NO. 11-0732

IN THE SUPREME COURT OF TEXAS

IN RE STEPHANIE LEE
Relator

Original Proceeding Arising from the 309th District Court
Harris County, Texas, No. 2005-41798 (Hon. Sheri Y. Dean)

BRIEF OF THE STATE BAR OF TEXAS FAMILY LAW COUNCIL AS AMICUS CURIAE

Respectfully submitted by,

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DISCLOSURE

This amicus curiae brief is filed by the State Bar of Texas Family Law Council, which is the governing body of the State Bar of Texas Family Law Section. The State Bar of Texas Family Law Section is a voluntary section associated with the State Bar of Texas. This brief does not necessarily represent the views of the members of the Board of Directors of the State Bar of Texas of or the State Bar itself. A copy of the *Guidelines for Submission of Amicus Curiae Briefs on Behalf of the Family Law Council* is attached hereto as Appendix A.

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BRIEF OF THE STATE BAR OF TEXAS
FAMILY LAW COUNCIL AS AMICUS CURIAE

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS:

The State Bar of Texas Family Law Council ("Council") submits this Amicus Curiae Brief pursuant to Rule 11 of the Texas Rules of Appellate Procedure and respectfully requests that it be received and considered by the Court.

I.
FAMILY LAW COUNCIL'S INTEREST

The Council, the governing body for the State Bar of Texas Family Law Section, represents the interest of approximately 5300 lawyers practicing family law located throughout the State. The Council is elected by vote of the members of the Family Law Section of the State Bar of Texas. No one was paid for the preparation of this brief.

This brief is filed in support of the granting of the mandamus. The overarching purpose of mediated settlement agreements is to amicably resolve disputes, without the interference of the judiciary, except under extremely limited circumstances specifically set forth by the Texas Legislature. Creation of common-law exceptions to the enforceability of mediated settlement agreements has the potential to lead to a loss of confidence in mediation as a case-dispositive process which in turn would lead to decreased participation in mediation and increased litigation regarding best interest of the child.

II.
STATEMENT OF FACTS

A. **On April 8, 2011**, Real Party in Interest Benjamin Redus ("RRPI") filed an amended motion to modify Relator Stephanie Lee's conservatorship and periods of possession of the parties' child ("the Child"). 3 MR 1-9.

B. **On April 19, 2011**, the parties signed a *Mediated Settlement Agreement* ("MSA"), which resolved all of the issues regarding conservatorship and possession of the Child and which met the requirements of Family Code Section 153.0071(d). 4 MR 1-6. *See* Tex. Fam. Code Ann. § 153.0071(d). The MSA enjoined Relator's current husband, Scott Lee ("Lee"), from being within five miles of Child when Relator exercised her periods of possession with the Child.[1] 4 MR 4.

C. **On May, 9, 2011,** the associate judge took judicial notice that Relator and RRPI had entered into and proved up the elements of an MSA. 5 MR 3-4. Nevertheless, the associate judge refused to enter judgment on the MSA after learning that Lee was a registered sex offender. 5 MR 7-8.

D. **On July 12, 2011**, Relator filed an unopposed motion to enter judgment on the MSA. 7 MR 1-5.

E. **On July 19, 2011,** RRPI filed an objection to Relator's motion to enter arguing for the first time that the MSA was not in the Child's best interest, withdrawing his con-

[1] Lee is a registered sex offender, who is on probation. 6 MR 13-14.

sent to the MSA, and requesting Respondent to dismiss Relator's motion to enter judgment or alternatively to order the parties to further mediation. 8 MR 1-4.

F. **On July 25, 2011,** during a hearing, Respondent took judicial notice of the MSA and heard additional evidence regarding RRPI's concern for the Child's best interest under the MSA. 6 MR 12-22. During cross-examination, RRPI admitted that at no time before he signed the MSA was he the victim of family violence involving Relator or that he signed the MSA as a result of such family violence. 6 MR 27-28. RRPI also admitted that, when he signed the MSA, he believed the MSA was in the Child's best interest even though he knew Lee's status as a registered sex offender. 6 MR 24-26. At the conclusion of the hearing, Respondent determined that the MSA was not in Child's best interest and refused to enter judgment. 6 MR 38; 2 MR 1-2.

G. **Subsequently,** Relator sought a mandamus from the Fourteenth Court of Appeals, which was denied. 1 MR 1-4.

H. **On September 15, 2011,** Relator filed this mandamus action.

III.
SUMMARY OF THE ARGUMENT

The Council's argument is simple—where parties execute a mediated settlement agreement concerning issues affecting the parent-child relationship that meets the Family Code's requirements to be irrevocable, either party is entitled to judgment on the agreement unless the trial court finds a party to the agreement was a victim of family violence, and that circumstance affected the parties decision making ability. The statute providing for mediation of suits affecting the parent-child relationship reflects a policy favoring alternative dispute

resolution—whereby the parents may contractually determine what is in a child's best interest. This Court's rules of statutory construction reveal that the Legislature's intent in enacting the mediation statute was to remove the best interest determination from the trial court when entering judgment on mediated settlement agreements.

This case is important to the jurisprudence of the state because it involves the construction of a Family Code statute intended to minimize litigation and cost to the parties. The Court of Appeals' and trial court's rulings do just the opposite and have the potential to drastically increase the cost (financial, emotional, and otherwise) of family litigation in Texas. This Court should grant review to address this problem.

III.
ARGUMENT

A. Standard of Review.

This case requires this Court to interpret Family Code Section 153.0071. Statutory interpretation is a legal question that this Court reviews de novo. *F.F.P. Operating Partners, L.P. v. Duenez*, 237 S.W.3d 680, 683 (Tex. 2007). Once a mediated settlement agreement meets the requirements of Section 153.0071(d), it is an abuse of discretion for the trial court not to enter judgment on the mediated settlement agreement. *See In re S.A.D.S.*, 2010 WL 3193520 at * 4, __ S.W. 3d. ___ (Tex. App.—Fort Worth 2010, no pet.); *Garcia-Udall v. Udall*, 141 S.W.3d 323, 332 (Tex. App.—Dallas 2004, no pet.).

B. Family Code Section 153.0071.

Texas Family Code Section 153.0071 provides in pertinent part as follows:

> (d) A mediated settlement agreement is binding on the parties if the agreement:

(1) provides, in a prominently displayed statement that is in bold-faced type or capital letters or underlined, that the agreement is not subject to revocation;
(2) is signed by each party to the agreement; and
(3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(e) If a mediated settlement agreement meets the requirements of Subsection (d), a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.

(e-1) Notwithstanding Subsections (d) and (e), a court may decline to enter a judgment on a mediated settlement agreement if the court finds that:

(1) a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions; and
(2) the agreement is not in the child's best interest.

Tex. Fam. Code Ann. § 153.0071(d)-(e-1).

C. The rules of statutory construction control the interpretation of Family Code Section 153.0071.

The legislature has removed the trial court's discretion to conduct a "best interest" finding when a mediated settlement agreement meets the requirements of Family Code Section 153.0071(d). The construction of this statute and its interaction with other relevant statutes show that the legislature has balanced the Family Code's "best interest" policy with Texas's "alternative dispute resolution policy" and vested the "best interest" determination in the consenting parents who submit their dispute to mediation, not to the trial court.

When unambiguous, the primary objective of statutory interpretation is for this Court to ascertain legislative intent by examining the statute's plain language. *City of DeSoto v. White,* 288 S.W.3d 389, 394 (Tex. 2009). This Court must also consider the objective of the

law, the legislative history, and the consequences of a particular construction. *See* Tex. Gov't Code Ann. § 311.023(1), (3), (5); *Union Bankers Ins. Co. v. Shelton*, 889 S.W.2d 278, 280 (Tex. 1994).

A more specific statute controls over a more general one. *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000). When a general statutory provision conflicts with a more specific provision, "the provisions shall be construed, if possible, so that effect is given to both." Tex. Gov't Code Ann. § 311.026(a). If the conflict between a general provision and a more specific provision is irreconcilable, "the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail." *Id.* at § 311.026(b); *see also City of Dallas v. Mitchell*, 870 S.W.2d 21, 23 (Tex. 1994).

A statute is presumed to have been enacted by the legislature with complete knowledge of the existing law and with reference to it. *Acker v. Texas Water Comm'n*, 790 S.W.2d 299, 301 (Tex. 1990). This Court does not give a statute a meaning that conflicts with other provisions if it can reasonably harmonize the provisions. *See id.*

In determining the meaning of a statute, a court must consider the entire act, its nature and objective, and the consequences that would follow from each construction. *Sharp v. House of Lloyd, Inc.*, 815 S.W.2d 245, 249 (Tex. 1999). If the statutory text is unambiguous, a court must adopt the interpretation supported by the statute's plain language unless that interpretation would lead to absurd results. *Texas Dept. of Protective & Regulatory Services v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex. 2004).

1. The plain meaning of Section 153.0071(d)-(e-1) shows that the legislature vested the best interest determination in the parents.

Here, the language in Section 153.0071(d)-(e-1) is unambiguous—if a settlement agreement meets the statutory requirements in subsection (d), any party to the agreement is entitled to judgment on the agreement. *See* Tex. Fam. Code Ann. § 153.0071(e). The statute's sole exception permits a court to decline entry of judgment on a mediated settlement agreement that complies with subsection (d)'s requirements if it finds:

(1) that a party to the agreement was a victim of family violence; and

(2) that circumstance impaired the party's ability to make decisions; and

(3) the agreement is not in the child's best interest.

Tex. Fam. Code Ann. § 153.0071(e-1). The statute does not authorize the trial court to substitute its judgment for the mediated settlement agreement entered by the parties unless the requirements of subsection 153.0071(e-1) are met. *See id.*; *In re S.A.D.S.*, 2010 WL 3193520 at * 4.

2. Section 153.0071 specifically governs the parties' mediation of matters involving the parent-child relationship.

RRPI and the Solicitor General argue that Family Code Section 153.002 governs all actions under Title 5 of the Family Code. While section 153.002 mandates a general best interest policy when courts are making the determination regarding conservatorship and possession and access, Section 153.0071(d)-(e-1) deals specifically with mediated settlement agreements between the parties. *Compare* Tex. Fam. Code Ann. § 153.002 and §153.0071(d)-(e-1). The legislature has carried this general best interest policy mandate forward into statutes more narrowly tailored to specific circumstances. *See e.g.* Tex. Fam. Code

Ann. § 153.007 (requiring the court to find a non-mediated settlement agreement in the best interest of the child before entry of judgment); 153.0071(b) (requiring a best interest determination for arbitrator awards); 156.101 (requiring a best interest finding prior to orders for modification of conservatorship and possession); 263.401(a)-(b) (requiring a court to dismiss a parental termination case after one year where the DFPS is appointed temporary conservator and no trial has been held unless the court finds continuing temporary conservatorship by the DFPS is in the child's best interest); 161.002(b) (requiring the court, before ordering termination of the parent-child relationship, to find by clear and convincing evidence that termination is in the best interest of the child).

Unlike the statutes listed above that require the trial court to make a best interest finding or determination, Sections 153.0071(d)-(e) contain no such requirement for parties requesting a judgment on a mediated settlement agreement. *See* Tex. Fam. Code Ann. 153.0071(d)-(e). Under RRPI's and the Solicitor General's construction of Section 153.002, there would be no need to ever add "best interest" to any statute set forth in Title 5 of the Family Code. Since the legislature is never presumed to do a useless act, RRPI's and the Solicitor's General's construction necessarily fails. *Hunter v. Fort Worth Capital Corp.*, 620 S.W.2d 547, 551 (Tex. 1981).

3. The legislature enacted Section 153.0071(d)-(e-1) with reference to existing law.

In this case, the intermediate court of appeals below determined that Respondent had the authority to refuse to enter judgment on the MSA based upon its finding that the MSA was not in the child's best interest. 1 MR 3. In arriving at this conclusion, the court of ap-

peals placed great emphasis on two cases: *In re Kasschau*, 11 S.W.3d 305 (Tex. App.—Houston [14th Dist.] 1999, no pet.), and *Garcia-Udall v. Udall*, 141 S.W.3d 323 (Tex. App.—Dallas 2004, no pet.). The court of appeals misplaced its reliance.

In 1995, the legislature enacted Section 153.0071, which originally did not include subsection (e-1). *See* Acts of 1995, 74th Leg., ch. 751, § 27, eff. Sept. 1, 1995.

In 1999, the Houston Fourteenth Court of Appeals decided *In re Kasschau* in which the court held that the trial court did not abuse its discretion by refusing to enforce a mediated settlement agreement that it found contained an illegal provision. 11 S.W.3d at 314. In *Kasschau*, a mother and father entered into a mediated settlement agreement that complied with Section 153.0071(d). *Id.* at 308. A provision in the mediated settlement agreement required the father to turn over certain audiotape recordings for destruction by the parties' attorneys—an illegal act. *Id.* at 309. The trial court refused to render judgment on the mediated settlement agreement, finding the agreement void and unenforceable because it required performance of an illegal act.[2] In affirming the trial court's actions, the court of appeals noted the common law rule that a contract which requires a party to perform an illegal act violates public policy and is void. *Id.* at 312. As such, the court held that the trial court did not abuse its discretion by refusing to enter judgment on the mediated settlement agreement. *Id.*

In 2003, the Dallas Court of Appeals decided *Garcia-Udall v. Udall*, 141 S.W.3d 323. *Garcia-Udall* involved a mediated settlement agreement between a mother and father relating to the parties' child. *Id.* at 326. The trial court entered orders that deviated from the terms of

[2] The trial court additionally refused to sever the illegal provision and enforce the remaining provisions. *Id.* 313.

the mediated settlement agreement, and the mother appealed. *Id*. On appeal, the court ultimately determined the trial court had no authority to enter orders that deviated from the parties' MSA. *Id.* at 332. However, in dicta, the *Garcia-Udall* court made statements that appear to have misled the court of appeals in this case.

Citing a 1991 opinion, the *Garcia-Udall* court noted that "[a]n agreement on conservatorship issues that is not in the child's best interest violates public policy and is unenforceable." *Id.* at 331 (citing *Leonard v. Lane*, 821 S.W.2d 275, 278 (Tex. App.—Houston [1st Dist.] 1991, writ denied)). At this point, it is important to note that in *Leonard*, the court was applying Family Code Section 14.06, which addressed the enforcement of non-mediated settlement agreement.[3] *See Leonard*, 821 S.W.2d at 277 (citing Tex. Fam. Code 14.06 **(**Repealed by Act 1995, 74th Leg., ch. 20, § 2, eff. April 20, 1995)). Importantly, Section 14.06 permitted a trial court to refuse enforcement of a non-mediated settlement agreement if it found the agreement was not in the child's best interest. *Id.* Although, the *Garcia-Udall* court's reliance on *Leonard* and Section 14.06 is technically sound in regards to non-mediated settlement agreements that allow for a judicial best interest review, it has no application to mediated settlement agreements that do not allow a best interest review. See *Garcia-Udall*, 141 S.W.3d 331. *Compare* Tex. Fam. Code § 153.007 (formerly 14.06) with §153.0071(d)-(e).

In 2005, the legislature amended Section 153.0071 to include subsection (e-1)—with complete knowledge of the holdings *Kasschau* and *Garcia-Udall*. *See Acker*, 790 S.W.2d at

[3] Family Code section 14.06 was in form and substance virtually identical to current section 153.007(a).

301. Despite its knowledge of those cases, the legislature amended the statute to permit a court to refuse entry of judgment on a mediated settlement agreement only when the trial court finds a party to the agreement was a victim of family violence and that this family violence affected the party's decision making ability and that the mediated settlement agreement is in the child's best interest. Tex. Fam. Code Ann. § 153.0071(e-1).

Here, unlike the mediated settlement agreement in *Kasschau,* RRPI has not alleged the MSA contains an illegal provision or that the MSA requires an illegal act. Further, the evidence unequivocally establishes that RRPI was not a victim of family violence or that family violence affected his ability to make decisions. 2 MR 1; 6 MR 27-28; 38-39. As such, the trial court abused its discretion by refusing to enter judgment on the MSA based solely on its determination that the MSA was not in the Child's best interest. Further, the appellate court erred in affirming the trial court's refusal to enter judgment on the MSA based upon the holding in *Kasschau* and the dicta in *Garcia-Udall,* as the holding and dicta in those cases do not support its construction of Section 153.0071(d)-(e-1).

In his brief to this Court, RRPI also relies on *Beyers v. Roberts*, 199 S.W.3d 354 (Tex. App.—Houston [1st Dist.] 2006, pet. denied), to support his argument that the trial court had authority to refuse to enter judgment on the MSA. *See* Appellant's Brief at 6. In *Beyers*, the appellant-father argued the trial court erred by failing to conduct a hearing to determine whether a mediated settlement agreement was in the children's best interest. *Beyers*, 199 S.W.3d 359. In affirming the trial court's action, the court stated in dicta: "Trial courts have discretion to void all or part of a mediated settlement agreement if the court determines it is not in the child's best interest." *Id.* at 360. Like the court of appeals in this case, the *Beyers*

court relied on *Garcia-Udall* to support this assertion. *See id.* For the same reasons that the court of appeals reliance on *Garcia-Udall* is misplaced in this case, the *Beyers* court also misplaced its reliance on *Garcia-Udall*.

4. The construction of Section 153.0071 by the Court of Appeals and the Solicitor General will gut the legislature's intent to amicably settle family disputes by mediation.

The Solicitor General argues that precluding a trial court from making a best interest determination in a mediated settlement agreement will ultimately lead to absurd results. *See* Sol. Gen. Am. Brief at 6. As examples, the Solicitor General posits that "divorced parents could agree to allow a convicted child rapist to have sole custody of a minor child." *See* Sol. Gen. Am. Brief at 6. The Solicitor General additionally posits that a trial court's "hands would be tied if . . . [a] mother's drug dealer . . . coerced the father to sign an agreement obligating him to pay large amounts of child support that everyone understood would go directly to the drug dealer's pockets." Both of these fictional scenarios are nothing like the facts presented here, but they are also likely illegal—which provides the trial court grounds for invalidating the agreement without necessitating a best interest determination. *See In re Kasschau*, 11 S.W.3d at 314. Moreover, as for the latter example, the trial court may refuse to enforce the agreement as it was likely procured by fraud or duress. *See Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 664 (Tex. 2008).

Moreover, the consequences that will flow from the court of appeals' and the Solicitor General's construction of 153.0071(d)-(e-1) is realistically more troubling than the fictional scenarios the Solicitor General posits. The opinion issued by the appellate court creates a

dangerous precedent that will effectively gut the legislative intent favoring alternative dispute resolution of family law matters by mediation. *See* 1 MR 1-4.

Under the court of appeals' construction, a party to a non-revocable mediated settlement agreement that complies with Section 153.0071(d) may effectively rescind the agreement after signing it either before or perhaps after entry of judgment merely by convincing the trial court that the agreement is not or is no longer in a child's best interest. Therefore, instead of settling a family dispute by binding mediation, families will ultimately find themselves litigating best interest every time a litigant changes his or her mind after settling in mediation—a circumstance the legislature attempted to avoid by providing for the non-revocability of mediated settlement agreements in the first place. This result will ultimately increase the cost of resolving family law disputes by discouraging mediation which, under the law announced by the court of appeals, can be challenged upon a vague claim regarding the best interest of the child. Moreover, the stress imposed on families including the children will no doubt increase as families are forced to settle their disputes in the adversarial venue of the courts, rather than the cooperative environment of mediation. This result is certainly not in a child's best interest.

There are a number of reasons why the legislature has deferred to the parents to make the best interest determination in mediated settlements. *See* Gary Spitko, *Reclaiming The "Creatures Of The State"*: *Contracting For Child Custody Decisionmaking In The Best Interests Of The Family*, 57 WASH. & LEE L. REV. 1139 (2000). Parents are likely to know substantially more about their child than the court is able to learn through the adversarial process. *Id.* (citing *Miller v. Miller*, 620 A.2d 1161, 1164-66 (Pa. Super. Ct. 1993)). Additional-

ly, the parents' love for their child tends to produce agreements that are in the child's best interests. *Id*. Further, amicable settlement of the custody issue promotes family harmony, which is a good in itself. Finally, settlement of a custody dispute offers the opportunity for a speedy resolution of the matter. *Id.*

Furthermore, under the law announced by the court of appeals, procedural difficulties would need to be resolved. For example, is a contest over the best interest of the child under a mediated settlement agreement conducted by a hearing or by a trial? If conducted at a trial, would the issue be tried before the bench or would a party be entitled to a jury determination of best interest? Which party would have the burden of proof? Additionally, would the level of proof be by preponderance of the evidence or by clear and convincing? If coupled with a divorce, would the husband-wife portion of the mediated settlement agreement continue to be enforced or is the entire agreement abrogated if the trial court finds some of its terms not to be in a child's best interest?

D. Respondent (and the parties) had options to avoid the "bad facts" in this case rather than impermissibly refusing to enter judgment on the MSA.

The Council highlights the following options that Respondent and/or RRPI could have taken to ensure Child's welfare during Relator's periods of possession. First and foremost, because RRPI admitted he knew of Lee's status as a sex offender and that Lee had slept naked with the Child, RRPI was free to contract for more stringent restrictions on the whereabouts of Lee during Relator's periods of possession. 5 MR 9; 6 MR 24-26. Alternatively, RRPI could have negotiated for a contract that required Relator's periods of possession to be supervised. Further, assuming Lee had violated the terms of his probation or did so in the fu-

ture and RRPI became aware of such violation, RRPI or any other person could have reported such violation to Lee's probation officer or any other appropriate authority to have him incarcerated for violating the terms of his probation, thereby prohibiting his access to the Child. Moreover, if RRPI believed at any time that Lee's presence threatened the Child's physical or mental health or welfare, he would be required to report such suspicions—and the MSA would have no effect on this duty. *See* Tex. Fam. Code Ann. § 261.101(a). Finally, if RRPI had personal knowledge that Lee posed a danger to the Child, he could have contacted the Department of Family and Protective Services to obtain its assistance in ensuring the Child's safety. *See generally* Tex. Fam. Code Ann. Chaps. 261-65.

Additionally, Respondent in her discretion could have appointed an amicus attorney or a guardian ad litem to protect or represent the best interest of the Child's during mediation negotiations to ensure the MSA was in Child's best interest. *See* Tex. Fam. Code Ann. § 107.021(a). Respondent could also have referred the case to the Department of Family and Protective Services or discussed the matter with Lee's probation officer. Instead of taking one of the steps outlined above, Respondent refused to enforce the contract to which Relator and RRPI had mutually agreed at mediation—an act for which it had no statutory authority or common law precedent. *See* Tex. Fam. Code Ann. 153.007(e-1); *Fairfield Ins. Co.*, 246 S.W.3d at 664 (without clear legislative intent to prohibit agreements, and absent any claim of fraud, duress, accident, mistake, or failure or inadequacy of consideration, Texas courts generally decline to declare contractual agreements void on public policy grounds).

PRAYER

The Family Law Council requests this Court to grant Relator Stephanie Lee's petition for writ of mandamus and to order the trial court to enter judgment that conforms with the parties' mediated settlement agreement.

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CERTIFICATE OF SERVICE

This is to certify that on the 9th day of January 2012, a true and correct copy of the *Brief of the State Bar of Texas Family Law Council as Amicus Curiae* has been delivered as follows:

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APPENDIX A

GUIDELINES FOR SUBMISSION OF AMICUS CURIAE BRIEFS ON BEHALF OF THE FAMILY LAW COUNCIL

1. The Family Law Council will submit amicus briefs only in matters involving substantive or procedural law on major issues of importance to the practice of family law. Issues of importance to the practice of family law may arise in cases involving other issues, such as probate or corporate matters, but where the decisions reached will carry over into the family law practice.

2. The Council shall submit no briefs which purport to resolve or take a position with regard to factual disputes.

3. The Council shall submit amicus briefs only in the Texas Supreme Court. Briefs may be submitted upon granting of writ of error or in order to encourage the Court to grant writ of error or discretionary review.

4. Amicus briefs shall not be submitted in any case in which an officer or member or liaison member of the Family Law Council has participated, either directly or indirectly.

5. Submission of an amicus brief may be suggested to the Amicus Curiae Brief Committee by any Section member or by any member of the Family Law Council. The Committee shall investigate the matter and then vote to recommend for or against the filing of such a brief, and the position to be taken by the Section in such brief, such votes being taken by the Committee Chairman by mail or telephone. Upon receiving a request to consider filing a brief in a particular matter, the Committee chairman may but is not required to communicate with counsel for the parties, to solicit copies of briefs or other information pertinent to the decision. The Chairman of the Amicus Curiae Brief Committee shall communicate the vote of the Committee to the entire Family Law Council. The Chairman of the Family Law Section shall conduct a poll of all Council members, by mail or telephone, or at a Council meeting. Two-thirds of the Council's voting members must vote in favor of submission of the brief, and the position to be taken in the brief, before an amicus curiae brief may be submitted on behalf of the Family Law Section.

6. Upon receipt of the affirmative consensus vote required by these guidelines, the Chairman of the Family Law Council shall notify the chairman of the Amicus Curiae Brief Committee to begin assignment and preparation of the amicus brief.

7. Upon notification, the committee chairman shall attempt to notify the lead attorneys involved in the case in question as to the decision of Council to participate. If time permits, the chairman shall request the attorneys to forward copies of their briefs or a letter setting forth their position in the case.

8. The final brief shall be submitted to all amicus committee members and Executive Committee members for approval if time permits. Approval by a

majority of the Family Law Section's Executive Committee shall be required for submission. In the event of serious time constraints where it is likely that a decision will be delivered before a full review by committees may be had, the Chairman of the Family Law Council may issue approval for submission.

9. The brief shall be signed by the Chairman of the Family Law Council on behalf of the council and by the authors of the brief.

10. Any inquiries or comments as to contents of the amicus briefs shall be directed to the Amicus Curiae Committee chairman.

11. Any amicus curiae brief filed by the Council shall comply with all requirements by the Texas Rules of Appellate Procedure pertaining to amicus briefs.

12. Any amicus brief filed by the Council shall contain any disclosure recommended by the State Bar of Texas, and shall state that the brief is filed by a voluntary section associated with the State Bar of Texas, and that the brief does not necessarily represent the views of members of the Board of Directors of the State Bar of Texas or of the State Bar itself. A copy of these guidelines shall be attached to every amicus brief filed by the Council.

13. The substance of the brief and the fact of its filing on behalf of the Council will be announced to the membership of the Family Law Section by publication of a summary of the case, and contentions of the amicus brief, in the Family law Section Report.

14. Any of these Rules can be suspended by affirmative vote of two-thirds (2/3) of the Family Law Council.

APPROVED by the Family Law Council on December 7, 1991.
AMENDED by the Family Law Council on February 19, 1994 and December 3, 1994.