

Enclosure to Agenda No. 1

TEXAS PARENTAL NOTIFICATION RULES AND FORMS

effective date January 1, 2000

EXPLANATORY STATEMENT

Chapter 33 of the Texas Family Code, adopted by Act of May 25, 1999, 76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466 (S.B. 30), provides for judicial authorization of an unemancipated minor to consent to an abortion in Texas without notice to her parents, managing conservator, or guardian. Section 2 of the Act states: "The Supreme Court of Texas shall issue promptly such rules as may be necessary in order that the process established by Sections 33.003 and 33.004, Family Code, as added by this Act, may be conducted in a manner that will ensure confidentiality and sufficient precedence over all other pending matters to ensure promptness of disposition." See also Tex. Fam. Code §§ 33.003(l), 33.004(c). Section 6 of the Act adds: "The clerk of the Supreme Court of Texas shall adopt the application form and notice of appeal form to be used under Sections 33.003 and 33.004, Family Code, as added by this Act, not later than December 15, 1999." See also Tex. Fam. Code §§ 33.003(m), 33.004(d).

The following rules and forms are promulgated as directed by the Act without any determination that the Act or any part of it comports with the United States Constitution or the Texas Constitution. During the public hearings and debates on the rules and forms, questions were raised concerning the constitutionality of Chapter 33, among which were whether the statute can make court rulings secret, and whether the statute can require courts to act within the specified, short deadlines it imposes. Because such issues should not be resolved outside an adversarial proceeding with full briefing and argument, the rules and forms merely track statutory requirements of the Legislature. Adoption of these rules does not, of course, imply that abortion is or is not permitted in any specific situation. See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973); Tex. Rev. Civ. Stat. Ann. art. 4495b, § 4.011 (restrictions on third trimester abortions of viable fetuses).

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

RULE 1. GENERAL PROVISIONS

1.1 Applicability of These Rules. These rules govern proceedings for obtaining a court order authorizing a minor to consent to an abortion without notice to either of her parents or a managing conservator or guardian under

Chapter 33, Family Code (or as amended). Other Texas court rules — including the Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, Rules of Judicial Administration, and local rules approved by the Supreme Court — also apply, but when the application of another rule would be inconsistent with the general framework or policy of Chapter 33, Family Code, or these rules, these rules control.

1.2 Expedition Required.

- (a) **Proceedings.** A court must give proceedings under these rules precedence over all other pending matters to the extent necessary to assure that applications and appeals are adjudicated as soon as possible and within the time required by Rules 2.4(a), 2.5(d), and 3.3(c).
- (b) **Prompt actual notice required.** Without compromising the confidentiality and anonymity required by statute and these rules, courts and clerks must serve orders, decisions, findings, and notices required under these rules in a manner designed to give prompt actual notice in order that the deadlines imposed by Chapter 33, Family Code, can be met.
- (c) **Instant.** "Instant" means immediately, without delay. An action required by these rules to be taken instant should be done at the first possible time and with the most expeditious means available.

1.3 Anonymity of Minor Protected.

- (a) **Generally.** Proceedings under these rules must be conducted in a way that protects the anonymity of the minor.
- (b) **No reference to minor's identity in proceeding.** With the exception of the verification page required under Rule 2.1(c)(2) and the communications required under Rule 2.2(e), no reference may be made in any order, decision, finding, or notice, or on the record, to the name of the minor, her address, or other information by which she might be identified by persons not participating in the proceedings. Instead, the minor must be referred to as "Jane Doe" in a numbered cause.

recording and the transcription to the court of appeals.

1.6 Disqualification, Recusal, or Objection to a Judge.

- (a) **Time for filing and ruling.** An objection to a judge, or a motion to recuse or disqualify a judge, must be filed before 10:00 a.m. of the first business day after an application or notice of appeal is filed. A judge who chooses to recuse voluntarily must do so before 12:00 noon of the first business day after an application or notice of appeal is filed. An objection to a judge or a motion to disqualify or recuse does not extend the deadline for ruling on the minor's application.
 - (b) **Voluntary disqualification or recusal, or objection.** A judge to whom objection is made under Chapter 74, Government Code, or a judge or justice who voluntarily does not sit, must notify instanter the appropriate authority for assigning another judge by local rules or by statute. That authority must instanter assign a judge or justice to the proceeding.
 - (c) **Involuntary disqualification or recusal.** A judge or justice who refuses to remove himself or herself voluntarily from a proceeding in response to a motion must instanter refer the motion to the appropriate judge or justice, pursuant to local rule, rule, or statute, for determination. The judge or justice to whom the motion is referred must rule on it as soon as possible and may do so with or without a hearing. If the motion is granted, the judge or justice to whom the motion was referred must instanter assign a judge or justice to the proceeding.
 - (d) **Only one objection or motion to recuse permitted.** A minor who objects to a judge assigned to the proceeding may not thereafter file a motion to recuse or disqualify, and a minor who files a motion to recuse or disqualify a judge may not thereafter object to a judge assigned to the proceeding.
 - (e) **Issues on appeal.** Any error in the denial of a motion to recuse or disqualify, or any error in the disallowance of an objection, or any challenge to a judge that a minor is precluded from making by subsections (a) or (d), may be raised only on appeal from the court's denial of the application.
- 1.7 **Rules and Forms to be Made Available.** A copy of these rules, and a copy of the attached forms in English and Spanish, must be made available to any person without charge in the clerk's offices of all courts in which applications or appeals may be filed under these rules, on the Texas Judiciary Internet site at www.courts.state.tx.us, and by the Office of Court Administration upon request. A copy of a court's local rules relating to proceedings

under Chapter 33, Family Code, must be made available to any person without charge in the office of the clerk for that court where applications may be filed. Rules and forms may be copied.

- 1.8 **Duties of Attorneys Ad Litem.** An attorney ad litem must represent the minor in the trial court in the proceeding in which the attorney is assigned, and in any appeal under these rules to the court of appeals or the Supreme Court. But an attorney ad litem is not required to represent the minor in any other court or any other proceeding.
- 1.9 **Fees and Costs.**
 - (a) **No fees or costs charged to minor.** No filing fee or court cost may be assessed against a minor for any proceeding in a trial or appellate court.
 - (b) **State ordered to pay fees and costs.** 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 filing fees and costs as certified by the clerk. The order must be directed to the Comptroller of Public Accounts and 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 Form 2F, but it is not required to do so.
 - (c) **Witness fees.** Court costs do not include the fees or expenses of a witness.
 - (d) **Motion to reconsider; time for filing.** Within thirty days of actual receipt of the order, the Comptroller 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.
 - (e) **Appeal.** The Comptroller may appeal from the trial court's ruling on the motion to reconsider as from any other final judgment of the court.
 - (f) **Report to the Office of Court Administration.** The court must transmit to the Office of Court Administration a copy of every order assessing costs in a proceeding under Chapter 33, Family Code.
 - (g) **Confidentiality.** The confidentiality of an order awarding costs — as prescribed by Chapter 33, Family Code — is not affected by its transmission to the Comptroller or the Office of Court Administration.

local rule or these rules. The clerk to whom the application is tendered cannot refuse to accept it because of any local rule or other rule or law that provides for filing and assignment of such applications but must accept the application and transfer it instantly to the proper clerk, advising the person tendering the application where it is being transferred.

- (3) *Court assignment and transfer by local rule.* The courts in a county that have jurisdiction to hear applications may determine by local rule how applications will be assigned between or among them. A local rule must be approved by the Supreme Court under Rule 3a, Texas Rules of Civil Procedure.
- (4) *Initial court assignment if no local rule.* Absent a local rule, the clerk that files an application — whether the district clerk or the county clerk — must assign it as follows:
- (i) to a district court, if the active judge of the court, or a judge assigned to it, is then present in the county;
 - (ii) if the application cannot be assigned under (i), then to a statutory county or probate court, if the active judge of the court, or a judge assigned to it, is then present in the county;
 - (iii) if the application cannot be assigned under (i) or (ii), then to the constitutional county court, if it has probate jurisdiction, and if the active judge of the court, or a judge assigned to it, is then present in the county;
 - (iv) if the application cannot be assigned under (i), (ii), or (iii), then to the district court.
- (5) *Judges who may hear and determine applications.* An application may be heard and determined (i) by the active judge of the court to which the application is assigned, or (ii) by any judge authorized to sit for the active judge, or (iii) by any judge who may be assigned to the court in which the application is pending. An application may not be heard or determined, or any proceedings under these rules conducted, by a master or magistrate.
- (c) *Application form.* An application consists of two pages: a cover page and a separate verification page.
- (1) *Cover page.* The cover page may be submitted

on Form 2A, but use of the form is not required. The cover page must be styled "In re Jane Doe" and must not disclose the name of the minor or any information from which the minor's identity could be derived. The cover page must state:

- (A) that the minor is pregnant;
 - (B) that the minor is unmarried, is under 18 years of age, and has not had her disabilities removed under Chapter 31, Family Code;
 - (C) that the minor wishes to have an abortion without notifying either of her parents or a managing conservator or guardian, and the statutory ground or grounds on which she relies;
 - (D) whether the minor has retained an attorney, and if so, the attorney's name, address, and telephone number;
 - (E) whether the minor requests the court to appoint a particular person as her guardian ad litem; and
 - (F) whether, concerning her current pregnancy, the minor has previously filed an application that was denied, and if so, where the application was filed.
- (2) *Verification page.* The verification page may be submitted on Form 2B, but use of the form is not required. The verification page must be separate from the cover page, must be signed under oath by the person completing the application, and must state:
- (A) the minor's full name and date of birth;
 - (B) the name, address, telephone number, and relationship to the minor of any person the minor requests the court to appoint as her guardian ad litem;
 - (C) a telephone or pager number — whether that of the minor or someone else (such as a physician, friend, or relative) — at which the minor may be contacted immediately and confidentially until an attorney is appointed to represent her and
 - (D) that all information contained in the application, including both the cover page and the verification page, is true.

- (e) *Hearing to be informal.* The court should attempt to rule on the application without regard to technical defects in the application or the evidence. Affidavits of persons other than applicants are admissible. Statements in the application cannot be offered as evidence to support the application. If necessary, the court may assist the minor in remedying technical defects in the application and in presenting relevant and material facts.

the date the minor states she is ready for the hearing, and that if the court does not rule within this time, the application is deemed to be granted.

- (e) *Notification of right to appeal.* If the court denies the application, it must inform the minor of her right to appeal under Rule 3 and furnish her with the notice of appeal form, Form 3A.

2.5 Ruling.

Notes and Comments

- (a) *Form of ruling.* The court's ruling on the application must include a signed order and written findings of fact and conclusions of law. The findings and conclusions may be included in the order. The court may use Form 2D, but it is not required to do so.
- (b) *Grounds for granting application.* The court must grant the application if the minor establishes, by a preponderance of the evidence, that:
- (1) the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notifying either of the minor's parents, the minor's managing conservator, or the minor's legal guardian, as the case may be;
 - (2) notifying either of the minor's parents, the minor's managing conservator, or the minor's legal guardian, as the case may be, would not be in the minor's best interest; or
 - (3) notifying either of the minor's parents, the minor's managing conservator, or the minor's legal guardian, as the case may be, may lead to physical, sexual, or emotional abuse of the minor.
- (c) *Grounds for denying application.* If the minor can establish none of the grounds in Rule 2.5(b) by a preponderance of the evidence, the court must deny the application. If the court, the guardian ad litem, or the attorney ad litem are unable to contact the minor before the hearing despite diligent attempts to do so, or if the minor does not attend the hearing, the court must deny the application without prejudice.
- (d) *Time for ruling.* The court must rule on an application as soon as possible after it is filed, subject to any postponement requested by the minor, and immediately after the hearing is concluded. Section 33.003(h), Family Code, states that a court must rule on an application by 5:00 p.m. on the second business day after the day the application is filed, or if the minor requests a postponement, after

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.

2. Because an application is considered filed when it is actually received by the clerk, the timing provisions relating to filing by mail of Tex. R. Civ. P. 21a are inapplicable.

3. Section 33.003(f), Family Code, provides that a guardian ad litem may be (1) a person who may consent to treatment for the minor under Sections 32.001(a)(1)-(3), Family Code; (2) a psychiatrist or an individual licensed or certified as a psychologist under the Psychologist's Licensing Act, Article 4512c, Vernon's Texas Civil Statutes; (3) an appropriate employee of the Department of Protective or Regulatory Services; (4) a member of the clergy; or (5) another appropriate person selected by the court. The trial court may also consider appointing a qualified person requested by the minor. Although not directly applicable to these proceedings, the standards embodied in Chapter 107, Family Code, reflect legislative intent that competent and qualified persons be appointed to serve as ad litem and may provide general guidance concerning the nature of those qualifications. Appointment of an employee of the Department of Protective and Regulatory Services to serve as

- (b) *Forwarding record to court of appeals.* Upon receipt of a notice of appeal, the trial court clerk must instanter forward to the clerk of the court of appeals the notice of appeal, the clerk's record (original papers or copies) excluding the verification page, and the reporter's record. The trial court clerk must not send the record to the clerk of the court of appeals by mail but must, if feasible, deliver it by hand or transmit it by facsimile or other electronic means. If neither of these methods is feasible, then the record may be sent by overnight delivery.
- (c) *Certificate of court's failure to rule within time prescribed by statute.* If the court of appeals fails to rule on an application within the time required by Section 33.004(b), Family Code, upon the minor's request, the clerk of the court of appeals must instanter issue a certificate to that effect, stating that the trial court's order is reversed and judgment is rendered that the application is deemed by statute to be granted. The clerk may use Form 3D but is not required to do so.

3.3 Proceedings in the Court of Appeals.

- (a) *Briefing and argument.* A minor may request to be allowed to submit a brief and to present oral argument, but the Court may decide to rule without a brief or oral argument.
- (b) *Ruling.* The court of appeals — sitting in a three-judge panel — must issue a judgment affirming or reversing the trial court's order denying the application. If the court of appeals reverses the trial court order, it must also state in its judgment that the application is granted. 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 5:00 p.m. on the second business day after the notice of appeal is filed with the court that denied the application, or if the minor requests a postponement, after the date the minor states she is ready to proceed, and that if the court does not rule within this time, the appeal is deemed to be granted.
- (d) *Postponement by minor.* The minor may postpone the time of ruling by written request filed either with the trial court clerk at the time she files the notice of appeal or thereafter with the court of appeals clerk. The request may be submitted on Form 3B, but use of the form is not required. The request must either specify a date on which the minor will be ready to proceed to ruling, or state that the minor will later provide a date on which she will be ready to proceed

to ruling. Once the minor determines when she will be ready to proceed to ruling, she must notify the court of appeals clerk of that date in writing.

(e) *Opinion.*

- (1) *Opinion optional.* A court of appeals may issue an opinion explaining its ruling, but it is not required to do so.
- (2) *Time.* Any opinion must issue not later than:
- (A) ten business days after the day on which a notice of appeal is filed in the Supreme Court, if an appeal is taken to the Supreme Court; or
- (B) sixty days after the day on which the court of appeals issued its judgment, if no appeal is taken to the Supreme Court.
- (3) *Confidential transmission to Supreme Court.* When the court of appeals issues an opinion, the clerk must confidentially transmit it instanter to the Supreme Court and to the trial court.

Notes and Comments

- Chapter 33, Family Code, provides for no appeal from an order granting an application.
- 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.
- Neither Chapter 33, Family Code, nor these rules prescribes the appellate standard of review.
- Although publication of appellate court opinions is prohibited by statute, the Supreme Court may amend these rules to address issues arising from their application and interpretation.

RULE 4. APPEAL TO THE SUPREME COURT

- 4.1 *How to Appeal to the Supreme Court.* To appeal from the court of appeals to the Supreme Court, the minor must simultaneously file a notice of appeal with the Clerk of the Supreme Court, file a copy of the notice of appeal with the clerk of the court of appeals, and advise the clerk of each court by telephone that an appeal is being taken under Chapter 33, Family Code. The minor may use Form 4A but is not required to do so. The notice of appeal must:
- (a) be styled "In re Jane Doe";

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 claim 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.

Attention Clerk: Please Expedite

Confidential Application for Waiver of Parental Notification: Cover Page (Form 2A)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.003(m).

(Do not complete this section. Court staff will complete this section.)

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____ COUNTY, TEXAS

Important: Your Application has two parts: (1) this cover sheet (Form 2A), which asks for basic information about your application; and (2) a separate verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You or someone acting on your behalf must complete both of these forms. If you are completing this application for a minor, remember that "I" or "my" refers to the minor rather than to you.

1. I ask the court for an order that allows me to have an abortion without first telling my parent(s), managing conservator, or guardian before I have an abortion. I swear or affirm that (place a check mark in all the blanks for which you answer "yes"):

_____ I am pregnant.

_____ I am unmarried and younger than 18 years of age.

_____ I do not have an order from a Texas court that gives me the same legal rights and responsibilities as an adult.

2. I request this order for one of the following reasons (place a check mark beside any that apply):

_____ I am mature enough to decide to have an abortion without telling my parent(s), managing conservator, or guardian. I also know enough about abortion to make this decision.

Please continue to the next page.

Telling my parent(s), managing conservator, or guardian that I want an abortion is not in my best interest.

Telling my parent(s), managing conservator or guardian that I want an abortion may lead to physical or emotional abuse of me.

Telling my parent(s), managing conservator or guardian that I want an abortion may lead to sexual abuse of me.

3. Please check one of the following statements:

I do not have a lawyer. (The court will appoint one for you).

I have a lawyer, who is:

Lawyer's name: _____

Lawyer's address: _____

Lawyer's phone: _____

4. The court must appoint a "guardian ad litem" for you. A guardian ad litem meets with you before the hearing and helps the judge decide your application. Please state whether you want the court to appoint someone you know as your guardian ad litem. This person could be a relative, a member of the clergy, a counselor, a psychiatrist or psychologist, or other adult, or your lawyer. You do not have to ask the court to appoint someone you know. Keep in mind that the court may appoint the person you request, but it does not have to.

I am requesting that the court appoint someone I know as my guardian ad litem (you will identify this person on your verification page)

I am not requesting the court to appoint someone I know as my guardian ad litem. (The court will appoint someone it chooses).

5. Please state whether you have filed a Confidential Application for Waiver of Parental Notification other than this one.

I have filed another Confidential Application for Waiver of Parental Notification.

I have **not** filed another Confidential Application for Waiver of Parental Notification.

(End of Cover Page)

CAUSE NO. _____
(Do not fill in the blank above. Court staff will fill in the blank.)

**Confidential Application for Waiver of Parental Notification:
Verification Page
(Form 2B)**

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code §33.003(m)

Important: Your Application has two parts: (1) this cover sheet (Form 2A), which asks for basic information about your application; and (2) a separate verification page (Form 2B), which asks for information about you and for you to swear to the truth of everything you say in the cover sheet and verification page. You or someone acting on your behalf must complete both of these forms. If you are completing this application for a minor, remember that "I" or "my" refers to the minor rather than to you.

1. If you are requesting the court to appoint someone you know as your guardian ad litem (*see* Question 4 on the Cover Sheet, Form 2A), please identify them:

Name: _____ Relationship: _____

Address: _____ Phone: _____

2. If you do not have a lawyer, please complete the two blanks below. Tell us how the court, the lawyer appointed by the court, and the guardian ad litem appointed by the court can quickly contact you. If you cannot be contacted, your application will be denied. You can choose to be contacted by telephone, pager/beeper, or any other method by which you can be contacted immediately and confidentially. You do not have to give us your own telephone number, and you can have us contact someone else who helps you.

Person to be contacted (you or another person)

Another person to be contacted (optional)

Phone/pager/beeper/fax number(s)

Phone/pager/beeper/fax number(s)

Important: Please sign your name in the blank below. You must sign your name before a notary public, court clerk, or other person authorized to give oaths.

I swear or affirm that the information in my Application (both the Cover Sheet and this Verification Page) is true and correct.

Signature of minor or other person
completing this form

Full name of minor printed or typed
(if minor is not person completing this form)

Name of person completing this form printed or typed

Minor's date of birth

Sworn to or affirmed in my presence this _____ day of _____, _____.

Notary Public, Clerk or other person authorized to give oaths

**REQUEST TO POSTPONE TRIAL COURT HEARING
IN PARENTAL NOTIFICATION PROCEEDING;
DESIGNATION OF ALTERNATIVE TIME FOR HEARING
(Form 2C)**

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____ COUNTY, TEXAS

Please check and complete any questions below that apply:

_____ I request that the court postpone its hearing on my application. The hearing currently is due to be held on _____ or by _____ at _____ a.m./p.m.

_____ Please rule on my application by 5 p.m. on the second business day after (please state a date after which you will be ready to have the hearing): _____. The clerk will notify you concerning the specific time of the hearing.

_____ I will contact you at a later time to determine a time for the hearing.

Attorney's Signature: _____

Attorney's Name, Printed: _____

Attorney's State Bar No.: _____

Attorney's Address: _____

Attorney's Telephone: _____

Attorney's Fax No.: _____

**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.

Comment: _____

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

Comment: _____

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

Comment: _____

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

**CERTIFICATE OF DEEMED GRANTING OF
APPLICATION IN PARENTAL NOTIFICATION PROCEEDING
(Form 2E)**

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____ COUNTY, TEXAS

This will certify that on the _____ day of _____, _____, Jane Doe filed an application for a court order authorizing her to consent to an abortion without the parental notice required by Section 33.002, Family Code. The court did not rule on the application by 5:00 p.m. on the second business day after the day the application was filed. Accordingly, under Section 33.003(h), Family Code, the application is deemed to be GRANTED.

Signed this _____ day of _____, _____.

Judge Presiding or Clerk

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

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

Attention Clerk: Please Expedite

Notice of Appeal in Parental Notification Proceeding (Form 3A)

As prescribed by the Clerk of the Supreme Court of Texas pursuant to Tex. Fam. Code § 33.004(d).

CAUSE NO. _____

IN RE JANE DOE

IN THE _____

_____ COUNTY, TEXAS

(Important: Your lawyer or court-appointed lawyer should fill out the information below.)

On this _____ day of _____, _____, notice is hereby given that Jane Doe appeals to the _____ Court of Appeals from the final order entered in the above-referenced cause denying her application for a court order authorizing her to consent to an abortion without the parental notification required by Section 33.002, Family Code.

Attorney's Signature: _____

Attorney's Name, Printed: _____

Attorney's State Bar No.: _____

Attorney's Address: _____

Attorney's Telephone: _____

Attorney's Fax No.: _____

**REQUEST TO POSTPONE COURT OF APPEALS' RULING
IN PARENTAL NOTIFICATION PROCEEDING;
DESIGNATION OF ALTERNATIVE TIME FOR RULING
(Form 3B)**

CAUSE NO. _____

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

_____ DISTRICT OF TEXAS

AT _____, TEXAS

Please check and complete any questions below that apply:

_____ I request that the court postpone its ruling on my appeal. The appeal currently is due to be ruled on by _____ at _____ a.m./p.m.

_____ Please rule on my appeal by 5:00 p.m. on the second business day after (please state a date after which you will be ready to have the hearing): _____. The clerk will notify you concerning the specific time of the hearing.

_____ I will contact you at a later time to determine a time for ruling on my appeal.

Attorney's Signature: _____

Attorney's Name, Printed: _____

Attorney's State Bar No.: _____

Attorney's Address: _____

Attorney's Telephone: _____

Attorney's Fax No.: _____

**JUDGMENT ON APPEAL IN PARENTAL NOTIFICATION
PROCEEDING
(Form 3C)**

CAUSE NO. _____

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

_____ DISTRICT OF TEXAS

AT _____, TEXAS

It is ORDERED that the trial court's final order in this cause denying the minor's application for a court order authorizing her to consent to an abortion without the parental notice required by Section 33.002, Family Code, is:

_____ Affirmed. The minor will be advised of her right to appeal under Rule 4 of the Texas Parental Notification Rules and furnished a Notice of Appeal form, Form 4A.

_____ Reversed and the application is GRANTED.

_____ Opinion to follow.

_____ No opinion to follow.

Justice

Other Members of the Panel:

Justice _____

Justice _____

Date: _____

**CERTIFICATION OF DEEMED REVERSAL OF ORDER ON APPEAL
IN PARENTAL NOTIFICATION PROCEEDING
(Form 3D)**

CAUSE NO. _____

IN RE JANE DOE

IN THE COURT OF APPEALS FOR THE

_____ DISTRICT OF TEXAS

AT _____, TEXAS

This will certify that on the _____ day of _____, _____, Jane Doe filed her notice of appeal from an order denying her application for a court order authorizing her to consent to an abortion without the parental notice required by Section 33.002, Family Code. The court of appeals did not rule on her appeal by 5:00 p.m. on the second business day after the day the notice of appeals was filed. Accordingly, under Section 33.004(b), Family Code, the order is deemed to be REVERSED and the application is deemed to be - GRANTED.

Signed this _____ day of _____, _____.

Judge Presiding or Clerk

ATTENTION CLERK: PLEASE EXPEDITE

NOTICE OF APPEAL TO TEXAS SUPREME COURT IN PARENTAL NOTIFICATION PROCEEDING (Form 4A)

CAUSE NO. _____

IN THE SUPREME COURT OF TEXAS

IN RE JANE DOE

On this _____ day of _____, _____, notice is hereby given that Jane Doe petitions the Supreme Court of Texas for review of the order entered in Cause No. _____, in the _____ Court of Appeals affirming the denial of her application for a court order authorizing her to consent to an abortion without the parental notice required by Section 33.002, Family Code. -

Attorney's Signature: _____

Attorney's Name, Printed: _____

Attorney's State Bar No.: _____

Attorney's Address: _____

Attorney's Telephone: _____

Attorney's Fax No.: _____

Enclosure to Agenda No. 2

1-5
Carrie

TEXAS RULES OF CIVIL PROCEDURE

Part VII Rules Relating to Special Proceedings

Section 1. Procedures Related to Home Equity and Certain Reverse Mortgage Foreclosure

Rule 735. Procedures

A party seeking to foreclose a lien created under TEX. CONST. art. XVI, § 50(a)(6), for a home equity loan, or TEX. CONST. art. XVI, § 50(a)(7), for a reverse mortgage, that is to be foreclosed on grounds other than TEX. CONST. art. XVI, §§ 50(k)(6)(A) or (B), may file: (1) a suit seeking judicial foreclosure; (2) a suit or counterclaim seeking a final judgment which includes an order allowing foreclosure under the security instrument and TEX. PROP. CODE § 51.002; or (3) an application under Rule 736 for an order allowing foreclosure.

Rule 736. Expedited Foreclosure Proceeding

1. Application

A party filing an application under Rule 736 seeking a court order allowing the foreclosure of a lien under TEX. CONST. art. XVI, § 50(a)(6)(D), for a home equity loan, or § 50(k)(11), for a reverse mortgage, shall initiate such in rem proceeding by filing a verified application in the district court in any county where all or any part of the real property encumbered by the lien sought to be foreclosed (the "property") is located. The application shall:

- (A) be styled: "In re: Order for Foreclosure Concerning _____ (Name of person to receive notice of foreclosure) and _____ (Property Mailing Address)";
- (B) identify by name the party who, according to the records of the holder of the debt, is obligated to pay the debt secured by the property;
- (C) identify the property by mailing address and legal description;
- (D) identify the security instrument encumbering the property by reference to volume and page, clerk's file number or other identifying recording information found in the official real property records of the county where all or any part of the property is located or attach a legible copy of the security instrument;
- (E) allege that:
 - (1) a debt exists;

- (2) the debt is secured by a lien created under TEX. CONST. art. XVI, § 50(a)(6), for a home equity loan, or § 50(a)(7), for a reverse mortgage;
 - (3) a default under the security instrument exists;
 - (4) the applicant has given the requisite notices to cure the default and accelerate the maturity of the debt under the security instrument, TEX. PROP. CODE § 51.002, TEX. CONST. art. XVI, § 50(k)(10), for a reverse mortgage, and applicable law;
- (F) describe facts which establish the existence of a default under the security instrument; and
- (G) state that the applicant seeks a court order required by TEX. CONST. art. XVI, § 50(a)(6)(D), for a home equity loan, or § 50(k)(11), for a reverse mortgage, to sell the property under the security instrument and TEX. PROP. CODE § 51.002.

A notice required by TEX. CONST. art. XVI, § 50(k)(10), for a reverse mortgage, may be combined or incorporated in any other notice referenced in Rule 736(1)(E)(4). The verified application and any supporting affidavit shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence, provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.

3. Notice

- (A) Service. Every application filed with the clerk of the court shall be served by the party filing the application. Service of the application and notice shall be by delivery of a copy to the party to be served by certified and first class mail addressed to each party who, according to the records of the holder of the debt is obligated to pay the debt. Service shall be complete upon the deposit of the application and notice, enclosed in a postage prepaid and properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. If the respondent is represented by an attorney and the applicant's attorney has knowledge of the name and address of the attorney, an additional copy of the application and notice shall be sent to respondent's attorney.
- (B) Certificate of Service. The applicant or applicant's attorney shall certify to the court compliance with the service requirements of Rule 736. The applicant shall file a copy of the notice and the certificate of service with the clerk of the court. The certificate of service shall be prima facie evidence of the fact of service.
- (C) Form of Notice. The notice shall be sufficient if it is in substantially the following form in at least ten point type:

Cause Number

In re: Order for Foreclosure
Concerning

_____ *1
and
_____ *2

In The District Court

of _____ County

_____ Judicial District

NOTICE TO _____ *3

An application has been filed by _____, as Applicant, on _____ *4, in a proceeding described as "In re: Order for Foreclosure Concerning _____ *1 and _____ *2."

The attached application alleges that you, the Respondent, are in default under a security instrument creating a lien on your homestead under TEX. CONST. art. XVI, § 50(a)(6), for a home equity loan, or § 50 (a)(7), for a reverse mortgage. This application is now pending in this court.

Applicant seeks a court order, as required by TEX. CONST. art. XVI, § 50(a)(6)(D) or § 50(k)(11), to allow it to sell at public auction the property described in the attached application under the security instrument and TEX. PROP. CODE § 51.002.

You may employ an attorney. If you or your attorney do not file a written response with the clerk of the court at _____ *5 on or before 10:00 a.m. on _____ *6 an order authorizing a foreclosure sale may be signed. If the court grants the application, the foreclosure sale will be conducted under the security instrument and TEX. PROP CODE § 51.002.

You may file a response setting out as many matters, whether of law or fact, as you consider may be necessary and pertinent to contest the application. If a response is filed, the court will hold a hearing at the request of the applicant or respondent.

In your response to this application, you must provide your mailing address. In addition, you must send a copy of your response to _____ *7.

ISSUED

By _____
Applicant or Applicant's Attorney

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this notice with a copy of the application was sent certified and regular mail to _____ *8 on the _____ day of _____.

Applicant or Applicant's Attorney [signature]

*1 name of respondent

*2 mailing address of property

*3 name and address of respondent

*7 name and address of applicant or applicant's attorney

*4 date application filed

*5 address of clerk of court

*6 response due date

- (D) The applicant shall state in the notice the date the response is due in accordance with Rule 736(3).
- (E) The application and notice may be accompanied by any other notice required by state or federal law.

3. Response Due Date

A response is due on or before 10:00 a.m. on the first Monday after the expiration of thirty-eight (38) days after the date of mailing of the application and notice to respondent, exclusive of the date of mailing, as set forth in the certificate of service.

4. Response

- (A) The respondent may file a response setting out as many matters, whether of law or fact, as respondent deems necessary or pertinent to contest the application. Such response and any supporting affidavit shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence, provided that facts may be stated based upon information and belief if the grounds of such belief are specifically stated.
- (B) The response shall state the respondent's mailing address.
- (C) The response shall be filed with the clerk of the court. The respondent shall also send a copy of the response to the applicant or the applicant's attorney at the address set out in the notice.

5. Default

At any time after a response is due, the court shall grant the application without further notice or hearing if:

- (A) the application complies with Rule 736(1);
- (B) the respondent has not previously filed a response; and
- (C) a copy of the notice and the certificate of service shall have been on file with the clerk of the court for at least ten days exclusive of the date of filing.

6. Hearing When Response Filed

On the filing of a response, the application shall be promptly heard after reasonable notice to the applicant and the respondent. No discovery of any kind shall be permitted in a proceeding

under Rule 736. Unless the parties agree to an extension of time, the issue shall be determined by the court not later than ten business days after a request for hearing by either party. At the hearing, the applicant shall have the burden to prove by affidavits on file or evidence presented the grounds for the granting of the order sought in the application.

7. Only Issue

- (A) The only issue to be determined under Rule 736 shall be the right of the applicant to obtain an order to proceed with foreclosure under the security instrument and TEX. PROP. CODE § 51.002. No order or determination of fact or law under Rule 736 shall be res judicata or constitute collateral estoppel or estoppel by judgment in any other proceeding or suit.
- (B) The granting of an application under these rules shall be without prejudice to the right of the respondent to seek relief at law or in equity in any court of competent jurisdiction. The denial of an application under these rules shall be without prejudice to the right of the applicant to re-file the application or seek other relief at law or in equity in any court of competent jurisdiction.

8. Order to Proceed with Notice of Sale and Sale

- (A) Grant or denial. The court shall grant the application if the court finds applicant has proved the elements of Rule 736(1)(E). Otherwise, the court shall deny the application. The granting or denial of the application is not an appealable order.
- (B) Form of order. The order shall recite the mailing address and legal description of the property, direct that foreclosure proceed under the security instrument and TEX. PROP. CODE § 51.002, provide that a copy of the order shall be sent to respondent with the notice of sale, provide that applicant may communicate with the respondent and all third parties reasonably necessary to conduct the foreclosure sale, and, if respondent is represented by counsel, direct that notice of the foreclosure sale date shall also be mailed to counsel by certified mail.
- (C) Filing of order. The applicant is to file a certified copy of the order in the real property records of the county where the property is located within ten business days of the entry of the order. Failure to timely record the order shall not affect the validity of the foreclosure or defeat the presumption of TEX. CONST. art. XVI, § 50(i).

9. Abatement and Dismissal

A proceeding under Rule 736 is automatically abated if, before the signing of the order, notice is filed with the clerk of the court in which the application is pending that respondent has filed a petition contesting the right to foreclose in a district court in the county where the application is pending. A proceeding that has been abated shall be dismissed.

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110:999993-1

ENROLLED

1 SENATE JOINT RESOLUTION

2 proposing a constitutional amendment relating to the making of
3 advances under and payment of a reverse mortgage.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subsections (k), (p), and (r), Section 50,
6 Article XVI, Texas Constitution, are amended to read as follows:

7 (k) "Reverse mortgage" means an extension of credit:

8 (1) that is secured by a voluntary lien on homestead
9 property created by a written agreement with the consent of each
10 owner and each owner's spouse;

11 (2) that is made to a person who is or whose spouse is
12 62 [55] years or older;

13 (3) that is made without recourse for personal
14 liability against each owner and the spouse of each owner;

15 (4) under which advances are provided to a borrower
16 based on the equity in a borrower's homestead;

17 (5) that does not permit the lender to reduce the
18 amount or number of advances because of an adjustment in the
19 interest rate if periodic advances are to be made;

20 (6) that requires no payment of principal or interest
21 until:

22 (A) all borrowers have died;

23 (B) the homestead property securing the loan is
24 sold or otherwise transferred; [or]

1 (C) all borrowers cease occupying the homestead
2 property for a period of longer than 12 consecutive months without
3 prior written approval from the lender; or

4 (D) the borrower:

5 (i) defaults on an obligation specified in
6 the loan documents to repair and maintain, pay taxes and
7 assessments on, or insure the homestead property;

8 (ii) commits actual fraud in connection
9 with the loan; or

10 (iii) fails to maintain the priority of
11 the lender's lien on the homestead property, after the lender gives
12 notice to the borrower, by promptly discharging any lien that has
13 priority or may obtain priority over the lender's lien within 10
14 days after the date the borrower receives the notice, unless the
15 borrower:

16 (a) agrees in writing to
17 the payment of the obligation secured by the lien in a manner
18 acceptable to the lender;

19 (b) contests in good faith
20 the lien by, or defends against enforcement of the lien in, legal
21 proceedings so as to prevent the enforcement of the lien or
22 forfeiture of any part of the homestead property; or

23 (c) secures from the holder
24 of the lien an agreement satisfactory to the lender subordinating
25 the lien to all amounts secured by the lender's lien on the
26 homestead property [~~(B) all borrowers cease occupying the~~
27 homestead property as a principal residence for more than 180

1 consecutive days and the location of the homestead property owner
2 is unknown to the lender];

3 (7) that provides that if the lender fails to make
4 loan advances as required in the loan documents and if the lender
5 fails to cure the default as required in the loan documents after
6 notice from the borrower, the lender forfeits all principal and
7 interest of the reverse mortgage, provided, however, that this
8 subdivision does not apply when a governmental agency or
9 instrumentality takes an assignment of the loan in order to cure
10 the default; [and]

11 (8) that is not made unless the owner of the homestead
12 attests in writing that the owner received counseling regarding the
13 advisability and availability of reverse mortgages and other
14 financial alternatives;

15 (9) that requires the lender, at the time the loan is
16 made, to disclose to the borrower by written notice the specific
17 provisions contained in Subdivision (6) of this subsection under
18 which the borrower is required to repay the loan;

19 (10) that does not permit the lender to commence
20 foreclosure until the lender gives notice to the borrower, in the
21 manner provided for a notice by mail related to the foreclosure of
22 liens under Subsection (a) (6) of this section, that a ground for
23 foreclosure exists and gives the borrower at least 30 days, or at
24 least 20 days in the event of a default under Subdivision
25 (6) (D) (iii) of this subsection, to:

26 (A) remedy the condition creating the ground for
27 foreclosure;

1 (B) pay the debt secured by the homestead
2 property from proceeds of the sale of the homestead property by the
3 borrower or from any other sources; or

4 (C) convey the homestead property to the lender
5 by a deed in lieu of foreclosure; and

6 (11) that is secured by a lien that may be foreclosed
7 upon only by a court order, if the foreclosure is for a ground
8 other than a ground stated by Subdivision (6) (A) or (B) of this
9 subsection.

10 (p) The advances made on a reverse mortgage loan under which
11 more than one advance is made must be made [at regular intervals]
12 according to the terms [a plan] established by the [original] loan
13 documents by one or more of the following methods:

14 (1) at regular intervals;

15 (2) at regular intervals in which the amounts advanced
16 may be reduced, for one or more advances, at the request of the
17 borrower; or

18 (3) at any time by the lender, on behalf of the
19 borrower, if the borrower fails to timely pay any of the following
20 that the borrower is obligated to pay under the loan documents to
21 the extent necessary to protect the lender's interest in or the
22 value of the homestead property:

23 (A) taxes;

24 (B) insurance;

25 (C) costs of repairs or maintenance performed by
26 a person or company that is not an employee of the lender or a
27 person or company that directly or indirectly controls, is

1 controlled by, or is under common control with the lender;

2 (D) assessments levied against the homestead
3 property; and

4 (E) any lien that has, or may obtain, priority
5 over the lender's lien as it is established in the loan documents
6 [agreement].

7 (r) The supreme court shall promulgate rules of civil
8 procedure for expedited foreclosure proceedings related to the
9 foreclosure of liens under Subsection (a) (6) of this section and to
10 foreclosure of a reverse mortgage lien that requires a court order.

11 SECTION 2. This proposed constitutional amendment shall be
12 submitted to the voters at an election to be held November 2, 1999.
13 The ballot shall be printed to permit voting for or against the
14 proposition: "The constitutional amendment relating to the making
15 of advances under a reverse mortgage and payment of a reverse
16 mortgage."

17 S.J.R. No. 12

18 _____
19 President of the Senate

Speaker of the House

20 I hereby certify that S.J.R. No. 12 was adopted by the Senate
21 on March 18, 1999, by the following vote: Yeas 31, Nays 0;
22 May 21, 1999, Senate refused to concur in House amendment and
23 requested appointment of Conference Committee; May 24, 1999, House
24 granted request of the Senate; May 29, 1999, Senate adopted
25 Conference Committee Report by the following vote: Yeas 30,
26 Nays 0.

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Secretary of the Senate

I hereby certify that S.J.R. No. 12 was adopted by the House, with amendment, on May 18, 1999, by the following vote: Yeas 143, Nays 0, one present not voting; May 24, 1999, House granted request of the Senate for appointment of Conference Committee; May 27, 1999, House adopted Conference Committee Report by the following vote: Yeas 144, Nays 0, one present not voting.

Chief Clerk of the House

Enclosure to Agenda No. 3



PAUL WOMACK, JUDGE
COURT OF CRIMINAL APPEALS OF TEXAS

P.O. Box 12308
Austin, Texas 78711.
(512) 463-1595. (Fax) 463-7061.

April 13, 1999

Nathan Hecht, Justice
Supreme Court of Texas
Austin, Texas

Dear Nathan:

We have spoken before about adopting some "clean-up" amendments to the Rules of Appellate Procedure. I am sending you a copy of the changes we are considering. Our court has not approved these changes; I am sending them "for your information."

You will notice that only one proposal would affect civil cases: the amendment to Rule 38.6(a) to allow an extension of time to file the appellee's brief.

Although we have not taken formal action, we are eager to adopt Rule 73.01 and the appendix, which require use of a standard form of application for post-conviction writs of habeas corpus. We received 700 applications last month, and a standard form would greatly ease our task of processing them.

Please let me have your thoughts on these. With best wishes, I am,

Yours truly,

A handwritten signature in cursive script that reads "Paul".

Paul Womack, Judge.

000239

RULE 38. REQUISITES OF BRIEFS

38.6 Time to File Briefs.

- (d) *Modifications of filing time.* On motion complying with Rule 10.5(b), the appellate court may extend the time for filing ~~the appellant's~~ brief and may postpone submission of the case. A motion to extend the time to file the brief may be filed before or after the date the brief is due. The court may also, in the interests of justice, shorten the time for filing briefs and for submission of the case.

Notes and Comments

Comment to 1999 change: Rule 38.6(d) is amended to allow appellate courts to extend the time for filing briefs other than the appellant's.

RULE 42. DISMISSAL

42.2 Voluntary Dismissal in Criminal Cases.

- (a) At any time before the appellate court's decision, the appellate court may dismiss the appeal if the appellant withdraws his or her notice of appeal. The appellant ~~and his or her attorney~~ must personally sign the written withdrawal and file it in duplicate with the appellate clerk, who must immediately send the duplicate copy to the trial court clerk.

Notes and Comments

Comment to 1999 change: The requirement in Rule 42.2(a) that the appellant's attorney must sign the withdrawal is deleted to remove any implication that the attorney may veto the appellant's decision to withdraw the notice of appeal. The word "personally" is added to emphasize that the decision must be made by the appellant. *9/1a doesn't*

RULE 67. DISCRETIONARY REVIEW WITHOUT PETITION

- 67.1 **Four Judges' Vote.** By a vote of at least four judges, the Court of Criminal Appeals may ~~without a petition for discretionary review having been filed~~ grant review of a court of appeals' decision in a criminal case at any time before the mandate of the court of appeals issues. An order granting review will be filed with the clerk of the Court of Criminal Appeals, who must send a copy to the court of appeals clerk.

Notes and Comments

Comment to 1999 change: Language which was in the catchline of former Rule 201 has been deleted from Rule 67.1, to restore the substance of the rule, and to remove any implication that the court may not grant review on its own motion when a petition for discretionary review has been filed.

RULE 73. POSTCONVICTION APPLICATIONS FOR WRITS OF HABEAS CORPUS

73.01 Form of Application in Felony Case (other than Capital)

- (a) *Form.* The Court of Criminal Appeals may by order adopt a form for use by a person who files an application for postconviction habeas corpus relief in a felony case without a death penalty, under Code of Criminal Procedure article 11.07. The form will appear in an appendix to these rules.
- (b) *Use of form required.* An application for postconviction habeas corpus relief in a felony case other than capital, under Code of Criminal Procedure article 11.07, must be in the form adopted by the Court of Criminal Appeals. The clerk of the convicting court will make the forms available to applicants on request, without charge.
- (c) *Contents.* The person making the application must provide all information required by the form. The application must specify all grounds for relief, and must set forth in summary fashion the facts supporting each ground. The application must not cite cases or other law. The application must be typewritten or handwritten legibly.
- (d) *Verification.* The application must be verified by either:
 - (1) oath made before an officer authorized to administer oaths, such as a notary public, or
 - (2) if the person making the application is an inmate in the Institutional Division of the Department of Criminal Justice or in a county jail, an unsworn declaration in substantially the form required in Civil Practice and Remedies Code chapter 132.
- (e) *Noncompliance.* The clerk of the convicting court may, without filing an application that does not comply with this rule, return it to the person who filed the application, with a notation of the defect. The clerk of the Court of Criminal

01-20-00

To select at copy of form

000241

Appeals may, without filing an application that does not comply with this rule, return it to the clerk of the convicting court, with a notation of the defect, and the clerk of the convicting court will return the application to the person who filed it.

Notes and Comments

Comment to 1999 change: Subdivision 73.01 is added, and a form is added in an appendix.

COURT OF CRIMINAL APPEALS OF TEXAS

APPLICATION FOR A WRIT OF HABEAS CORPUS SEEKING RELIEF FROM FINAL FELONY CONVICTION UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

INSTRUCTIONS

1. You must use this form to file an application for a writ of habeas corpus seeking relief from a final felony conviction (other than a death-penalty case), under Code of Criminal Procedure article 11.07.
2. The clerk of the court in which you were convicted will make this form available to you, on request, without charge.
3. If you do not follow the instructions on this form, the clerk of the court may write a note of the defect on your application and return the form to you without filing it.
4. You must make a separate application on a separate form for each judgment of conviction you seek relief from. Even if the judgments were entered in the same court on the same day, you must make a separate application for each one.
5. Answer every item that applies to you on the form. You may use additional pages only if you need them for item 20, the facts supporting your ground for relief. Do not attach any additional pages for any other item.
6. You must include all grounds for relief, and all facts supporting each ground for relief, in the application you file seeking relief from any judgment of conviction.
7. Do not cite cases or other law in this application. Do not make legal arguments in this application. Legal citations and arguments may be made in a separate memorandum.
8. You must verify the application by signing either the Oath Before Notary Public or the Inmate's Declaration, which are at the end of this form. You may be prosecuted and convicted for aggravated perjury if you make any false statement of a material fact in this application.
9. When the application is fully completed, mail the original to the clerk of the convicting district court. Keep a copy of the application for your records.

Cause No. _____
(The Clerk of the convicting court will fill this line.)

COURT OF CRIMINAL APPEALS OF TEXAS

APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

_____/_____/_____
NAME OF APPLICANT (Please print full name) DATE OF BIRTH

PLACE OF CONFINEMENT TDCJ-ID NUMBER

(1) Number and county of court which entered the judgment of conviction under
attack _____

(2) Trial Court Cause Number of judgment _____

(3) Date of judgment of conviction _____

(4) Length of sentence _____

(5) Trial judge's name _____

(6) Punishment assessed by: (Check one) (a) Judge (); (b) Jury ()

(7) Offense or offenses for which you were convicted: (all counts)

(8) What was your plea? (Check one)

- (a) Not guilty ()
- (b) Guilty ()
- (c) Nolo Contendere ()

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

(9) Kind of trial: (check one)

- (a) Jury ()
- (b) Judge only ()

(10) Did you testify at the guilt/innocence phase of trial? Yes () No ()

(11) Did you testify at the sentencing phase of trial? Yes () No ()

(12) Did you appeal from the judgment of conviction?

Yes () No ()

(13) If you did appeal, answer the following:

(a) Name of court of appeals: _____

(b) Cause No.: _____

(c) Result: _____

(d) Date of result: _____

(14) Did you file a petition for discretionary review with respect to this judgment?

Yes () No ()

(15) If your answer to (14) was "yes," give the following information:

(a) Cause No. _____

(b) Result: _____

(c) Date of result: _____

(16) Have you previously filed an 11.07 application for writ of habeas corpus with respect to this judgment?

Yes () No ()

(17) If your answer to (16) was "yes", give the following information:

(a) Court of Criminal Appeals Writ No. _____

(b) Result: _____

(c) Date of result: _____

(18) Do you have any petition or appeal now pending in any court, either state or federal, attacking the same conviction?

Yes () No ()

(19) If this is not your first habeas corpus application challenging this conviction, state the reason the current claims have not been and could not have been presented in an earlier application.

- (20) State concisely every ground on which you claim that you are being unlawfully confined. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting the grounds.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. The grounds you may raise are not limited to those listed below. However, you should raise in this application all available grounds (relating to this conviction) on which you base your allegations that you are being unlawfully confined.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not simply check any of the grounds listed below.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and empaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- (k) Denial of time credits on sentence.
- (l) Improper revocation of parole on mandatory supervision.
- (m) Illegal sentence.
- (n) Invalid or defective indictment.
- (o) No evidence or insufficient evidence.
- (A) Ground one: _____

Supporting FACTS (tell your story briefly without citing cases or law): _____

- (B) Ground two: _____

Supporting FACTS (tell your story briefly without citing cases or law): _____

(C) Ground three: _____

Supporting FACTS (tell your story briefly without citing cases or law): _____

(D) Ground four: _____

Supporting FACTS (tell your story briefly without citing cases or law): _____

Wherefore, applicant prays that the Court grant applicant relief to which he may be entitled to this proceeding.

VERIFICATION

(Complete either the Oath Before Notary Public or the Inmate's Declaration)

Oath Before Notary Public

STATE OF TEXAS, COUNTY OF _____

_____, being first duly sworn, under oath, says: that he is the applicant in this action and knows the content of the above application and according to the applicant's belief, the foregoing allegations of the application are true.

Signature of applicant

SUBSCRIBED AND SWORN TO BEFORE ME this ___ day of _____.

Notary Public

122000

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Inmate's Declaration

I, _____,
(inmate's name)

_____, being presently incarcerated in
(inmate's identifying number from TDCJ-ID or county jail)

(name of TDCJ-ID unit or county jail)

declare under penalty of perjury that according to my belief the foregoing
information and allegations of the application are true and correct.

Signed on _____
(date)

Signature of applicant

Signature of attorney (if any)

Enclosure to Agenda No. 4

JAMAIL & KOLIUS

ATTORNEYS AT LAW

ONE ALLEN CENTER

800 DALLAS STREET SUITE 3400

HOUSTON, TEXAS 77002-4798

(713) 851-3000

FAX (713) 851-1957

JOSEPH D. JAMAIL
GUS KOLIUS
JANET FIGUEROA HANSEN
FRANK M. STAGGS, JR.

DAWN JAMAIL

NAT B. KING
COUNSEL

July 19, 1999

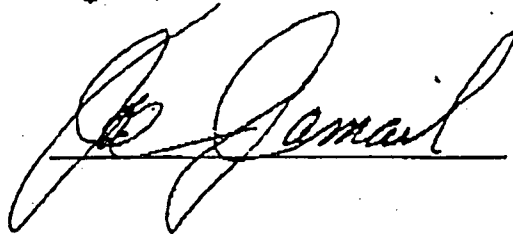
Honorable Tom Phillips
Chief Justice Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Honorable Nathan Hecht
Justice, Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Dear Judges:

Would you please review these suggestions regarding voir dire. Make whatever changes you want but, please, preserve voir dire.

Regards,

A handwritten signature in cursive script, appearing to read "J. Jamail", is written over a horizontal line.

JJ:dd
Enclosure
via telecopy

001000

000195

(New)

Tex. R. Civ. P. 226b

EXAMINATION OF JURY PANEL BY VOIR DIRE

(a) After administration of the oath prescribed by Rule 266, each party shall be permitted to examine the members of the jury panel to determine if any of them are disqualified or should not serve on the case.

(b) The jury panel shall be examined in the following order unless the court should, for good cause stated in the record, otherwise direct:

(i) The party upon whom rests the burden of proof on the whole case shall first examine the jury panel. In the event there be more than one such party, such parties shall examine the jury panel in the order assigned by the court according to the nature of the claims or defenses.

(ii) The adverse party shall then examine the jury panel. In the event there be more than one adverse party, such parties shall examine the jury panel in the order assigned by the court according to the nature of the claims or defenses.

(iii) An intervenor shall occupy the position in the examination of the jury panel assigned by the court according to the nature of the claim.

(c) Each party shall have the opportunity to address and question the jury panel for a reasonable period of time. A party examining the jury panel shall be accorded the opportunity to state to the jury panel briefly the nature of its claim or defense and what it expects to prove and the relief sought. Each party shall be entitled to inquire into matters reasonably related to the kinds of issues presented by the case so as to adequately exercise the right to challenge a panel member for cause or exercise its allocated peremptory challenges. The time allocated to a party for examination of the jury panel shall not be unreasonably restricted.

Comments:

1. The right to conduct a proper voir dire is linked to the constitutional right to a fair trial. *Babcock v. Northwest Memorial Hosp.*, 767 S.W.2d 705, 709 (Tex. 1989). Thus, although the trial court has broad discretion in ruling on the propriety of the voir dire, *Dickson v. Burlington N. R.R.*, 730 S.W.2d 82, 85 (Tex. App. — Fort Worth 1987, writ ref'd n.r.e.), the exercise of such discretion in the curtailment of a party's voir dire is subject to constitutional scrutiny.

2. The court should give the attorneys broad latitude during the examination of the jury panel. *Babcock v. Northwest Memorial Hosp.*, 767 S.W.2d 705, 708-09 (Tex. 1989).

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LEGISLATIVE INFORMATION SYSTEM 76(R)
BILL TEXT REPORT
SB 1863 SENATE COMMITTEE REPORT *

DATE: 01/06/00
TIME: 15:43:09
PAGE: 1

1-1 By: Cain S.B. No. 1863
1-2 (In the Senate - Filed April 13, 1999; April 14, 1999, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 27, 1999, reported favorably by the following vote: Yeas 4,
1-5 Nays 0; April 27, 1999, sent to printer.)
1-6 A BILL TO BE ENTITLED
1-7 AN ACT
1-8 relating to voir dire requirements in civil actions.
1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-10 SECTION 1. Chapter 30, Civil Practice and Remedies Code, is
1-11 amended by adding Section 30.006 to read as follows:
1-12 Sec. 30.006. VOIR DIRE REQUIREMENTS. (a) In this section,
1-13 "side" has the same meaning as in Rule 233, Texas Rules of Civil
1-14 Procedure, or its successor.
1-15 (b) In any civil action to be tried before a jury, the trial
1-16 court shall allow each side voir dire, as follows:
1-17 (1) in Level 1 cases, as defined by Rule 190.2, Texas
1-18 Rules of Civil Procedure, at least one hour;
1-19 (2) in Level 2 cases, as defined by Rule 190.3, Texas
1-20 Rules of Civil Procedure, at least two hours; and
1-21 (3) in Level 3 cases, as defined by Rule 190.4, Texas
1-22 Rules of Civil Procedure, at least three hours.
1-23 (c) The time allocated in Subsection (b) shall not include
1-24 time consumed in making preemptory challenges or challenges for
1-25 cause to jurors or in making or responding to objections.
1-26 (d) The supreme court may adopt rules consistent with the
1-27 provisions of this section. To the extent that any rule conflicts
1-28 with the provisions of this section, this section controls.
1-29 (e) Section 22.004, Government Code, does not apply to this
1-30 section.
1-31 SECTION 2. The importance of this legislation and the
1-32 crowded condition of the calendars in both houses create an
1-33 emergency and an imperative public necessity that the
1-34 constitutional rule requiring bills to be read on three several
1-35 days is hereby suspended, and that this Act take effect and be in
1-36 force from and after its passage, and it is so enacted.
1-37 * * * * *

LI8030C

LEGISLATIVE INFORMATION SYSTEM 76(R)
BILL TEXT REPORT
SB 1863 INTRODUCED VERSION *

DATE: 01/06/00
TIME: 15:43:18
PAGE: 1

By: Cain S.B. No. 1863
Line and page numbers may not match official copy.
Bill not drafted by TLC or Senate E&E.

A BILL TO BE ENTITLED
AN ACT

- 1-1 relating to voir dire requirements in civil actions.
- 1-2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
- 1-3 SECTION 1. Chapter 30, Civil Practice and Remedies Code, is
- 1-4 amended by adding Section 30.006 to read as follows:
- 1-5 Section 30.006. VOIR DIRE REQUIREMENTS. (a) In this
- 1-6 section, "side" has the same meaning as in Rule 233, Texas Rules of
- 1-7 Civil Procedure, or its successor.
- 1-8 (b) In any civil action to be tried before a jury, the trial
- 1-9 court shall allow each side voir dire, as follows:
- 1-10 (1) In Level One cases, as defined by Rule 190.2,
- 1-11 TEXAS RULES OF CIVIL PROCEDURE, at least one hour;
- 1-12 (2) In Level Two cases, as defined by Rule 190.3,
- 1-13 TEXAS RULES OF CIVIL PROCEDURE, at least two hours; and
- 1-14 (3) In Level Three cases, as defined by Rule 190.4,
- 1-15 TEXAS RULES OF CIVIL PROCEDURE, at least three hours.
- 1-16 (c) The time allocated in Subsection (a) shall not include
- 1-17 time consumed in making preemptory challenges or challenges for
- 1-18 cause to jurors or in making or responding to objections.
- 1-19 (d) The Supreme Court may adopt rules consistent with the
- 1-20 provisions of this Act. To the extent that any rule conflicts with
- 1-21 the provisions of this Act, this Act controls.
- 1-22 (e) Section 22.004, Government Code, does not apply to this
- 2-1 section.
- 2-2 SECTION 2. The importance of this legislation and the
- 2-3 crowded condition of the calendars in both houses create an
- 2-4 imperative public necessity that the constitutional rule requiring
- 2-5 bills to be read on three several days is hereby suspended, and
- 2-6 that this Act take effect and be in force from and after its
- 2-7 passage, and it is so enacted.

Enclosure to Agenda No. 5

Please join us for a
Tribute to
Luke Soules
immediate past chair of the
Supreme Court Rules Advisory Committee

Friday, January 28
6:00 p.m.

100 Congress Avenue
Suite 1100
Austin, Texas

Hosted by
Jackson Walker L.L.P.

Cocktails and Hors d'oeuvres

Please reply by January 21
(512) 236-2000 ext. 5815