion in Texas without notice to, or the consent of, a parent, managing conservator, or guardian. Sections 33.003 and 33.004, which govern proceedings in the trial and appellate courts, authorize the Court to make rules to ensure that judicial bypass applications are decided confidentially and promptly. *See* TEX. FAM. CODE §§ 33.003(l), 33.004(c). The statute also directs the Court to make forms for use in judicial bypass proceedings. *Id.* §§ 33.003(m), 33.004(d).

The Court approved the first set of rules and forms in 1999, following the enactment of Chapter 33. *See* Misc. Docket No. 99-9247 (Dec. 22, 1999); Act of May 25, 1999, 76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466 (S.B. 30) (codified at TEX. FAM. CODE § 33.001 *et seq.*). The rules and forms have been amended to reflect the 2015 amendments to Chapter 33. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 436 (H.B. 3994). The rules and forms track the statutory requirements. They do not reflect any judgment by the Court that Chapter 33, or any part of it, is constitutional. Constitutional questions should be resolved in an adversarial proceeding with full briefing and argument. Nor do the rules imply that abortion is—or is not—permitted in any specific situation. *See, e.g., Roe v. Wade*, 410 U.S. 113 (1973); TEX. HEALTH & SAFETY CODE § 170.002 (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, or the consent of, a parent, managing conservator, or guardian under Chapter 33, Family Code. 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.

1.2 Expedition Required.

- (a) ***Proceedings.*** A court must give proceedings under these rules precedence over all other pending matters to the extent necessary to ensure that applications and appeals are adjudicated as soon as possible and within the time required by Chapter 33, Family Code, and these rules.
- (b) ***Prompt actual notice required.*** Without compromising the confidentiality 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.

1.3 Identity of Minor Protected.

- (a) ***Generally.*** Proceedings under these rules must be conducted in a way that protects the confidentiality of the identity 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.*** With the exception of orders and rulings released under Rule 1.4(b), all notices and communications from the court to the minor must be directed to the minor’s attorney with a copy to the guardian ad litem. The minor’s attorney must immediately serve on the guardian ad litem a copy of any document filed with the court. These requirements take effect when an attorney appears for the minor or when the clerk has notified the minor of the appointment of an attorney or a guardian ad litem.

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 the court is confidential and expeditious. Except as permitted by law, officials and court personnel must never disclose to anyone outside the proceeding—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.***

- (1) *General rule; disclosure prohibited.* 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.
 - (2) *Exception; disclosure to minor permitted.* The application and any other document in the court file may be disclosed to the minor.
 - (3) *Exception; disclosure of order to certain persons.* An order, ruling, opinion, or clerk's certificate may be released to:
 - the minor;
 - the minor's guardian ad litem;
 - the minor's attorney;
 - the physician who is to perform the abortion;
 - a person designated in writing by the minor to receive the order, ruling, opinion, or certificate;
 - a governmental agency or governmental attorney, in connection with a criminal or administrative action seeking to assert or protect the minor's interests; or
 - another court, judge, or clerk in the same or related proceedings.
- (c) ***Filing of court reporter's notes required.*** To ensure confidentiality, the court reporter's notes, in whatever form, must be filed with other court documents in the proceeding.
- (d) ***Duty to report possible abuse.***
- (1) *Duty of the court.* A judge or justice who, as a result of a court proceeding governed by these rules, has reason to believe that a minor has been or may be physically or sexually abused must report the suspected abuse in accordance with Sections 33.0085 and 33.009, Family Code, and other law.

- (2) *Duty of an attorney or guardian ad litem.* An attorney or a guardian ad litem who, as a result of a court proceeding governed by these rules, has reason to believe that a minor has been or may be physically or sexually abused must report the suspected abuse in accordance with Section 33.009, Family Code, and other law.
- (e) *Department of Family and Protective Services or local law enforcement agency to disclose certain information in proceeding.* The Department of Family and Protective Services or a local law enforcement agency may disclose to the court, the minor's attorney, and the guardian ad litem any information obtained under Sections 33.008, 33.0085, and 33.009, Family Code, without being ordered to do so. The court may order the Department or a local law enforcement agency to disclose the information to the court, the minor's attorney, and the guardian ad litem, and the Department or agency must comply.

1.5 Methods of Transmitting Documents; Hearings Conducted By Remote Electronic Means; Electronic Record Allowed When Necessary.

- (a) *Electronic filing through statewide portal prohibited.* Documents must not be filed through the electronic filing manager established by the Office of Court Administration.
- (b) *Paper, fax, or email filing permitted.* Documents may be filed in paper form, by fax, or by email. The clerk of a court must designate an email address or a fax number for the filing of documents in proceedings governed by these rules and must take all reasonable steps to maintain the confidentiality of the filings. An attorney must notify the clerk by telephone before filing a document by email or fax.
- (c) *Fax and email transmission by court and clerk.* The court and clerk may transmit orders, rulings, notices, and other documents by fax or email. But before the transmission is initiated, the sender must take all reasonable steps to maintain the confidentiality of the transmission. The time and date of a transmission by the court is the time and date when it was initiated.
- (d) *Participation in hearings by electronic means.* Consistent with the confidentiality requirements of these rules, with the court's permission, a witness may participate in a hearing under these rules by video conferencing, telephone, or other remote electronic means. But the minor must appear before the court in person.

- (e) ***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.*** A motion to recuse or disqualify a trial judge or an objection to a trial judge under Section 74.053, Government Code, must be filed before 10 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's attorney, whichever is later. A motion to recuse or disqualify an appellate judge or an objection to an appellate judge under Section 75.551, Government Code, must be filed before 10 a.m. of the first business day after a notice of appeal is filed or promptly after the assignment of a judge is made known to the minor's attorney, whichever is later. A judge who chooses to withdraw voluntarily must do so immediately. A motion to disqualify or recuse or an objection to an assigned judge does not extend the deadline for ruling on the minor's application.
- (b) ***Voluntary disqualification or recusal; objection.*** A judge who removes himself or herself voluntarily—whether in response to a motion or on the judge's own initiative—or to whom objection is made under Sections 74.053 or 75.551, Government Code, must immediately notify the appropriate authority under rule or statute for assigning another judge. That authority must immediately assign a judge or justice to the proceeding.
- (c) ***Involuntary disqualification or recusal.*** A judge who refuses to remove himself or herself voluntarily from a proceeding in response to a motion must immediately refer the motion to the appropriate judge under rule or statute for determination. The judge 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 to whom the motion was referred must immediately assign another judge to the proceeding.
- (d) ***Restrictions on the number of motions and objections.*** A minor who objects under Section 74.053 or Section 75.551, Government Code, to a judge assigned to the proceeding may not thereafter file a motion to recuse the judge assigned to replace the judge to whom the objection was made. A minor who files a motion to recuse or disqualify a judge may not thereafter

object under Section 74.053 or Section 75.551, Government Code, to another judge assigned to the proceeding.

- (e) ***Issues on appeal.*** Any error in the denial of a motion to recuse or disqualify, 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) ***Online.*** A complete set of these rules and forms must be posted on the Texas Judiciary website at www.txcourts.gov. Forms 1A, 2A, and 2B must be translated into Spanish.
- (b) ***In clerks' offices.*** The clerk of a court in which an application or appeal may be filed must make the rules and forms—including the Spanish version of Form 1A, 2A, and 2B—and any applicable local rules available to a minor without charge.

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) and an evaluation by a licensed mental health counselor but do not include the fees or expenses of a witness. Court costs do not include fees that 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 and sent 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 fees, expenses, and 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.* 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.
- (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 fees, expenses, or 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 fees, expenses, or costs in a proceeding under Chapter 33, Family Code. Orders assessing fees, expenses, or costs are not subject to any order of the Supreme Court of Texas requiring mandatory reports of judicial appointments and fees or to the reporting requirements of Chapter 36, Government Code.
 - (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, the Texas Department of Health, or 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. If the brief is filed in paper form, the person must submit the original brief and the same number of copies required for other paper submissions to the court. The person 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. The brief must not contain any information in violation of Rules 1.3 and 1.4. If the brief is filed in paper form, the person must submit the original brief and the same number of copies required for other paper submissions to the court. If the brief is submitted to a court of appeals, one copy of the brief must also be submitted to the Supreme Court of Texas. Upon receipt 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 website.

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.
4. Sections 33.008, 33.0085, and 33.009, Family Code, require physicians, judges, attorneys, and guardians ad litem to report suspected physical or sexual abuse to the Texas Department of Family and Protective Services and to a local law enforcement agency. Section 33.010 makes confidential—“[n]otwithstanding any other law”—all information obtained by the Department or a law enforcement agency under Sections 33.008, 33.0085, and 33.009 except to the extent necessary to prove certain criminal conduct. Rule 1.4(e) construes Section 33.010 in harmony with Section 33.003(i-2), which makes past or potential future abuse relevant to a claim that notifying or attempting to obtain the consent of a parent, managing conservator, or guardian would not be in the minor’s best interest.
5. 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.
6. 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.
7. Orders awarding fees, expenses, and costs contain information that is made confidential by Chapter 33, Family Code. The confidentiality of the information should not be affected by the transmission of the order to the Texas Department of Health and to 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, the Texas Department of Health, or the Office of Court Administration from disclosing total amounts paid for all proceedings, the average amount awarded per proceeding, or other statistical summaries or analyses that do not impair the confidentiality of the proceedings.

8. Rule 1.10 adds a procedure for filing amicus curiae briefs uniquely designed for the expedited and confidential nature of judicial bypass cases.

RULE 2. PROCEEDINGS IN THE TRIAL COURT

2.1 Where to File an Application; Court Assignment and Transfer; Application Form; Effect of a Nonsuit or Prior Determination.

- (a) ***Counties in which an application may be filed.*** An application for an order under Section 33.003, Family Code, must be filed in the minor's county of residence, unless one of the following exceptions applies.
- (1) ***Minor's parent is a presiding judge.*** If the minor's parent, managing conservator, or guardian is a presiding judge of a court described in (b)(1) in the county of the minor's residence, the application must be filed in:
 - (A) a contiguous county; or
 - (B) the county where the minor intends to obtain the abortion.
 - (2) ***Residence in a county with a population of less than 10,000.*** If the minor's county of residence has a population of less than 10,000, the application must be filed in:
 - (A) the minor's county of residence;
 - (B) a contiguous county; or
 - (C) the county where the minor intends to obtain the abortion.
 - (3) ***Nonresident minor.*** If the minor is not a Texas resident, the application must be filed in the county where the minor intends to obtain the abortion.
- (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 governs the filing and assignment of applications or cases. The clerk must accept the application and transfer it immediately 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 who files an application—whether the district clerk or the county clerk—must assign it as follows:
 - (A) to a district court, if the active judge of the court, or a judge assigned to it, is available;
 - (B) if the application cannot be assigned under (A), then to a statutory county or probate court, if the active judge of the court, or a judge assigned to it, is available;
 - (C) if the application cannot be assigned under (A) or (B), 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 available;
 - (D) if the application cannot be assigned under (A), (B), or (C), then to the district court.
- (5) *Judges who may hear and determine applications.* An application may be heard and determined by the active judge of the court to which the application is assigned, by any judge authorized to sit for the active judge, or 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—if the minor is not represented by an attorney at the time of filing. If the minor is represented by an attorney at the time of filing, the application must include a third page, the attorney’s sworn statement or declaration made under penalty of perjury.
- (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 or obtaining consent from either of her parents or a managing conservator or guardian, and the statutory ground or grounds on which she relies;
 - (D) that venue is proper in the county in which the application has been filed;
 - (E) whether the minor has retained an attorney, and if so, the attorney’s name, email address, mailing address, and telephone number;
 - (F) whether the minor requests the court to appoint a particular person as her guardian ad litem; and
 - (G) that, concerning her current pregnancy, the minor has not previously filed an application that was denied; or
 - (H) if the minor has filed a previous application with respect to the current pregnancy that was denied, that this application is being filed in the same court that denied the previous application and that there has been a material change in circumstances since the time the previous application was denied.

- (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 by the minor under oath or under penalty of perjury, and must state:
 - (A) the minor’s full name, date of birth, physical address, mailing address, and telephone number;
 - (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) if the minor has not retained an attorney, a telephone 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.
 - (3) *Attorney’s statement.* The minor’s attorney must file with the application a sworn statement or unsworn declaration made under penalty of perjury that attests to the truth of the minor’s claims regarding venue and prior applications.
- (d) ***Time of filing.*** An application is filed when it is actually received by the district or county clerk.
 - (e) ***Nonsuit requires permission.*** A minor may not withdraw or nonsuit an application without permission of the court.
 - (f) ***Res judicata effect of prior determination.***
 - (1) *General rule.* A minor who has filed an application and obtained a determination by the court under Rule 2.5 may not initiate a new application proceeding with respect to the same pregnancy, and the prior determination is res judicata on the issue whether the minor may consent to an abortion without notification to, or consent of, a parent, managing conservator, or guardian.
 - (2) *Exception for material change in circumstances.* A minor whose application is denied may submit a new application to the court that

denied the application if the minor shows that there has been a material change in circumstances since the prior application was denied.

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—to persons seeking to file an application. If requested, the clerk must administer the oath for the verification page or provide a person authorized to do so. The clerk must also redact from the cover page any information identifying the minor. The clerk must 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 that does not identify the assigned judge 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 immediately. If appointment of a specific person as guardian ad litem has been requested, the clerk must also communicate the information to the appropriate court immediately.
- (d) ***If judge of assigned court not available.*** The clerk must determine immediately whether the judge of the court to which the application is assigned is available to hear the application within the prescribed time period. If that judge is not available, the clerk must immediately 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 the hearing or of the appointment of a guardian ad litem or an attorney ad litem, the clerk must immediately 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's attorney and the guardian 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 33.003(h), Family Code, then, upon the minor's request, the clerk must immediately issue a certificate to that effect, stating that the application is deemed to be denied. 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 applicant;
- (b) unless the minor has a retained attorney, appoint an attorney ad litem for the minor, who must not be the same person appointed as guardian ad litem;
- (c) set a hearing on the application; and
- (d) advise the clerk of the appointments and the hearing time.

2.4 Hearing.

(a) **Time.**

- (1) **General rule.** The court must conduct a hearing in time to rule on the application by the deadline stated in Rule 2.5(f).
- (2) **Minor may request postponement.** The minor may postpone the hearing by written request to the clerk. 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 by the deadline stated in Rule 2.5(f).

- (b) **Place.** The hearing should be held in a location, such as a judge's chambers, that will ensure confidentiality. The hearing may be held away from the courthouse.
- (c) **Persons attending.** The hearing must be closed to the public. Only the judge, the court reporter, other essential court personnel, the minor, her attorney, her guardian ad litem, and witnesses on the minor's behalf may be present.
- (d) **Record.** The court, the minor, 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, the minor's attorney, or the 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, if she has requested the record; 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 immediately if it has been requested for appeal or to demonstrate the past or potential abuse of the minor. 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).
- (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 the minor 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 clear and convincing evidence:

- (1) that the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notice to, or consent of, a parent, managing conservator, or guardian; or
 - (2) that the notification or attempt to obtain consent would not be in the minor's best interest.
- (c) ***The mature-and-informed inquiry.*** In determining whether the minor meets the requirements of (b)(1), the court must consider the experience, perspective, and judgment of the minor. The court may:
- (1) consider all relevant factors, including:
 - (A) the minor's age;
 - (B) the minor's life experiences, such as working, traveling independently, or managing her own financial affairs; and
 - (C) steps taken by the minor to explore her options and the consequences of those options;
 - (2) inquire as to the minor's reasons for seeking an abortion;
 - (3) consider the degree to which the minor is informed about the state-published informational materials described by Chapter 171, Health and Safety Code; and
 - (4) require the minor to be evaluated by a licensed mental health counselor, who must return the evaluation to the court for review within three business days.
- (d) ***The best-interest inquiry.*** In determining whether the minor meets the requirements of (b)(2), the court may inquire as to:
- (1) the minor's reasons for not wanting to notify and obtain consent from a parent, managing conservator, or guardian;
 - (2) whether notification or the attempt to obtain consent may lead to physical or sexual abuse;
 - (3) whether the pregnancy was the result of sexual abuse by a parent, managing conservator, or guardian; and

- (4) any history of physical or sexual abuse from a parent, managing conservator, or guardian.
- (e) **Grounds for denying the application.** The court must deny the application if:
 - (1) the minor does not establish either ground in (b) by clear and convincing evidence; or
 - (2) the minor does not attend the hearing; and
 - (A) the minor had actual knowledge of the setting; or
 - (B) diligent attempts were made to notify the minor of the setting.
- (f) **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 p.m. on the fifth business day after the day the application is filed, or if the minor requests a postponement, by 5 p.m. on the fifth business day after the date the minor states she is ready for the hearing.
- (g) **Failure to timely rule.** If the court fails to timely rule on an application, the application is deemed to be denied.
- (h) **Notification of the 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 “a county court at law, court having probate jurisdiction, or district court, including a family district court, in the minor’s county of residence” or, if an exception applies, in a contiguous county or the county where the abortion would be performed. 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.

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 Chapter 501, Occupations Code; (3) an appropriate employee of the Department of Family and Protective Services; (4) a member of the clergy; or (5) another appropriate person selected by the court. The trial court may also consider appointing a qualified person requested by the minor. Although not directly applicable to these proceedings, the standards embodied in Chapter 107, Family Code, reflect legislative intent that competent and qualified persons be appointed to serve as ad litem and may provide general guidance concerning the nature of those qualifications. Appointment of an employee of the Department of Family and Protective 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, or consent of, either of her parents or a managing conservator or guardian or whether notification or the attempt to obtain consent would not be in the best interest of the minor. Rule 2.5(c) and (d) list some nonexclusive factors outlined in Section 33.003(i-1)-(i-2), Family Code, that a court may consider in deciding whether the statutory criteria for a bypass have

been met. Factors that have been considered in other jurisdictions with similar parental notification and consent statutes include:

- 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; and
- 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 confidential and expeditious nature of such proceedings, but they reflect general legislative intent concerning the responsibilities of ad litem.

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

RULE 3. APPEAL FROM DENIAL OF APPLICATION

- 3.1 How to Appeal.** To appeal the denial of an application, the minor must file a notice of appeal with the clerk of the court that denied the application, 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.

- 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. The clerk must ensure 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 immediately forward to the clerk of the court of appeals the notice of appeal, the clerk’s record excluding the verification

page, and the reporter's record. The trial court clerk must deliver the record to the clerk of the court of appeals by hand or send it by fax or email. The clerk must not send the record by mail.

- (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, then, upon the minor's request, the clerk of the court of appeals must immediately issue a certificate to that effect, stating that the trial court's order is affirmed. 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.
- (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 p.m. on the fifth business day after the notice of appeal is filed with the court that denied the application, or if the minor requests a postponement, by 5 p.m. on the fifth business day after the date the minor states she is ready to proceed.
- (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; must preserve confidentiality.*** A court of appeals may issue an opinion explaining its ruling, but it is not required to do

so. An opinion that is designated for publication or public release must be written in a way to preserve the confidentiality of the identity of the minor.

(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) *Transmission to Supreme Court and trial court.* When the court of appeals issues an opinion, the clerk must transmit it immediately to the Supreme Court and to the trial court. If the opinion is not designated for publication or public release, the transmission must be confidential.

(f) *Failure to timely rule.* If the court of appeals fails to timely rule on the appeal, the trial court's judgment is deemed to be affirmed.

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 prescribe the appellate standard of review.
4. The 2015 amendments to Chapter 33, Family Code, permit the court of appeals to publish an opinion "if the opinion is written in a way to preserve the confidentiality of the identity of the pregnant minor." TEX. FAM. CODE § 33.004(c-1). Any opinion that is released to the public must not only omit the minor's name and other directly identifying information but it must also describe the facts in a way that those who know the minor would not be able to recognize her.

RULE 4. APPEAL TO THE SUPREME COURT

4.1 How to Appeal to the Supreme Court. To appeal from the court of appeals to the Supreme Court, the minor must file a notice of appeal with the clerk of the Supreme Court, 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.

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 any person seeking to file an appeal. The clerk must ensure 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 immediately forward 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.