

1 STATE OF ALABAMA
 2 ADVISORY COMMITTEE ON
 3 CHILD SUPPORT GUIDELINES
 4 AND ENFORCEMENT
 5 MONTGOMERY, ALABAMA

6
 7
 8 IN RE: CHILD SUPPORT GUIDELINES
 9 COMMITTEE MEETING
 AUGUST 19, 2008

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Advisory Committee on Child Support
 Guidelines and Enforcement meeting held on Tuesday,
 August 19, 2008, commencing at approximately
 10:02 a.m. at the Heflin-Torbert Judicial Building,
 300 Dexter Avenue, Montgomery, Alabama and reported by
 Lisa J. Green, CCR, ACCR #334, Registered Professional
 Reporter and Commissioner for the State of Alabama at
 Large.

* * * * *

1 ADVISORY COMMITTEE MEMBERS PRESENT:
 2 Gordon F. Bailey, Jr., Chairman
 Post Office Box 1930
 3 Anniston, AL 36202-1930

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- 4 Honorable Aubrey Ford, Jr.
District Court Judge
5 101 E. Northside Street
Tuskegee, AL 36083
6
7 Professor Penny Davis
Associate Director
Alabama Law Institute
8 Post Office Box 861425
Tuscaloosa, AL 35486-0013
9
10 Honorable Lyn Stuart
Supreme Court of Alabama
300 Dexter Avenue
11 Montgomery, AL 36104
12 Honorable William K. Bell
Circuit Judge
13 100 Northside Square
Huntsville, AL 35801
14
15 Mr. J. Michael Manasco
Post Office Box 302510
Montgomery, AL 36101-2510
16
17 Ms. Julia Kimbrough
1300 Corporate Drive
Birmingham, AL 35242
18
19 Ms. Julie A. Palmer
Suite 101
2363 Lakeside Drive
20 Birmingham, AL 35244-3387
21
22 Mr. Michael A. Polmeni
Post Office Box 13149
Huntsville, AL 35802
23

3

- 1 Mr. James D. Jeffries
2053 Dauphin Street
2 Mobile, AL 36606
3
4 Ms. Angela S. Campbell
Post Office Box 1906
Mobile, AL 36633
5
6 Mr. L. Stephen Wright, Jr.
2125 Morris Avenue
Birmingham, AL 35203-4209
7
8 Ms. Jennifer Bush
Legal Division
Alabama Dept. of Human Resources
Gordon Persons Building

9 08-19-2008 child support guidelines meeting.txt
10 50 North Ripley Street
11 Montgomery, AL 36130
12 Mr. Bryant A. (Drew) Whitmore, Jr.
13 Suite 501
14 215 Richard Arrington, Jr. Blvd. N.
15 Birmingham, AL 35203
16 Honorable Mary C. Moore
17 Circuit Court Clerk
18 Perry County Courthouse
19 P. O. Box 505
20 Marion, AL 36756-0505
21 Dr. Benjamin W. Patterson
22 Fine, Geddie & Associates
23 P. O. Box 138
Montgomery, AL 36101

4

1 ALSO PRESENT:

2 Mr. Cliff Smith
3 Ms. Jan Justice
4 Ms. Janice Grubbs
5 Alabama Department of Human Resources
6 Gordon Persons Building
7 50 North Ripley Street
8 Montgomery, Alabama

6 COMMENTS BY PUBLIC:

7 Mr. Mitch Edwards
8 Ms. July Dowing

9 * * * * *

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1 MR. BAILEY: Let me welcome everyone. Thank you
2 for being on time. We appreciate everybody
3 coming today. Lunch will be, I assume, Bob,
4 around 12 noon? Is that what time?

5 MR. MADDOX: From what I understand, yes, in the
6 small classroom.

7 MR. BAILEY: Wayne says we have a wonderful lunch
8 planned courtesy of the Supreme Court. I
9 certainly want to thank Lyn and other
10 members of the Court for hosting us for
11 lunch today. And I guess, Julie, we should
12 call it in your honor The Palmer Luncheon.

13 MS. PALMER: Thank you, Gordon.

14 MR. BAILEY: Julie has suggested on numerous
15 occasions that we try to have some kind of
16 lunch. We want to thank Julie for that.

17 We're going to try to finish by mid
18 afternoon. Bob has your travel vouchers if

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19 you need to complete one. Bob has samples
20 and will be glad to assist you.

21 Let me ask everyone to introduce
22 themselves, if you will, please, Julie,
23 starting with you.

6

1 MS. PALMER: Julie Palmer, a sole practitioner
2 mainly in Shelby County, mainly
3 concentrating in family law.

4 MR. MANASCO: Mike Manasco, general counsel to
5 Treasurer Ivey, Montgomery.

6 MR. JEFFRIES: Jim Jeffries. I'm a solo
7 practitioner. I have a divorce practice in
8 Mobile.

9 MR. POLEMENI: Michael Polemeni, Alabama Family
10 Rights Association. Just a general citizen
11 on the committee.

12 JUDGE BELL: I'm Billy Bell. I'm a circuit judge
13 for Madison County, and I handle domestic
14 relations cases.

15 MR. BAILEY: We want to welcome Judge Bell. He's
16 one of our new judicial appointees from the
17 Court.

18 MS. DAVIS: I'm Penny Davis with the Alabama Law
19 Institute.

20 MS. CAMPBELL: I'm Angela Campbell. I'm with
21 Mobile County DHR Child Support, and I'm
22 here as a representative of the Child
23 Support Association.

1 JUSTICE STUART: Lyn Stuart, Alabama Supreme
2 Court.

3 DR. PATTERSON: Ben Patterson with Fine, Geddie &
4 Associates here in Montgomery.

5 JUDGE FORD: Aubrey Ford, district judge, Macon
6 County. I've been on this committee since
7 its inception.

8 MR. WHITMIRE: Drew Whitmire, solo practitioner
9 in Birmingham.

10 MR. BAILEY: Gordon Bailey. I've been involved
11 in this program since '76. I'm currently a
12 child support referee.

13 Judge Ford, if you'll start us off,
14 please, sir, on our credit for other
15 children. Judge Ford has a wonderful report
16 on the judges' responses. We deferred this
17 report, if you'll remember, from our last
18 meeting so Judge Ford could present it.
19 Judge Ford.

20 JUDGE FORD: Essentially, what we have is the
21 fact that we've received 31 responses, which
22 is about normal for the judiciary when we
23 send out a survey. And the overwhelming

1 majority indicated that they only give
2 credit for children if there's a preexisting
Page 6

3 order and it's actually being paid.

4 Now, there are several anomalies: If
5 there are stepchildren, some judges will
6 give credit for stepchildren if there's --
7 if the parent of the -- the biological
8 parent of the stepchildren is unable to pay
9 or is not paying and there's proof of the
10 same; if there are other children that are
11 living in the household that the obligor is
12 actually paying for, some judges will give
13 credit for those children if there's proof
14 of actual payment.

15 But essentially, it can be boiled down
16 to if there's a prior court order, that
17 prior court order is being -- being paid,
18 then the parent will get credit for that
19 child; otherwise, from the responses we
20 received, generally, there's no credit for
21 any other circumstance.

22 MR. BAILEY: Judge Ford, I believe you have
23 copies of your responses.

1 JUDGE FORD: Yes.

2 MR. BAILEY: If anyone would like a copy -- I
3 imagine you probably would -- we'll be glad
4 to make copies for you. Wayne, we can do
5 that over lunch, before or after lunch.
6 We'll make those available for you.

7 Judge Ford, any other comments you
Page 7

8 want to make on your survey?

9 JUDGE FORD: That's about it. I think generally,
10 most of the judges now -- what they will do,
11 some judges have indicated that if there are
12 other circumstances, they will use that as a
13 means to deviate from the guidelines. Of
14 course, there'll be an explanation as to why
15 there's a deviation. But for the most part,
16 our judges comply with the rules as written.

17 MR. BAILEY: Any questions of Judge Ford?

18 Now, we've made placards for our
19 wonderful court reporter -- thank you for
20 being with us again today -- so hopefully we
21 won't have to keep repeating our names. If
22 you'll remember in the past transcripts,
23 I've tried to get everybody to repeat their

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1 names several times, and we came up with
2 this idea sort of at the last minute. So
3 please forgive the penmanship of your
4 placard.

5 Let me ask you to introduce yourself.
6 You've joined us now, please.

7 MS. KIMBROUGH: Julie Kimbrough, Birmingham. I'm
8 in private practice.

9 MR. BAILEY: Glad to have you, Julie.

10 Judge Ford just reported on credit for
11 other children. And we're going to make you
12 a copy -- make all the members a copy of his

13 survey during lunch.

14 Any questions of Judge Ford from
15 anyone on the committee?

16 (No response.)

17 MR. BAILEY: All right. Health insurance costs.
18 Let's see. Steve has not joined us yet. I
19 think he was coming today. Who else was on
20 Steve's committee? Michael.

21 MR. POLEMENI: I wasn't on the committee, but I
22 did have -- I have contacted an independent
23 insurance broker. He immediately said, oh,

11

1 there's a lot of flags here, but he hasn't
2 responded with the formal report as of yet.

3 MR. BAILEY: Michael, was anyone else serving --
4 I believe Faye Nelson was on the committee
5 as well.

6 JUDGE FORD: I was on the committee also.

7 MR. BAILEY: Judge Ford, yes. Excuse me.

8 JUDGE FORD: The last meeting that we had, we
9 came down to essentially saying that we
10 really don't have a solution available.
11 There's a number of issues that are out
12 there, from the actual cost of the
13 insurance, how are you going to find out
14 what portion is for that particular child;
15 also, the quality of the insurance
16 coverage.

17 You can get hospitalization insurance
Page 9

18 for little or nothing, but it covers
19 nothing, or you can get something that's
20 going to cover visits to the doctor on a per
21 visit basis.

22 So there are a number of issues. We
23 were not able to come up with anything

12

1 defi ni ti ve. Unfortunately, that's the best
2 we could do.

3 MR. BAILEY: Jan Justice, correct me if I'm
4 wrong. Di dn' t you help Faye put together
5 the report on how other states and IV-D
6 directors deal with the health insurance?

7 MS. JUSTICE: Yes, I did, Gordon. Cliff Smith
8 and Janice Grubbs are here. They did some
9 work on this, too. And this report is what
10 we pulled together from what other states
11 responded.

12 MR. BAILEY: That was, I guess, Handout B. It's
13 Attachment B in your mail out. You should
14 have a copy of that with you today. And if
15 you don' t, we can certainly make sure that
16 you do. So we'll refer to that as Handout
17 B.

18 Anyone have any questions of this work
19 that Jan and Faye -- and, Jenni fer, you
20 helped with this as well, di dn' t you, I
21 believe?

22 MS. BUSH: I did, but I've also prepared a
Page 10

23 summary of the federal regulations that have

13

1 just been passed that impact medical
2 support --

3 MR. BAILEY: Wonderful.

4 MS. BUSH: -- and prepared some proposed
5 language, because they have actually given
6 some guidance on how the states are to treat
7 health insurance.

8 MR. BAILEY: Jan, is there any comments you want
9 to make about your survey? And we
10 appreciate the IV-D directors participating
11 from the various states and, I guess,
12 District of Columbia as well.

13 MS. JUSTICE: I think it's pretty straightforward
14 and self-explanatory. I'll be glad to
15 answer some questions. What we did is came
16 up with just some -- a case scenario. And
17 we probably should have done more than one
18 case scenario because the one we used was
19 just kind of what we said was -- he was
20 already paying family coverage. The NCP was
21 already paying family coverage for \$170 a
22 month and it covered his spouse and two
23 children in the home, and we were adding a

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1 second child -- I mean a third child that
2 was outside this home.

3 So we kind of applied that case
4 scenario to each one -- the way each one of
5 the states handled their medical support
6 coverage. And as you can see, the deduction
7 varied anywhere between zero, because he
8 didn't have to pay any more to add this
9 child, to the full \$170 which is what we are
10 currently doing in Alabama and, I think --
11 I'm glad the committee did take a look at
12 that.

13 MR. BAILEY: Any questions of Jan about now
14 Handout B? The state, how cost is
15 determined, example, and deduction, any
16 questions you have of Jan?

17 (No response.)

18 MR. BAILEY: They did a great job of putting this
19 together for us. Thank you so much.

20 Jennifer, if you will, let's -- are
21 the regs now final?

22 MS. BUSH: The regs are now final. A couple of
23 weeks ago, they came out with the final

15

1 regs, and they are a result of the Deficit
2 Reduction Act.

3 I have prepared two documents. One is
4 a two-page summary of the regulations. It's
5 called medical support, final regulations.

6 And what I did is after I prepared this
7 summary went into Rule 32 and just drafted
8 some proposed language for the committee to
9 look at, and so I would like to go over
10 those at the same time.

11 MR. BAILEY: Do you want to just do it now?

12 MS. BUSH: However you want to do it.

13 MR. BAILEY: Sounds great. The floor is yours.

14 MS. BUSH: Well, if you look at the medical
15 support, the final regulations -- this is a
16 summary, and I've listed where the federal
17 regulation -- which one I'm referencing.
18 Also, on the second page, you will see an
19 e-mail address where you can get the entire
20 regs, the comments and everything.

21 One thing to note is they have now
22 required that health care needs be addressed
23 through health insurance or cash medical.

16

1 They're introducing a new concept that we
2 haven't seen before. That's the cash
3 medical support, and that's in 302.56.

4 They also in the federal regs define
5 cash medical, and I took their definition
6 which is here on the 303.31 (a)(1). Their
7 definition is: Cash medical support is
8 defined as an amount ordered to be paid
9 toward the cost of health insurance provided
10 by a public entity or by another parent

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11 through employment or otherwise, or for
12 other medical costs not covered by
13 insurance.

14 Now, if you'll flip through to your
15 language -- and this is obviously something
16 for the committee to vote on. But I plugged
17 in under number seven where it says health
18 insurance premiums, I changed health
19 insurance premiums to medical support --

20 Since according to the regulations, it
21 now needs to cover more than health
22 insurance. It covers any type of medical
23 support.

17

1 -- and plugged in that definition that
2 the feds gave us for cash medical support.
3 That's their definition.

4 They also provide a definition for
5 health insurance, and I put that under (b).
6 It is: Health insurance includes fee for
7 service health maintenance organization,
8 preferred provider, and other types of
9 coverage which is available to either
10 parent, under which medical services could
11 be provided to dependent children.

12 And in the comments and responses to
13 the federal regs, they did say that would
14 include any type of military insurance --
15 well, not insurance, but their military --

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the TRICARE, the military coverage.

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The feds at 303.31 (a)(3) also state that every single state has to determine reasonable costs. And this is something that's -- it's new for us, and it's new for all the states. We have to define medical costs -- reasonable costs, and it has to be a numerical standard. They put in five

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1 percent. I put in five percent here. But
2 that is totally up to the committee.

3 What their statement is: Reasonable
4 costs for medical support must be defined.
5 Cash medical support or the cost of private
6 health insurance is considered reasonable in
7 cost if the cost to the parent responsible
8 for providing medical support does not
9 exceed five percent of his or her gross
10 income or, at state option, a reasonable
11 alternative standard adopted in accordance
12 with 302.56. In applying the five percent
13 standard, the cost is the cost of adding the
14 child to existing coverage or the difference
15 between self-only and family coverage.

16 That language is straight from the
17 regs. So they basically tell us -- I know
18 at one point, there was some discussion
19 about using a proportionate cost of the
20 insurance. They tell us how to do it here

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21 in the federal regs. So that decision has
22 basically been taken away from the state,
23 but the state can decide whether it wants to

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1 use a five percent, ten percent, 20 percent,
2 whatever numerical standard we want to use.

3 MR. BAILEY: Jennifer, let's talk for just a
4 second about how important it is for us to
5 comply with the federal regulations in child
6 support.

7 MS. BUSH: Okay. It's very important. You know,
8 when I was in private practice, I did not
9 realize how much of child support is
10 actually dictated by federal law and federal
11 regulation.

12 MS. PALMER: And for someone who doesn't practice
13 in family court hardly ever or go to child
14 support court, maybe you could -- when you
15 talk about us, maybe you could define what
16 us is as far as --

17 MR. BAILEY: Do you mean like the State of
18 Alabama?

19 MS. PALMER: Yeah, DHR versus -- yeah, versus the
20 individual people that go before the court,
21 because I don't think it affects us, but ...

22 MR. BAILEY: Well, it affects the entire child
23 support program. It affects the funding --

1 the state funding to -- to fund the entire
2 program.

3 MS. PALMER: Okay.

4 MR. BAILEY: It affects -- Is it still 66?

5 MS. BUSH: 66 percent is federal funding.

6 MR. BAILEY: 66 percent is federally funded. And
7 if we're not in compliance -- and recently,
8 we just received our compliance letter, I
9 think, last year. And we were certainly
10 delighted to receive that because that means
11 we're in -- if we're out of compliance, then
12 the state has to take corrective measures,
13 and ultimately we could lose all of our
14 federal funding for the child support
15 program which would be devastating. The
16 state could not fund the program itself.
17 That's the reason we're so concerned about
18 these regulations.

19 JUSTICE STUART: A point I would like to make
20 about the reason it really affects everybody
21 is, you have to be compliant as far as your
22 statutes, your rules, and those have to
23 apply to everybody. So that's the way it

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1 really does affect everybody. You have to
2 be in compliance, and they apply to
3 everybody.

4 MR. BAILEY: In fact, when we were discussing

5 guidelines originally in the mid eighties
6 and trying to decide if we wanted to have
7 guidelines, it became very clear that we
8 were going to lose at that point 17 million
9 dollars in federal funding if we didn't
10 adopt guidelines, so we voted immediately to
11 adopt guidelines. Kind of a no-brainer.

12 Did you want to add anything else to
13 that, Jennifer? It's really important,
14 though, that we follow the federal regs and
15 are in compliance.

16 MS. BUSH: Yes. And what I would like to add is,
17 even though DHR is federally regulated, that
18 does extend out, because the feds don't just
19 dictate what we do. They dictate what all
20 child support will do. They require income
21 withholding orders in every child support
22 order, not just DHR. So the tentacles of
23 the feds reach out beyond just DHR. They

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1 make sure that everything is uniform in
2 Alabama whether it's a DHR case or not,
3 because they flip back and forth -- and in
4 other states. That's their goal, is
5 uniformity.

6 And the money is -- It's a large
7 amount of money, and it trickles down and
8 out to other state agencies. It's a very,
9 very serious financial impact.

10 MR. BAILEY: Absolutely. We've just had Mary
11 Moore join us. Mary, do you want to
12 identify yourself, and welcome to our
13 meeting.

14 MS. MOORE: Thank you. Circuit clerk for Perry
15 County. I apologize for my tardiness.

16 MR. BAILEY: Glad to have you with us.

17 All right. Jennifer, anything else on
18 medical support that we need to talk about?

19 MS. BUSH: Oh, yes. You're not that lucky,
20 Gordon. Oh, no.

21 MR. BAILEY: I want to give you plenty of time.

22 MS. BUSH: Reasonable costs, I plugged in five
23 percent, but that is certainly up to the

23

1 committee to determine. It will require the
2 committee to make a decision. It's
3 accessibility. And the federal regs require
4 that the state look at the accessibility of
5 insurance to the children.

6 And it's basically a three-prong
7 standard. When you look at all the regs
8 together, it's three prongs: Is it
9 available to the person -- to the parent
10 either through the employer or private
11 insurance, is it available; you then look is
12 it reasonable, by a five percent standard or
13 whatever we adopt; and is it accessible to
14 the children?

15 If you have someone who has health
16 insurance in Pennsylvania and all the
17 providers are in Pennsylvania and the
18 children are in Alabama, it may be available
19 and it may be reasonable, but it's not
20 accessible.

21 And so this committee does need to
22 look at determining an accessibility
23 standard. Some suggestions have been 30

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1 miles. That personally seems a little short
2 to me considering rural areas and maybe
3 people wanting to travel to Birmingham. It
4 can be a mileage standard. But that is
5 something that will have to be defined.

6 JUDGE FORD: When you talk about accessibility,
7 PPO's are -- are accessible more than likely
8 than the HMO's, so that's the --

9 MS. BUSH: Yes, sir. Yes. So that may be -- we
10 need to think about the language we're going
11 to put in there so a judge can look at it
12 and make his decision and so that it will be
13 clear to everyone.

14 JUDGE FORD: Okay.

15 JUDGE BELL: Jennifer, let me ask you a question
16 if I can. There's a possibility I can see
17 that there'll be a difference between the
18 cost of adding the child to existing
19 coverage which may very well be zero or the

20 difference in premiums between self-only and
21 family coverage. It needs to say whichever
22 is less, whichever is more, doesn't it?
23 MS. BUSH: Yes. Yes. That is something -- if

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1 you look down on (f) -- it used to be (b)
2 and it changed to (f). That is where the
3 language "the cost of adding the child to
4 existing coverage or the difference in
5 premiums between self-only and family
6 coverage," we probably do need to mention
7 whichever is less, whichever is more,
8 whatever the committee decides because there
9 could be a difference.

10 JUDGE BELL: I can see a lot of situations there
11 might be a difference.

12 MS. BUSH: So that is an area we'll need
13 guidance.

14 If you look down to (i), there's an
15 issue of priority. There are times when
16 health insurance is ordered and child --
17 current child support is ordered. An income
18 withholding order goes out. And what many
19 people don't know is that DHR will send out
20 what's called a National Medical Support
21 Notice. It's a notice that once health
22 insurance is --

23 Usually, people outside DHR don't know

1 this. But once health insurance is ordered,
2 we send a notice to the healthcare provider
3 and notify them that you need to start
4 providing insurance for this child. And
5 what happens a lot of times is, once that's
6 deducted from their check, there's not
7 always enough money to pay current. So a
8 decision has to be made on the priority,
9 either pay health insurance first, or are
10 you going to pay current first?

11 And DHR has no opinion as to which
12 should be paid first, current or health
13 insurance. We just would like some
14 guidance. On one hand, you can't miss
15 paying a premium or you lose your
16 insurance. On the other hand, you know, a
17 lot of times people need that cash money in
18 their pocket, and they'd rather have that
19 cash money and use an alternative source
20 such as Medicaid or All Kids.

21 So that is a decision that needs to be
22 made. It could be considered that if a
23 person can't pay their health insurance and

1 their current support, maybe the health
2 insurance is unreasonable.

3 JUDGE BELL: Well, but haven't you also -- when
4 you do that administratively, you have
5 destroyed the calculation of the Rule 32
6 child support because it takes into account
7 the health insurance premium. See, what
8 you've done is you've added a child support
9 obligation administratively without a judge
10 ever seeing it.

11 MS. BUSH: We only do it if it's in the
12 guidelines and it's ordered. We only send a
13 Medical Support Notice if the premium is
14 included in the guidelines and health
15 insurance is ordered. So the premium has
16 been factored into the child support. In
17 order to enroll the child and to ensure
18 they're enrolled, we send a Medical Support
19 Notice. And we're federally mandated to do
20 it. We have to do it.

21 JUDGE BELL: But you're following the premium
22 used in the Rule 32 calculation?

23 MS. BUSH: Yes.

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1 JUDGE BELL: You haven't added anything to it?

2 MS. BUSH: No.

3 JUDGE BELL: I misunderstood.

4 MS. BUSH: No. And I'm glad you brought that up
5 to clarify it. We do not do it in every
6 single case. We have to look at the case
7 and we have to make sure the premium is

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8 included and we have to make sure that it
9 was ordered, and only then do we send it to
10 the health -- to the employer to make sure
11 they enroll that child for health
12 insurance. Because we don't want a
13 situation where the person is getting credit
14 for the health insurance but they never
15 enrolled the child.

16 MR. WHITMIRE: Do you ever get a difference when
17 you send that notice out, the health
18 insurance company writes back and says it's
19 not 100, it's 200?

20 MS. BUSH: I'm sure that could happen. I'm not
21 aware of that happening.

22 MR. WHITMIRE: That's what I'm wondering about.

23 MS. BUSH: It could happen. But usually, the

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1 person is giving us good information when we
2 come to court.

3 MR. BAILEY: Lyn.

4 JUSTICE STUART: I just wanted to make the point
5 that we all need to remember as we look at
6 all of this, that under our present
7 guidelines, the payment of health insurance
8 premiums is put into the guideline
9 calculation. The way it's written now, if
10 both parents have insurance coverage, those
11 go into the calculation. But at any rate,
12 whoever provides it, it comes down and as

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part of our calculations, the payment or

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responsibility for it is by both parents in

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proportion to their income.

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MR. BAILEY: Judge Bell.

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JUDGE BELL: I like what I see on the diversity

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of the committee here because we're coming

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at it from a lot of different angles. I'm a

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domestic relations judge and I handle

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divorces, but I also handle some child

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support enforcement cases.

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We have to look at it and make sure

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that we are being fair to the whole gamut of

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the cases that we're going to handle, not

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just focused on one issue. That's why I

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think we're all going to bring a different

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perspective.

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When you look at the cash medical

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support, aren't we already doing that in the

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child support calculations?

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MS. BUSH: Yes, and I'm glad you brought that up,

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because that's in the comments, if you want

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to flip to the comments section of the

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rules.

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One good thing about cash medical,

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when you read the federal regulations and

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read all their answers and comments, they

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say cash medical support does not have to be

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a standalone amount, and I added that in

08-19-2008 child support guidelines meeting.txt
here in the comments to the rule. Cash

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medical support can be an allocation between
the parents for responsibility for uninsured
medical expenses.

So when you have an order that says
parents are to split the medical expenses

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50-50, 30-70, whatever, that is cash
medical. So that makes cash medical much
easier to meet as opposed to having to add a
separate standalone amount of money that's
on top of child support.

And, actually, I don't see there being
a huge sweeping change to the way medical
support and health insurance is treated
now. We do have some extra definitions. We
do need to define priority and
accessibility, but I don't think it's going
to change the way we're operating.

We also, as you mentioned, have a \$250
unreimbursed insurance cost built into our
income shares model of child support, and
that counts as cash medical. So we're good
as a practical method of how we do it, but
the feds want us to have the language and
the regulations in place. They want it in
writing. I think we're already doing it as
a practical matter.

JUSTICE STUART: I think the comments need to

1 needs to reflect that, but definitely the
2 comments need to reflect that we are already
3 accommodating this in our guidelines.

4 MS. PALMER: But if we are going to give it --
5 only credit -- let's say a person pays a
6 thousand dollars a month for family
7 coverage, but we're -- in this case, only
8 one child is being considered in the
9 income -- when we're doing the calculations
10 on the Rule 41, 42's, and 43's, we just put
11 in 20 -- let's say \$250 for that child, but
12 yet he's really paying or she's really
13 paying a thousand dollars. Is that going to
14 affect any of the availability or the
15 reasonableness or anything like that?
16 Because I've got to pay a thousand dollars
17 for health insurance to have this child
18 covered, but yet I'm only getting \$250
19 credit on it. Do you see where I'm coming
20 from?

21 MS. BUSH: Are you saying you're only getting the
22 250 because that's five percent of your
23 income?

1 MS. PALMER: No. Because we've talked about
Page 27

2 having only the child's portion being
3 credited to the calculations on the CS-42
4 and -- when that person is really paying a
5 thousand dollars.

6 MS. BUSH: But if the 250 is the difference
7 between single coverage and family coverage,
8 then that's what you would place in the
9 guidelines.

10 MR. POLEMENI: And I kind of agree with what
11 you're saying. If I don't have to buy
12 insurance, I'm not going to buy insurance.
13 But you're forcing me to buy insurance to
14 get \$250 for -- insurance on my child, so
15 I'm having to pay a thousand dollars that
16 I'm not going to be paying because I don't
17 need the other insurance for myself. But I
18 had to buy -- is that correct?

19 MS. PALMER: Actually, my thought was I've
20 remarried now, and I've got my husband and
21 the child that he and I had on there. And
22 it's family coverage, so it's a thousand
23 dollars. I add my other child on there that

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1 I had from my previous marriage or a
2 previous relationship, and from what I've
3 determined that we've talked about over the
4 past three years is that if we can't
5 determine how much that cost is for that
6 child -- and we're just going to say there's

7 four people on there. Divide it by four,
8 and for that immediate case, only \$250 of
9 that thousand-dollar premium would be used
10 in calculating the child support that is
11 owed.

12 MS. BUSH: And that's what we've talked about, is
13 using a proportionate amount until the
14 federal regulations came out and gave us a
15 standard. So now they've given us a
16 standard to use, but we did discuss using
17 just a proportionate amount.

18 MS. PALMER: So now are we talking about only
19 using -- to use the whole five percent or
20 use the whole ten percent and not for just
21 the child that's covered? Because now we're
22 back to basically using the whole premium
23 again which is what we were trying to get

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1 away from.

2 MS. BUSH: Well, now, the five percent is going
3 to apply to the amount that's plugged into
4 the Child Support Guidelines. And so if
5 that's unreasonable, then it wouldn't be
6 used.

7 Medical support can always be deviated
8 from the same way child support can be
9 deviated. So if you have a scenario such as
10 you were talking about where you don't have
11 any insurance anyway but it's going to cost

12 you a thousand dollars just to get coverage
13 for yourself so you can get coverage for the
14 child, to me that would be a reason to
15 deviate.

16 JUSTICE STUART: And let me just point out that
17 we haven't made a decision about what to do
18 about all this. And I think this discussion
19 is very important because all of this needs
20 to be in consideration when we decide
21 whether to change what we're doing.

22 MR. BAILEY: Penny.

23 MS. DAVIS: This is my first look at this. I

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1 need a little clarification. It appears to
2 me that the five percent really is setting a
3 ceiling. That's the maximum.

4 MR. BAILEY: Penny, could you speak up just a
5 little bit. I'm sorry. We can't hear real
6 well.

7 MS. DAVIS: I just was saying this is the first
8 time I've looked at the regs, so I may not
9 be interpreting this correctly. But it
10 appears that you're talking about health
11 insurance, includes a fee for that, and then
12 down -- and the cost not to exceed five
13 percent, is that setting a ceiling?

14 MS. BUSH: Yes.

15 MS. DAVIS: So if you have -- whatever the
16 percentage we use, and we'll use five

17 percent as you did, so five percent of the
18 gross is the maximum amount that we can plug
19 into the guidelines?

20 MS. BUSH: Without a deviation by the judge
21 determining --

22 MS. DAVIS: So let's say that, for our purposes,
23 five percent of the gross income means that

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1 \$500 would be the five percent. That would
2 be the maximum we could put in under that if
3 we use the five percent.

4 Then let's look at this family --
5 let's look at Julie's family over here. If
6 they spend a thousand dollars in insurance,
7 what this rule says is the maximum that
8 could be put in the Child Support Guidelines
9 is 500. That still leaves us to decide, are
10 we going to let them put in the 500 or are
11 we going to say, well, there's four people
12 covered and of that four people, one goes --
13 divide it by four, that's \$250?

14 Or are we going to say, okay, family
15 coverage -- single coverage is 500, family
16 coverage is 500. And then you take the
17 family coverage and say, okay, there's three
18 kids under the family coverage and divide
19 that 500 by three?

20 It seems to me, if I'm understanding
21 it correctly, we still are going to have to

22 deal with the issue of how we prorate the
23 insurance being paid based on the coverage.

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1 All the feds have done here is said the
2 maximum amount that can be put in is five or
3 whatever percent that was used. Is that a
4 correct interpretation?

5 MS. BUSH: That's not exactly correct. They're
6 not saying you can only put in five
7 percent. They're saying if the cost of the
8 total -- if the cost of the insurance is
9 over five percent, it's unreasonable and
10 shouldn't be required and then you wouldn't
11 put anything --

12 MS. DAVIS: Okay. So it is putting a ceiling.
13 But my question is, when they say the cost
14 of insurance, are they talking about the
15 thousand dollars being the amount or are
16 they talking about the amount that we are
17 putting in for the child?

18 MS. BUSH: They're talking about the amount of
19 the health insurance, the premium.

20 MS. DAVIS: Paid for everybody?

21 MS. CAMPBELL: Not the individual coverage, the
22 family coverage.

23 MS. BUSH: The family coverage.

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1 MS. DAVIS: In that scenario, of that thousand
2 dollars total amount that's being paid --
3 MS. BUSH: Total amount that's being paid,
4 including that child --
5 MS. DAVIS: The check they write every month is a
6 thousand dollars under Julie's scenario.
7 But if that employee only got insurance,
8 let's say it's \$450 -- well, let's say it's
9 more than that. Let's say it's \$700 and the
10 family coverage is 300, are we looking at
11 five percent of the 300? Five percent of
12 the thousand?
13 MR. WHITMIRE: Gross income.
14 MR. BAILEY: It's five percent of the gross
15 income.
16 MS. DAVIS: It's five percent of the gross
17 income?
18 MR. BAILEY: Right.
19 MS. DAVIS: If the gross income is 500, then five
20 percent of the gross -- use five percent.
21 500 is the maximum amount.
22 MS. BUSH: For that entire premium.
23 JUDGE BELL: That's not what (c) says, though.

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1 (c) says that it's the -- in applying the
2 five percent standard, the cost is the cost
3 of adding the child to existing coverage or
4 the difference between the self-only and

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5 family coverage. So that's not a family
6 policy. That's not what that says. It's
7 not family coverage.

8 MS. BUSH: But listening to her scenario, it's
9 not what you plug in. It's not five percent
10 that can be -- the max that can be plugged
11 into the guidelines and then they don't get
12 credit for anything else. That's what I
13 thought you said, that they were only going
14 to put five percent into the guidelines and
15 they had to be responsible for everything
16 else. If it's over five percent, it's not
17 reasonable.

18 JUDGE BELL: Right. And that's the question,
19 isn't it, whether the premium for the
20 insurance that's available is reasonable?
21 And that reasonableness is defined under the
22 federal regs so that it doesn't exceed five
23 percent of his or her gross income. So

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1 let's say you make -- and that's \$500 a
2 month. Then you then have to figure out the
3 cost of adding the child to existing
4 coverage or the difference between self-only
5 and family coverage. And if that's 500 or
6 less, then that's considered reasonable.

7 MS. BUSH: Yes. You have presented it very well.

8 JUDGE BELL: Well, I went to Auburn. Can you get
9 that on there.

10 MS. PALMER: Well, I can just tell you right now,
11 as a solo practitioner and in the Blue
12 Cross-Blue Shield, the small, you know,
13 two -- two people or more in the office,
14 individual coverage is \$318. Family
15 coverage is \$910 whether it's just --
16 whether it's just my spouse or my spouse and
17 ten children. So you're looking at, really,
18 what? \$600 between family -- between
19 individual coverage and family coverage.
20 MS. BUSH: In considering the gross income of the
21 employees, it may be that insurance cost is
22 not reasonable. It would be unreasonable.
23 MR. BAILEY: Let me pause just a minute. I want

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1 to welcome Steve to our committee. Steve,
2 would you identify yourself and tell us your
3 area of practice, please.
4 MR. WRIGHT: I'm Steve Wright. I'm from
5 Birmingham, Alabama. And my practice is
6 limited to divorce and divorce-related
7 matters.
8 MR. BAILEY: Glad you joined, Steve.
9 MR. WRIGHT: Thank you. Sorry to be late.
10 MR. BAILEY: Go ahead.
11 MS. DAVIS: In that scenario, if you had three
12 children -- we'll just simplify it and say
13 it's \$900. Are we going to look at whether
14 or not we plug in the 900 which might be

15 decreased by -- let's say the person goes in
16 and takes the insurance and that they've had
17 all along. Would they plug in 500 because
18 that's the maximum in the scenario that you
19 could put in for reasonableness, or do you
20 take the nine hundred and divide it by three
21 because it's three children and put in three
22 hundred, or do you put in the whole 900?
23 MS. BUSH: You apply the five percent to the cost

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1 of adding the child to the existing coverage
2 or the difference between self-only and
3 family coverage. You wouldn't divide out
4 proportionately per child, which is what we
5 were talking about doing earlier. That's
6 what we talked about doing.
7 MS. DAVIS: The question is, can we still do
8 that?
9 MS. BUSH: No. They have actually laid out this
10 standard for us. They have given this
11 standard.
12 MS. DAVIS: So that's not the flexible part? The
13 percent is the flexible part?
14 MS. BUSH: The five percent is the flexible
15 part. The feds have laid out that this is
16 the standard. And we could add if one is
17 more or less or whichever is the most or
18 whichever is less if we want to, but that's
19 the standard they have given us.

20 JUDGE BELL: But, Jennifer, it is flexible to the
21 extent that a trial judge can deviate --
22 MS. BUSH: Yes.
23 JUDGE BELL: -- based upon the circumstances of

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1 that particular case as long as you state
2 the reasons for the deviation.
3 MS. PALMER: Well, one reason we did want to
4 change it is because -- let's say you've got
5 one person that has three children by three
6 different women. Well, they were getting --
7 being the obligor were getting credit on
8 each one of the child support calculations
9 credit for \$910 for having the family
10 coverage. And we were trying to get away
11 from that and divide that \$910, let's say,
12 by three or even by four for each one of
13 those children versus each one of the women
14 who, let's just say, that had the children
15 to basically be punished because that whole
16 premium was being calculated each time that
17 the person was being hit up for child
18 support.
19 MR. BAILEY: Judge Bell.
20 JUDGE BELL: But, Julie, the way this is written,
21 the cost to add the second and the third
22 child may very well be zero. And that would
23 be the amount you would use from what I hear

1 Jennifer saying on this paragraph.

2 MS. DAVIS: Do we get to choose that? It says in
3 applying the five percent standard, the cost
4 is the cost of adding the children ... or
5 the difference between them.

6 JUDGE BELL: It doesn't say whichever is less.

7 JUSTICE STUART: Or whichever is greater.

8 MS. BUSH: You could say whichever is greater.

9 MS. DAVIS: That's what I'm asking. Is that
10 sentence one that we have flexibility in
11 making that decision? Is the "or" --

12 MS. BUSH: We don't have a lot of flexibility in
13 that sentence. The cost of adding the child
14 to existing coverage and the difference
15 between self-only and family coverage to me
16 almost are the same thing. There may be
17 scenarios where it would result in a
18 different amount.

19 JUSTICE STUART: They're never the same. Never
20 the same.

21 MS. DAVIS: Kind of help give me the bottom
22 line. On your first page on the medical
23 support final regs, is this direct language?

1 MS. BUSH: Yes. And I've got the medical regs if
2 you do want to see them. I just didn't make
3 30 copies.

4 MS. DAVIS: No, that's fine. I appreciate it.

5 In the fourth paragraph, (a)(3), the
6 sentence says: Or at a state's option, a
7 reasonable alternative standard adopted in
8 accordance with ... that's the part we get
9 to tinker with?

10 MS. BUSH: Yes.

11 MS. DAVIS: Okay. Next question. The next
12 sentence says: In applying the five percent
13 standard, the cost is the cost of adding the
14 child to existing coverage or the difference
15 between self-only and family coverage. Is
16 that sentence something that we tinker with
17 and decide the "or" or is that -- is that
18 language that we have to put into the
19 statute?

20 MS. BUSH: That's the exact language we have to
21 put in the statute, but we can add whichever
22 is greater or whichever is less. We can add
23 something to it, but we have to keep that

1 standard.

2 For example, we can't now decide to go
3 use a proportionate amount divided among the
4 four children. That option has been taken
5 away from us. We can't use that standard
6 anymore. We have to use this standard.

7 MS. DAVIS: Going back to Julie's scenario, in
8 each of -- the man that has the three

9 different children, if we choose whichever
10 is less, that would mean that if he has no
11 additional cost for each child that he has,
12 then zero would be put in.

13 MS. BUSH: Yes.

14 MS. DAVIS: If we choose the greater, then \$900
15 would be put in, in each of those instances.

16 DR. PATTERSON: Do we need to choose?

17 MS. DAVIS: My first question is, can we choose?
18 You said, yes, we can choose by saying
19 greater or lesser. And under Julie's
20 scenario, the current practice now, if I
21 understand you correctly, is that that man
22 now would -- the choice that's put in now is
23 the difference between self coverage and

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1 family coverage which would be \$900, so you
2 would plug in \$900.

3 MS. PALMER: For each child.

4 MS. DAVIS: So if we want to follow the same
5 practice now, we would say the greater of.

6 MS. PALMER: Plus they already get credit on
7 their CS-42 forms for the preexisting child
8 support, and then they get the full
9 insurance premium, so as Judge Bell can tell
10 you, sometimes it comes out to a negative
11 and the other person owes them money.

12 MS. DAVIS: If what I'm understanding is correct,
13 our choice here -- we have to put this

14 sentence in. We can say the greater or the
15 lesser of. Is that our only choice?

16 MS. BUSH: That's our only choice.

17 MR. BAILEY: Lyn.

18 JUSTICE STUART: I think I need to point this out
19 because -- I think this has been added in
20 the wrong place. I think that this language
21 only determines what reasonable costs for
22 medical support are, but I do not think it
23 dictates what amount we have to allow to be

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1 put in the guidelines. That's two
2 different -- I think it's two different
3 things.

4 MS. BUSH: Well, it might be.

5 JUSTICE STUART: I think that's right.

6 MS. BUSH: If you want to include a child support
7 amount that's not deemed reasonable, I think
8 you would say it can't exceed that, but I
9 don't think it determines what you plug in.

10 MS. DAVIS: Which goes back to my first
11 scenario. We're dealing with two issues
12 which is the five percent -- only dealing
13 with the maximum amount, the ceiling. Once
14 we've got that decided, whatever percentage
15 to put in, then we deal with the other issue
16 of proportionate if we're allowed to. If
17 not allowed to, then we don't.

18 MR. BAILEY: Jennifer, you're saying you don't

19 think that's an option for our state now?

20 MS. BUSH: The feds say we have to determine
21 what's a reasonable cost for insurance. I
22 tied it in to the number that would be
23 placed into the guidelines because if you're

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1 not going to use it there, why determine
2 what's reasonable or not reasonable? If
3 it's not reasonable, then you wouldn't plug
4 it -- you wouldn't use that number. You
5 would determine insurance is not available
6 because it's an unreasonable cost. It would
7 be zero.

8 MR. BAILEY: Okay. Well --

9 MS. BUSH: To me, it is tied in. I understand
10 what you're saying. I haven't actually
11 thought about -- I've never thought about it
12 that way. I tied it in to what has to be
13 placed in the guidelines because otherwise,
14 it has no practical effect.

15 MR. BAILEY: Penny, let's refresh everyone's
16 memory, including ours. When we met with
17 the Court in April of 2007, we told the
18 Court at that point that there were 27
19 states that factored in health insurance
20 premiums in their guideline formulas, and we
21 were the only state that used the entire
22 premium. Did I state that correctly? I
23 believe that's what we said.

1 MS. DAVIS: I regret to say my memory is never
2 going to be as good as yours on any issue.
3 MR. BAILEY: I think that was the information we
4 received.
5 Jan, am I right on that? I think Jane
6 Venohr told us we were the only state that
7 used the entire premium. The other states
8 did variations and prorated in some
9 fashion. I think that's how we got into
10 this this time.
11 MS. JUSTICE: Jan Justice. I cannot be for sure
12 of that. If Jane said that, I feel
13 confident, but I --
14 MR. BAILEY: I believe she did tell us that.
15 MS. JUSTICE: But I do know from our
16 investigation, very -- very few states would
17 include that whole premium as has been
18 used --
19 MR. BAILEY: Right, and I think that's how we got
20 into this issue a year or so ago.
21 MS. DAVIS: I'm fairly comfortable in thinking
22 that Alabama is at least in the very small
23 minority of states that do that. I can't

1 remember the exact numbers and all that.

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JUDGE BELL: Gordon --

MR. BAILEY: Yes.

JUDGE BELL: And y'all are going to be sorry they ever put me on this committee.

As a trial judge, what I'm looking for -- and I hope part of our purpose here is to revise these Child Support Guidelines so that we make it as fair for as many people, custodial, noncustodial parents as we possibly can.

One of the abuses that I've always felt bad about in the Rule 32 is the medical insurance premium because in some situations, that's just not fair, and so I deviate from it on that.

But what I'm looking for is for whatever we do as a committee, that it is simple enough for even an Auburn graduate judge like me to figure the child support. And, you know, we've got to go out and educate the judges. We've got to educate the lawyers. If we make it too complicated,

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we are going to breed litigation, which is exactly the opposite of what I want to do. Justice Stuart is going to have more appellate court cases that are deflected up probably.

We've got to avoid that and do

08-19-2008 child support guidelines meeting.txt
7 something that's fair but consistent and

8 simple, because I have a lot of pro se
9 divorces. A pro se is not going to -- ever
10 imagine how to figure this stuff out.

11 MR. BAILEY: That's an excellent point. And when
12 you're hearing 60 to 100 child support cases
13 a day, it just can't be extremely
14 complicated for everybody involved, and a
15 lot of these litigants are not represented.
16 Exactly.

17 Penny.

18 MS. DAVIS: I think our threshold has to be to
19 figure out what the guidelines require us to
20 do and from that, then we could decide what
21 flexibility we have.

22 JUSTICE STUART: Don't you think this sets the
23 maximum amount? It's the cap. It's the

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1 maximum amount that can be included. But I
2 don't think it sets the amount ...

3 JUDGE BELL: I agree with that, and we do the
4 same thing on childcare. You can have a
5 \$2,000 a month childcare and hire a nanny,
6 but all you claim is the DHR cap.

7 MR. BAILEY: Recommended amount.

8 JUDGE BELL: That's no different. You're exactly
9 right.

10 MR. BAILEY: That's a good point.

11 JUDGE BELL: And I think that sets -- If the

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12 premium is more than that, you just set it
13 at whatever that cap is.

14 MR. JEFFRIES: It seems that too often, though --
15 in reference to your analogy -- that there
16 aren't the variations of health insurance
17 that are available in most situations as
18 there are in childcare and day care. You've
19 got -- you may have 25 day care options plus
20 someone coming into your home, for example,
21 but health insurance is what you have
22 through your employer or what you can get
23 through underwriting, which can be very

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1 limited, I think.

2 JUDGE BELL: You know, most of my cases, the
3 folks already have health insurance in
4 place -- somebody does. In Huntsville,
5 we've got a lot of, you know, two-parent
6 working families and there's good medical
7 insurance available throughout the county.
8 It may be my situation is unique. We have
9 it available in most every case.

10 MR. BAILEY: Mike.

11 MR. MANASCO: It appears that, you know, similar
12 to the day care, you know, our best approach
13 may be to -- as Justice Stuart suggests, to
14 determine what is reasonable and then leave
15 it up to the trial court to determine
16 whether or not it will be included based

08-19-2008 child support guidelines meeting.txt
upon the circumstances of the case.

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MR. BAILEY: Did you hear what Mike said, Judge?

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MR. MANASCO: The cost of doing it, the number of
children, prior marriages, all that and what
is available and what's not available --
because we all know that there are a
substantial number of citizens who do not

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1 have health insurance and cannot afford
2 health insurance.

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MS. PALMER: But they make too much money to
qualify for All Kids or Medicaid as well.
And I don't want us to define what
reasonable is and then the children are left
uncovered because, Your Honor, it's -- the
regs say it's not reasonable, so ...

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MS. BUSH: Well, the regs do require us to define
what's reasonable, and they require us to
use a numeric standard. If there's ever a
case where a judge wants to deviate or the
parties think a deviation is in place, then
that certainly would be acceptable, but I'm
reluctant to word it so that a judge has to
decide every single case. I'd like to see
it to be --

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Let's say it's five percent. And
Angela has pointed out that in the regs, in
the comments, they say the standard would
not be applied to the cost of adding each

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22 child to the insurance plan but where -- the
23 cost of family versus individual coverage.

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1 And if there needs to be a deviation
2 from that, there can be, but we want to make
3 it so that pro se litigants can come in,
4 read the standard, look -- look at the gross
5 income, look at the cost of their insurance
6 premium, the difference between family and
7 individual coverage, and they'll know right
8 away. It's just a matter of running the
9 numbers.

10 JUDGE BELL: If they have that information.
11 That's the problem. I don't know. I'm a
12 state employee. I don't know the
13 difference, and most folks don't, especially
14 the pro se litigants.

15 I do like the idea of capping it at
16 five percent, and if the judge wants to
17 include more of the premium than the five
18 percent, they can deviate.

19 MS. PALMER: Well, what's the average income in
20 Alabama? Isn't it, like, 32 or 35,000?

21 JUDGE FORD: It's about 32,000.

22 MS. PALMER: And so if we did five percent, then
23 it's just a -- what? \$150. So I would

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1 think we'd need to at least do ten percent
2 in Alabama.

3 MS. CAMPBELL: I looked at two salaries in DHR.
4 I looked at the beginning salary of a child
5 support worker, and the current premium that
6 we're paying for family coverage is \$180 a
7 month. It's a good premium. It's eight
8 percent of their beginning salary. And if
9 you have a clerical person who comes in, the
10 beginning salary of an administrative
11 support assistant, it's 10.3 percent of
12 their beginning salary.

13 So five percent is probably not going
14 to be reasonable. I think we may have to
15 increase it just a little bit.

16 DR. PATTERSON: I think the state employees'
17 premiums are fairly low compared to the
18 general population.

19 MS. CAMPBELL: They are.

20 MR. BAILEY: Angela, are you suggesting maybe ten
21 percent?

22 MS. CAMPBELL: Eight to ten. I think five is a
23 little low.

1 I also called -- I have my other
2 insurance with Alfa, so I also called Alfa
3 to find out. They cover through Blue
4 Cross. I just had them run some rates for
5 me. And one of them I did, like, the oldest

6 family member is 30 and a non-smoker. The
7 cost for individual coverage is 336
8 bi monthly or 168 a month, and the family
9 coverage is \$1,034 bi monthly which is 517 a
10 month. That's if the oldest family member
11 is 30 and a non-smoker. If the oldest
12 family member is 55 and a non-smoker, the
13 cost for individual coverage is 407 a month
14 and the family coverage is 926 a month.
15 It's very high.

16 MS. PALMER: But what are your deductibles?
17 Isn't that, like, an 80-20 plan?

18 MS. CAMPBELL: I just asked for just the regular
19 plan. I didn't even go into any of the
20 ones -- they may be higher than that.

21 MS. PALMER: I think that is an 80-20 plan, which
22 you have a \$5,000 a year deductible. And
23 then after you meet that, then it pays 80

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1 percent of everything after that, and you're
2 still responsible for the 20 percent.

3 JUDGE FORD: That's another issue we have.
4 There's so many different plans out there
5 that, you know, there's not going to be an
6 absolute number ...

7 MS. BUSH: And the good thing is, the federal
8 regulations do not require us to look at the
9 insurance and what it covers and whether
10 it's a good insurance. They have relieved

11 us from that obligation. They just want to
12 know accessibility, reasonable, and
13 available.

14 MS. CAMPBELL: May end up ordering cash medical
15 rather than insurance. The insurance may be
16 too high. If you apply the threshold, the
17 cost of insurance is going to be too high
18 for a lot of people, and so they may be
19 required to pay the cash medical which is a
20 percentage of their income over and above
21 the child support or however we define it.

22 MS. DAVIS: That would resolve the case that
23 Michael was talking about where he didn't

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1 really need the thousand dollars coverage,
2 but in order to cover his kid, he would have
3 to get a thousand dollars but would only get
4 250 credit. In that scenario, what the
5 judge would probably order is the cash
6 medical amount of \$250 and then you'd apply
7 that instead of the insurance? Is that what
8 the scenario would be?

9 MS. CAMPBELL: I'm not sure how that --

10 MR. JEFFRIES: I have a question -- I'm not real
11 sure about that.

12 MS. CAMPBELL: The CS-42, the existing form, I'm
13 not sure if you -- the cash medical needs to
14 be plugged in just like the insurance
15 premium would be. I think it needs to be in

16 addition to, where you wouldn't do anything
17 on the health insurance line. It would be a
18 zero put there, and then you would just
19 basically add the cash medical to the child
20 support amount. It'd be an additional cost.

21 MR. POLEMENI: Now, on All Kids, is that
22 insurance only on the child?

23 MS. CAMPBELL: (Nods head up and down.)

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1 MR. POLEMENI: Then maybe we need to have All
2 Kids look at, you know, freeing up --
3 changing their minimums or maximums that you
4 can have to make insurance available.

5 MS. BUSH: In the scenario that you gave where
6 you don't have insurance but it's going to
7 cost you, let's say, 750 to get it for
8 yourself and plus another 250, if the five
9 percent -- if you are under the five percent
10 or ten percent or whatever cap, then you
11 would have to get the insurance. But if
12 it's unreasonable in cost, then the court
13 presumably would not order the insurance and
14 you would not have that financial burden
15 because it's --

16 MS. DAVIS: What the court would do, order a cash
17 difference.

18 MS. BUSH: Or they could order a cash difference,
19 but they don't have to because the good
20 thing is, cash medical is already covered if

21 you split the uninsured medical expenses.
22 If there's not insurance available
23 anyway to make you go out and spend a

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1 thousand dollars to get insurance, if it
2 exceeds the five percent cap -- I think
3 that's what they're trying to prevent, is
4 you would not have to do that and the
5 children would remain uninsured and covered
6 however they're being covered now.

7 MR. POLEMENI: And that's the dilemma we're in,
8 because now you have these poor children
9 that need the insurance, but we -- and
10 that's not really our job, but ...

11 JUSTICE STUART: I'm afraid that this is going to
12 cause a lot of children not to be covered by
13 insurance. This is pretty scary to me.

14 MS. BUSH: Well, with the five percent cap -- and
15 they say even -- they looked at 20 percent
16 caps and say those were reasonable, so
17 there's flexibility on what you want the cap
18 to be. It just has to be a numeric
19 standard.

20 MR. WHITMIRE: And there's the discretion of the
21 judge for that, too.

22 MS. BUSH: Can always deviate. The same way with
23 the child support -- the regular current

1 child support. You can deviate. It just
2 has to be in writing in the record as to why
3 the deviation.

4 MR. WHITMIRE: So what we would -- if we have a
5 percentage, we comply. If the judge wants
6 to deviate, that is discretionary and we're
7 still in compliance.

8 MS. BUSH: (Nods head up and down.)

9 JUDGE BELL: May I make a couple of points? A
10 suggestion I would make in your paragraph
11 seven is just leave in health insurance
12 premiums and put a slash and then put cash
13 medical support, because that paragraph
14 really covers both of those things. Do you
15 see where you've marked through health
16 insurance premiums, paragraph seven of the
17 Rule 32 --

18 MS. BELL: Yes.

19 JUDGE BELL: Because when you talk about --
20 because the CS-42, line six, has health
21 insurance premiums. We're either going to
22 change our CS-42 forms ...

23 But here is the key. The last thing

1 in the world I ever want is for two parents
2 to have to come in and litigate child
3 support and pay -- nothing against my

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4 brother and sister lawyers because I used to
5 be one -- five or \$6,000 in attorneys fees
6 to get child support calculated. We're
7 defeating the purpose if we make it so
8 complicated to have to do that, and I hope
9 that's one thing that we're trying to
10 avoid. The caseload is crushing, and the
11 appellate cases are the same way I'm sure.

12 JUDGE FORD: I do see a potential problem as far
13 as caseload. If you talk about cash medical
14 support and -- say, for instance, it says
15 for other medical costs not covered by
16 insurance. Someone is going to have to come
17 in and show the court that this is not
18 covered; therefore, the court is going to
19 have to order the obligor to cover that
20 portion.

21 So there's a possibility you're going
22 to have folks coming -- if we're basing it
23 on -- if medical support -- cash medical

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1 support is based upon paragraph (a),
2 somebody is going to have to come in and
3 show you the cost.

4 JUDGE BELL: Well, we do that anyway standardly.
5 I mean, we order one party to carry the
6 health insurance, non-covered/uninsured
7 medical and dental expenses including, and
8 we have a laundry list, are to be paid half

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9 by the mother, half by the father or in a
10 different proration depending upon the
11 respective gross incomes, so we do handle
12 that. I believe you said that covers the
13 cash medical support.

14 MS. BUSH: Yes, that covers cash medical.

15 JUDGE BELL: But you don't know what that amount
16 is, and it may vary from family to family,
17 child to child. You may have somebody
18 that's got a serious illness, somebody
19 that's healthy and not having any medical
20 problems. That's why I do a percentage.

21 JUDGE FORD: Still may need additional hearings.

22 JUDGE BELL: Right.

23 JUSTICE STUART: I hate to do this, but I feel

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1 like I need to point this out because I
2 think it's going to make a difference in all
3 this because I'm not sure all the states do
4 this.

5 But our present calculation, again,
6 makes both parents responsible for the
7 payment of either health insurance or
8 medical costs proportionately based upon
9 their income. So we really cannot in my
10 opinion think about it as though one parent
11 is bearing that cost because that's not the
12 case in virtually all the cases we see.

13 MS. PALMER: What you do, though, when you're

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14 calculating your CS-42's, if the obligor

15 pays 100 percent of that premium, it does
16 come out directly.

17 JUSTICE STUART: It gets added on and then it
18 gets divided proportionately.

19 MR. JEFFRIES: I've looked at this before. The
20 effect of adding it back in -- I've always
21 wondered who came up with that and what in
22 the world is that for. That's what it --
23 the effect is that it ends up dividing the

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1 health insurance costs by the proportion of
2 the gross -- the percentage of the gross
3 monthly income --

4 JUSTICE STUART: That portion of our child
5 support rules is incredibly fair, incredibly
6 fair.

7 JUDGE BELL: I agree with that.

8 MR. POLEMENI: The only problem I see with how
9 it's written is that there's nothing stating
10 that the person that has to have the
11 insurance, when that other parent takes the
12 child to the doctor that she has to go to
13 the doctors that are prescribed by that
14 provider, and that's where additional costs
15 are thrown in.

16 Maybe something in the wording needs
17 to be saying that, you know, this provider,
18 you know, is the -- any costs incurred

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19 outside of this provider's ruling would be
20 the responsibility of whoever is incurring
21 that cost.

22 Now, if you've both agreed that you're
23 going to pay that cost, yes. And the

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1 scenario I bring to mind is that I never
2 knew what my child's medical costs were
3 until I got a bill from the doctor, and I
4 had no say other than I was making a payment
5 on the insurance. And if she would have
6 went to a different doctor who was on the
7 prescribed list, it would have been a lot --
8 it would have been no money.

9 That's the scenario there, and that
10 may not be the responsibility of this
11 committee or something to consider.

12 MS. MOORE: Well, sometimes that's a little bit
13 inconvenient -- I'm thinking about rural
14 Perry County -- to go to that provider when
15 they may not even live in the same city.
16 You have emergency situations that will
17 stipulate. If you do that, if you address
18 that issue, then you're going to have to
19 address additional issues.

20 JUDGE FORD: That's going to be a judicial
21 decision.

22 MR. BAILEY: Jennifer, would you like to
23 summarize what we've been discussing for the

1 last hour?

2 MR. JEFFRIES: Gordon, can I mention one more
3 thing before you get into the summary?

4 MR. BAILEY: Sure.

5 MR. JEFFRIES: I don't want to change gears too
6 much. It's just another question I have
7 about the wording of this cash medical
8 support part. Judge Bell kind of touched on
9 this.

10 If I read this correctly, there are
11 three different ways that cash medical
12 support can be addressed. One of them is
13 that if the -- for example, if you look at
14 the second "or" -- it says by another parent
15 through employment or otherwise. Is that
16 contemplating that the custodial parent, for
17 example, could have insurance coverage --

18 MS. BUSH: Yes.

19 MR. JEFFRIES: -- that would be included in the
20 guidelines, but then the judge can order
21 extra payment to that custodial parent
22 pursuant to the cash medical support
23 definition?

1 MS. BUSH: That might could happen. I don't
2 think that's what the intention is.

3 MR. JEFFRIES: Again, just like Penny was saying,
4 it's the first time we're looking at these
5 things. I'm just kind of thinking out loud
6 about ways that it could be applied.

7 JUSTICE STUART: I think that's what's already
8 covered in our existing guidelines. Let's
9 say the custodial parent provides the
10 insurance, but within the calculation the
11 noncustodial parent has his percentage
12 figured in there. That is the cash medical
13 support. It's just a portion of the child
14 support.

15 MR. JEFFRIES: It just seems like it's language
16 that could get us into a pretty big change
17 in what we're doing now without realizing
18 it.

19 JUSTICE STUART: I simply think -- and I think
20 really the rule, not just the comment,
21 probably both needs to explain that we're
22 already doing this. This isn't different
23 from what we're doing. We're already doing

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1 it.

2 MR. WRIGHT: What if that other spouse isn't
3 employed?

4 MS. BUSH: Then they won't have any health
5 insurance available through their employer.

6 MR. WRIGHT: No, I mean the custodial spouse is
7 not employed. The person who's providing

8 the insurance is earning a hundred percent
9 of the income. There's no division --

10 JUDGE FORD: A stepparent is providing the
11 insurance.

12 MS. BUSH: Well, right now under our guidelines,
13 a stepparent can provide the insurance and
14 then that parent gets credit for it. It
15 could be the noncustodial parent's new wife
16 is providing the insurance but the
17 noncustodial parent gets credit for it.

18 I did not envision this being a big
19 change because we're already -- in almost
20 all of our orders, we already address
21 uninsured medical expenses in most of them.
22 We already have a place to plug in for
23 health insurance.

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1 I actually thought it would be a good
2 thing because there would be a numerical
3 standard; whereas, now people have to look
4 and decide -- you know, they'll say I can
5 get insurance, but I only make \$10 an hour
6 and the insurance would cost me \$600. This
7 would give guidance where you could just run
8 the numbers and say, okay, it's not
9 reasonable, you don't have to get this
10 insurance, or you should. Plug the number
11 in and -- I did not see a lot of changes in
12 the way we operate in Alabama.

13 MR. BAILEY: Let me ask you to add to this as
14 well. Cliff Smith is in charge of our forms
15 for child support. Done a wonderful job of
16 getting them online.

17 Cliff, we worked on our forms
18 committee, I know, to keep up to date with
19 the medical support issues, and I think
20 we're covered on our standardized forms, are
21 we not?

22 MR. SMITH: We have. We've retained language or
23 included language as far as in the orders.

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1 Each parent is ordered to pay, you know, a
2 percentage of any unreimbursed medical
3 expenses. We've also addressed the medical
4 support language in the rest of the orders.

5 MR. BAILEY: Cliff, do you see anything we've
6 talked about today that we'll need to change
7 in our standardized forms?

8 MR. SMITH: I don't think it's going to affect
9 anything at this point that we'll need to
10 change in the orders or the petitions.

11 JUDGE BELL: Are we talking about two different
12 situations here on this reasonable cost?
13 Are we talking about whether a judge should
14 order somebody to go out and get insurance?
15 Because if you've got a situation where
16 there's insurance already in effect, those
17 people have that premium. They're used to

18 that coverage for their family. The premium
19 is built into their budget, albeit
20 pre-divorce. But it looks to me like this
21 would be more applicable for a judge in
22 determining whether to order a parent to go
23 and get insurance coverage not presently in

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1 effect.

2 MR. JEFFRIES: I think Rule 32 says that you as a
3 judge, when you're calculating your support
4 order you have to address health insurance
5 in some way.

6 JUDGE BELL: I do.

7 MR. JEFFRIES: I think this is trying to clarify
8 how you do that maybe. I'm not real sure.

9 JUDGE BELL: And maybe I'm not expressing it real
10 well, but let's say these folks don't have
11 any insurance, and we all see a lot of
12 people that are like that. And if I've got
13 to decide whether they can fit another seven
14 or \$800 in their budget, 99.9 times out of a
15 hundred they can't because they're going to
16 be living separate and apart. And so I
17 don't know whether --

18 DR. PATTERSON: If they couldn't afford it when
19 they were married, they probably can't
20 afford it when they're divorced.

21 JUDGE BELL: I know. They're going to be living
22 separate and apart, and one is paying child

23 support and ...

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1 MS. BUSH: This will give you a numerical
2 standard to use. And then after you look at
3 everything, if you think you should deviate,
4 you could deviate. This would give you a
5 standard to look at.

6 JUDGE BELL: As to whether I should order them to
7 go and get coverage.

8 MS. BUSH: Whether they should go and get
9 coverage.

10 JUDGE BELL: I wouldn't have a bit of problem in
11 ordering that the available coverage be
12 continued. The only question that we have I
13 think as a committee is to determine what
14 part of that do we use in the Rule 32
15 calculation.

16 MR. BAILEY: Jennifer, correct me if I'm wrong.
17 The feds' intent over the last ten years on
18 medical support -- because they, I think,
19 started working on this eight to ten years
20 ago. Their intent was they felt like this
21 was a big gap in the child support world,
22 that children weren't being -- that it was
23 not being addressed by the courts. Am I

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correct in that's how it all started?

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MS. BUSH: Yes. And the preamble to all of this
is that the feds believe that children
should be -- as far as health insurance,
their health insurance and their medical
support should be provided by the parents.

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And you have to understand, these regs
came out of the Deficit Reduction Act. So
it is an attempt to get children covered by
health insurance as opposed to Medicaid and
All Kids. Now, when you have really low
incomes, then you're probably not going to
have a lot of insurance options. But, yes,
the goal is to get children covered by
private health insurance.

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MS. PALMER: I've got one more question. Where
it says reasonable costs ... in applying the
five percent standard, the cost is the cost
of adding the child to existing coverage or
the difference between self-only and family
coverage. So in the scenario that I gave
earlier where it's 318, but for math
purposes, let's just say \$310 individual for

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me, family coverage now is \$910. So the
amount that would be put in this -- the
CS-42, I believe it's line six, would be
\$600? It would not -- Or would it be the
900?

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4

5

6 JUSTICE STUART: You're mixing apples and
7 oranges.
8 MS. PALMER: Oh, am I?
9 JUSTICE STUART: This is only the maximum
10 amount. This is the cap. This does nothing
11 about what you plug in other than you can't
12 go above this.
13 MR. JEFFRIES: I was going to make a comment. I
14 have some confusion about the language and
15 what we've discussed. It seems like we're
16 discussing two totally different things at
17 the same time. One is, how are we going to
18 deal with (f) in Jennifer's suggested
19 revisions here? How are we going to deal
20 with health insurance in the guidelines
21 generally and then we're talking about
22 adding the language from the federal
23 regulation as well as how it applies to that

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1 once we decide how -- once we figure out
2 exactly what this language is going to be?
3 Does anybody else have the same
4 thoughts? I think that is causing a little
5 bit of our confusion.
6 JUSTICE STUART: I'm going to suggest that
7 everybody strike this added language in (f).
8 That's just not where that belongs, and I
9 think that's causing the confusion.
10 MR. JEFFRIES: If I understand what Jennifer is

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11 saying, (f) is the exact language that has
12 to be included.

13 MS. BUSH: Yes. Yes. The five percent -- I
14 believe the five percent in Julie's
15 scenario, the five percent would be applied
16 to the difference between your existing and
17 the new coverage. If it were over five
18 percent, then you would not have to provide
19 health insurance. If it were under five
20 percent, then that is what would be added in
21 to the guidelines.

22 And I'm concerned about a disconnect
23 between what we put in the guidelines and

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1 the standard we use because it's going to
2 make the standard I believe to be
3 ineffective. If the number is not in the
4 guidelines, then it has no meaning really.

5 JUSTICE STUART: It's got to go in there, but
6 it's not the five percent.

7 MS. BUSH: That would be the five percent cap.
8 I'm saying you would put -- if the five
9 percent -- if the person is under five
10 percent, you would put the -- that amount in
11 there. If they're over five percent, you
12 wouldn't then just proportion out what you
13 would put in the guidelines amount.

14 JUSTICE STUART: I think we're still mixing
15 apples and oranges. At this point in time,

16 I don't think we can talk about these
17 together. I really think until we decide
18 whether we're going to leave it the way it
19 is and include the total premium or whether
20 we're going to change it -- you know, I
21 think we're just confusing all this.

22 JUDGE FORD: I'll tell you the difference. I
23 think what Jennifer is indicating, the

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1 federal government is going to require us to
2 put what the cap is going to be. We have to
3 decide, first of all, what is going to be
4 the cap. Is it going to be five percent,
5 ten percent, 20, whatever it is. And then
6 from there, we can go to the other issue as
7 to how you use it. Is that correct?

8 MS. BUSH: You are correct. The feds are going
9 to require us to come up with a numeric
10 standard, and they're already --

11 JUDGE FORD: A ceiling.

12 MS. BUSH: Yes. And they're already telling us
13 we can't use the entire insurance premium.
14 They're telling us that. They have dictated
15 to us what we can apply that numeric
16 standard to. So, really, we only have to
17 come up with a numeric standard because
18 they've told us the other.

19 MR. BAILEY: Penny.

20 MS. DAVIS: I'm going back to my notes that I

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21 took. I don't know if anybody still has
22 their notes from September 21st, 2007. I
23 think it must have been the slide

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1 presentation that Jane did.

2 Going back to your initial comment, I
3 do have a note in here that Alabama is the
4 only state that uses the approach of the
5 actual cost, so you were right about that.

6 I do have a note in here relating to
7 the five percent that Alabama -- it's
8 recommended that Alabama use ten percent.
9 There's some calculations in here and some
10 figures in here. So there was, obviously,
11 some prior discussion, a lot of which I
12 didn't remember all of it, so maybe --

13 I still kind of -- I still have the
14 gut feeling that we are talking two issues.
15 If we all agree that one of the issues is
16 the percentage that we have to come up with,
17 then my proposal would be to go back to what
18 Jane has suggested based on her economic
19 data and plug in ten percent. And then from
20 that, we may need to deal with some other
21 issues, but we could at least make one
22 step -- small step forward.

23 MR. BAILEY: For manki nd.

1 MS. DAVIS: For children-kind.

2 MR. BAILEY: For children-kind. All right.

3 Jan.

4 MS. JUSTICE: I just wanted to say something to
5 reiterate, I think, what Jennifer is saying
6 and what I so often am hearing you-all refer
7 to the five percent as a cap. It's not a
8 cap as I understand it. It's a definition.
9 It's like Judge Bell was talking about. It
10 will help judges determine whether this new
11 insurance is reasonable.

12 It's not a cap. I don't think there's
13 any requirement that we cap what we include
14 on our Form 42. I think it's just to help
15 us -- the way it was said in the regs, it
16 was -- it's a definition of reasonable, and
17 what they told us is we couldn't count the
18 full insurance premium. In Julie's case,
19 you couldn't count the 910 and say, oh,
20 that's not reasonable. You only could count
21 the 590 -- about \$600. You'd only count
22 that in your discussion of is it
23 reasonable.

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1 And I think it is sort of mixing
2 apples and oranges as everyone has said, and
3 the way that we calculate it on the CS-42 is
4 a little bit different discussion.

5 MS. CAMPBELL: Can I ask a question?
6 MR. BAILEY: Sure.
7 MS. CAMPBELL: Are you paying \$1200? I mean, the
8 total cost for the individual plus the
9 family was 1200, not 900, correct?
10 MS. PALMER: No. Family is \$910.
11 MS. CAMPBELL: Okay. So that's the total that's
12 being paid?
13 MS. PALMER: Correct, and individual is 318.
14 MS. CAMPBELL: And so the employer is going --
15 MS. PALMER: No, sole practitioner.
16 MS. CAMPBELL: You're paying 1200?
17 MS. PALMER: No.
18 MS. BUSH: 900.
19 MS. CAMPBELL: That's where I was getting
20 confused. Because if you were paying 1200,
21 then I thought you would have to pay the
22 900. But if you're paying 900, then, yes,
23 it would be 600.

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1 MR. BAILEY: And I know we're all struggling with
2 this, but the feds struggled with this --
3 for how many years did they take comments,
4 Jennifer? Three or four years of comments,
5 didn't they?
6 MS. BUSH: The Deficit Reduction Act of 2005,
7 six.
8 MR. BAILEY: So they were receiving comments for
9 a number of years, so it is an issue that

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requires a lot of thought.

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DR. PATTERSON: Dr. Venohr suggested ten

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percent. Do we know if there's a basis for

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that five percent number?

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MS. BUSH: That's just what the feds put in

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there, five percent or another numeric --

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you know, whatever the state wants to put

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in. They put in five percent, but we can do

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whatever we want as far as ten, 20.

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MR. BAILEY: We'll be discussing some proposals

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and voting after lunch today or if we -- we

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may not vote. We may defer it to another

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meeting, but we'll be discussing that this

23

afternoon.

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I don't want to cut off any other

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discussion about medical support if somebody

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has something they want to add. But I did

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want, Mike, you to go ahead and if you could

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get into modifications before lunch because

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you've done a lot of work. I don't want to

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cut off discussion on medical support. If

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anybody has a burning question or thought

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they want to share ...

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MS. DAVIS: I have a burning question.

11

MR. BAILEY: All right.

12

MS. DAVIS: In her material, it says: The five

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percent definition comes from a

14

recommendation of the 2000 Medical Care

15 Child Support Working Group --

16 (Brief interruption.)

17 MS. DAVIS: This is from Jane's material, and
18 it's relating to the definition of
19 reasonable costs. The sentence says: The
20 five-percent definition comes from a
21 recommendation of the 2000 Medical Child
22 Support Working Group which was convened to
23 fulfill a requirement of the Child Support

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1 Performance and Incentive Act of 1998. So I
2 guess you could go back to that 2000 group
3 and see where they got the five percent.
4 That was in 2000 that they came up with that
5 five percent.

6 MR. BAILEY: Eight years ago.

7 Ben, did that answer your question?

8 DR. PATTERSON: I think that's all we can ...

9 MR. BAILEY: All right. Okay. I would like to
10 turn it over to Mike now. Mike, if you
11 will, give us a report on the next item on
12 our agenda which is effect of adoption of
13 new schedule on modifications.

14 MR. MANASCO: When we had our last meeting, we
15 were discussing the premise that the
16 establishment of new guidelines does not
17 represent a basis in and of itself for
18 changing child support.

19 My comments at that time was that from
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20 my view as a former domestic relations
21 practitioner that the fundamental
22 requirement for a trial court to consider in
23 modifying child support is whether or not

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1 the parties seeking modification could prove
2 that there had been a material and
3 substantial change in circumstances that was
4 continuing since the last court order. The
5 establishment of guidelines may cause pause
6 for some debate about that as to whether or
7 not that remains to be the beginning point,
8 particularly in light of the ten percent
9 rule.

10 I am of the opinion that the standard
11 remains the same, that there should be
12 proven a material change in circumstances.
13 One of the reasons for that is if you go and
14 you show that there is by application of the
15 guidelines a ten percent change, the person
16 seeking the change has the advantage of a
17 rebuttable presumption that child support
18 should be increased. The payor, on the
19 other side of that, is not out of court --
20 it's not ten percent; we change it --
21 because the payor would have the opportunity
22 to rebut that presumption and that could be,
23 certainly, by proving that applying the

1 change based upon that would be inequitable
2 or overburdensome, and part of that
3 certainly is that there has not occurred any
4 substantial change in circumstances. It's
5 ongoing and continuing: I still work at the
6 same place; I'm still making the same money;
7 I still have bills, you know. Circumstances
8 haven't changed related to the needs of the
9 children, and needs of the children are the
10 other part of that, is that child support is
11 based upon the needs of the children.

12 So that before I discuss any of the
13 cases was what I had added and circulated as
14 subparagraph (c) under the modifications.
15 Under (A), went down to numerical three for
16 modifications. We had the (a) and (b) that
17 existed that provided for the ten percent
18 rule. I added the (c).

19 JUDGE BELL: Mike, where are you?

20 MR. BAILEY: Are you referring to -- Attachment
21 C, we'll now mark it as Handout C. Handout
22 C was Attachment C that you received in your
23 mailing.

1 MR. MANASCO: I'm just operating on what I had in
2 my notebook. It's the same. So we're all

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on the same page?

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JUDGE BELL: Penny got me straight.

MR. MANASCO: If you don't have a ten percent change by application of the guidelines, you do not have the advantage of a rebuttable presumption. And it seems that the court then, however, may modify support upward based upon proof of a material change in circumstances concerning the needs of the children that's ongoing and continuing. So either way you look at it, if you've got greater than ten percent change, the obligor can say there hasn't been any change in my circumstances and applying it would be unfair and inequitable.

So change in circumstances is an integral part of modifying that order just as it has been throughout the history of domestic relations law, that child support orders, alimony orders can be changed based upon a substantial and material change in

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circumstances.

If you have less than that, the person needing the support has got the opportunity to show I can't get the ten percent by just looking at the guidelines, but, Judge, look at my circumstances. They have changed. You know, I'm not making the money that I

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8 was before. Bills are higher. Gas is up.

9 I've got children in school, et cetera.

10 I've got these needs.

11 In either of those circumstances, the
12 court is still the one that has the duty and
13 the opportunity to look at the actual facts
14 and circumstances, so that's why I'm saying
15 it's the fundamental rule. Does a person
16 have to going in prove that may be a
17 question.

18 It has been discussed at one time by
19 Rick Fernambucq and Gary Pate in their book,
20 2nd edition, Family Law in Alabama that the
21 passage of the new guidelines kind of did
22 away with the necessity to prove the change
23 in circumstances going in. But they also

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1 note that it's arguable that if it's ten
2 percent, the other side can prove it's less,
3 the same posture that I take.

4 So in that regard, I tie in another
5 paragraph, subparagraph (d), the existence
6 of the Child Support Guidelines or periodic
7 changes to the guidelines in and of
8 themselves does not constitute proof of a
9 material change in circumstances that is
10 substantial and continuing. It gives you a
11 presumption that the child support should be
12 applied if you have more than ten percent.

13 Still, the most important factor in
14 considering modification is whether the
15 needs of the child have undergone a material
16 and substantial change that is ongoing and
17 continuing. Criteria for determining
18 changed circumstances are increased needs of
19 the child and the ability of the parent to
20 meet those needs. In every child support
21 determination, whether it's original or a
22 modification, that is what the judge has got
23 to determine: What are the reasonable needs

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1 of the child; do I need to depart from the
2 guidelines; do I need to stick to the
3 guidelines; and what is the ability of the
4 other parent to meet those needs? That's a
5 bedrock of judicial guidance and discretion,
6 that the guidelines have never been looked
7 at as mandated. They are guidelines, and
8 they are that for the court.

9 Following in that regard, what I had
10 said earlier, the trial court has
11 discretion -- in subparagraph (e) -- and
12 authority to modify the child support even
13 when there's not a ten percent change in
14 circumstances when you prove that there
15 is -- when there's -- if it's less than ten
16 percent, you can still prove your change in
17 circumstance; likewise, the court could deny

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18 where the ten percent is there but the
19 obligor doesn't have the ability to pay.

20 The official comments says the
21 guidelines will provide an adequate standard
22 support for the children subject to the
23 ability of the parents to pay and will make

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1 awards more equitable by ensuring more
2 consistent treatment of persons in similar
3 circumstances.

4 And then my final suggested addition
5 was the rebuttable presumption that the
6 amount of child support established by the
7 application of the guidelines is correct may
8 be rebutted upon a determination by the
9 trial court that application of the
10 guidelines would be manifestly unjust and
11 inequitable. Now, I think that that
12 certainly is consistent with the way the
13 courts are run and the way cases are brought
14 and proved.

15 Looking at a case that's in the
16 comments of the guidelines, we have in the
17 total comments a case that says the standard
18 for determining changed circumstances as
19 justification for a modification of child
20 support is the increased needs of the child
21 and the ability of the parent to respond to
22 those needs. That is a 2007 case, Allen v.

1 If we were going to be looking at that
2 case, the mother filed a petition to modify
3 in Calhoun County. Court of Civil Appeals
4 held that the trial court was not required
5 to use split custody in determining the
6 obligation of support and that modification
7 of child support is a matter within the
8 judicial discretion of the court.

9 Also, in the headnotes, a prior child
10 support order may be modified only upon
11 proof of changed circumstances, and the
12 burden is on the party seeking
13 modification. And, further, the standard
14 for determining changed circumstances as
15 justification for modification is the
16 increased needs of the child and the ability
17 of the parent to respond to those needs.

18 That is already in the guideline
19 comments and, you know, I think it's there
20 from the standpoint of carrying forward the
21 sound judicial thinking that regardless of
22 the guidelines and regardless of ten percent
23 or less than ten percent, in all cases the

2 has to make a determination based upon the
3 facts and circumstances as they are
4 presented.

5 Another case in 2007 for the same
6 thing, a child support award may be modified
7 only upon proof of a change in
8 circumstances, and the burden rests upon the
9 party seeking modification. That's Morgan
10 v. Morgan, and that's 964 So.2d 24. That's
11 already specified in the comments to the
12 guidelines. The previous case was on page
13 19 of Rule 32. This case is on Rule -- page
14 20 of Rule 32.

15 If we were looking at the Morgan case,
16 in that case the guidelines exceeded the
17 uppermost limit of \$10,000 because it was
18 \$10,730. The court remanded the case for
19 presentation of evidence as to the
20 reasonable and necessary needs of the child
21 before the trial court could modify the
22 father's child support obligation. No
23 evidence was introduced that established the

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1 financial needs of the child had increased
2 since the entry of the divorce judgment or
3 that the child's extracurricular activities
4 had changed since the original judgment.
5 The court in that decision cites previous
6 cases, including modifications or opinions

7 at the discretion of the trial court.

8 Another case that is in the comments
9 on page 20, the burden falls upon the party
10 contesting the application of the Child
11 Support Guidelines to rebut the presumption
12 that child support should be modified when
13 the difference between the present
14 application and that indicated by the
15 guidelines is greater than ten percent by
16 proving that applying the guidelines would
17 be manifestly unjust or inequitable. That's
18 Scott v. State, and that is -- see if I can
19 give the actual cite. Scott v. State, the
20 guidelines has it with its Westlaw cite.
21 Scott v. State, 963 So.2d 674, 2007.

22 That is an interesting case in that it
23 is a matter where the state was representing

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1 someone seeking a child support increase.
2 In that case, the holding was the state was
3 not required to show a material change in
4 circumstances as a prerequisite to
5 modification of father's child support
6 obligation once the presumption in favor of
7 modification was established; and, two,
8 father failed to rebut the presumption in
9 favor of modification of child support by
10 showing that it would be manifestly unjust.

11 Now, we still have the rebuttal of the
Page 82

12 presumption to -- when you have greater than
13 ten percent. In this case, it said the
14 state does not have to do that. This was a
15 pro se case, pro se defendant. And they do
16 cite the rule that I've said several times:
17 The burden falls upon the party contesting
18 the application when it's greater than ten
19 percent.

20 The opinion makes note that this was a
21 pro se case and got the ore tenus rule, and
22 that always kind of makes you question a
23 little bit about the authority holding when

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1 you're just looking at the ore tenus rule.

2 However, the evidence is certainly in
3 support of the father not being able to
4 rebut the presumption. He testified at the
5 hearing that he hadn't received a pay raise
6 in ten years; however, he also testified he
7 had reached the maximum of his salary range
8 15 years before the hearing. On
9 cross-examination, he acknowledged that he
10 had received cost of living raises along the
11 way. So I think this case does not
12 necessarily stand for anything to do with
13 changed circumstances, but the failure of
14 the litigant to rebut the application of the
15 Child Support Guidelines.

16 It is interesting going in that -- it
 Page 83

17 says that the state was not required to
18 prove that. It didn't say that the
19 petitioner or that the mother or the parent,
20 it said the state. So I'm not quite certain
21 how that would be.

22 There's another case that has some
23 interest for us as we consider these changes

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1 in the comments, and that's a 2006 case,
2 Schiesz -- I think that's how you might
3 pronounce that, S-C-H-I-E-S-Z. Existence of
4 less than ten percent change between child
5 support award under divorce judgment and the
6 amount former husband contended was due
7 under the Child Support Guidelines given the
8 party's current income did not preclude the
9 trial court from modifying former husband's
10 child support based upon a material change
11 in circumstances.

12 In that case, the husband was
13 arguing -- the husband argues only that the
14 application of Rule 32 Child Support
15 Guidelines demonstrates that there is less
16 than a ten percent change between the child
17 support award and the amount he contends is
18 due under the current income levels;
19 therefore, according to the husband, a
20 modification of child support is not
21 warranted. The husband is not correct that

22 child support may not be modified absent a
23 ten percent change in the support-paying

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1 parent's child support obligation. The
2 trial court may modify a support obligation
3 where the change of ten percent is not
4 present but where there has been a material
5 change in circumstances.

6 So I think that -- those cases were
7 what guided me in suggesting these
8 recommendations because I think that if
9 someone is looking -- citizens,
10 particularly, are looking at Child Support
11 Guidelines, they would be better served if
12 something was in the comments that -- and
13 I'm not insistent on my language being
14 absolutely correct or what the committee
15 should adopt. But I think it would be
16 beneficial and an aid to the court if it's
17 in the rule as opposed to being hidden in
18 case capsules that an ordinary person would
19 not know how to go and get and look at the
20 finer points and say is this really the main
21 point in the case or is it just the point
22 that related to change in circumstances and
23 it doesn't discuss it in much detail.

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1 So those are some of the cases that I
2 looked at, and many of them are already in
3 the Child Support Guidelines comments which
4 led me to believe that someone who decides
5 on what cases go in the child support
6 comments thought those cases might have some
7 instructive merit for practitioners and pro
8 se people to look at when they are
9 litigating their child support cases.

10 MR. BAILEY: Mike, thanks. Great report. Also
11 on your committee were Jim, Penny and, I
12 believe, Jennifer. Jim, did you want to add
13 anything to Mike's report?

14 MR. JEFFRIES: No. We through e-mail kind of
15 exchanged some different language, and each
16 of us had some suggestions that we could
17 discuss further if you want to.

18 MR. BAILEY: Is there anything that you want to
19 point out specifically now that you feel is
20 important for us to consider?

21 MR. JEFFRIES: No. I made a couple of -- just a
22 few of the suggested changes that I added
23 were in the (d) paragraph where it talks

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1 about the periodic changes not constituting
2 a material change in circumstances. I added
3 some language, for example, at the end of
4 that sentence, "and cannot be the sole basis

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5 for a modification of child support." That
6 may be specified already where it says the
7 guidelines in and of themselves do not
8 constitute ... I just thought that was a way
9 to make it a little more clear.

10 Other than that, it was just some
11 very, very basic changes that don't really
12 need to be discussed.

13 MR. BAILEY: Penny, did you want to add anything
14 to our discussion on modifications?

15 MS. DAVIS: I got an e-mail from Mike and then
16 Jennifer, kind of -- I don't know if you
17 ever got mine.

18 MR. BAILEY: I did.

19 MS. DAVIS: Mine bounced back. Jennifer, have
20 you already told them --

21 MS. BUSH: I have not.

22 MS. DAVIS: While we're doing that in that order,
23 he made a presentation. Jennifer commented,

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1 and I commented on Jennifer's comment. So
2 if we're going chronologically --

3 MR. BAILEY: You want to defer to Jennifer?
4 She's yielded the floor.

5 MS. BUSH: I expressed concern that this was
6 changing the criteria for modifications. In
7 the past, it has been ten percent and that's
8 been, again, a situation where you could
9 look at the numbers and determine whether

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you presumptively were entitled to a

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modification.

I felt that adding in the ability to pay, the needs of the children, requiring it be substantial and continuing, those are large evidentiary issues that are going to require a great deal of resources, either attorney time, evidence, a lot of hearings and litigation. I do agree that that is a standard that you might use in litigation, but I was reluctant to place it on an even -- an even scale with -- if it's set out in subsections (b), (d), and (e) -- well, subsection (b) says ten percent

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rebuttable presumption, and then the following paragraphs outline all the evidentiary issues the court would go into, and I felt it was -- I felt it was confusing. It confused me in that, what is the standard? Do I have to prove all of these issues before a judge, or can I just run the numbers and if it's a ten percent change, I go forward?

I was concerned that it would make it difficult for pro se litigants, courts with very heavy dockets having to hear all the evidence. And it appeared to me to be a reversion to what we had pre-Rule 32 where

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15 you have to present evidence in each and

16 every case. Those were my basic comments.

17 And can I add one other thing?

18 MR. BAILEY: Sure. Absolutely.

19 MS. BUSH: The income shares model that we have
20 now to the best of its ability already takes

21 into account the clothing costs, food

22 expenses, housing costs of children. And I

23 think that's where we got our ten percent

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1 rebuttable presumption because it's already

2 considered. To go in and have to prove all

3 of that again to me appears just an undue

4 burden.

5 MR. BAILEY: Moving backwards is what you're

6 saying?

7 MS. BUSH: Yes, and I think it places an undue

8 burden on the pro se and on the courts.

9 MR. MANASCO: May I comment?

10 MR. BAILEY: Go ahead.

11 MR. MANASCO: I don't think that you have to

12 prove all of that going in. I think you've

13 got the presumption going in. It's the

14 other side who has to prove that it can't

15 go. So I don't think -- Number one, I don't

16 think determination of child support should

17 ever be an administrative matter. But the

18 guidelines do give the advantage,

19 particularly in the Child Support Title IV

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cases and all that to go in with the

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presumption, and it would be -- the burden

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would be upon the other side to prove all

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that.

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I don't see that the rules provide

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that you have to go in and prove the change

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in circumstances to start with. You've got

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a rebuttable presumption. And the one case

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I talked about was -- said the state did not

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have to do that, so ...

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But I think in fairness to the citizen

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and to the pro se and all of that, that our

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guidelines should be forthcoming and, you

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know, provide some transparency to a

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mysterious process where you go in and

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you're either working against a district

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attorney's office or attorney general's

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office and, you know, you should have

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something in the guidelines that would say,

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you know, you can seek to have your case

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heard other than just it's presumed it's

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correct, it's here, and you're out.

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MR. BAILEY: Penny, I believe the floor is yours.

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MS. DAVIS: Well, my comment back based upon the

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e-mails was -- my recollection of what we

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were trying to get at was the presumed

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proliferation of case law -- the cases we

1 would have once the guidelines have changed
2 and the amounts have changed, and we were
3 trying to deal with what we thought would be
4 appropriate when people started calculating
5 and the calculations would hit at the
6 rebuttable presumption -- hit the rebuttable
7 presumption solely based on the new figures
8 that are plugged in.

9 That's what I thought our focus was
10 on. I think we kind of -- although I don't
11 discount at all what Mike is saying, the
12 cases that he has, I'm not sure that we
13 really hammered in on what we were trying to
14 deal with by the language that we have
15 here.

16 I think what we had concluded was we
17 didn't want merely the recalculation because
18 of the numbers being different being the
19 reason for the deviation to go forward, but
20 I may be not correctly remembering that.

21 MR. BAILEY: Judge Bell and Judge Ford, a number
22 of judges asked me had we thought this
23 through in terms of adopting a new

1 schedule. Say the Court would approve it,
2 put it into effect January 1st, would that
3 cause an onslaught of filings because we had

4 adopted a new schedule regardless of the
5 factual matters involved and was there a ten
6 percent change or whatever. That really was
7 the genesis of this.

8 JUDGE BELL: I think you've got two issues you're
9 looking at. Number one, I think we do need
10 to put clear language in there that the
11 adoption of any revision to the guidelines
12 would not in and of itself constitute a
13 material change in circumstances.

14 And then once you get past that, I'm
15 worried, too, about the proliferation of
16 cases and pro se litigants and any litigant
17 coming in. And I think other than the ten
18 percent -- I think Mike has probably
19 codified what the appellate cases have said
20 in the last couple of years.

21 MR. BAILEY: I think so.

22 JUDGE BELL: But I like the rebuttable ten
23 percent presumption that a modification of

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1 child support -- and it could be up or
2 down -- should be ordered if there's a ten
3 percent difference, but that it can be
4 rebutted by the other party by showing that
5 the application of the guidelines would be
6 manifestly unjust or inequitable.

7 I like, too, putting in that if
8 there's not a ten percent difference, the

9 court can still modify the child support,
10 but only upon proof of a material change in
11 circumstances. And then the other party has
12 the opportunity to rebut that, that it would
13 be manifestly unjust or unreasonable.

14 I'd also like to put a provision -- if
15 we're talking to the public and we're
16 saying, look, these are the categories, that
17 if the combined gross incomes of the parties
18 exceeds whatever amount we have -- that we
19 set, which is \$10,000 right now, that Rule
20 32 Child Support Guidelines do not apply --
21 even if it's a dollar over, they do not
22 apply -- and the child support to be ordered
23 is based upon the children's reasonable and

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1 necessary monthly expenses and the parents'
2 ability to pay towards that support,
3 that's -- that's basically the law. My
4 suggestion would be keep it as simple as
5 possible.

6 MR. BAILEY: Right.

7 JUDGE BELL: I don't want folks coming in where
8 there's a -- and having to prove if there's
9 a ten percent difference how much gas has
10 gone up or how much jeans cost now more than
11 they used to. We've all done that. I've
12 sat there and said, oh, my gosh, and -- you
13 know, I've got to sit there and I've got ten

14 cases in the hall waiting to be tried. Keep
15 it simple. Keep it simple.

16 MR. BAILEY: Michael.

17 MR. POLEMENI: The only thing I've got to say is
18 that in my sphere of influence, a change of
19 ten percent of income, I've just gotten
20 eaten up by court costs, you know. Maybe --

21 JUDGE BELL: It's not income. It's ten percent
22 difference between the existing child
23 support award and the new one calculated --

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1 MR. POLEMENI: I understand that. Still, all
2 that difference we're arguing over, you
3 know, it's monies that are eaten up by court
4 costs alone. Maybe we need to raise that
5 ten percent threshold to something higher
6 before they come to court.

7 MR. BAILEY: Let me check with our maitre d',
8 Wayne Jones. I think everybody knows
9 Wayne. He's done a wonderful job for us as
10 staff for the Court. Where are we on our
11 lunch timer?

12 MR. JONES: It's ready whenever we're ready to
13 eat.

14 MR. BAILEY: All right. Well, I'm going to give
15 us just a few more minutes on this
16 discussion and then we'll adjourn for
17 lunch.

18 Any other committee member of Mike --
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19 or, Mike, did you want to add anything else
20 before we break for lunch?
21 MR. MANASCO: I agree that if there's a ten
22 percent change, that there's no necessity to
23 pre-approve a material change in the

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1 guidelines or ...
2 MR. BAILEY: Jim, anything else you want to add?
3 MR. JEFFRIES: I think we have to be careful
4 about focusing too much on the
5 administrative aspect of these things.
6 We're either going to have the guidelines
7 apply all the time and there's not going to
8 be any discretion, let's run them through,
9 or let's leave the discretion there, and
10 it's just something we're going to end up
11 having to deal with.
12 MR. BAILEY: Good point. Penny, anything else
13 you wanted to add?
14 MS. DAVIS: (Shakes head from side to side.)
15 MR. BAILEY: Jennifer?
16 MS. BUSH: I'm fine.
17 MR. BAILEY: I think Lyn had something she wanted
18 to say.
19 JUSTICE STUART: I was just going to say
20 concerning lunch, I would like to request
21 that we go and eat and come back and get to
22 work --
23 MR. BAILEY: Absolutely..

1 JUSTICE STUART: -- that we not linger and chat.

2 We've got a lot of ground to cover.

3 MR. BAILEY: I think that's a wonderful
4 admonition. All right. No further
5 business, we'll adjourn for lunch.

6 (Lunch recess was taken.)

7 MR. BAILEY: I think we're all back except Penny
8 and Jim. I know they're in the wings
9 somewhere. Let's go ahead and try to get
10 started quickly on time so we can maybe get
11 out of here around mid afternoon or around
12 3:30 or 4:00.

13 The next item on our agenda is review
14 of guidelines every four years. Let me
15 address that quickly. That is in your
16 mail out and handout this morning -- that we
17 got this morning. You were mailed a copy of
18 this. It's G, review of guidelines.

19 The change that we talked about before
20 was just changing it to our committee as
21 opposed to the director of AOC, and we all
22 thought that was a good idea. Be glad to
23 entertain some discussion on that this

1 afternoon if we want to discuss it further.

2 It's fairly straightforward. We're the
3 reviewing body instead of the ADC, the
4 Administrative Director of Courts.
5 MS. DAVIS: I propose we adopt it as it's
6 drafted.
7 MR. BAILEY: We're going to vote in just a little
8 while.
9 MS. DAVIS: Okay. Trying to move us forward.
10 MR. BAILEY: I will table your motion until the
11 appropriate hour.
12 MS. DAVIS: See what having a good dessert will
13 do for you.
14 MR. BAILEY: I see it. I see it. It got you on
15 the fast lane, didn't it?
16 (Brief interruption.)
17 MR. BAILEY: The lunch was really wonderful.
18 Lyn, please thank the Court for us, and I'll
19 write the Court a formal letter thanking
20 them again.
21 All right. Advisory use of proposed
22 new schedule until effective date for
23 incomes between ten and 20,000. Judge Bell

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1 and Judge Ford, the last time we met, we
2 talked about how to propose this to the
3 trial courts. We have had a number of
4 judges ask us could they go ahead and start
5 using the schedule now as advisory. I don't
6 see anything wrong with that, but we thought

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7 we'd just talk about it for a minute.

8 Judge, have you had anybody mention to
9 you they'd like to use the new schedule
10 which goes from ten to 20 as advisory now?
11 Has that come up with any of your
12 colleagues?

13 JUDGE BELL: They haven't, but I've had a lot of
14 them who want it extended because of the --
15 the income levels as they go up. I seem to
16 remember back when Rule 32 was adopted, they
17 were advisory for a period of time, weren't
18 they --

19 MR. BAILEY: That's correct.

20 JUDGE BELL: -- before they were made mandatory?
21 That might be a good thing to do.

22 MR. BAILEY: Well, just to bring everybody up to
23 date, at Lyn's suggestion, which was an

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1 excellent one, we have not sent the new
2 schedule we voted on several meetings ago to
3 the Court because we didn't want to
4 piecemeal things out to the Court. So what
5 we're hoping to do is get a package together
6 today, if we can, with our recommendations
7 to the Court and that will, of course,
8 include the new schedule we've already voted
9 on and approved.

10 Judge, do you have an idea about how
11 we might -- assuming we can get a package

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12 together to give the Court today, how we

13 might disseminate that to the judges in the
14 state?

15 JUDGE BELL: Yes. If we get it to AOC, AOC can
16 send it out in bulk e-mail form to all the
17 judges.

18 MR. BAILEY: All right. Does anybody want to
19 comment further on allowing the judges from
20 whenever date we decide until January the
21 1st, assuming everything might go into
22 effect January 1st, for the judges using
23 it as advisory? Penny.

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1 MS. DAVIS: My comment would be that if we're
2 going to send it out to the judges, which I
3 think is a good idea, let's go ahead and put
4 it out to the -- so the public can see it,
5 too -- got so many pro se people -- so that
6 they'll be aware of it.

7 MR. BAILEY: Good idea.

8 MS. DAVIS: I don't know what's the appropriate
9 way to do it. It may be the same Web site
10 that we're using. I don't think we ought to
11 incur a lot of cost.

12 MR. BAILEY: I agree.

13 MS. DAVIS: If we put it on the same Web site so
14 it'd be available ...

15 And, Mike, if you could tell your
16 people, you know, so they'd be aware that

08-19-2008 child support guidelines meeting.txt
17 they could look on the Web site.

18 MR. POLEMENI: Right.

19 MR. BAILEY: Lyn.

20 JUSTICE STUART: Are y'all suggesting sending it
21 out before the Court looks at it for comment
22 or after --

23 MR. BAILEY: No, after the Court adopts it.

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1 Absolutely. If the Court chooses to adopt
2 our recommendations, including the chart,
3 but it's not effective until January the
4 1st -- let's say the Court decided to do
5 that in October. We might send out --
6 possibly send out an e-mail to all the
7 judges saying this will be effective January
8 1st. If you want to use it as advisory
9 only, the committee recommends you do that,
10 something like that.

11 MS. DAVIS: And also the public, too.

12 MR. BAILEY: The public, absolutely.

13 MR. POLEMENI: I think the biggest thing would
14 be, you know, like you said, is keep it on
15 the same Web site that's there, just a PR
16 campaign out to the media and so forth to
17 make them aware.

18 MR. BAILEY: Right. Any other discussion on that
19 issue?

20 (No response.)

21 MR. BAILEY: Hearing none, I'm going move

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22 volunteers to draft committee comments until
23 after we vote. I think that's probably the

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1 best place to put that. So with everyone's
2 permission, I'll move F down to between six
3 and seven.

4 We've had lunch, a wonderful lunch. I
5 don't see Wayne or Bob. I think they're
6 making some copies. I'll certainly thank
7 them again. Now it's time for comments from
8 the public? Do we have anyone from the
9 public. Do we have anyone from the public
10 that would like to be heard?

11 Yes, sir. If you will, come forward
12 and give us your name and if you possibly
13 could, we'd like for you to limit it to
14 about ten minutes. But if you need a few
15 minutes over, we don't have an official time
16 keeper.

17 Go ahead, sir. If you'll give us your
18 name and --

19 MR. EDWARDS: Yes. My name is Mitch Edwards,
20 M-I-T-C-H, E-D-W-A-R-D-S. And thank you for
21 allowing me to address you today.

22 There's been a great deal of
23 discussion today and in these ongoing

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1 proceedings in the last several years about
2 fairness and, to some extent, about
3 transparency. I've got to tell you. I do
4 not envy the work that is before you and has
5 been behind you up to this point. That's a
6 very difficult task to be able to do.

7 And while there has been a great deal
8 of discussion on many of the semantics and
9 technicalities over the last several
10 meetings, I think there have been some very
11 fundamental issues that perhaps have not
12 truly been considered by this committee, and
13 I would like to address a few of those.

14 In your report that deals with the
15 Rule 32 Child Support Guidelines, on page
16 seven, under (G), middle of the page: These
17 guidelines are based on the income shares
18 model developed by the National Center for
19 State Courts and -- here is the important
20 part -- are founded on the premise that
21 children should not be penalized as a result
22 of the dissolution of the family unit but
23 should continue to receive the same level of

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1 support that would have been available to
2 them had the family unit remained intact.

3 The sentence above the last sentence
4 in that same paragraph says: The guidelines
5 assume that the custodial parent will

6 directly provide his or her proportionate
7 share of support to the children.

8 If I could refer back to something
9 that Jane Venohr had said earlier in one of
10 our previous meetings, if I can find my
11 notes on that. Just briefly bear with me.
12 I apologize. I thought I had my note in
13 front of me. I'll continue.

14 It basically alluded to the same -- to
15 the same premise that the family would
16 remain intact. Unfortunately, that's not
17 the case. If that's what you're building
18 your premise upon, then that's not factual.
19 There's a reason that people get divorced,
20 whatever that reason may be, and that means
21 that there are two separate households at
22 that time.

23 In Alabama, even though I think it's

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1 presumptive that most people get joint
2 custody of their children, it really kind of
3 comes down to whoever is the primary
4 physical custodian. Whomever is the primary
5 physical custodian, that's where the money
6 is going to go.

7 So if you're looking at two separate
8 households -- for example, if you're looking
9 at two households -- an intact household,
10 you've got a mom that makes \$40,000 and,

11 say, a dad that makes \$40,000. If the
12 family breaks apart, the mom still makes
13 \$40,000. The dad still makes \$40,000.
14 You've got two separate families at this
15 point. The income shares model bases the
16 model on the intact family itself. So
17 there's no more intact family. It's only
18 now two separate families with two separate
19 expenses that you have.

20 Mom makes 40,000. Dad makes 40,000.
21 If you put it into the calculation under
22 Rule 32, the noncustodial parent will still
23 pay to the custodial parent an amount that

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1 would reflect that there's an intact
2 household.

3 Now, you've got two different
4 situations that go on there. Mom may like
5 her temperature in the house at 68 degrees.
6 Dad may like his at 78 degrees. Mom may
7 like to buy designer clothes. Dad may like
8 to buy stuff from thrift stores. Mom may
9 drive a Porsche. Dad may drive a beat-up
10 Hyundai for purposes of an example. They're
11 not equal. There's no way you can make them
12 equal.

13 However, one of the recommendations
14 that Mark Rogers made in February of 2006 to
15 you was that you include a parenting time

16 adjustment for Alabama. We still haven't
17 done that. There was not even a debate by
18 this committee. But if you do that, then
19 you look at the relative amount of money --
20 the parenting time that one parent spends
21 with the other.

22 The other thing that was actually
23 brought to our attention today, and it was

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1 from one of the circuit court judges, is the
2 idea of gross taxes -- calculating the
3 amount on the gross amount versus the net
4 amount. In the real world, nobody gets the
5 gross amount. I mean, I wish we did. That
6 would be great. It just does not happen.
7 There have been arguments for and against
8 this, but the reality is this: We live off
9 net income, not off of our gross income.

10 Additionally, this committee has not
11 yet considered the tax advantages that are
12 given to the custodial parent with regard to
13 the amount of child support monies that are
14 being received. If you truly want to
15 increase the amount of participation in
16 making sure that children's lives are as
17 much unaffected or uninterrupted as they can
18 be, you should try to increase -- in my
19 opinion, should try to increase the level of
20 participation that currently exists out

21 there.

22 I have to stop at this point and ask
23 the question -- someone from DHR may be able

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1 to tell me. What is the annual collections
2 from withholding that the State of Alabama
3 receives each year?

4 MS. BUSH: I don't have that information with
5 me. I could get it for you, but I don't
6 have it today.

7 MR. POLEMENI: Was that not the figure that was
8 given last meeting? In 2007, was -- 297
9 million dollars was collected in child
10 support?

11 MS. BUSH: That's total collections. It could
12 be. We can break it down by income
13 withholding order. That sounds like total
14 collections.

15 MR. BAILEY: It was total collections. 297 was
16 total collections.

17 MR. EDWARDS: You have people in Alabama that are
18 divorced that are under withholding order,
19 and they pay through the court system;
20 others that are not. There are a lot of
21 people that, you know, probably should be
22 required to pay. Along with fairness and
23 transparency, there's no accountability in

1 the system.

2 Back to your document again on page
3 six, item two, computation of child
4 support: The custodial parent shall be
5 presumed to spend his or her share directly
6 on the child. We have no way of knowing
7 that in the state of Alabama. We presume
8 that they do, but how do you actually know
9 that they do? Let's go back to our example
10 again of the mom and the dad. Also, the
11 idea that there's no calculation based on
12 the amount of monies that's actually spent
13 on the child regardless of their age.

14 For example, Mom and Dad get
15 divorced. The children are five and three.
16 That calculation is based on an income
17 shares model of what it would be for
18 income -- a family that remains intact,
19 presuming that the amount of money that is
20 spent for child support would be spent on
21 the child.

22 We had a family of four, say, in this
23 case, two -- family, \$80,000, roughly around

1 \$1,000 a month. Are you actually telling me
2 that you spend a thousand dollars a month on
3 the children? I find that hard to believe.

4 There's no sliding scale that goes forward
5 that says that as children get older that
6 there's also going to be a need to be able
7 to spend more on that particular child.

8 If you have a two -- intact household
9 broken apart, 40,000, 40,000, just in this
10 example, again, if one parent paying another
11 in which the one parent, the custodial
12 parent, gets more tax breaks than the
13 noncustodial parent, that's just another
14 example of perhaps the inequities that
15 currently exist.

16 And if there's no tax breaks, the
17 custodial parent is getting whatever amount
18 attributed to them through the child
19 support, no accountability, and there's no
20 tax break given to the noncustodial parent.
21 It makes a big difference. I think you're
22 going to see more people not participating
23 than they would participate, but ...

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1 I know it's not an easy task. I know
2 there have been several recommendations that
3 have been made that have not been acted
4 upon. I would hope that this committee
5 would continue to give some thought to
6 further discussion. Many of those items is
7 just the awareness that most people don't
8 have about what's going on.

9 There's a major shift that's coming, a
10 systemic shift that's coming in Alabama in
11 the coming months, and I dare say outside
12 this room, not many people know about it.
13 In your previous transcripts, many times
14 I've noted that there would be public
15 awareness that's made. There's no public
16 awareness campaign that I'm aware of outside
17 of publicizing something on the Web site. I
18 don't know if there have been any news
19 releases. I can only tell you one reporter
20 that exists here at this or at any other
21 meetings since I've been attending over the
22 last three years. I don't know that there's
23 any awareness created. If they would, you

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1 would -- you would have to have a bigger
2 room. You really would, because once people
3 become aware of what's about to happen in
4 Alabama, I think it'd be a great human
5 outcry over it one way or the other.
6 And maybe that's the thing. Maybe you
7 have it too cold for some people and it's
8 going to be too hot for others. There is no
9 easy way to do it. I do commend you on the
10 work that you have done to this point, but I
11 think there needs to be some additional
12 studies to go forward before any
13 recommendations are made to the Alabama

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14 Supreme Court. And I'll conclude with those
15 remarks.

16 MR. BAILEY: Thank you very much, Mitch. Anyone
17 have questions for Mitch?

18 (No response.)

19 MR. BAILEY: Okay. We sure appreciate your being
20 with us today. Thank you so much for
21 joining us.

22 Do we have someone else from the
23 public that would like to speak? Would you

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1 like to speak, ma'am?

2 MS. DOWLING: I would.

3 MR. BAILEY: Come on up. And if you would, take
4 the podium and tell us your name, please.
5 And if you could limit it to about ten
6 minutes, that would be great. We don't have
7 an official time keeper, but we've asked
8 people in the past to limit it to ten
9 minutes if you could.

10 MS. DOWLING: My name is July Dowling. I
11 practice in Dothan. And I basically just
12 have lots of questions because I came in
13 late.

14 I appreciate Mr. Edwards' comments,
15 and just speaking a little bit about his
16 comments, parenting time adjustment and
17 those kind of things, that's how Big Brother
18 we need to be in that respect where we get

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19 down to measuring how many hours of the day
20 or how many days of the week are spent with
21 this parent and that parent, but ...

22 Anyway, one of my questions was -- in
23 listening about the division of the health

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1 insurance premium that's been going all this
2 morning, I have a case right now where the
3 child support is being re-calculated for the
4 dad and he's wanting credit for the entire
5 amount of the health insurance premium, but
6 his current wife -- and these are divorced
7 and remarried people -- is also receiving
8 the full amount of the health insurance
9 premium as -- in credit -- in the
10 calculations for her child with her
11 ex-husband.

12 So when you run these numbers, it's
13 coming out inequitably because between the
14 current wife's ex-husband and then the
15 current husband's ex-wife, together when
16 they get that credit, they're basically
17 getting their health insurance premiums paid
18 for because those dollars are coming out of
19 the child support of the ex-spouses and
20 they're not bearing any of the cost of that
21 health insurance premium themselves.

22 I know you've talked about that here
23 and I think Ms. Palmer mentioned that

1 earlier, and that's one of the issues we
2 want to address. So I don't know. I know
3 you'll probably include it somewhere in your
4 rules that that has got to be -- the
5 question has got to be asked with respect to
6 this particular policy of health insurance,
7 are there children covered in other families
8 and what kind of credit are they getting for
9 it in their child support calculation as
10 well. I've got that exact situation right
11 now. I'm not sure how to argue it to the
12 judge, but that's one thing I'm dealing
13 with.

14 You were also discussing the adoption
15 of the new guidelines as not being a
16 material change in circumstances for
17 purposes of modification. Whenever you
18 enact the changes about the health insurance
19 premium, those are bound to result also in
20 ten percent or more changes. I guess that
21 would be a reason, a basis to come in and
22 modify; is that right? I'm just asking more
23 questions than offering opinions.

1 Those are my main questions that I
2 have. Oh, I'm sorry. One more thing.

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MR. BAILEY: Go ahead. Sure. Go ahead.

MS. DOWLING: The five percent rule that was being discussed, what is that five percent of? Is that five percent of the combined gross income of the parents or -- when you were talking about the health insurance premium, the reasonableness ...

MS. BUSH: It is five percent of the gross income of the person who is providing the insurance.

JUDGE FORD: That's defining what's reasonable.

MS. DOWLING: Five percent of the gross income of the person providing the insurance, whether it's the actual parent or the parent's current spouse?

JUDGE FORD: No, no, no. The parent that's the subject of the particular litigation that's before the court.

MS. DOWLING: If they're not paying the premium ...

MS. BUSH: I believe it would be treated

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similarly to the way it's treated now. Whoever is responsible -- whatever parent is responsible for providing the insurance, their income is used for the five percent. But if they can obtain that insurance through a spouse, then you would apply the five percent of that parent's gross income

8 to the spouse's premium.

9 MS. DAVIS: This is probably out of order, but it
10 raises a good question. If it talks about
11 the five percent of his or her gross income,
12 if the person is not working -- somebody
13 mentioned that -- and it's coming from the
14 stepparent --

15 Steve, were you the one that mentioned
16 it?

17 MR. WRIGHT: Right.

18 MS. DAVIS: Is it five percent of that
19 stepparent's or is it --

20 MR. WRIGHT: I don't know. I was asking.

21 MS. DAVIS: If they've remarried and the
22 noncustodial parent is married to -- We're
23 married. I've got to get the people. We're

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1 married here. I appreciate this.

2 MR. BAILEY: Enjoyed the reception.

3 MS. DAVIS: We had strawberry dessert.

4 Okay. So we're married. I'm the
5 noncustodial parent. Because I've married
6 this wealthy lawyer --

7 MS. PALMER: He's a judge. He's in the top five
8 percent of the United States in pay.

9 MS. DAVIS: Let's say he makes \$200,000 a year.
10 So I quit my job where I've been a secretary
11 making 25,000. Now, does the five percent
12 rule -- because I'm the one that's supposed

13 to be paying, but I'm now unemployed.
14 Zero. I'm assuming the court would impute
15 income to me. That's part of the
16 guidelines. So I'd get \$25,000 imputed to
17 me, so the five percent comes to five
18 percent of my income; is that correct?

19 JUDGE FORD: (Nods head up and down.)

20 MR. BAILEY: \$125.

21 MS. DAVIS: Is that the way you --

22 MS. BUSH: You could do -- I do not think it
23 would be five percent of your spouse's --

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1 MS. DAVIS: No matter what he makes. It doesn't
2 matter. We're assuming this is the ceiling,
3 and the ceiling is based on five percent of
4 the gross income, and we would add -- or the
5 imputed gross income if you're unemployed or
6 underemployed of the parent. Is that --
7 that's kind of what you're asking?

8 MS. DOWLING: Yes.

9 JUSTICE STUART: Isn't there another possible
10 interpretation? If it's available to you
11 and you're not paying anything for it, it's
12 available to you at reasonable cost.

13 MS. DAVIS: So what you're saying is that that
14 threshold doesn't come into play at all, the
15 five percent -- and I'm not disputing what
16 you're saying because I haven't read this to
17 understand it. I'm trying to get

18 clarification.

19 In our scenario here, because he can
20 pay for it, it's not going to cost me
21 anything for him to pay for it. It's
22 available. Then the court would order it,
23 and then my question would go -- the second

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1 issue is, if that's a threshold -- if
2 there's a five percent threshold that the
3 feds require us to do, is our threshold --
4 JUSTICE STUART: It's for reasonableness. It's
5 only for reasonableness.

6 MR. BAILEY: That's right.

7 JUSTICE STUART: That's the definition of
8 reasonableness.

9 MS. DAVIS: It's decided it's reasonable. And
10 once we've made that threshold it's
11 reasonable, then you plug in any amount
12 that's being paid --

13 JUSTICE STUART: No. That's still got to be
14 decided.

15 MR. BAILEY: No, we haven't decided that. We
16 haven't decided that yet.

17 JUSTICE STUART: And there's one other
18 possibility. It's rare in Alabama, but
19 another possibility is your employer
20 provides the insurance for the family. You
21 don't pay anything, and it's available at a
22 reasonable cost because you pay zero.

23 MR. BAILEY: Exactly. July, anything else we can

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1 help you with or that you can help us with?

2 MS. DOWLING: I don't know. If I have anything
3 else, if I can ...

4 MR. BAILEY: Appreciate your being with us
5 today. Thanks for coming up. Thanks for
6 coming up.

7 Anyone else from the public that would
8 like to be heard?

9 MR. EDWARDS: Mr. Bailey, can I --

10 MR. BAILEY: Sure. Mitch Edwards.

11 MR. EDWARDS: 30 seconds.

12 MR. BAILEY: Sure.

13 MR. EDWARDS: It was brought up in July's
14 remarks, and I'm not trying to get Big
15 Brother involved in anything when I talk
16 about the parenting time itself. But this
17 committee already knows that 35 other states
18 already include parenting time as part of
19 their calculations for child support.
20 Alabama is not one of those. Arizona is
21 one, and that was recommended by Mark Rogers
22 as a model for us because it's so very
23 similar to Alabama, so ...

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1 MR. BAILEY: Thank you very much.
2 MR. POLEMENI: Can I address that?
3 MR. BAILEY: Sure.
4 MR. POLEMENI: As a member of the Family Law Task
5 Force, that is the kind of thing that we
6 will be addressing in that Family Law Task
7 Force rather than in this committee. Is
8 that correct?
9 MR. BAILEY: That's correct.
10 MR. EDWARDS: That's important.
11 MR. POLEMENI: Absolutely.
12 MR. EDWARDS: At the same time, recommendations
13 are going forward to the Supreme Court for
14 many of these adoptions to be taking place
15 in January of 2009. I don't know if your
16 committee -- your work will influence this
17 committee or not by that time.
18 MR. POLEMENI: We'll just have to go with what's
19 happening, do what we can.
20 MR. BAILEY: All right. Let's start on our
21 voting, then, if we're ready to vote and
22 consider Item A, credit for other children.
23 Do we have a proposal for the

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1 committee to vote on or discuss concerning
2 credit for other children?
3 MS. PALMER: As Justice Stuart has said in the
4 past, that's always been at the discretion
5 of the courts. And I think we should --

6 personally, I think we should just leave it
7 at that and let that be at the discretion of
8 the court. If the court feels from the
9 totality of the evidence presented that
10 there should be credit given for other
11 children, then it's at the discretion and
12 then if the evidence shows that it shouldn't
13 be, then it's not.

14 MR. BAILEY: Are you suggesting that we leave it
15 alone?

16 MS. PALMER: Yes, I'm suggesting that we leave it
17 alone.

18 JUDGE FORD: If that's a motion, I'll second it.

19 JUDGE BELL: And Steve is making a funny face,
20 and I know what he's thinking about. We
21 don't have the discretion to give credit for
22 any children other than that provided in
23 Rule 32, but we do have the discretion to

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1 deviate from Rule 32.

2 MR. BAILEY: Excellent distinction. Absolutely.
3 Julie, if I can put your motion in
4 these words. Your proposal is that we
5 recommend to the Supreme Court that the
6 issue of credit to other children be left as
7 it currently is, that we not make any
8 changes in that provision in terms of credit
9 for other children. Is that a fair
10 statement of your motion?

11 MS. PALMER: It is a fair statement.
12 MR. BAILEY: Do you accept that as an amendment
13 to your second?
14 JUDGE FORD: I will accept it.
15 MR. BAILEY: Any discussion on the proposal that
16 we, bluntly said, leave it alone? Any
17 discussion? Any committee member like to be
18 heard?
19 MR. JEFFRIES: Let me just say one thing.
20 MR. BAILEY: Sure, Jim.
21 MR. JEFFRIES: I think something that would help
22 in this situation, based on Judge Bell's
23 comments and the comments that we've had in

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1 the past about this that -- that perhaps
2 consider emphasizing that circumstance in
3 the comments. If we don't want to change
4 the rules themselves, maybe we can consider
5 that specific scenario in the comments as a
6 better, more full guide to practitioners,
7 judges, whoever deals with them.
8 MR. BAILEY: All right. Any other discussion?
9 DR. PATTERSON: I would just like a
10 clarification.
11 MR. BAILEY: Sure, Ben.
12 DR. PATTERSON: Help me understand exactly.
13 Right now, if there is an order for support,
14 they are considered, but if there's not --
15 JUDGE FORD: An order of support and actual

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16 payment.

17 DR. PATTERSON: And actual payment. But if
18 there's not an actual order of support, just
19 a child living in the house, then that's
20 not -- is that within the discretion?

21 MR. BAILEY: Let Judge Ford answer that because
22 he deals with this every day.

23 JUDGE FORD: What most of the judges around the

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1 state, some judges say they use that report
2 of -- to digress from the guidelines and use
3 their discretion as to how it's going to
4 be -- it becomes a point of discretion.

5 MR. BAILEY: Does that answer your question, Ben?

6 DR. PATTERSON: It does, and that may be what
7 you're going to. You suggested some
8 clarification of that in the comments.

9 MR. JEFFRIES: Too often it seems that it's more
10 of just here is what the guidelines say.
11 It's not addressed that you can deal with
12 afterborn children, whether there's an order
13 or not, and it's here is what the guidelines
14 are, and there you go.

15 DR. PATTERSON: My personal feeling is that there
16 should be some allowance for it. Perhaps
17 that's sufficient, because to not allow it
18 is to ignore reality.

19 JUDGE FORD: Well, I think maybe some of it is a
20 training issue because the guidelines are

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just that, guidelines. They're not

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mandatory. The judge always has the

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discretion to deviate. All the judge has to

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1 do is write his or her reason for deviating.

2 MR. BAILEY: Penny.

3 MS. DAVIS: In light of the number of pro se

4 cases we're going to have and in the

5 interest of assisting the public in

6 understanding the guidelines, maybe in

7 support of Jim's statement if we add a

8 committee comment there that sets up a

9 scenario and just does emphasize that the

10 court has the discretion and the pro se

11 people who read the guidelines and the

12 comments might have a little more direction

13 to know to ask for that deviation.

14 MR. BAILEY: Good point.

15 DR. PATTERSON: I would like to see something to

16 that effect, advising the courts that they

17 do have the discretion to make a deviation

18 in that case.

19 MR. BAILEY: Judge Bell.

20 JUDGE BELL: I agree with what Jim said and I

21 think we need to spell that out, that it

22 would have to be in the judge's discretion.

23 The last sentence of that subparagraph

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1 is causing me some concern. It may be
2 clearer to y'all than it is to me. It's on
3 page four, subparagraph six. If the
4 proceeding is one to modify an existing
5 amount of support, no deduction should be
6 made for other children born or adopted
7 after the initial award of support was
8 entered, except for support paid pursuant to
9 another order of support.

10 To me, that's -- maybe it's just me,
11 but it sounds like a double negative to me.
12 I don't know. It looks to me like if we're
13 going to say that, that after the last --
14 rather than a period, you put a comma,
15 unless the judge makes a determination that
16 the application of Rule 32 would be
17 manifestly unjust and unreasonable under the
18 circumstances of that particular case.
19 Because when it says no deduction should be
20 made, that's almost saying --

21 JUDGE FORD: It's absolute. You can't do it.

22 JUDGE BELL: The "should" is what's causing me a
23 problem.

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1 MR. JEFFRIES: That sentence gets to the whole --
2 one of the bases for the guidelines as I
3 read my materials. Some of the history that
4 went into the adoption of the guidelines in

5 the first place was specifically to
6 discourage having afterborn children.

7 JUDGE BELL: Which we know is not the reality,
8 blended families and divorce rate and
9 re-marriages. You know, maybe if it says no
10 deduction may be made for other children
11 unless -- or support paid pursuant to
12 another order of support or the judge
13 determines from the evidence that a
14 deviation from Rule 32 should be made.

15 MS. DAVIS: If you put it for that, we're going
16 to have to put it for everything else.
17 Really, all you're saying is that the court
18 can deviate if they choose to. Maybe the
19 comments would be more appropriate.

20 MR. BAILEY: Let me ask Judge Ford again. Your
21 survey indicates the judges are using their
22 discretion now?

23 JUDGE FORD: Right. Some are. We only have 30.

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1 Of the 30, some are using discretion. The
2 majority are not.

3 MS. BUSH: Judge Bell, would the impact of what
4 you're saying be to treat the afterborn
5 children similar to the preexisting
6 children, require there be an order of
7 support?

8 JUDGE BELL: That's what that says to me. Isn't
9 that what that last sentence is saying?

10 Even if they're afterborn, if there's an
11 order of support, you have to then give them
12 credit for that as preexisting child support
13 when, in fact, it's not preexisting.

14 MS. BUSH: I wonder if having the afterborn
15 children in a separate section at the end
16 makes it more confusing than if we just
17 reworded this section slightly and instead
18 of calling it preexisting children and
19 afterborn children, just say support for
20 other children for which you're paying
21 support and for which there's an order you
22 can get credit and don't differentiate
23 between preexisting and afterborn.

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1 JUSTICE STUART: I hate to do this, but I'm going
2 to point out that there's still a
3 distinction, and the distinction is between
4 folks where the parents are not married as
5 opposed to where the parents are married.
6 Children of parents who are married are
7 discriminated against. The children of the
8 parents who are not married are favored.
9 There is discrimination in this. I guess
10 that's all I'll say. I've said it before,
11 but I'm just going to say it again.

12 JUDGE BELL: I mean, I wouldn't treat anybody in
13 my court differently whether they're married
14 or not. I mean, this is my first meeting.

15 What --

16 JUSTICE STUART: I mean, that's what that
17 provides for. If you're married, you can't
18 go get a child support order to pay support
19 for your own children within the marriage.

20 JUDGE BELL: But it's inherent. I mean, you're
21 living together.

22 JUSTICE STUART: That's not what it says.

23 MS. PALMER: Reflect back on our many discussions

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1 on this. We had talked about if you get
2 credit for the children that are currently
3 in your intact family -- you're divorced;
4 you're remarried -- then at that time, then
5 you've got to take your new spouse's income
6 into effect and then -- if you're the
7 obligor. If you're the obligee and you've
8 re-married and then -- and you've had other
9 children, then you've got to take those
10 factors into consideration, too. So that's
11 why I believe Justice Stuart said just leave
12 it alone and leave it up to the judges to
13 make -- it's at their discretion to deviate
14 or not upon the evidence presented to them
15 at the time.

16 JUSTICE STUART: All I really want to say to this
17 group is the same thing that the Court said,
18 and we said it back in writing. I'm just
19 going to repeat it so you won't be surprised

20 if the Court comes back and says it again.
21 That is, if this committee recommends
22 treating some children different from other
23 children, you'd better offer an explanation

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1 of why you're doing it.

2 JUDGE BELL: I don't think we should.

3 JUSTICE STUART: I just want to make that point
4 again. Somebody asked me at lunch -- Steve
5 asked me at lunch why did we reject it and
6 send it back. That was one of the three
7 major reasons why we rejected the previous
8 proposal and sent it back.

9 MR. BAILEY: I certainly don't want to cut off
10 any meaningful discussion, but does anyone
11 have anything else they'd like to add to the
12 motion that's on the floor?

13 Jim.

14 MR. JEFFRIES: One more point. This language
15 that Judge Bell pointed out seems to -- it
16 seems to limit the discretion of a judge to
17 address afterborn children whether there's
18 an order or not, whether they're married. A
19 judge can do that if he wants to we would
20 hope. That's where I think the comments
21 might clarify things.

22 MR. BAILEY: Any other discussion points?

23 Jan.

1 MS. JUSTICE: If I might, Gordon, the difference
2 is whether it's an initial order or a
3 modification, and that might be -- I mean,
4 if we wanted to change something, we might
5 want to look at -- and like somebody said,
6 the reason for the modification was to
7 discourage once you got a child support
8 order from going and starting another family
9 and then you have two or three other
10 children and then you come back several
11 years later and say, oh, well, I now have
12 three more children and I want to reduce my
13 order.

14 And that's why in a modification you
15 don't get credit for these children that are
16 in an intact family, and it does not -- when
17 we did the research, we found that it was
18 less likely in other states that they
19 treated an initial order different from a
20 modification. Alabama is a little unique in
21 that we do treat those a little differently.

22 MR. BAILEY: All right. Anyone else like to be
23 heard?

1 (No response.)

2 MR. BAILEY: I'll call for a vote on the motion.

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3 Is everyone clear on the motion?

4 DR. PATTERSON: Please restate it.

5 MR. BAILEY: Julie, would you like to clarify
6 your motion?

7 MS. PALMER: I'm going to let you clarify.

8 MR. BAILEY: Actually, I think the bottom line is
9 that we just leave the current practice in
10 place as it is now, that we do not recommend
11 to the Court any changes regarding credit
12 for other children.

13 DR. PATTERSON: Could we add to that motion that
14 we include appropriate comments, emphasizing
15 the discretion ...

16 MR. BAILEY: Do you accept that as a friendly
17 amendment, that we add appropriate comments
18 from the committee?

19 MS. PALMER: Yes.

20 MR. BAILEY: And do you accept that as --

21 JUDGE FORD: Yes.

22 MR. BAILEY: That being said, all in favor of the
23 motion raise your right hand signifying aye,

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1 please.

2 (Vote taken.)

3 MR. BAILEY: I think it's -- Lyn is not voting.

4 JUSTICE STUART: I want to note for the record --

5 I have on previous occasions -- I'm not
6 going to vote as a part of this committee.

7 It's not clear from the federal court order

08-19-2008 child support guidelines meeting.txt
8 that caused me to be put on this committee
9 whether I should or not, but I will have a
10 final vote.

11 MR. BAILEY: Let me note for the record that the
12 chair counts 15 members present out of our
13 22 --

14 Excuse me, Bob. I'm sorry.

15 MR. MADDOX: I think it would be good for the
16 record to state the number of votes.

17 MR. BAILEY: I'm getting ready to. Getting ready
18 to. That's where I'm going. I'm sorry.
19 Good point, Bob.

20 The chair notes we have 15 members
21 present. Wayne, I believe we have 22 on our
22 committee; is that correct? So we certainly
23 have a quorum present, and the chair notes

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1 that everyone voted for the motion except
2 Justice Stuart who abstained. Did I miss
3 anybody that voted no? I think everybody
4 voted yes. So it would carry 14 votes in
5 favor, none opposing.

6 The next issue, health insurance
7 costs. Jennifer, would you like to make a
8 proposal on that, or would someone else like
9 to make a proposal on health insurance
10 costs? And these are recommendations, now,
11 we are sending to the Supreme Court for
12 their consideration along with the schedule

08-19-2008 child support guidelines meeting.txt
13 we previously adopted a couple of meetings
14 ago.

15 MS. BUSH: I will break it down because we have
16 so many issues.

17 MR. BAILEY: I think so.

18 MS. BUSH: I move that we adopt a definition of
19 cash medical support. That's the first
20 motion. I don't know if you want to vote on
21 it or ...

22 MR. BAILEY: Let's get something on the table so
23 we can have the discussion, please. Your

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1 proposal is that we do what, Jennifer? I'm
2 sorry.

3 MS. BUSH: Adopt a definition of cash medical
4 support, and I have proposed language that
5 mirrors the federal language.

6 MR. BAILEY: All right. Do you want to tell us
7 exactly where that is?

8 MS. BUSH: It is in the handout that I gave, Rule
9 32, number seven. It was 7 (a). It's not
10 the one with the balloons. That was Mike
11 Manasco's. That was a change to the
12 modifications.

13 MR. BAILEY: Got it. All right. Number seven,
14 medical support.

15 MS. BUSH: Yes. It was health insurance
16 premiums, and I guess we'll have to vote on
17 what we name it. I propose that we adopt

08-19-2008 child support guidelines meeting.txt
18 the definition that is provided here which
19 is from the federal regulations on cash
20 medical support.

21 MR. BAILEY: Do we have a second?

22 MS. CAMPBELL: Second.

23 MR. BAILEY: Angela seconds Jennifer's motion.

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1 Discussion on Jennifer's motion,
2 please.

3 MS. DAVIS: I just have a comment. Since we have
4 a definition section in the rule, maybe we
5 ought to put that in the definition
6 section. All you're proposing is that
7 that's the definition for the words cash
8 medical support when we use that, correct?

9 MS. BUSH: Yes.

10 JUSTICE STUART: I was going to wait and do this
11 later. Now that we're doing this, let me
12 just make a proposal.

13 MR. BAILEY: All right.

14 JUSTICE STUART: I would like to propose that we
15 add some introductory language in this
16 section and that it read health insurance --
17 Seven, health insurance premiums slash cash
18 medical support. Medical support in the
19 form of health insurance premiums or cash
20 medical support shall be ordered, provided
21 health insurance or health insurance
22 coverage is available to a parent at

1 must be accessible to the children, and then
2 definitions. Because if you just stick
3 these definitions in, if you haven't put
4 something substantive about them in there
5 before that, they don't link to anything.
6 They're just in there and they don't link to
7 anything.

8 JUDGE BELL: I'll second that.

9 MR. BAILEY: Let me clarify this. Jennifer,
10 would you accept Justice Stuart's amendment
11 to your motion?

12 MS. BUSH: Gladly.

13 MR. BAILEY: And then, Angela, will you accept
14 the friendly amendment?

15 MS. CAMPBELL: Yes.

16 MR. BAILEY: Judge Bell certainly supports the
17 amendment. Would anyone like for Justice
18 Stuart to repeat her proposed language?

19 Penny would like it repeated. So
20 would the chair.

21 JUSTICE STUART: Seven, health insurance premiums
22 slash cash medical support. Medical support
23 in the form of health insurance premiums

1 and/or cash medical support shall be
Page 133

2 ordered, provided health insurance or health
3 coverage is available to a parent at
4 reasonable cost. The insurance coverage
5 must be accessible to the children, and then
6 definitions before we start listing those.
7 And where the definitions go, it doesn't
8 matter to me whether we put them here or
9 someplace else, but I think you've got to
10 have something substantive to link it to.

11 MR. BAILEY: Julie.

12 MS. PALMER: Just the difference between health
13 insurance and health coverage, is that not
14 health insurance? Health coverage.

15 JUSTICE STUART: I guess it may be. I was trying
16 to look at the federal regs and where they
17 talk about things provided by public
18 entities, I'm not clear whether they're
19 talking about Medicaid or not, and some
20 people don't consider Medicaid to be
21 insurance. So I was trying to cover all the
22 bases, but maybe that's not appropriate.

23 MS. PALMER: That makes sense. I didn't think of

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1 that as far as health coverage, but that
2 makes sense.

3 JUDGE FORD: Could we just have an amendment to
4 say medical insurance premiums or cash
5 medical support?

6 MR. BAILEY: Say that a little louder, if you
Page 134

7 will, Judge.

8 JUDGE FORD: Rather than saying and/or, just say
9 cash medical support premiums or -- cash
10 medical support or health insurance
11 premiums.

12 JUSTICE STUART: Actually, though, I think and/or
13 is correct because as I understand the
14 federal regs, they refer to health insurance
15 and then there may be an order to split
16 uninsured medical costs. I think it can be
17 and.

18 MS. BUSH: It can be.

19 JUDGE BELL: If you don't have "and" there, it
20 can be mutually exclusive.

21 MR. BAILEY: Any further questions, discussion?
22 And I'm going to ask Justice Stuart to read
23 it one more time before we vote. But do we

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1 have any discussion first?

2 JUDGE BELL: Before we do that, are we voting on
3 the definitions? Remember in (c), we had
4 talked about changing percentage and
5 adding --

6 MR. BAILEY: No, we're not there yet. Not there
7 yet.

8 JUDGE BELL: We're just talking about the
9 introductory language. Okay.

10 JUSTICE STUART: It would read seven, health
11 insurance premiums slash cash medical

12 support. Medical support in the form of
13 health insurance premiums and/or cash
14 medical support shall be ordered -- shall be
15 ordered, provided health insurance is
16 available -- health insurance or health
17 coverage is available to a parent at
18 reasonable cost. The insurance coverage
19 must be accessible to the children.

20 MR. BAILEY: I just have one question. Jennifer,
21 are you comfortable that that complies with
22 the federal regs that we are so worried
23 about?

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1 MS. BUSH: I've heard it several times. It
2 sounds good to me. Does it sound good
3 to ...

4 MS. JUSTICE: (Nods head up and down.)

5 MR. BAILEY: Michael.

6 MR. POLEMENI: One question. Does using the
7 phrase "insurance" imply federal programs
8 and so forth as being under that insurance
9 or should there be -- like Medicaid and all
10 those other different programs, are they
11 lumped under insurance, or would that be
12 worded some other way?

13 MS. BUSH: I don't think that that wording is
14 going to impact the Medicaid aspect of it.
15 There are times -- That gets into some other
16 issues where there are times when DHR as an

17 agency when we collect cash medical or get
18 money back, then we do have to at times
19 forward it to the Medicaid agency, but
20 that's nothing that would ever impact the
21 public, and so that's -- it's better not
22 going there.

23 MR. BAILEY: I'm not trying to give a shotgun

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1 charge here to the jury, but is there any
2 other discussion? Because I'm just trying
3 to move us along. Any further discussion?
4 Don't want to cut off any debate or
5 anything.

6 Cliff.

7 MR. SMITH: I was kind of concerned about the
8 word "premium," entitled health insurance
9 slash medical support -- cash medical
10 support.

11 MR. BAILEY: You were concerned about the
12 verbiage?

13 MR. SMITH: The word "premium" being in the
14 heading.

15 MR. BAILEY: Is that a problem, Jennifer?

16 MS. BUSH: Well, I guess Cliff's concern may stem
17 from the fact that the federal regulations
18 are concerned about insurance coverage, the
19 premium being just a mechanism to get the
20 coverage or the health insurance.

21 MR. BAILEY: Should it be coverage?

22 MS. BUSH: Coverage would be broader, and I
23 think --

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1 MR. BAILEY: Cliff, I see you and Jan shaking
2 your heads. Coverage is acceptable from
3 your standpoint?

4 MS. JUSTICE: (Nods head up and down.)

5 MR. BAILEY: Justice Stuart, is that acceptable
6 to change it to coverage?

7 JUSTICE STUART: That's fine.

8 MR. BAILEY: All right. Everybody clear we're
9 changing it to coverage? I'll ask everybody
10 that's moved or seconded if they'll accept
11 that as a friendly amendment. I see heads
12 nodding that they do.

13 All right. Any further discussion?
14 Don't want to cut it off, but any further
15 discussion that we might have on this
16 particular motion before the committee?

17 (No response.)

18 MR. BAILEY: All right. All those in favor say
19 aye and raise your hand, please.

20 (Vote taken.)

21 MR. BAILEY: I count everyone voting unanimously
22 again except Justice Stuart abstaining.
23 Thank you.

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1 All right. Our next proposal,
2 Jennifer, what else do we need to do about
3 health insurance, please?

4 MS. BUSH: We have definitions which can go, as
5 far as I'm concerned, wherever the committee
6 believes they are appropriate to be placed.
7 But talking about the definition only, not
8 the location of it, the definition of cash
9 medical support I propose be as is written
10 here in front of you which is from the
11 federal regulation.

12 MR. BAILEY: All right. That's 7(a); is that
13 right.

14 MS. BUSH: Yes.

15 MR. BAILEY: Is that your motion?

16 MS. BUSH: Yes, sir.

17 MR. BAILEY: Do we have a second?

18 MS. DAVIS: Second.

19 MR. BAILEY: Penny seconded.

20 Discussion?

21 JUDGE BELL: Again, I'd like to have something in
22 the comments like Jim was talking about
23 earlier that this can be satisfied by

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1 payment included in the child support
2 towards the premiums and non-covered medical
3 contributions.

4 MR. BAILEY: Good point. I think we may be

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5 scarce on volunteers to write the comments.

6 We may bar the doors until we get a
7 satisfactory group put together. Good
8 point, Judge.

9 Any further discussion on 7 (a) which
10 is in your handout, 7 (a), the definition of
11 cash medical support?

12 Jennifer, before I call for a vote,
13 that does comply with the federal regs?
14 We're safe?

15 MS. BUSH: Yes.

16 MR. BAILEY: Any further discussion?

17 (No response.)

18 MR. BAILEY: I call for a vote on 7 (a), cash
19 medical support. All in favor say aye and
20 raise your right hand so I can count them,
21 please.

22 (Vote taken.)

23 MR. BAILEY: Again, it's unanimous with Justice

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1 Stuart abstaining.

2 Jennifer, what's next on our agenda
3 for health insurance?

4 MS. BUSH: I propose the committee adopt 7 (b)
5 which is the definition of health
6 insurance. Again, this is for content and
7 not for location.

8 MR. BAILEY: Okay. Do we have a second?

9 MR. WRIGHT: I second.

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MR. BAILEY: Steve seconds.

Call for discussion on 7 (b) which is before you in your handout. Anyone not clear on that definition?

MR. MADDOX: Gordon, should it say fees with an S?

MR. BAILEY: Health insurance includes fees? You think it should be plural? Jennifer.

MS. BUSH: I can look and see what is actually --

JUDGE FORD: I think it's fee.

MR. JEFFRIES: It's fee for service is really what it is.

JUSTICE STUART: I think it's actually talking about an entity or a type of health

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provider. I think it's fee for service health maintenance organization.

MR. BAILEY: I think you're right. Bob, I think that's correct. I think she's right.

Any other comments? Cliff? Jan? Any comments? Any further comments?

(No response.)

MR. BAILEY: I'll call for the question. All in favor of 7 (b), the language for health insurance, raise your right hand and say aye, please.

(Vote taken.)

MR. BAILEY: Again, it's unanimous with -- you voted yes; is that right, Judge Ford?

15

JUDGE FORD: Yes.

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MR. BAILEY: Unanimous for the record with

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Justice Stuart, again, abstaining.

18

Jennifer, next on your plate.

19

MS. BUSH: I recommend the committee adopt a

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definition of reasonable costs which is at

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this point outlined under 7 (c) and that the

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committee adopt the definition that is

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listed here with the caveat of changing the

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five percent to another numeric ...

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MR. BAILEY: Do you want to go ahead and propose

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one so that we can have --

4

MS. BUSH: How about ten percent?

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MR. BAILEY: Ten. Okay. Good. All right.

6

Jennifer's motion is that we use the

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language in 7 (c) with changing the five

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percent to ten percent as it's stated.

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JUDGE FORD: I second that.

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MR. BAILEY: Judge Ford has seconded it.

11

Now it's time for discussion. We'll

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entertain discussion now on 7 (c) with the

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change of ten percent. Penny.

14

MS. DAVIS: The last sentence says cash medical

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support may be ordered in addition to health

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insurance coverage. I don't think that's a

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part -- should be a part of that

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definition. I'm not saying that we

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shouldn't include that somewhere. I just

08-19-2008 child support guidelines meeting.txt
20 don't think that should be part of the
21 defini ti on.

22 MR. BAI LEY: Jenni fer, is that required by the
23 regs?

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1 MS. BUSH: I believe that could be -- that is not
2 required in the defini ti on language. In
3 fact, it may be appropriate in the comments.

4 MR. BAI LEY: Okay.

5 JUSTICE STUART: I think it needs to go back up
6 in the preface. The comments won't make it
7 part of the rule. They're what somebody
8 thinks about it. They really don't have any
9 force of law at all.

10 MS. DAVIS: I'm not saying it shoul dn't be
11 there. I agree. I think you should -- if
12 that's the way we feel, it should be in the
13 statutory language -- I mean, the committee
14 language. It's just not a part of that
15 defini ti on.

16 MR. BAI LEY: Would you feel more comfortable,
17 Penny, if we took the last sentence
18 beginni ng with cash medical support and
19 moved it to 7 (a), at the end of 7 (a)?

20 MS. DAVIS: A defini ti on should be just that, a
21 defini ti on.

22 JUSTICE STUART: I think it can go after the
23 insurance coverage must be accessible to the

1 children. Cash medical support may be
2 ordered in addition to health insurance
3 coverage. I think to put it there would be
4 fine.

5 MR. BAILEY: Put it where? I'm sorry, Lyn. I
6 got mixed up.

7 MS. DAVIS: In the preamble or whatever you want
8 to call it. That's really just directing --

9 MR. BAILEY: Oh, the preamble. Okay. I've got
10 you. Then are we suggesting that we move
11 that sentence to the preamble?

12 MS. DAVIS: Yes.

13 MR. BAILEY: Jennifer, you made the motion. Do
14 you accept that as a friendly amendment?

15 MS. BUSH: I do accept it as a friendly
16 amendment.

17 Can I direct your attention to the
18 comments where I had made some changes? I
19 don't know if that was something that you
20 would want to include in the preamble as
21 well. It is where it outlines that cash
22 medical support does not have to be a
23 standalone amount, and that's on the last

1 page of the handout. It says: Cash medical
2 support can be an allocation between the
3 parents for responsibility for uninsured

4 medical expenses. I placed it in the
5 comments. It may be more appropriate in the
6 preamble since we're addressing cash medical
7 in addition to health insurance.

8 MR. BAILEY: In an effort to keep it clear for
9 myself, why don't we accept as a friendly
10 amendment deleting the last sentence of
11 7 (c) and then working next after we vote on
12 the motion eliminating that sentence,
13 working next on that sentence being
14 incorporated into what you just read us, the
15 second page of your comments and putting
16 that in the preamble somewhere.

17 For clarification, let's at this point
18 delete -- if you'll just bracket out the
19 last sentence of 7 (c). If everyone accepts
20 that as a friendly amendment, then we can
21 move forward on voting on 7 (c).

22 Have I thoroughly confused everybody?

23 JUDGE BELL: No. I think that's great.

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1 Didn't we talk about we needed to add
2 whichever is less or whichever is greater?
3 In the next to the last sentence -- it'll be
4 the last sentence now of 7 (c), because
5 there could be a difference. I can see a
6 situation where it could either be zero or a
7 number. I think we had talked about
8 greater would probably be the best -- since

9 we're doing a threshold, it might be better
10 to do greater.

11 MR. BAILEY: Judge, do you want to give us a
12 proposed sentence to add in?

13 JUDGE BELL: At the end where it says only and
14 family coverage, comma, whichever is
15 greater, period.

16 MR. BAILEY: Add whichever is greater.
17 Jennifer, do you accept that as a friendly
18 amendment?

19 MS. BUSH: Yes, I do.

20 MR. BAILEY: I believe, Judge Ford, you seconded
21 it. Is that acceptable to you?

22 JUDGE FORD: Yes.

23 MR. BAILEY: Just for clarification, we're

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1 deleting the last sentence in 7 (c). We're
2 bracketing that out and we're adding a comma
3 after family coverage and adding whichever
4 is greater, period. Everybody clear?

5 Any further discussion on Jennifer's
6 motion to adopt 7 (c) with the changes as
7 indicated? Michael.

8 MR. POLEMENI: I have a question or a comment
9 about five percent versus ten percent.
10 Being in a free market economy, I'm sure the
11 insurance company is going to meet that ten
12 percent figure every time.

13 MR. BAILEY: Ben, any thoughts on that? I think

14 that's out of our purview, don't you?
15 DR. PATTERSON: I do. I'm not sure how we
16 control that. I'm not sure that would drive
17 insurance costs.
18 MR. POLEMENI: It may not.
19 MR. BAILEY: Any other comment on 7 (c)?
20 (No response.)
21 MR. BAILEY: I call the question. All in favor
22 raise your right hand and say aye if you
23 will for me, please.

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1 (Vote taken.)
2 MR. BAILEY: We've got everybody voting.
3 Michael, I believe you're voting no; is that
4 correct?
5 MR. POLEMENI: That's correct.
6 MR. BAILEY: So we have 13 in favor, one no, and
7 Justice Stuart abstaining.
8 MR. POLEMENI: Let me clarify. My objection is
9 to the percentage increase rather than the
10 other wording if that helps any.
11 MR. BAILEY: Let's return now to the question of
12 where we put the sentence that we deleted
13 from 7 (c), cash medical support may be
14 ordered in addition to health insurance
15 coverage, combining that with the
16 sentence -- the two sentences on Jennifer's
17 page two of her handout, medical support,
18 final regulations. Do we have a motion

19 concerning where that should go?
20 MS. BUSH: I move that it be placed in the
21 preamble.
22 MS. PALMER: I'm sorry, Gordon. What part?
23 MR. BAILEY: We're now dealing with -- We just

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1 passed 7 (c) with bracketing out the last
2 sentence. We're now discussing moving that
3 sentence with the two sentences on
4 Jennifer's handout, the second page, cash
5 medical support does not have to be a
6 standalone amount ...
7 MS. PALMER: Okay.
8 MR. BAILEY: And she's moving that those three
9 sentences be put in the preamble. Is that
10 your motion, Jennifer?
11 MS. BUSH: Yes, sir.
12 MR. BAILEY: Do we have a second?
13 DR. PATTERSON: Second.
14 MR. BAILEY: Ben seconds it.
15 I would call for discussion. Any
16 discussion on that motion? Cliff? Jan?
17 Any discussion?
18 (No response.)
19 JUDGE FORD: Call for the question.
20 MR. BAILEY: Judge Ford calls for the question.
21 All in favor, raise your right hand and say
22 aye, please.
23 (Vote taken.)

1 MR. BAILEY: The chair notes it's unanimous with
2 Justice Stuart abstaining.
3 All right. Penny -- I'm sorry.
4 Jennifer. Excuse me.
5 MS. DAVIS: I have one question. That sort of
6 added several things to the preamble. Just
7 for purposes of later on, it may be easier
8 if we do them in subsections, like
9 subsection A and B. If we had the
10 language -- I don't know if you want to do
11 it today or just give the authority to the
12 chair or somebody to put that same language
13 and organize it in A's and B's so that it's
14 easier for the public to deal with the
15 sections and --
16 MR. BAILEY: I think that's a good idea.
17 MS. DAVIS: -- it's easier for the court and
18 everybody.
19 MR. BAILEY: Well, I know we have a distinguished
20 law professor with us today that could
21 certainly do that and put that in wonderful
22 form for all of us to understand as she's
23 done over a number of years.

1 MS. DAVIS: There must be somebody here that I

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2 don't know about.

3 MR. BAILEY: Penny, we really appreciate it.

4 Anything else, Jennifer, on our plate
5 for medical support that we need to deal
6 with today?

7 MS. BUSH: Yes, we do. Under 7 (d),
8 accessibility of health insurance, there is
9 not a recommended definition for
10 accessibility. That is left up to the
11 states discretion; however, the states must
12 define accessibility.

13 JUDGE FORD: Do you have a proposed definition?

14 MS. BUSH: I do not have a proposed definition.

15 MS. CAMPBELL: Are they talking about geographic
16 distance?

17 MS. BUSH: Yes. They are talking about something
18 geographical, something where the children
19 have access to it, something -- you know, if
20 it's an HMO and it's in New Jersey, they may
21 not have access to it.

22 MS. DAVIS: Do we have to put, like, within a
23 two-hour driving distance or 30 miles? Do

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1 we have to put a specific time or just can
2 we leave it to the court's discretion to
3 determine that?

4 JUSTICE STUART: It has to be defined.

5 MS. BUSH: It has to be defined, but I don't
6 know -- it doesn't have to be a mileage

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7 definition. The example the feds gave was a
8 mileage definition, but they do not require
9 a number the way they do on reasonable
10 costs.

11 JUDGE FORD: Could you say within a reasonable
12 distance of the child's residence? Is that
13 too general?

14 MS. BUSH: I think it can be very general. I
15 think it can be general.

16 DR. PATTERSON: This may be too general, too, but
17 say locally, available locally?

18 MS. CAMPBELL: That to me would mean in Bay
19 Minette, and yet we all go to Mobile and
20 Pensacola for our health care.

21 JUDGE FORD: I'm just searching for what words to
22 use.

23 MS. BUSH: Personally, if I were going to put a

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1 mileage definition on it, I would be very
2 broad and use something along a hundred
3 miles just because some of the rural
4 counties ...

5 MR. BAILEY: Mary, do you want to --

6 MS. MOORE: I think that would be great. I was
7 thinking about rural counties, like in
8 Perry, where there is no hospital and we
9 only have one pretty much full-time general
10 practitioner. The closest hospital is 30
11 miles away, with Jefferson being 80 --

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Birmingham, UAB. 100 miles away perhaps

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would be ...

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MR. BAILEY: Jan, can you enlighten us on the
feds' thinking on this medical support issue
of accessibility?

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MS. JUSTICE: Cliff and I were just thumbing
through and looking for it, and they do not
give much guidelines. And I think it would
be good to be broad and general on this and
say that if it's -- sort of like Judge Ford
said, if it's -- if the insurance is
accessible to the children at a -- within a

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1 reasonable traveling distance, if we could
2 say something broad and general like that,
3 it would be good, or we could say a hundred
4 miles. We don't see any specific
5 guidelines.

6 JUDGE FORD: Let me suggest --

7 MR. BAILEY: Judge Ford.

8 JUDGE FORD: Birmingham seems to be a centralized
9 place for particularly advanced medical
10 care. Would you want to say within, say,
11 200 miles of -- usually, I think 200 miles
12 from any distance in the state would be
13 accessible to Birmingham. That's where
14 people get their advanced medical care.

15 MS. PALMER: Well, let me ask -- say Jim in

16 Mobile. Would you come to Birmingham if you

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17 needed something at Children's Hospital?

18 Where would Mobile go? Would you go to New
19 Orleans? Is that closer than Birmingham?

20 MR. JEFFRIES: It depends on what you're talking
21 about. If you're talking about normal
22 routine care or even surgical care for
23 special injuries or sicknesses or things

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1 like that, then you can get it all locally.
2 If you prefer to go to UAB or Ochsner in New
3 Orleans or even Houston -- I know people
4 that go to Houston. It just depends on what
5 you're talking about.

6 MR. BAILEY: Ben.

7 DR. PATTERSON: I've just got a thought. I guess
8 it's more of a question. Health insurance
9 typically isn't -- if it's available in one
10 locality in the state, it's probably
11 available in another locality I think. The
12 state boundary is probably more important
13 than the local boundary, I think.

14 In other words, if you've got a parent
15 living in Columbus, Georgia that's providing
16 health insurance for a child in Phenix City,
17 it might become more of an issue of
18 whether ...

19 JUDGE BELL: Well, does accessible mean you
20 can't -- like if your child is sick, you
21 couldn't take them to Vanderbilt for care or

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M. D. Anderson in Houston?

22

23 JUSTICE STUART: I think what it's really talking

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1 about is, there are health insurance
2 programs that, let's say, only provide
3 health insurance coverage in the state of
4 Rhode Island. Well, that doesn't do a child
5 in Alabama much good.

6 MR. BAILEY: That's right.

7 JUSTICE STUART: That's what it's really trying
8 to do, is to be sure that they can access
9 medical care where they live or within a
10 reasonable distance.

11 JUDGE BELL: Maybe we just need to say within the
12 state of Alabama. Is that what you were
13 saying, Ben?

14 DR. PATTERSON: I was getting to that. I hadn't
15 quite formed it as a thought. It was more
16 of a question, but maybe, you know, within a
17 day's travel or --

18 MS. MOORE: You're going to have to be careful
19 there as well because, for example, I have a
20 son that goes to college in New York. Let's
21 say my husband and I were separated and he's
22 actually got that Blue Cross-Blue Shield.
23 When my son first used his card, they had no

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1 earthly idea what Blue Cross-Blue Shield
2 was. We had to go through everything. And
3 still now, there's some benefits -- some
4 things that we still have to pay straight
5 out because of that.

6 You have to think about children that
7 are away to college and also with so many of
8 our young people -- well, people in the
9 military that are all over the country. So
10 you're going to have to consider all of that
11 as far as demographics. It should be broad
12 and general.

13 MS. PALMER: Are they talking about as far as the
14 regulations if the only thing that's
15 available in your area or that's reasonable
16 is an HMO and then that HMO doesn't cover
17 certain things or if they refer to a doctor,
18 that you can only have a certain circle? Is
19 that what they're talking about more than
20 specialized treatment?

21 MS. BUSH: I think that they're talking about
22 routine and ordinary medical care. Because
23 there's always going to be a situation where

1 you have an emergency or some extreme
2 circumstance where you have to go to do --
3 or some place far away. I think they're
4 talking about routine and ordinary medical
5 care being available to the -- where the

6 child resides.

7 MS. MOORE: And that routine medical care, added
8 on to that where I have the state employees
9 insurance, you get the two cleanings per
10 year and one eye exam. They don't honor
11 that in New York where my son is in
12 college. There again, it's the routine --
13 for us here in Alabama, that's routine. But
14 when you go out of the state, it poses
15 another problem.

16 MS. BUSH: As far as the definition goes, we may
17 want to say that health insurance is
18 accessible to the children if it provides
19 routine and ordinary medical care within --

20 DR. PATTERSON: The boundaries of Alabama?

21 MS. BUSH: I wouldn't say within the boundaries
22 of Alabama.

23 JUSTICE STUART: What if the child doesn't live

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1 here? It doesn't need to say a state. I
2 think it has to be mileage. The divorce may
3 be here, but the child may move to
4 Mississippi or move to Arkansas or
5 whatever.

6 JUDGE BELL: Here is your problem. Let's say
7 that happens. Get divorced in Madison
8 County. The custodial parent and the child
9 move to Tennessee. Should the noncustodial
10 parent have to pay for special insurance for

11 the child to be covered where they move to
12 or just the coverage that they have -- I
13 don't think it would be fair.

14 MR. BAILEY: I wouldn't think it would be fair
15 either.

16 MS. BUSH: Under that scenario, most of the times
17 the insurance you have available to you
18 through your employer is what you've got
19 available. If you cover the child --

20 JUDGE BELL: It depends on what you've got. If
21 you've got Blue Cross-Blue Shield, you don't
22 have that problem except for what you're
23 talking about.

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1 MS. BUSH: Most of us only have limited
2 availability. We only have one or two
3 insurance options available to us anyway.

4 MR. POLEMENI: For my insurance, out of Alabama
5 it's 50 percent more to go for that care
6 under my program.

7 MS. BUSH: That's where it would go back into the
8 reasonable standard.

9 MR. POLEMENI: Right.

10 MS. BUSH: It may be cost prohibitive.

11 MS. PALMER: And, Judge Bell, wouldn't you -- if
12 somebody came in front of you and now the
13 parties -- it's still in Alabama because one
14 of the parties still resides here, but let's
15 say the custodial parent now has moved to

16 Oklahoma. The coverage that the obligor has
17 either doesn't pay or hardly pays anything
18 in Oklahoma.

19 Wouldn't you automatically turn that
20 around and say, okay, Mom, you've moved to
21 Oklahoma. Now you go get some coverage
22 that's good in Oklahoma and then just
23 re-calculate it that way versus keeping it

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1 in -- the person in Alabama to have the
2 coverage?

3 JUDGE BELL: I don't think the law allows you to
4 order both parents to carry insurance --

5 MS. PALMER: No, no. I would think you'd only
6 modify it to one parent --

7 JUDGE BELL: It might be the reason for a
8 modification for Mom to carry it, factored
9 into the Rule 32 calculation.

10 But the bottom line is, if they don't
11 have any coverage, the parents are going to
12 be dividing the uninsured medical and dental
13 anyway, and it's going to be huge. So it
14 would benefit them both --

15 MR. WHITMIRE: Or, Billy, wouldn't you just order
16 a cash payment to the mom who's now in
17 Oklahoma and she gets insurance with the
18 cash hopefully?

19 MS. PALMER: Well, you'd just factor it in to the
20 CS-42 form, wouldn't you, whatever she

21 pays?

22 JUDGE BELL: That might be a material change in
23 circumstances justifying a modification of

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1 the child support.

2 MR. BAILEY: Jennifer, what we're saying is, we
3 don't really have any guidance.

4 MS. PALMER: And we're making it more
5 complicated --

6 MR. BAILEY: And we're making it more
7 complicated. But they want some mileage
8 radius? Is that what they want?

9 MS. BUSH: It does not have to be a mileage.
10 They gave an example of mileage. And I
11 suggest to the committee that we make
12 something as broad as we can make it. I
13 would suggest health insurance is accessible
14 to the children if reasonable and ordinary
15 medical care is available within a 200-mile
16 radius. I'm throwing out 200 miles, but ...

17 MR. BAILEY: All right. Whatever we vote on this
18 afternoon, would you be kind enough to check
19 with your folks in Region IV? And I believe
20 Ann Russell is our new acting person in
21 Region IV. Would you check with Ann and
22 make sure we're in compliance with what we
23 adopt today?

1 MS. BUSH: Yes.

2 MS. DAVIS: My suggestion would be that if we
3 find out that that would not be in
4 compliance, that we not send that to the
5 Court.

6 MR. BAILEY: Absolutely.

7 MS. DAVIS: Let that be part of the vote, if that
8 could be a friendly amendment.

9 MR. BAILEY: We don't want to send something
10 that's not in compliance.

11 MS. DAVIS: I guess it calls for the question
12 then, do we send the rest of the health
13 stuff to them or wait?

14 MR. BAILEY: I think we know as much as we're
15 going to know right now until we vote on
16 something. They will sort of pre-clear, for
17 lack of a better description, what we do
18 today and tell us if we're in compliance.
19 They've always done that. They're happy to
20 do that.

21 MR. MANASCO: Gordon, just based on the example
22 that was given, Jennifer, does the Code of
23 Federal Regulations establish an age of a

1 child? We were talking about someone going
2 to college. Ordinarily, they're beyond the
3 age of majority and child support would not

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4 apply to that. I just wanted to see if the
5 CFR is dealing with a dependent less than 21
6 or --

7 MS. BUSH: Actually, the feds leave the age of
8 majority up to each state. Some states it's
9 18. Some it's 21.

10 JUSTICE STUART: Here it's 19.

11 MS. BUSH: Here it's 19. But it deals with minor
12 children. It's not dealing with emancipated
13 children in which college support is being
14 provided.

15 MR. MANASCO: And our college support doesn't
16 cover anything other than the room, board,
17 books, tuition --

18 (Simultaneous discussion by committee
19 members.)

20 (Brief interruption.)

21 MS. PALMER: Gordon, of course, my learned
22 neighbor here, Steve, made a good point.
23 These are not my thoughts. But, of course,

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1 as always, the policy is what controls who's
2 acceptable and who's not and when the
3 services can be met and who can, so ...

4 MR. WRIGHT: Does the regulation you're talking
5 about deal with the accessibility of
6 insurance coverage or the accessibility of
7 medical care?

8 MS. BUSH: Accessibility of the health insurance

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9 coverage is what they're talking about.

10 They're not talking about accessibility of
11 the medical care because I think that goes
12 beyond what they can control. But the
13 primary care -- the insurance is
14 accessible -- the insurance coverage is
15 accessible for the children so that if --
16 and I gave this example before. An HMO in
17 New Jersey is not going to be accessible to
18 my child here in Alabama.

19 MR. WRIGHT: Right.

20 JUDGE FORD: An HMO would not be selling
21 insurance here in Alabama that's in New
22 Jersey.

23 MS. BUSH: True. Some of this may be just

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1 because the federal regs are written so
2 broadly to cover such a wide variety of
3 circumstances.

4 MR. WRIGHT: But if you're dealing with a divorce
5 situation, the coverage is almost always
6 already in place and it's going to already
7 determine under the policy what's available
8 here or elsewhere. I don't see how we're
9 going to make a decision that would change
10 that.

11 JUSTICE STUART: We're not. I think what this is
12 intended to do is say we're not going to
13 give somebody credit for providing health

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14 insurance coverage or HMO coverage that

15 basically doesn't cover the child. That's
16 how it gets excluded. If it doesn't cover
17 the child, it doesn't count.

18 MS. BUSH: It's one of the three factors:
19 Available, reasonable, and accessible. If
20 any of those three are not met, then
21 insurance is not -- it won't be provided for
22 the child and it won't be included in --

23 MR. WRIGHT: The premium would not be a portion

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1 of the calculation of child support.

2 MR. BAILEY: Cliff.

3 MR. SMITH: In the federal regs that came out,
4 there's a statement in here that says --
5 it's talking about the 30-minute or mileage
6 rule. It says that health insurance
7 coverage must be worthwhile to the
8 custodian.

9 MR. BAILEY: Say that again. I'm sorry.

10 MR. SMITH: The health insurance coverage must be
11 worthwhile to the custodian; in other words,
12 should be able to use the health insurance.

13 MS. DAVIS: Of course, the noncustodial parent
14 may certainly want to keep coverage if it's
15 the situation where I'm the noncustodial
16 parent. I live in Alaska and my child comes
17 and visits me in Alaska. The child is
18 covered. It's accessible to that child

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19 while they're in Alaska.

20 Well, I have an impetus for keeping
21 the insurance myself because it's accessible
22 when I have the child. But I guess the
23 question is, do we figure it in the

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1 calculations? Because a child in Alabama
2 can have that coverage, but only when
3 they're in Alaska. And so is that why they
4 go with -- that's why they're going with the
5 distance?

6 MS. BUSH: Yes.

7 MS. DAVIS: It's not just whether or not the
8 child can be covered under the policy. It's
9 whether or not practically the child can get
10 to that coverage when they need it. That's
11 why they're going time and distance?

12 MS. BUSH: Yes, whether -- for ordinary medical
13 expenses in your routine everyday life,
14 whether you will have access to that medical
15 insurance as opposed to an occasional visit
16 somewhere else.

17 MS. DAVIS: So the court here may want to deviate
18 from the guidelines at some point and say,
19 yes, it's worthwhile to have that insurance
20 in Alaska because he's actually there four
21 or five months out of the year or enough
22 that it's practical to keep it, and even
23 give -- I guess if you deviate from the

1 rule -- credit for it. But ordinarily,
2 under this, if it's too far away or too long
3 away, then they would not get credit for
4 it. It would not be accessible, so you
5 would not include it in the guideline
6 calculations; is that correct?

7 MS. BUSH: Yes. That's correct.

8 MR. BAILEY: Wayne says we need a break. Let's
9 take a ten-minute break. Please be back
10 exactly at 2:15.

11 (Brief recess was taken.)

12 MR. BAILEY: Everybody have a seat. I don't want
13 to rush everybody, but let me just share the
14 time frames we're working on this
15 afternoon. I'm trying to get y'all out of
16 here before the rush hour hits in Montgomery
17 which can be imposing if you're going to
18 Anniston like I am through Wetumpka because
19 it comes to pretty much of a stall around
20 4:30 or 5:00. Don't want to rush anybody,
21 but our time frame is this.

22 We're trying to get our votes in this
23 afternoon so that we can present our

1 recommendations to the Court in the next two
2 weeks. We've just discussed possibly

3 getting our recommendations to the Court so
4 they can vote on it in September and then
5 having some additional time between
6 September if they approve it and January 1st
7 to work on the commentary which would give
8 us ample time to do the commentary. But we
9 do need to get our recommendations to the
10 Court if we can. Do you think that will
11 fly, Lyn?

12 JUSTICE STUART: I think the first part of that
13 will fly. Doing the commentary that way --
14 these rules -- there's not going to be a
15 final vote on these rules until we have the
16 commentary. We're not going to do that
17 piecemeal. There may be a preliminary vote
18 on the --

19 MR. BAILEY: Recommendation.

20 JUSTICE STUART: -- rule itself, but it's not
21 going to be a final vote until we see the
22 comments. They can't go separate. They've
23 got to go together.

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1 MR. BAILEY: So you're saying don't submit
2 anything --

3 JUSTICE STUART: Oh, I think you can submit it.
4 I'm just saying -- I guess what I'm saying
5 is if you submit it separately, we're going
6 to need the comments by October.

7 MR. BAILEY: We could do that. I think we --

8 JUSTICE STUART: I mean, otherwise, if we don't
9 meet those deadlines -- it may still get
10 approved --

11 MR. BAILEY: Right.

12 JUSTICE STUART: -- but I strongly suspect you
13 would see the effective date moved from
14 January 1 to June 1 or July 1.

15 MR. BAILEY: Here is what I think we should do.
16 I think we should try to finalize our vote
17 today and then see if the Court would give
18 us maybe until October to finish our
19 commentary. And if the Court doesn't want
20 to do that, then we'll, I guess, just all
21 roll up our sleeves and get on the fast
22 track and get it done, because I think we're
23 looking at January 1st. I think this has

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1 been pending, as I've said to many people,
2 for 15 years. It may be time to bring
3 something to resolution. Don't want to rush
4 into it. But we have been discussing this
5 now since '93, so that's certainly I think
6 long enough to consider everything.

7 Jennifer, back to the issue of
8 accessibility. Is the consensus that we can
9 just put a mileage radius in? You'll review
10 that with the feds and see if we're in
11 compliance?

12 MS. BUSH: Yes.

13 MS. DAVIS: I move we take her language, if you
14 want to repeat that again.

15 MR. BAILEY: All right.

16 MS. DAVIS: And that subject to the approval of
17 the feds -- if the feds disapprove it, then
18 as expediently as possible, let the chair
19 know so we can decide if we're going to have
20 to try to meet again before the Court meets
21 or --

22 MR. BAILEY: I don't think we can meet again in
23 two weeks. I just don't think we can. I

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1 think we can vote by e-mail. We can
2 circulate by e-mail and so on, but I don't
3 think we can meet again in two weeks.

4 Ben.

5 DR. PATTERSON: In our preamble, we've stated
6 that it must be accessible. I think a judge
7 is capable of determining what's accessible,
8 but -- a common definition. Do we have to
9 define accessible?

10 MR. BAILEY: We do.

11 MS. BUSH: The feds require us to define
12 accessible.

13 MS. DAVIS: Look at (b)(1) on her handout. The
14 last sentence says the state must define
15 accessibility of health insurance.

16 MR. BAILEY: Do you have a motion?

17 MS. DAVIS: Yes. My motion is -- after she reads
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18 her language -- that we approve that
19 language subject to preliminary approval by
20 the feds if that meets the standard.

21 MR. BAILEY: How many miles?

22 MS. DAVIS: Whatever she said.

23 MR. BAILEY: Did you say 200?

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1 MS. BUSH: I said 200, and this is the way I
2 worded it. Health insurance is accessible
3 to the children if ordinary and regular
4 medical care is available within a 200-mile
5 radius of the child's residence.

6 MR. JEFFRIES: Before we vote on that, can I make
7 one comment instead of coming back and doing
8 it later with discussion.

9 MR. BAILEY: Absolutely.

10 MR. JEFFRIES: My first thought, being in Mobile,
11 200 miles puts you in New Orleans just about
12 it, across state lines. I'm not sure if
13 that would affect what we're talking about
14 or not. If you have somebody that moves to
15 Louisiana or Mississippi, it's not
16 necessarily effective and accessible to the
17 child in Mobile, for example. I don't know
18 if that's -- or Phenix City and Georgia for
19 Ben's example.

20 MS. BUSH: Are you suggesting a shorter or a
21 longer mileage?

22 MR. JEFFRIES: You can put something in there --

23 I don't know if that would affect it at all

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1 anyway. But we have the -- for example, the
2 relocation act as I call it that has a
3 60-mile radius or across state lines.
4 Again, I understand the applicability of
5 that. I just don't know if across state
6 lines needs to be addressed. I'm just
7 thinking out loud.

8 MS. BUSH: I did not include state lines and just
9 picked 200 miles because I'm thinking
10 wherever the child lives, whether he lives
11 in Mobile, Madison County, that the regular
12 and ordinary dental checkups is available to
13 that child. It may be a rural area. That's
14 why I didn't want to go necessarily with 30
15 miles, but just so the child can get the
16 regular and ordinary medical care by having
17 to travel within a certain mile radius from
18 where they live. But I'll defer to the
19 committee on the actual mileage.

20 MR. BAILEY: Mike.

21 MR. MANASCO: I think it's important that we
22 limit the obligation of the person providing
23 the health care, that that be within the

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1 confines of the state. Because, you know,
2 most anywhere from Alabama, 200 miles can
3 put you having reasonable care whether it's
4 Tennessee, Georgia, Florida or Mississippi.
5 To get into courts mandating that parents
6 provide health insurance beyond the confines
7 of their state where their health insurance
8 is in force and effect I think goes way
9 beyond what would be reasonable.

10 MR. BAILEY: Drew.

11 MR. WHITMIRE: In a lot of scenarios -- again, I
12 do primarily adoptions -- all the cities on
13 the borders such as Phenix City or if you go
14 to the other side of the state -- the
15 insurance companies as well as Medicaid have
16 arrangements with the other state to cover
17 because the hospital itself is in Columbus
18 and all the OB's are in Columbus, all the
19 peds may be in Columbus that they're going
20 to, of course any specialties.

21 So if you exclude Georgia or going
22 across state lines when actual medical
23 treatment is taking place ten miles apart --

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1 because as you know, Columbus and Phenix
2 City are just one city.

3 MR. MANASCO: That would not be my concern,
4 Drew. My concern would be that -- you know,
5 if the insurance company has an arrangement

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6 with reciprocal coverage in another state,
7 that's fine, but not to put the obligation
8 on an Alabama citizen who gets divorced in
9 Alabama and may not be the custodial parent,
10 the former spouse and child move away, to be
11 looking at the courts determining providing
12 reasonable medical care through insurance
13 for a child who may be residing outside the
14 state of Alabama or may be going outside the
15 state of Alabama out of preference.

16 Accessible is -- I don't know if we need to
17 define it, but accessible is within --

18 MR. JEFFRIES: We have to.

19 MR. BAILEY: We do.

20 MR. MANASCO: -- reach reasonably. You know,
21 we're trying to -- you know, they say we
22 have to determine accessibility.

23 MR. WHITMIRE: What is accessible.

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1 MR. MANASCO: I don't think that it's going to
2 work unless we, you know, put something back
3 with the courts because, you know, you
4 have -- you live in Montgomery. You get
5 divorced. Your wife moves to Birmingham.
6 Child gets a disease and she wants to go to
7 M. D. Anderson. You don't have insurance
8 out there, you know, or ...

9 JUDGE FORD: There's UIFSA.

10 MS. BUSH: Gordon, Judge Ford just brought up the

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point that -- of UIFSA cases. There are

11
12 many, many interstate cases where a
13 noncustodial parent resides in Alabama and
14 the child is anywhere in one of the 50
15 states. So for that reason, I don't think
16 we want to limit it to within the state of
17 Alabama.

18 MR. BAILEY: I agree.

19 MS. BUSH: If the insurance is available to the
20 child in Oklahoma, great. If it's not
21 accessible to the child in Oklahoma, then it
22 fails one of those three prongs and the
23 insurance may not be ordered.

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1 JUSTICE STUART: There's nothing that says you
2 get to choose where you want to go. You
3 don't get to choose to go to M. D.
4 Anderson. You may have to go to UAB.

5 MR. BAILEY: So, really, what we're talking about
6 is just the mileage; is that correct?

7 MS. BUSH: We're talking about mileage, and I'm
8 thinking limiting it to regular and ordinary
9 medical expenses or medical care.

10 MR. BAILEY: 200 miles, I think that's fine
11 personally.

12 Any further discussion? We really
13 need to try to resolve this if we can.

14 MS. GRUBBS: I'm Janice Grubbs. There is nothing
15 really in the federal regulation that says

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16 it has to be a numeric standard. I think it
17 would be all right to put it back on the
18 court and to define it as it being
19 accessible if it was usable by the custodial
20 parent.

21 JUSTICE STUART: I don't think that's a
22 definition. I think that's a
23 non-definition. I think that's just punting

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1 it to the court, and I don't think that's
2 the purpose of the guidelines.

3 MS. BUSH: I believe the purpose of the
4 guidelines is to give a definition to the
5 Court so the Court can use that.

6 MR. BAILEY: To the Court, yeah.
7 Michael.

8 MR. POLEMENI: I would add to Penny's request
9 that when the feds review it, that they give
10 us a recommendation back as to if they want
11 to change what we give them --

12 JUDGE FORD: They won't do that.

13 MR. BAILEY: Well, they just vote up or down.
14 They just say you're in compliance or not.
15 They don't give us advice.

16 Penny, do you want to restate your --
17 I'm just trying to move this along. Do you
18 want to restate your motion about Jennifer's
19 language?

20 MS. DAVIS: My motion was to accept the language

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21 that Jennifer has proposed subject to the
22 tentative approval or -- of the feds that
23 that would comply with the federal

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1 regulations. If we find it doesn't comply
2 with the federal regulations, then she
3 should immediately contact the court -- the
4 chair and we'll proceed from there, but not
5 send to the Court a recommendation that we
6 know to not meet federal approval.

7 MR. BAILEY: Absolutely. So, Jennifer, your
8 motion is health insurance accessible to
9 children if ordinary and regular within 250
10 miles of the child's residence?

11 MR. WHITMIRE: I thought she said 200.

12 MR. BAILEY: 200. I'm sorry. 200.

13 MS. BUSH: Yes, that is the crux of it.

14 MS. DAVIS: Gordon, my new husband here has
15 raised an excellent question.

16 (Brief interruption.)

17 JUDGE BELL: How long will the federal approval
18 take?

19 MR. BAILEY: I think Jennifer can call them and
20 we can get a response in a day or two or
21 e-mail them and she may can get something
22 back on the same day.

23 All right. We have a motion on the

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1 floor. Let me restate it. Health insurance
2 is accessible to children if ordinary and
3 regular within 200 miles of the child's
4 residence. Do we have a second?

5 MR. WHITMIRE: I second.

6 MR. BAILEY: All right. Drew seconds it. Any
7 further discussion? Anybody else like to
8 add something?

9 (No response.)

10 MR. BAILEY: I'll call for the question. All in
11 favor say aye and raise your right hand.

12 (Vote taken.)

13 MR. BAILEY: Everyone votes in favor -- We have
14 one negative. Ben votes no.

15 DR. PATTERSON: I abstain. I'm with Justice
16 Stuart.

17 MR. BAILEY: We have two abstainers. All
18 right. So the motion carries 13 voting for,
19 two abstaining.

20 What's next, Jennifer, on health
21 insurance?

22 MS. BUSH: If you look at 7 (f) -- and, actually,
23 this ties in with 7 (e) because in 7 (e),

1 the words actual cost of a premium, "actual
2 cost of a" was deleted in light of the
3 language that was adopted above with the
4 difference between the group coverage and

5 the family coverage -- excuse me, single
6 coverage and family coverage. So do we want
7 to -- let's vote on that, removing that
8 language. 7 (e) --

9 JUSTICE STUART: I think we have to do (f) first.

10 MS. BUSH: We do have to do (f) -- okay.

11 MR. BAILEY: I think we have to do (f) first.

12 MS. BUSH: 7 (f) which in my language deletes
13 "actual amount of the total insurance
14 premium for family/dependent coverage,
15 regardless of whether all children covered
16 are in the same family" and adds in the
17 language that it "shall be the cost of
18 adding the children to existing coverage or
19 the difference in premiums between self-only
20 and family coverage," and I would amend it
21 at this point to say whichever is greater
22 which is in line with Judge Bell's previous
23 language.

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1 MR. BAILEY: So we're changing the amount of
2 insurance premiums to be included in the
3 guidelines?

4 MS. BUSH: Yes.

5 MR. BAILEY: Do we have a second?

6 MR. WRIGHT: I second.

7 MR. BAILEY: Steve seconds.

8 All right. Discussion. Let's all be
9 clear, now. This is what we started talking

10 about, I guess, two years ago. Lyn and
11 Steve led the charge, and then the Court
12 considered what we sent them and sent it
13 back because they had some real concerns.

14 JUSTICE STUART: Yes, we really did.

15 MR. BAILEY: And I think really good concerns,
16 too.

17 JUSTICE STUART: I'm really sorry that Steve is
18 not here today in light of what he said at
19 an earlier meeting where he said when they
20 had done some further exploration, they
21 found some significant unintended
22 consequences to what he proposed. But let
23 me say what he proposed at that time is not

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1 this. This is something different.

2 MR. BAILEY: That's right.

3 JUSTICE STUART: I just want to say what I think
4 this means. I think in the typical
5 situation, the cost of adding the child to
6 existing coverage is probably zero and will
7 always be zero. Does everybody agree with
8 that?

9 MS. PALMER: No.

10 JUSTICE STUART: No?

11 JUDGE BELL: To an already existing family
12 policy.

13 MR. BAILEY: Yeah, family.

14 JUSTICE STUART: I think that's virtually always
Page 178

15 going to be zero. The second part would be,
16 for example, for a state employee -- and I'm
17 going to round the numbers off -- individual
18 coverage, \$600 paid by the state; family
19 coverage, \$200. So it would be \$200.

20 MS. DAVIS: No matter how many kids or --

21 JUSTICE STUART: No matter how many kids.

22 MR. JEFFRIES: Unless you're paying that already
23 and you're talking about an additional

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1 child --

2 MR. BAILEY: Be zero.

3 MR. JEFFRIES: -- the court could use zero
4 according to this.

5 JUSTICE STUART: I personally think there's a
6 problem with this.

7 MR. JEFFRIES: I don't see the need to have --

8 MR. WRIGHT: Why do you think there's a problem
9 with it?

10 JUSTICE STUART: Because if it's always zero,
11 that doesn't work. If you're in virtually
12 every situation going to come back to zero,
13 that defeats the whole purpose of having it
14 included in the guidelines. This number
15 we're talking about right here is the number
16 that you plug into the guideline form and
17 then proportionately share between the two
18 parents under the Alabama system.

19 MS. DAVIS: I have a suggestion as to when it

20 might be different -- or a thought is coming
21 to my mind. If you're getting coverage for
22 your child through your current new husband,
23 joint marriage, then we get a divorce very

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1 quickly, then in order for my child to be
2 covered, I'm going to have to go out and get
3 insurance. Then you would have a scenario
4 where I'm getting insurance now under my --
5 I've gone back to work. I'm getting
6 insurance under mine, and the difference is
7 \$200.

8 JUSTICE STUART: But y'all don't really think
9 that's what we intend to do is say you only
10 get it under A if you have to go out and get
11 new insurance? That's totally different
12 from anything we've ever done in Alabama.

13 MR. BAILEY: That's right.

14 JUDGE BELL: But I think -- I think that when you
15 put in whichever is greater, I think that
16 there's always going to be a difference
17 between the premium actually paid for single
18 coverage versus family, and I would
19 imagine -- I mean, I can't imagine there
20 being an insurance company that doesn't have
21 those distinguishable rates so that you can
22 get the difference, but I do think it needs
23 to be actual cost. In your particular case

1 and mine, too, the state pays part of our
2 insurance. That shouldn't be included in
3 the calculation. It should be whatever we
4 pay out of pocket.

5 JUSTICE STUART: I think it always is. I think
6 that's covered someplace else in the rules.
7 I just want to be sure everybody understands
8 what this means. I think Part A would
9 rarely, if ever, be applicable. Part B
10 would certainly be applicable. And what
11 that means is -- in the scenario that I just
12 gave, \$200. Make sure everybody understands
13 what we're talking about.

14 MS. BUSH: By adding the language whichever is
15 greater, there would be -- like for state
16 insurance, they would be able to add in \$180
17 because the state employee's insurance is
18 for free, we pay nothing, but we pay 180.
19 So instead of having to do the zero, it
20 would be the 180 or --

21 JUDGE FORD: If you already had existing coverage
22 and then a new child --

23 MS. BUSH: Then it would be zero. It really is

1 not truly costing you anything out of your
2 pocket because you were already paying that.

3 MS. CAMPBELL: So basically you would get credit
4 for the first order you were put under, and
5 any additional children that you have under
6 another order, then it would be zero?
7 MS. PALMER: It could be.
8 MS. BUSH: It usually would be.
9 MS. DAVIS: Or if I marry somebody that has
10 family coverage, I would plug in zero there
11 because it's costing me zero to add my child
12 to his coverage; is that correct?
13 JUDGE FORD: Absolutely.
14 JUSTICE STUART: I just want y'all to think about
15 what this really means. I think of it in
16 terms of what does this look like when I
17 calculate it. I will go back -- once we get
18 the rule, I'll go back and calculate at
19 least a dozen, maybe even 32 or 36 for the
20 Court to show them how this works. You need
21 to think about how this works in reality and
22 is that really what you intend to be doing.
23 MS. PALMER: Oftentimes, I've seen in my practice

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1 insurance might be available to either
2 myself or my husband and now we're getting a
3 divorce and we need to choose are they going
4 to go on my policy or are they going to go
5 on his policy. What the courts look at is
6 the amount of the premium that it's going to
7 cost -- and, Judge, please correct me if I'm

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8 wrong -- and the coverage.

9 His premium might only be \$20, but it
10 covers nothing, so then you've got all the
11 out-of-pockets. Mine might be a little bit
12 more expensive, but it has a better
13 coverage. Or we both have Blue Cross-Blue
14 Shield, but because I work for Big Bank over
15 here, I only have to pay \$200 for family
16 coverage, but he has to -- he works for a
17 smaller company, so his family coverage is
18 \$700. So then you do have to make a choice
19 as to which one.

20 And it's not always preexisting. It's
21 not always the same coverage that you have
22 on the date of the divorce because now you
23 get to pick between the two policies.

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1 JUSTICE STUART: I don't think the law has
2 changed since I was doing this all the time,
3 but I think the rule allows you if both
4 parents provide insurance to include both.
5 May not be able to order both, but I think
6 you can include both under the guidelines.

7 JUDGE BELL: If they do it by agreement I think
8 you can, but I don't think you can if you're
9 ordering it to be carried.

10 MS. PALMER: But even then, you have to have a
11 primary. The insurance companies force you
12 to have a primary, and usually it's

13 whoever's birthday is first. His birthday
14 is in January. My birthday is in June. The
15 insurance company says you're the primary.

16 JUSTICE STUART: The guidelines don't care.

17 MS. PALMER: But the insurance companies do.

18 JUDGE BELL: I think there was a case out of the
19 Court of Civil Appeals within the last
20 couple of years on that very point. In the
21 back of my mind, I think it said that you
22 can only order one -- you have to pick one
23 or the other. If the judge did just what

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1 you're talking about, it makes sense --

2 JUSTICE STUART: Again, I'm not talking about the
3 judge ordering it to be provided. I think
4 the guidelines say if it's provided, they
5 get to include it.

6 JUDGE BELL: If they agree to it.

7 JUSTICE STUART: I don't think they have to agree
8 to it. I just think if they provide it,
9 it's included.

10 MS. BUSH: I'm familiar with that case. I want
11 to say the name of it was Volozecky, but I'm
12 not sure. I remember seeing a case like
13 that, too.

14 MS. DAVIS: Of course, we can change that by what
15 we do.

16 MR. BAILEY: Absolutely.

17 MS. DAVIS: It's relevant in terms of making us

08-19-2008 child support guidelines meeting.txt
18 think about it.

19 MR. BAILEY: Sure.

20 MS. DAVIS: I mean, we can't, but we can make the
21 recommendation and the court can.

22 MR. BAILEY: Absolutely.

23 MS. BUSH: And I would like to bring up, as far

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1 as the federal regulations go, they don't
2 care if -- for example, the scenario that
3 you gave, Penny, where you already have
4 children covered so you add children and
5 there wouldn't be any additional coverage --
6 it would be zero.

7 But since we have added in the
8 language whichever is greater, if we want to
9 give credit for that insurance premium on
10 every single -- and maybe it was you that
11 brought it up -- on every single -- she's
12 got three or four different child support
13 cases. We can give credit for that premium
14 on every single one of those. It does not
15 have to be a first-come, first-serve,
16 whoever gets to court first gets the premium
17 included and it's not included later. I
18 don't think that this deals with that.

19 MR. BAILEY: I don't think so either.

20 MS. PALMER: And that's why we wanted to divide
21 the premium to begin with so that the
22 children wouldn't be punished because now

1 separate times or, like July talked about,
2 the insurance is being paid for the new
3 spouse whose ex-husband now is basically
4 paying for a portion of that premium that my
5 child is now on.

6 MS. BUSH: I'll agree, Julie. I'd like to see if
7 we -- with that scenario.

8 MS. DAVIS: I know we have a motion on the table,
9 but is it germane to go back and sort of
10 poll the committee to find out -- Can we
11 approach it the other way? What is it that
12 the committee wants, and then write language
13 to accomplish that. And if this language is
14 not really what we want, instead of trying
15 to tinker with it, change it, let's find out
16 what the committee wants.

17 MR. BAILEY: I think that's a great idea.

18 MS. DAVIS: If you have five people on the
19 insurance and one child is covered and it's
20 divided by five, whatever the amount is, and
21 that's what the amount is --

22 MR. BAILEY: That's what we wanted.

23 MS. DAVIS: -- if that's what you want, fine. If

1 it's something different than that, let's
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2 try to decide what we want.

3 JUDGE BELL: I think that's a good point because
4 I have a hard enough time getting CS-41's in
5 my trials even with lawyers involved. But
6 are most people going to know the difference
7 between these two premiums, single versus
8 family? Are they going to know it and be
9 able to make that calculation?

10 MR. BAILEY: Well, they should. They're supposed
11 to.

12 MR. POLEMENI: We're paying it.

13 MS. PALMER: Yeah.

14 JUDGE BELL: That would be common knowledge.
15 Okay.

16 MR. BAILEY: Yeah, I think so.

17 Penny, your suggestion is that we try
18 to get a consensus of where we're going and
19 then try to -- then deal with the language?

20 MS. DAVIS: Then get to that point after we know
21 where we're going, what direction we're
22 going.

23 MR. BAILEY: Is the consensus of the committee

1 that we want to prorate the insurance costs
2 per child, or do we want to use the entire
3 premium? Let's talk about the child first.
4 Do we want to prorate it for the children?
5 Is that what everybody thinks is the fairest
6 thing to do?

7 MR. WHITMIRE: Are we going to vote?

8 MR. BAILEY: We're not going to vote. We're
9 just --

10 MS. PALMER: Is there any way -- and I'm going to
11 throw one more problem into this. Is there
12 any way that we can only give that person --
13 if the obligor is actually paying for it --
14 because it used to be part of the rules and
15 the comments. If it came out -- The obligor
16 was actually paying it versus a new spouse
17 was paying it, then they got credit for it.
18 But if the new spouse is paying for it, even
19 now, though, on the CS-42, they still get
20 credit for it even though it's not coming
21 out of their paycheck. It's coming out of
22 the new spouse's paycheck.

23 MR. BAILEY: That's right.

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1 MR. JEFFRIES: You can see that allowing the
2 new -- the new spouse providing coverage to
3 be included in the preexisting children's
4 child support guideline as a way to
5 encourage child support coverage which that
6 custodial parent actually does get the
7 benefit from, even though it's not
8 actually -- they're not making it come out
9 of Dad's pocket or Mom's pocket, whoever the
10 noncustodial to be, but it still benefits.

11 JUSTICE STUART: It does still come out of that

12 new family's household budget regardless of
13 whose paycheck it actually ...
14 MR. WRIGHT: Prorate.
15 JUDGE BELL: That kind of balances it.
16 MR. BAILEY: Is the consensus we want to prorate
17 it for the children as opposed to the entire
18 premium? Is that the consensus?
19 MR. WRIGHT: Yes.
20 MR. BAILEY: Now, Jennifer, how do we get there
21 with the language?
22 MS. BUSH: What I'm curious about is, we're going
23 to apply a ten percent standard for

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1 reasonable cost. But then when it comes to
2 actually putting a dollar amount into the
3 guidelines, we're not going to use that ten
4 percent. We're going to use -- and I'm
5 repeating back what I think you're saying --
6 we're going to use back a proportionate
7 amount, not the ten percent.
8 MR. BAILEY: Lyn, did you want to add something?
9 JUSTICE STUART: The only thing that I wanted to
10 say is -- and I wish Steve was here.
11 MR. BAILEY: I do, too.
12 JUSTICE STUART: I think -- and I'm not going to
13 say in every case, but I think in the vast
14 majority of cases, the effect of doing what
15 you're proposing is to increase and in some
16 cases substantially increase the amount of

17 child support being paid. The reason is in
18 the child support calculations, you add in
19 whatever that amount is, you divide it
20 proportionately between the two parents
21 based on their relative income and then the
22 person who's paying it gets to take it back
23 out.

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1 MR. BAILEY: That's exactly right. Exactly.

2 It's going to be --

3 JUSTICE STUART: Instead of taking out 200, you
4 only get to take out 40. That increases
5 your child support by \$160 a month. I want
6 to be sure y'all understand what the real
7 life consequences of what you're doing are.

8 DR. PATTERSON: That's if the custodial parent is
9 providing.

10 JUSTICE STUART: No, the noncustodial parent.

11 MR. BAILEY: Noncustodial.

12 JUDGE FORD: I think it's the fairest way to do
13 it because if you pay a large premium, he
14 gets credit for the entirety. That could
15 cover ten kids.

16 MR. BAILEY: And in some situations, Judge, there
17 is no child support paid because the
18 insurance premium is so large. And when he
19 takes it off -- the noncustodial parent
20 takes it off the bottom, his child support
21 is zero sometimes or \$5 a month, so ...

22 JUSTICE STUART: That won't be the case anymore
23 because we do have a cap.

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1 MR. BAILEY: Won't be the case anymore. That's
2 right.
3 Did you want to say something, ma'am?
4 I'm sorry.
5 MS. DOWLING: If I could. July Dowling. Are you
6 talking about dividing -- prorating the
7 allocation of the premium based on just the
8 children or by all people who are covered
9 under the policy? In my case, the parents
10 are also covered.
11 MS. DAVIS: I think it'd cover --
12 MS. DOWLING: Would you divide the premium --
13 MS. DAVIS: -- everybody under that.
14 MS. DOWLING: -- by all who are covered or just
15 the children?
16 MS. DAVIS: My thought was everybody in the
17 family covered, including the spouse.
18 MR. BAILEY: Not just the children.
19 MS. DAVIS: Right.
20 MS. DOWLING: Not just the children.
21 And, also, Justice Stuart was
22 referring to -- are you referring to
23 including the entire health insurance

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1 premium, adding that into the basic child
2 support obligation and then --

3 JUSTICE STUART: What you're doing is, whatever
4 we put in here, whatever number we put in
5 here, that's the number that gets added on
6 to the basic child support obligation. Then
7 it's proportioned out based upon relative
8 income, and then the payor, the person who
9 pays for the insurance premium, has whatever
10 that amount is subtracted back off.

11 MR. BAILEY: That's right. What we're saying is,
12 it's going to be a big difference in a lot
13 of cases where there's a 700 deduction taken
14 off the bottom as opposed to maybe just
15 prorating it among all the family members or
16 children and it might be just a hundred
17 dollars. Big difference.

18 Ben.

19 DR. PATTERSON: You may have clarified this, but
20 I just didn't catch it. Are we prorating
21 the entire family -- individual plus family
22 or just prorating the family part? It seems
23 like --

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1 MS. DAVIS: Take out the family.

2 DR. PATTERSON: To me the way you would do it is
3 just prorate the family coverage among the
4 children, not prorate it among the entire

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MS. DAVIS: The way most insurances are divided, you have coverage for an employee. Then there's family coverage. And family coverage can include the spouse, children, in some cases stepchildren. It's whatever that policy says. If it includes great uncle twice removed, then I guess you would take whatever number of people are getting family coverage.

If there's five getting family coverage and if the noncustodial parent -- if two of those five are that noncustodial parent, then it would be two-fifths of that amount. If it's one of those, it would be one-fifth of that amount. If it's four of those, it would be four-fifths.

MR. POLEMENI: My insurance, it's individual coverage. One family member, it's one

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rate. Two family members is another rate. The third family member is when I get zero -- I reach zero. You're giving analogies of family rate as all equal, and you have those different, you know ...

MS. DAVIS: Right. In that scenario, if your second -- if you are covered and you cover a spouse -- that's the second one -- then the third one would be your child and you get --

10 MR. POLEMENI: No. For me, it's one dependent,
11 two dependents at a different rate, and it's
12 that third dependent where I get the zero --
13 I reach the zero rate.
14 MS. DAVIS: Okay. So I would say that in your
15 case, if all three of the dependents are
16 under the -- let's say your amount is a
17 couple of hundred --
18 MR. POLEMENI: A hundred bucks.
19 MS. DAVIS: -- a hundred dollars. And your
20 employee amount is 50, and the second amount
21 that you pay, the other 50, all three of
22 those kids are your kids with me, then you
23 get to take the whole 50 off.

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1 MR. POLEMENI: Right.
2 MS. DAVIS: Is that what we're thinking we would
3 do? Because a hundred percent of that is
4 for those --
5 MR. POLEMENI: What if I only had one child with
6 you and it's one amount, but then I have
7 another child that's a different rate with
8 somebody else?
9 MS. DAVIS: I would say it would be 25 percent if
10 I was a judge.
11 MS. PALMER: Ask your husband over there what he
12 would do.
13 JUDGE BELL: It's going to depend upon how we
14 define pro rata. Is it going to be the

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MR. BAILEY: That's where we were two years ago.

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JUDGE BELL: -- divided by the number of people

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insured? Is it just the children? And I

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like justice. I mean, we need to plug this

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in a CS-42 calculator and see how this is

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going to come out. We can pull it up on

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Alacourt. There's a calculator there.

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MR. POLEMENI: I think that's what Steve did, and

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that's where we had those big variables.

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JUSTICE STUART: I mean, I --

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MR. BAILEY: Where does that leave us this

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afternoon? We have a motion on the floor.

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Did we get a second? I'm not sure we got a

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second.

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MR. WRIGHT: I seconded it.

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MR. BAILEY: Steve seconded it. Yeah, I'm sorry.

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We've got a motion on the floor.

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MS. PALMER: Well, I have a question to

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Jennifer.

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MR. BAILEY: Go ahead, Julie.

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MS. PALMER: Can we do that, Jennifer, under

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these federal regs? Can we prorate it or

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can we not?

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MS. BUSH: The more I have thought about it, I

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think that we can plug in whatever number we

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want in our actual guidelines. And I will

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check and confirm and let you know

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immediately if I find out different. I

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think that we can use whatever number we
want in our actual guideline forms as long
as we have a reasonable standard.

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Now, what effect that will have
practically when we tell somebody it's
reasonable or not reasonable based on ten
percent and then use a totally different
number, I don't know, but I think we can do
that --

MR. BAILEY: I think so, too.

MS. BUSH: -- you know, whatever number y'all
want to come up with. I don't think DHR has
a vested interest -- I have an opinion, but
we don't have a vested financial interest in
what number is used.

DR. PATTERSON: I think what you're alluding to
is there's a disconnect between what we
define as reasonable and the way we actually
calculate it if we go with this.

MS. BUSH: Yes. I'm not saying it's bad. I'm
just saying I initially plugged in the same
standard so they would be tied in. If it's
unreasonable because it's over ten percent,
then there wouldn't be anything in there.
If it's reasonable because it's under ten
percent, you would use whatever number that

1 was.

2 But I don't think that the feds
3 mandate the criteria for what we actually
4 use in our guidelines because we can use any
5 type of guidelines we want, so I don't think
6 they get that detailed.

7 MR. WRIGHT: Judge, wasn't our proposal before
8 that it be prorated and it was rejected?

9 JUSTICE STUART: It was. That's the reason I
10 wish Steve was here because I remember him
11 saying then when either he looked at it or
12 he and somebody else looked at it and did it
13 in real life, which is what the Court asked
14 be done, that it came up with some very sort
15 of out there unintended consequences.

16 I think you need to understand. If
17 people have been allowed to take off, let's
18 say, \$500 and now it's going to be changed
19 where they only get to take off 50, it means
20 their child support increases \$450 a month.
21 Whatever the committee wants to recommend,
22 that's fine. I just want to be sure that
23 you understand the real life consequences of

1 it.

2 MR. WRIGHT: I think the original proposal was
3 that it be prorated per insured like we were

4 talking about just a few minutes ago. I see
5 this as a kind of compromise between
6 individual proration within the policy and
7 writing it all off which is perceived by
8 many of a different view to be unfair to the
9 recipient, the child support.

10 MS. PALMER: Well, I remember when I first
11 started practicing which was about 15 years
12 ago now that back then, you could only write
13 off the child's portion. And then the
14 courts came back, either Civil Appeals or
15 Supreme Court, and said, well, there's just
16 no way that you can go get an insurance
17 policy on a child for ten dollars because
18 the real crux of the premium is in with the
19 parent and then you can add the child on
20 for, say, ten dollars more. But I don't
21 think that's the case anymore.

22 And I thought we had also talked about
23 in the past if it can be determined how much

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1 it costs to add that child on, then you
2 don't pay for the individual's portion. You
3 only pay for that child's portion.

4 JUSTICE STUART: I do remember what Steve said
5 about that, and that is that doesn't happen
6 in Alabama. You can't.

7 MS. PALMER: Well, Michael just said that he
8 could do that with his policy.

9 JUSTICE STUART: I would say his is a one percent
10 kind of policy.

11 MR. POLEMENI: Lockheed Martin.

12 MS. PALMER: Well, in my scenario, we know that
13 for my family coverage, it's 318 -- for my
14 single coverage, it's 318 and for my family
15 coverage, it's 910. Isn't that a way to
16 define? And then the insurance for the
17 family is \$600.

18 JUSTICE STUART: They're saying if only one of
19 those children is the child that you're
20 paying support for in another marriage and
21 let's say you have two other children --
22 let's say it covers six people. This is a
23 child support order for one child. Instead

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1 of 600, it's just going to be 100.

2 MR. WRIGHT: I don't think that's the motion
3 that's before the committee.

4 MR. BAILEY: We do have a motion.

5 MR. WRIGHT: The motion is to take the entire
6 family coverage premium and not try to break
7 it down between the individual insureds, my
8 understanding.

9 MS. DAVIS: The oil in the water came about when
10 I said about what the committee really
11 wanted. This was not what the committee
12 started out doing. That's not to say -- My
13 only comment was, we ought to figure out

14 what we want and then work to where we want
15 to get.

16 MR. BAILEY: Do you want to amend Jennifer's
17 motion to get us where we want to be?

18 MS. DAVIS: My suggestion would be that we
19 temporarily table her motion, make a
20 determination of what the committee wants to
21 do and then go back to her motion.

22 MR. BAILEY: All right. Do you accept tabling
23 your motion?

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1 MS. BUSH: I accept tabling of the motion.

2 MR. BAILEY: Steve, is that acceptable with you
3 since you seconded it?

4 MR. WRIGHT: Absolutely.

5 MR. BAILEY: Now, Penny, where are we?

6 MS. DAVIS: I don't know. I think we're trying
7 to decide what not only the committee wants,
8 but what would be acceptable to the Court.
9 We've sent a suggestion to the Court. The
10 Court has responded back to us, so maybe we
11 ought to clarify that. No?

12 JUSTICE STUART: The only thing about the health
13 insurance thing that really got it sent back
14 was the fact that the Administrative
15 Director of Courts had arbitrarily changed
16 it.

17 MR. BAILEY: That's right. That's exactly right.

18 JUSTICE STUART: They said it's been changed but
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1 them a recommendation, then we just want to
2 leave this alone as well?

3 JUSTICE STUART: No, I'm not saying that. I'm
4 just saying that I hate for this committee
5 to adopt something when you don't fully know
6 what the real life consequences are. I
7 mean, you can if you want to because I would
8 hope that we would look at it and figure out
9 what the real life consequences are and
10 decide whether it's something we could live
11 with or not.

12 MR. BAILEY: No, we don't want to be adopting
13 something in the dark -- I mean, absolutely
14 not; we've spent too much time on this -- at
15 the 11th hour.

16 MS. DAVIS: Let me ask a question. If I
17 understand what Justice Stuart is saying is
18 that what we propose -- if we propose to go
19 to some form of division of family coverage
20 amounts based on some pro rata definition,
21 that will make a substantial change in some
22 child support orders.

23 MR. BAILEY: It will.

1 MS. DAVIS: A lot of what we're doing is going to

2 do that, so that doesn't -- I think the
3 committee -- I think you're right. I think
4 the committee should be aware of that, but I
5 think we are aware of that. And I think
6 that we're intending to do that because
7 we're intending to get away from some of
8 these circumstances that are so extreme
9 where because someone is paying a large
10 amount of money, \$1500 for health insurance,
11 and only one child is benefiting from that
12 but, yet, because they're paying \$1500 in
13 health insurance, the majority of which is
14 benefiting someone else, that child is
15 receiving only a minimal amount of child
16 support. I think that's the scenario we're
17 trying to get away from.

18 MR. MANASCO: Isn't that within the discretion of
19 the court to depart from the guidelines
20 because of that kind of unintended --

21 JUDGE BELL: Yeah. But, Mike, in reality, I
22 don't know how many judges will deviate to
23 be honest with you. It's too easy to plug

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1 it into a CS-42. You should, and I agree,
2 and that's part of our job. But you can't
3 ever get in trouble for following Rule 32.
4 You can get reversed for deviating. It only
5 hurts a little while. You rub it, put some
6 dirt on it, and it's okay in just a couple

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of weeks.

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8 MR. MANASCO: It's okay in a few years.

9 JUDGE BELL: Two years.

10 MR. MANASCO: I don't think we can fix the whole
11 ship is the thing. There's going to be a
12 difficulty if there's a large, you know, one
13 premium deduction that would impact, and
14 certainly it would seem like in those cases
15 where a judge is actually determining it
16 based on the evidence and arguments coming
17 in instead of perhaps, you know, when you're
18 dealing with a mass docket, but ...

19 It seems that it would not be too
20 difficult if you have that single deduction
21 for the guidelines to say provided that it's
22 not detrimental to reasonable support for
23 the other members of the family. I don't

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1 know if we can get wherever we want to be
2 with what we have at this time, you know,
3 without looking at scenarios as we're trying
4 to figure out the departure points that we
5 need to look at.

6 MS. DAVIS: I would like to request that we poll
7 the committee and see if the committee would
8 like to further consider today -- not later
9 on -- further consider this section with a
10 pro rata amount being plugged in based on
11 the child's portion that they're actually

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12 receiving the benefit for. I don't know how

13 to say that.

14 MR. BAILEY: Pro rata versus entire premium.

15 MS. DAVIS: Right.

16 MR. BAILEY: Let's just have a show of hands. Do
17 we favor prorating the insurance premium --

18 Are you saying for the children only

19 or for all members under the --

20 MS. DAVIS: All the people that are insured under
21 that --

22 MR. BAILEY: Include mom and dad and children.

23 MS. DAVIS: Some form of proration. If we don't

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1 want proration, there's no point in defining
2 it.

3 MR. BAILEY: I agree. I agree.

4 MS. DAVIS: Some form of proration versus all.

5 MR. BAILEY: Let's have a show of hands of all in
6 favor of proration.

7 (Vote taken.)

8 MR. BAILEY: I think that certainly carries it.

9 All right. Now, do we want to have a
10 show of hands on proration versus the
11 children only versus mom and dad and the
12 children?

13 MS. DAVIS: Family coverage versus employee
14 coverage?

15 MR. BAILEY: Oh, I'm sorry. Just the children
16 only, or do we want to have everybody under

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17 the family plan which could include aunts
18 and uncles?

19 MS. BUSH: When you say everybody under the plan,
20 you would take the entire premium for the
21 entire family, everybody covered, and divide
22 it among those people, or are you saying the
23 family coverage only?

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1 MR. BAILEY: Family coverage only, over and above
2 the single coverage.

3 MS. DAVIS: It would be the non-employee
4 coverage, one lump sum, divided by the
5 number of people is one alternative; is that
6 correct?

7 JUDGE BELL: It's got to be the total family
8 premium because the employee is covered
9 within that family coverage.

10 MR. BAILEY: Right. That's right.

11 JUDGE BELL: You would take the total premium --

12 MR. BAILEY: Just say \$300.

13 MS. DAVIS: The total that's covered. Like, for
14 example, the state employees. If they cover
15 \$600 for me as an employee and my dependents
16 are 200 -- my family coverage is 200. Are
17 we talking about dividing the 200 or are we
18 talking about dividing the 800?

19 JUDGE BELL: The 800.

20 MR. BAILEY: 800, the family policy.

21 MS. DAVIS: The whole coverage.

22 MS. PALMER: That actually comes out of your
23 check, not if the company pays \$300 towards

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1 that. What comes out of your check.

2 MS. DAVIS: Okay. It's what comes out of the
3 check versus what's the other? What was
4 your other option?

5 MR. BAILEY: Well, the option is you'd just leave
6 it as it is. You take the whole amount and
7 apply that in the guidelines versus
8 prorating it among the children or family
9 members, whatever we think.

10 MS. DAVIS: Whatever is cut out of the check; is
11 that what you're saying?

12 JUDGE BELL: The biggest problem -- two biggest
13 problems I've had with applying Rule 32 is
14 the health insurance situation because of
15 the escalating cost of health insurance.

16 MR. BAILEY: Absolutely.

17 JUDGE BELL: It can create terrible injustices
18 either for the paying party or the receiving
19 party because of the deduction.

20 And the other is -- we haven't talked
21 about it, and I know this is my first
22 meeting -- the tax exemptions. That's not
23 on the agenda, but --

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1 JUSTICE STUART: Tax exemptions are built into
2 the schedule.

3 MR. BAILEY: Right. And our committee previously
4 addressed that a couple of years ago, and we
5 voted I think fairly unanimously to leave
6 that alone. And the Court did adopt that
7 recommendation. They adopted several.

8 JUDGE BELL: And I deviate when I feel like
9 there's a reason to deviate for that.

10 MR. BAILEY: Penny, do we want to go back to
11 discussing the proration issue?

12 MS. DAVIS: We need to decide what everybody
13 wants.

14 MR. BAILEY: I think I've confused myself. We're
15 asking about prorating among all the family
16 members under the policy versus an entire
17 premium.

18 MS. PALMER: No.

19 JUDGE BELL: Just the children.

20 MR. BAILEY: Just the children. That's right.
21 Just the children.

22 MS. BUSH: Gordon, this is what I understand it
23 to be. The entire premium and prorate it

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1 among all the people covered or just the
2 difference between single and family
3 coverage and prorate it among the children.
4 That's what I think the distinction is. Am
5 I correct or --

6 MR. WHITMIRE: Yes.

7 MR. BAILEY: I think you said it better than I
8 could say it.

9 MS. DOWLING: Can I make one more distinction?

10 MR. BAILEY: Sure.

11 MS. DOWLING: Children and any other dependents
12 covered as part of the family coverage after
13 you've --

14 MR. WHITMIRE: Grandkids.

15 MS. PALMER: Well, no, I don't think grandkids
16 would be covered, but stepchildren.

17 MR. WHITMIRE: Well, custodial grandkids. I get
18 a lot of those.

19 MS. DOWLING: Say the current wife is a teacher,
20 and her coverage is only two dollars for
21 individual coverage. Family coverage is
22 132. Covered under her family coverage are
23 her husband and three children. Do you

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1 divide it between just the children or her
2 husband and the children?

3 MR. BAILEY: Well, that's what we're trying to
4 decide. Do we include the husband and wife
5 and the children or just the children?

6 Let's have a show of hands for
7 including Mom, Dad, and the children. We'll
8 do the children next.

9 MS. BUSH: Say it again.

10 MR. BAILEY: That's the family, prorating it
Page 209

11 among the family members insured.

12 MS. DAVIS: If the out-of-pocket payment is
13 \$1,000, if there's five people and there's
14 one child that's the subject of an order
15 being covered, it would be \$200?

16 JUDGE BELL: That's right.

17 MR. BAILEY: Right.

18 MS. DAVIS: What's the other alternative?

19 MR. WHITMIRE: We've got options.

20 MR. BAILEY: The children, just doing the
21 children only.

22 MR. WHITMIRE: But you've also got the difference
23 between single and family. That's a third

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1 option.

2 MS. DAVIS: Of that thousand dollars, if it's 600
3 for the single and -- well, whichever way it
4 is, 600 for the single, 400 for the kids or
5 the reverse, 400 for the single and 600 for
6 the additional members, is that the other
7 alternative, which is to separate out the
8 single coverage and then prorate family
9 members?

10 MR. JEFFRIES: By the number of children.

11 MR. BAILEY: No, children, just children.

12 MS. DAVIS: Just children.

13 JUDGE BELL: I'm for keeping it as simple as
14 possible.

15 MR. BAILEY: Me, too.
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16 JUDGE BELL: Because we've got laypeople who are
17 going to be trying to do this calculation
18 themselves. Keep it as simple as you can.

19 MS. BUSH: One thing to think about, a practical
20 matter, how will the person prove how many
21 people are covered under this insurance?

22 MS. KIMBROUGH: That would be on your policy.

23 MS. BUSH: I mean, maybe six people are covered,

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1 but they know they're going to get more
2 money off if they only claim two.

3 MR. BAILEY: Ben said his lightbulb just went
4 off. Ben.

5 DR. PATTERSON: Well, I may be trouble.

6 MR. BAILEY: Good.

7 DR. PATTERSON: This seems a lot like the
8 proposal that we had on the table months ago
9 that Steve Arnold and Justice Stuart looked
10 at. I'm reading from the minutes of the
11 last meeting, Steve Arnold's comments: I
12 believe where we went through an examination
13 of many examples of actual calculations
14 using the new table, by the way -- and I'm
15 skipping other people's comments.

16 Mr. Arnold: In going through those
17 examples, we discovered that there was gross
18 disservice to one segment of either the
19 payor or the recipient, depending on the
20 amount of health insurance premium, such

21 that we were creating -- we faced the
22 possibility of creating a disparity, the
23 exact opposite of what exists now.

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1 Mr. Bailey: Right. Mr. Arnold: So we've
2 reviewed several examples. There were
3 several other questions brought up ... I'm
4 going to cut down here.

5 It was the consensus of the committee
6 that we table the recommendation for further
7 study, further examples, further thought
8 before we resubmit to the Supreme Court.
9 There's some serious concerns with how these
10 calculations came out.

11 And that seems to be what we're
12 considering here.

13 MR. BAILEY: Lyn, is one option to just tell the
14 Court we're still reviewing this and we
15 recommend at this time that we just leave it
16 as it is?

17 JUSTICE STUART: You can certainly do that if
18 that's what you want to do.

19 MR. BAILEY: I'm just not sure we're all clear on
20 where we're going.

21 Julie.

22 MS. KIMBROUGH: Where I'm confused -- I mean, I
23 understood this morning when I got here

1 where we were going, and then I received the
2 federal regulations.

3 MR. BAILEY: Right.

4 MS. KIMBROUGH: And I understood we voted to --
5 you know, there's a three-prong test: The
6 reasonable cost, availability, and
7 accessibility. And one of that is we have
8 approved the definition for reasonable cost
9 being ten percent, applying a ten percent
10 standard to the cost of adding a child to
11 existing coverage or the difference between
12 self-only and family coverage.

13 To me what we've said is whatever the
14 income is -- that's easy to figure out.
15 You've got the income.

16 MR. BAILEY: Right. Sure.

17 MS. KIMBROUGH: Ten percent of that income is
18 whatever that is. That's an easy
19 calculation. And then most of the time it's
20 easy to determine the difference between an
21 individual and the family policy.

22 MR. BAILEY: Right.

23 MS. KIMBROUGH: Let's say that's \$500. That fits

1 within your ten percent prong -- I mean, ten
2 percent. Don't you just use the \$500? I
3 thought that's what we had voted on.

4 JUSTICE STUART: No, that's not what you do as
5 far as putting it into the basic child
6 support obligation and into the
7 calculations, but that is an alternative.
8 One alternative that is out there is just
9 setting a cap, arbitrary as it might be, as
10 to the maximum amount you're allowed to put
11 in there no matter what you pay.

12 MS. KIMBROUGH: I thought that's what that ten
13 percent was.

14 MR. BAILEY: Jan.

15 MS. JUSTICE: I agree with what you're saying,
16 and along the lines of trying to keep it
17 simple like Judge Bell is talking about, are
18 we muddying the water and making it
19 confusing when we do define reasonable cost
20 and then we come up with something else that
21 we actually plug in on the CS-42?

22 And, also, there are two reasons I
23 would kind of recommend -- it's sort of a

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1 compromise. The difference, like you say,
2 everybody -- I mean, it's not hard to know
3 the difference in the cost of individual
4 coverage versus family coverage. Sometimes
5 we don't pay anything for that. It's just
6 what you pay. And if you do just pay --
7 like with the state insurance, it's not that
8 much, the difference.

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9 And if you define that under

10 reasonable cost and you use that same figure
11 and put it on the CS-42, it's like it's a
12 compromise. It's a lot less than taking the
13 full amount, yet it's more than taking the
14 prorated amount. So it's almost -- to me,
15 it's sort of like a compromise. It's easy
16 to follow and easy to understand, and
17 according to what -- it seems to be what the
18 federal regs were implying that we should
19 do, although it's not really clearly
20 stated -- as clearly stated as I would like.

21 JUSTICE STUART: The reason you can't just use
22 that other number is because it's
23 arbitrary. That ten percent has nothing do

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1 with what you actually pay.

2 MS. JUSTICE: The ten percent does not have
3 anything to do with it. Absolutely. I'm
4 just talking about the difference.

5 MS. BUSH: The only thing the ten percent has to
6 do with what you pay is if it's over ten
7 percent, then theoretically there will be
8 zero in the Rule 42 because you're not going
9 to be ordered to pay. Absent a deviation,
10 you're not going to be ordered to pay. And
11 if it's under ten percent, it's presumed
12 reasonable and it would be plugged in.

13 JUDGE FORD: If something is ordered.

14 MS. BUSH: If something is ordered and if it's
15 available and accessible.

16 MS. DAVIS: I'm going to redo my motion. My
17 motion is that we vote up or down to plug in
18 the prorated amount at whatever the
19 correct -- y'all help me word it, but -- so
20 that if there's five people covered under
21 the insurance and one child is the subject
22 of the proceeding, then it will be divided
23 by five so that whatever number -- whatever

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1 a total amount that's being paid out no
2 matter how they categorize it, whether it's
3 first person, second person, third person,
4 spouse, family, ever how much it is, the
5 total amount is taken into consideration and
6 divided by the number of coverage, and so
7 for every one person if there's five -- if
8 it's four people, then it's 25 percent for
9 that one person. Of those if there's two
10 kids covered, then 50 percent would be
11 plugged in.

12 MR. BAILEY: So you prorate it on the number of
13 children.

14 MS. DAVIS: Number of people.

15 MR. BAILEY: Number of people. Excuse me.
16 Number of people.

17 MS. DAVIS: Total insurance. Simple, cut and
18 dried, cut both ways.

19 MR. MANASCO: You're saying it's prorated among
20 all insureds?
21 MS. PALMER: All insureds.
22 MR. BAILEY: Good language. Good language.
23 MS. DAVIS: His scenario, if he's got three

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1 people covered or four people covered and
2 he's paying a thousand dollars, four people,
3 then every child would be 250 -- every
4 person would be 250.
5 MR. WHITMIRE: The total premium, not --
6 MS. DAVIS: The total premium paid.
7 JUDGE BELL: If you need a second, I'll second
8 it.
9 MR. BAILEY: Judge Bell seconds Penny's motion.
10 JUDGE BELL: I have a question.
11 MR. BAILEY: Yes, sir.
12 JUDGE BELL: Isn't that the same proposal we sent
13 to the Court last time that was rejected?
14 JUSTICE STUART: It is. It was rejected
15 because --
16 MR. BAILEY: But the trail got muddied.
17 JUSTICE STUART: The trail got muddied by the
18 Administrative Director of Courts changing
19 it.
20 MR. BAILEY: Right.
21 JUSTICE STUART: But the other thing was, there
22 were no real life examples, and the Court
23 asked the former chairman -- not Gordon.

1 The Court asked the former chairman to
2 submit -- I hate to say this -- to submit
3 real life calculations and he declined to do
4 so.

5 MS. DAVIS: So could we as a part of our motion
6 also say we will also submit to the Court
7 some real life examples if we vote that up
8 or down --

9 MR. BAILEY: I think that's a great idea.

10 MS. DAVIS: -- to include that?

11 MR. WRIGHT: What change did the administrator
12 make?

13 JUSTICE STUART: We don't know. It really wasn't
14 clear. He clearly said he changed it. He
15 didn't give us the committee's final
16 language, so we couldn't compare it. When
17 we asked -- I mean, this was, admittedly, in
18 the middle of a change of administration.
19 But we got no answer as to what was changed,
20 why it was changed, who changed it, and
21 whether the committee approved the change.

22 MR. WRIGHT: Maybe we passed over this and I just
23 missed it, but these are not retroactive.

1 MS. PALMER: No, but it could be a --

2 MR. WRIGHT: It's not going result in the filing
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3 of a thousand petitions to modify.

4 MS. PALMER: But it could.

5 MS. DAVIS: They're all adopted at the same time
6 as the guidelines. And when the chart
7 changes, then I think it will be treated in
8 the same way as any other chart change which
9 means if we don't change the ten percent
10 rule, then calculate under the new Child
11 Support Guidelines which may affect the --
12 the insurance would change, the
13 percentage -- the amount that you would pay
14 because the chart would change. If it's
15 more or less than ten percent --

16 MS. PALMER: It's kind of like you've had day
17 care expenses and now the children aren't in
18 day care. That's a material change. You
19 were paying a thousand dollars in health
20 insurance premiums. Now you're paying 500.
21 That's a material change. Is that what we
22 understood last time?

23 MR. BAILEY: Right.

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1 Would you please restate your motion
2 again.

3 MS. DAVIS: Tell her to read it back.

4 MR. BAILEY: Mike has got it. Mike has got it.

5 MR. MANASCO: As I understood it, the motion was
6 to prorate the total premium among all
7 insureds.

8 MR. BAILEY: Any further discussion?

9 (No response.)

10 MR. BAILEY: Have a call for the question. All
11 in favor say aye and raise your right hand.

12 MR. POLEMENI: I had one question.

13 MR. BAILEY: I'm sorry.

14 MR. POLEMENI: In going along with what Judge
15 Stuart said, do we want to add provable
16 insured or just leave it as is?

17 MR. BAILEY: I think it's got to be provable. I
18 don't think we need to add that. I wouldn't
19 think so.

20 All in favor raise your right hand and
21 say aye.

22 MR. JEFFRIES: Were we going to add the
23 calculations part in?

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1 MR. BAILEY: We agree to do that.

2 (Vote taken.)

3 MR. BAILEY: 11. All opposed.

4 (Vote taken.)

5 MR. BAILEY: Two opposed and one abstaining.

6 Where does that leave us on drafting
7 the language?

8 MS. PALMER: Gordon, just one more thing. I
9 would gladly volunteer to send you five real
10 life case scenarios --

11 MR. BAILEY: Wonderful.

12 MS. PALMER: -- of child support calculations,
Page 220

13 what they were --
14 MR. BAILEY: You mail them to me at your
15 convenience.
16 MS. PALMER: I'd probably have to mail them to
17 you because my scanner is broken.
18 MR. BAILEY: Just mail them to me.
19 JUSTICE STUART: Please do what they were under
20 the old, what they will be under the new.
21 MR. BAILEY: We've still got a couple of other
22 things to cover. Do we want to continue to
23 grapple with this language? Where are we on

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1 the language?
2 MS. BUSH: Under (f), is that what you're asking,
3 7 (f)?
4 MR. BAILEY: Yes.
5 JUSTICE STUART: Let me make one other comment.
6 Y'all are going to have to be very, very,
7 very precise in the language because it's
8 going to have to identify the person
9 actually pays for it, not the employer, and
10 that it's just the family coverage, if
11 that's what y'all really intend for it to
12 be, not including the employee.
13 MR. BAILEY: Right.
14 JUSTICE STUART: And then how to do this
15 proration.
16 MR. BAILEY: Penny, could I ask you -- go ahead.
17 MS. DAVIS: What I was thinking was that maybe

18 some of the judges who are actually going to
19 have to be looking at the language and
20 looking at pro se people that deal with them
21 on a regular basis, that it might be
22 appropriate to get our judges on the panel
23 to try to draft language --

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1 MR. BAILEY: That's a wonderful idea.
2 MS. DAVIS: -- that they think would be clear
3 enough that the people that stand in front
4 of them would be able to ...
5 MR. BAILEY: Penny, would you mind --
6 MS. DAVIS: I'll help.
7 MR. BAILEY: Well, Judge Bell, would you mind
8 chairing that?
9 JUDGE BELL: I'll be a co-chair with Judge Ford.
10 MR. BAILEY: All right. That's a great idea.
11 Penny, if you'll work with them on that. Is
12 it possible that y'all could get that to us
13 within, say, a week or so, so that we can
14 get this to the Court within two weeks.
15 JUDGE BELL: Sure.
16 MR. BAILEY: We'll circulate that to all the
17 members, the final language for their
18 approval again.
19 Jennifer, I hate to ask this.
20 Anything else?
21 MS. BUSH: Oh, yes. This is an easy one.
22 MR. BAILEY: Good.

23 MS. BUSH: Flip back to the second page under

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1 four, health care needs. I simply added in
2 some language "through cash medical support"
3 and at the end "and is accessible to the
4 children." I'll read the whole thing. I
5 simply added this in to acknowledge the new
6 federal regs and those new criteria.

7 Number four says: Health care needs.
8 All orders establishing or modifying child
9 support shall, at a minimum, provide for the
10 children's health care needs through health
11 insurance coverage through cash medical
12 support or other means. Normally, health
13 insurance covering the children should be
14 required if it is available to either parent
15 through his or her employment or pursuant to
16 any other group plan at a reasonable cost
17 and is accessible to the children.

18 MR. BAILEY: Okay.

19 MS. BUSH: So I put that proposal -- proposed
20 language before the committee.

21 MR. BAILEY: Good. Is that in the form of a
22 motion?

23 MS. BUSH: Yes, sir.

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1 MR. BAILEY: And that complies with our federal
2 regs?

3 MS. BUSH: Yes. It's actually not mandated. As
4 the rule was addressing health care needs
5 and only talked about insurance, I thought
6 it was appropriate to add in the cash
7 medical and the accessibility.

8 MR. BAILEY: Good. All right.

9 MR. WHITMIRE: Second.

10 MR. BAILEY: Drew has the second.

11 Discussion, please.

12 (No response.)

13 MR. WHITMIRE: Call for the question.

14 MR. BAILEY: Call for the question. All those in
15 favor say aye and raise your right hand,
16 please, so I can count them up.

17 (Vote taken.)

18 MR. BAILEY: All right. It's unanimous. We have
19 14 voting for it and one abstention.

20 All right. Jennifer, what else?

21 MS. BUSH: One more easy one. 7 (h) which is
22 back where we were at the very -- 7 (h)
23 towards the bottom, the last sentence I

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1 added in "unpaid cash support is a child
2 support arrearage." That is in the federal
3 language that it is treated just like the
4 child -- any other child support arrearage,
5 enforceable like a judgment --

6 MR. BAILEY: Are we required to have that in our
7 guidelines?
8 MS. BUSH: We don't have to actually have that.
9 There's no requirement that it be in Rule
10 32. It's not required to be in there. I
11 put it in there because it must be treated
12 like an arrearage, and how else to tell
13 people that but to put it in the rule.
14 MR. BAILEY: So that's not a federal reg
15 requirement?
16 MS. BUSH: It's a federal reg requirement that
17 unpaid cash support be a child support
18 arrearage and collectible, but it's not a
19 requirement that it be codified or in a
20 rule.
21 MR. BAILEY: Everybody clear on that? Mike.
22 MR. MANASCO: Let me suggest we add a little to
23 it. Unpaid cash medical support arrearage

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1 shall be treated as a child support
2 arrearage.
3 MR. BAILEY: Good point.
4 MR. MANASCO: Somebody just reading it who
5 doesn't know about cash --
6 MR. BAILEY: Good point.
7 MS. BUSH: Thank you, Mike. I think I
8 erroneously left out medical.
9 MR. BAILEY: Excellent point.
10 Jim.

11 MR. JEFFRIES: I think that is a very unworkable
12 set of words there. Let's think about us
13 being in a situation where the cash medical
14 support is covered under an order that the
15 parties equally divide non-covered
16 expenses. How many times have the
17 practitioners in here dealt with disputes
18 between parents about what's a non-covered?
19 Hey, here's the medical bills. You'd better
20 pay that. I'm not paying that because I
21 didn't know about it.
22 You're talking about putting those
23 kind of disputes --

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1 MR. BAILEY: I agree.
2 MR. JEFFRIES: -- in a category of definite
3 dollar amount child support in an order that
4 somebody is ordered to pay being the same
5 thing as potentially disputed amounts that
6 are unpaid cash medical support orders. I
7 just don't think that's a good -- and
8 collecting 12 percent interest and contempt
9 for going to jail, driver's licenses being
10 taken by DHR petitions. I just don't see
11 that --
12 MR. BAILEY: I think that's a good point.
13 MS. DAVIS: I think you need to add that
14 either -- which has been reduced down to a
15 judgment or something like that, language

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16 like that.

17 MR. BAILEY: Jennifer, if we don't have to have
18 this, would it hurt your feelings?

19 MS. BUSH: No.

20 MR. POLEMENI: I think it's a big issue. What I
21 alluded to earlier is -- and I think it has
22 to be an agreed-upon cash -- unpaid cash
23 support issue. That if you don't agree to

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1 it, then you're not liable for that
2 support.

3 So if the custodial parent goes to
4 somebody else and doesn't stay within the
5 requirements of the medical insurance and
6 then accrues this doctor's bill of \$10,000,
7 unless you agreed to that, you're not
8 responsible, something to that language.

9 JUDGE BELL: If a judge decided -- I agree with
10 you. A judge ought to have to make that
11 decision. I mean, you could have cosmetic
12 surgery. You could have teeth whitening.

13 MR. BAILEY: Right.

14 JUDGE BELL: You could have colored contact
15 lenses. There are all sorts of abuses that
16 judges have to sort out and determine what's
17 reasonable and necessary.

18 MS. DAVIS: If we took that language out, would
19 it make it --

20 JUDGE FORD: Well, my only problem with taking

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the language out, what Jennifer said, the
feds are going to still require it.

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MR. BAILEY: Not this one. I don't think so,

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Aubrey. I don't think so.

MS. BUSH: They require it be treated as an
arrearage, and they went so far as to say
that DHR can suspend licenses and do all
that. I took that out. I took that out.

MR. POLEMENI: That's one of those hidden
agendas.

MS. BUSH: It does not -- There's no requirement
that that language be in the rule or any
statute. And there are times when the
federal regs say you must have a law that
says XYZ, which they do with the definitions
above. They don't with this.

MR. WHITMIRE: Can you at least put that in the
comments to give everybody a little advance
notice?

MS. BUSH: Well, I mean, that's the reason I put
it in here was so people would understand
that the cash medical is enforceable like
any other child support arrearage. It will
be treated the same as far as the feds are
concerned.

MR. WHITMIRE: With interest and license removal.

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1 MS. BUSH: And tax offsets.

2 MR. JEFFRIES: How do you determine the amount?

3 MS. CAMPBELL: The court would have to determine
4 the amount; am I correct? You have an
5 ongoing -- Like the court could order \$50 a
6 month of medical support. It's an actual
7 amount that the court orders. Then it would
8 accrue, arrearage, if it's unpaid. Or if
9 there's a medical bill that has been reduced
10 to a judgment that you pay at a certain
11 rate, then that bill -- it's an actual
12 amount that the court orders. The court has
13 to reduce to a judgment or the ongoing
14 current support. Is that correct?

15 MS. BUSH: Yes. When you get to uninsured
16 medical expenses, obviously those -- there's
17 no way for us to enforce those until people
18 go to court and dispute and argue and we get
19 a judgment for that. Then we're able --

20 MR. POLEMENI: It's going to cost you as much or
21 more to go to court to avoid this when you
22 can say if you don't agree to it, you know,
23 as two divorced people, you know, then

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1 you're not liable.

2 MS. CAMPBELL: We already have orders that
3 what -- the judges order that each party
4 equally split non-reimbursed medical costs.

5 We can't enforce that until we get the bills
6 from the parties, take it back to court, and
7 the court has to determine who owes what.
8 You can't enforce that.

9 The ongoing monthly amount of medical
10 support -- for instance, let's say the
11 mother is paying the premium, child
12 support -- I mean, the insurance premium and
13 the court orders the father to reimburse her
14 whatever for a percentage of the premium.
15 That would be ongoing monthly obligation
16 medical support. That's, I believe, what
17 this is talking about.

18 MS. BUSH: A standalone cash medical support
19 amount would be collectible, and any
20 uninsured medical expenses that have been
21 reduced to a judgment we would collect like
22 any other arrearage.

23 MR. JEFFRIES: What about the circumstances

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1 where -- and you can probably give me better
2 guidance -- the DHR representatives --
3 better guidance on when these circumstances
4 actually arise.

5 But there are instances that I come
6 across all the time where there's never been
7 a court order, there's never been any kind
8 of determination from anybody except DHR as
9 to what the monthly amount is that this

10 person is going to pay, and you send them a
11 letter in the mail, hey, guess what. You
12 haven't been paying your \$777 obligation
13 which is not a court-ordered obligation.
14 It's not any kind of judicially-determined
15 amount. It's just a DHR ...

16 MR. POLEMENI: And, by the way, it's been three
17 years at 12 percent.

18 MS. BUSH: DHR in and of itself cannot
19 administratively order child support. We
20 always have to have a basic -- we have to
21 have a court order for child support.

22 MR. JEFFRIES: I'll collect you some letters from
23 DHR --

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1 MS. CAMPBELL: One exception, the administrative
2 income withholding order where there's a
3 current support obligation ordered by the
4 court, we're enforcing that current support
5 obligation. There is no court order to pay
6 back on the arrears. There is no court
7 order to pay back on the arrears.

8 We can add up to 25 percent of the
9 current support obligation to that income
10 withholding order only. If someone fails to
11 pay that 25 percent that we add, we can't
12 take them back to court and ask the judge to
13 find them in contempt for not paying the 25
14 percent. They would only be held in

15 contempt for not paying the current child
16 support that the court ordered.

17 MR. JEFFRIES: That's not what the letters say.
18 If you want to read it, I'll get you some
19 letters.

20 MR. BAILEY: Is the consensus right now that we
21 don't need to include this or we do need to
22 include it? Do you want to make a motion,
23 Jennifer, so we can vote on it? What's your

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1 pleasure?

2 MS. BUSH: It's perfectly acceptable to me to not
3 include it. I put it in there for
4 informational purposes.

5 MR. BAILEY: Mike.

6 MR. MANASCO: We've already included it when we
7 approved 7 (a), it looks like, you know,
8 cash medical support, amount ordered to be
9 paid toward the cost of health insurance
10 provided by a public entity or by another
11 parent through employment or otherwise, or
12 for other medical costs not covered by
13 insurance. So that last part, for other
14 medical costs not covered by insurance ...

15 MS. BUSH: I will withdraw my motion on 7 (h) to
16 include that language.

17 MR. BAILEY: That's the nicest thing you could
18 have said.

19 MR. MANASCO: Delete the last one?

20 MR. BAILEY: We're not adding in that "unpaid
21 cash support is a child support arrearage."
22 That's being deleted.
23 All right. Jennifer, what else on

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1 your plate, please?
2 DR. PATTERSON: Question. Will it, in fact, be
3 handled that way?
4 MR. BAILEY: Sure. Yeah.
5 JUSTICE STUART: It will.
6 DR. PATTERSON: I would like to make a motion,
7 then, that we keep it. As Judge Ford
8 indicated, that it must be reduced to a
9 judgment.
10 MR. BAILEY: Let me ask you this. Would you
11 accept a friendly amendment --
12 JUSTICE STUART: Just a quick example.
13 DR. PATTERSON: I'll withdraw.
14 MR. BAILEY: I was going to say, we could put it
15 in the commentary if we wanted to.
16 MS. BUSH: We might want to put it in the
17 commentary. The thing about child support
18 arrearages is they are a judgment --
19 (Simultaneous discussion by committee
20 members.)
21 MR. BAILEY: Jennifer, I'll try to keep us on
22 track. Anything else? All right. Jennifer
23 is complete. Thank you, Jennifer.

1 MS. BUSH: No, nothing else on the cash
2 medical -- on the arrears. But on 7 (i), do
3 we want to discuss the priority between
4 health insurance premiums and current
5 support?
6 MR. BAILEY: Is that required by the regs?
7 MS. GRUBBS: They left it up to the state. The
8 original proposed regs, they did address it
9 and then they took it out and they said that
10 the state would have to address it.
11 MR. BAILEY: I think we should leave it alone.
12 MS. BUSH: We do not have to address it --
13 MR. BAILEY: I say leave it alone.
14 All right. Jennifer, what else?
15 MR. MADDOX: What about 7 (e)?
16 MR. BAILEY: Bob says we forgot 7 (e).
17 MS. BUSH: We did forget 7 (e).
18 MR. BAILEY: I thought that's where we were
19 dealing with the language that Judge Bell,
20 Penny, and Judge Ford were going to draft
21 about prorating the insurance.
22 MS. BUSH: So whatever they do on 7 (f) --
23 MR. BAILEY: That will be 7 (e).

1 MS. BUSH: -- will affect 7 (e).
2 MR. BAILEY: You've got it.

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JUDGE BELL: It's (e) and (f).
MR. BAILEY: (e) and (f).
MS. BUSH: I'm done.
MR. BAILEY: Jennifer, great job. Great report.
Thank you so much.
MR. MANASCO: On that last part of 7 (a), other
medical costs not covered by insurance,
should that be pursuant to an order? I
mean, it doesn't say reasonable and
necessary or previously ordered to be
allocated between the parties or ...
I mean, it just throws it out there
for, you know, any other kind of medical
costs not covered by insurance, whatever
that might be, whether it may be for eyes or
cosmetic or anything like that.
JUSTICE STUART: The beginning says ordered to be
paid.
MR. BAILEY: It says ordered to be paid.
JUSTICE STUART: The beginning says ordered to be
paid.

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MR. BAILEY: Ordered to be paid, so a judge would
make that determination.
MS. PALMER: An amount ordered to be paid.
MR. MANASCO: Amount ordered to be paid, and then
you get to "or otherwise, or other medical
costs not covered by insurance." So is
ordered to be paid covering the other

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8 medical costs? It doesn't say that. You

9 got to an end, you've got a comma and added
10 "or for other medical costs not covered by
11 insurance."

12 MS. BUSH: I see that as being the uninsured
13 medical expenses that are split between the
14 parties either 50-50 or on a pro rata basis.

15 MR. MANASCO: That would be great language. I
16 would accept that as a clarification.

17 MR. BAILEY: Do you want to put that in the
18 commentary, Jennifer?

19 MS. BUSH: I'm thinking it's in the preamble.
20 I'm thinking we've already got it in there
21 somewhere because I had it in --

22 MR. BAILEY: I think it is in the preamble. I
23 think you're right. I think it is in the

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1 preamble.

2 MS. BUSH: It was in the comments. That language
3 was in the comments. The comments said cash
4 medical support does not have to be a
5 standalone amount. Cash medical support can
6 be an allocation between the parents for
7 responsibility for uninsured medical
8 expenses. And I had a note that that was
9 now going to be in the preamble.

10 MR. BAILEY: Right. That's correct. Jennifer,
11 thanks again.

12 Mike, can you succinctly give us your

08-19-2008 child support guidelines meeting.txt
verbiage on modifications?

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MR. MANASCO: As it's written.

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MR. BAILEY: All right. Mike, do you want to
make a motion, then, and we'll be subject
to, I'm sure, some discussion. Do you want
to make a motion that we adopt your language
just to get us off square one?

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MR. MANASCO: Yes.

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MR. BAILEY: All right. Does everybody have
Mike's language? Mike's language is on --

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MR. MANASCO: It's in Rule 32, appendix.

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1 MR. BAILEY: It was Attachment C which is now
2 Handout C, yes, and it's on page --

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MR. MANASCO: Page two.

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MR. BAILEY: Page two. Okay.

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MS. DAVIS: I have a substitute motion.

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MR. MANASCO: Under three, modifications, for
(c), (d), (e), and (f).

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MR. BAILEY: All right. Do you want to make that
in the form of a motion, Mike, so we can
move along?

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MR. MANASCO: Yes, sir.

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MR. BAILEY: Mike's motion is that we adopt (c),
(d), (e), and (f) as proposed. Penny, you
had a point of order?

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MS. DAVIS: He needs a second.

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MR. BAILEY: Got to get a second.

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MR. WHITMIRE: Second.

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18 MR. BAILEY: We have a second. Penny.
19 MS. DAVIS: I have a substitute motion.
20 MR. BAILEY: Drew Whitmore seconded.
21 MS. DAVIS: That in lieu of that, we adopt the
22 language that Jennifer had suggested in an
23 e-mail to me which is solely this language:

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1 Periodic changes in the Child Support
2 Guidelines in and of themselves do not
3 constitute proof of a material change in
4 circumstances, period.
5 MR. BAILEY: So you would speak to that being
6 included and that (c), (d), (e), and (f) not
7 be included?
8 MS. DAVIS: Right.
9 MR. BAILEY: Is that your discussion point?
10 MS. DAVIS: With the thought being that that was
11 the primary focus of the committee's
12 comments earlier, was to deal with the
13 proliferation --
14 MR. BAILEY: Can you say that one more time so I
15 can write the whole sentence down. Periodic
16 changes in the guidelines do not ...
17 MS. DAVIS: Child support guidelines in and of
18 themselves do not constitute proof of a
19 material change in circumstances.
20 JUDGE BELL: Penny, isn't it already in
21 subparagraph 3 (d)?
22 MS. DAVIS: I don't know.

MR. MANASCO: It is.

1 MR. BAILEY: We're wearing her down. We're
2 wearing her down.

3 MS. BUSH: See the language "the existence of"?
4 It is included in there. I took out "the
5 existence of" and started --

6 MS. DAVIS: The proposal is not including that
7 language. Basically, what Jennifer did was
8 take that one concept out and worded it a
9 little bit differently.

10 MR. BAILEY: All right. So we have -- that's not
11 in the form of a -- we have a motion on the
12 floor now.

13 MS. DAVIS: That's in the form of a motion.

14 MR. BAILEY: Well, no, we've got a motion on the
15 floor and we've got a second. Mike's
16 proposal is that we adopt (c), (d), (e), and
17 (f), and Drew has seconded that.

18 MS. DAVIS: And mine is a substitute motion.

19 MR. WHITMIRE: He's got to accept it.

20 MR. BAILEY: Are you asking for a friendly
21 amendment or is that a discussion point?

22 MS. DAVIS: Whatever. Discussion point.

23 MR. BAILEY: All right. Mike, do you want to be

1 heard on your proposal?
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2 MR. MANASCO: Yes. As we had our last meeting
3 and we were dealing with the quandary of
4 whether or not the Child Support Guidelines
5 would result in thousands of new cases, I
6 commented that the underlying basis for
7 modification has always been a material and
8 substantial change in the circumstances of
9 the parties that is continuing such that it
10 would impact the child support obligation as
11 opposed to just a new table, and that if we
12 put it in the commentary or in the rule,
13 that could possibly limit the mutation
14 unless the change in circumstances is
15 attendant to an independent change in
16 circumstances.

17 The remarks were: I think that is the
18 solution. Can you write that down for us,
19 Mike? Yes, that is the solution. I think
20 what Mike has said is very important. This
21 is critically important.

22 So while I have no pride of authorship
23 for the words used, I do want to point out

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1 that the task that was undertaken was to put
2 something in the rule that would meet those
3 requirements.

4 MR. BAILEY: Mike is absolutely correct, and the
5 record never lies, does it?

6 Judge, what are your comments on
Page 240

7 this? Do you think this is more than we
8 need to put in?

9 JUDGE BELL: I do. And it worries me that it
10 could be misconstrued, that it basically
11 makes the ten percent rebuttable presumption
12 ineffective. And as much as I respect my
13 brother, Mike Manasco --

14 MR. BAILEY: Absolutely.

15 JUDGE BELL: -- what I would rather see and I
16 would throw out just for discussion is that
17 the preamble is okay, (a) is okay. I would
18 make subparagraph (b) subparagraph (c).
19 Move (c) up to (b) because that kind of lays
20 the framework of what you need, like Mike
21 says, material change in circumstance, but
22 then the new (c) would say there shall be a
23 rebuttable presumption that child support

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1 should be modified where there's a ten
2 percent difference. In subparagraph (d), I
3 would use the first sentence and mark the
4 rest of it out.

5 MR. BAILEY: What about (e) and (f)?

6 JUDGE BELL: I'm okay with (e) down to where it
7 says likewise, the trial court has
8 discretion to deny a modification where the
9 ten percent variation is present based upon
10 proof that the application of the guidelines
11 would be manifestly unjust or inequitable.

12 That tracks the language of the deviation.
13 JUSTICE STUART: Can I raise one point that Bob
14 Maddox brought to my attention before lunch,
15 and that is we need to take the word
16 jurisdictional out. We do not have the
17 authority by rule to set jurisdictional
18 requirements.
19 MR. BAILEY: That's a good point.
20 MS. PALMER: So we're just going to strike the
21 word jurisdictional?
22 MR. BAILEY: Well, we've got a motion on the
23 floor and then we've got a -- we've got some

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1 friendly amendments.
2 MR. POLEMENI: I don't know if this is friendly
3 or unfriendly. I want to make ten percent
4 20 percent.
5 MR. BAILEY: I think at this point that's rather
6 unfriendly. Sorry. It's late in the day.
7 I'm sorry, Michael. We're losing it. We're
8 losing it, Michael. I'm sorry.
9 MR. POLEMENI: At least you're laughing.
10 MR. BAILEY: I'm sorry.
11 All right. Mike, go ahead. I'm
12 sorry.
13 MR. MANASCO: I didn't mean to infer that the
14 Child Support Guidelines were establishing
15 jurisdiction. Maybe it was the burden of
16 proof. I have no objection to deleting

17 jurisdictional, but fundamental requirement
18 is --

19 MR. BAILEY: You would like to leave the rest of
20 your motion intact?

21 MR. MANASCO: (Nods head up and down.)

22 MR. BAILEY: All right. There's a motion --
23 Mike's motion is on the floor. We need to

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1 vote on that, I think, first and then see
2 where we are in terms of that being accepted
3 or further discussion on that proposal.

4 Any further discussion on Mike's
5 motion and Drew's second as it's written?

6 (No response.)

7 MR. BAILEY: I'm going to call for the question.
8 All in favor, raise your right hand and say
9 aye on Mike's proposal.

10 (Vote taken.)

11 MR. BAILEY: We've got three in favor. I assume
12 the rest are nays. All right.

13 Now, Billy, do you want to make --
14 Judge Bell, do you want to make your
15 proposal with the changes?

16 JUDGE BELL: And it's just Billy. They didn't
17 change my name.

18 What I would move is that we modify
19 Mike's number three. The preamble is fine,
20 (a) is fine. We move (c) up to (b), delete
21 the word jurisdictional. We make the

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present (b) (c).

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MR. BAILEY: All right.

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JUDGE BELL: On (d), we strike all after the

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first sentence. On (e), in the second

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sentence where it says is present based on

4

proof, I guess, that the application of the

5

guidelines would be manifestly unjust or

6

unequitable, period. Strike the rest of

7

that paragraph, and strike (f). You don't

8

need (f) then because you've already stated

9

it.

10

MR. MANASCO: Say your last part again.

11

MR. BAILEY: Yeah. Go over (e) again for us, if

12

you will, Billy, please.

13

JUDGE BELL: (e) would now read: The trial court

14

has discretion and authority to modify the

15

child support obligation even when there is

16

not a ten percent variation between the

17

current obligation and the guidelines where

18

a petitioner has proven a material change in

19

parties' circumstances that is substantial

20

and continuing, period. Likewise, the trial

21

court has discretion to deny a

22

modification -- I would put even where the

23

ten percent variation is present based on

291

1 proof -- or say based on a finding that the
2 application of the guidelines would be
3 manifestly unjust or inequitable, period.

4 MR. BAILEY: All right. Is that a motion?

5 JUDGE BELL: And then you strike (f).

6 MR. BAILEY: Is that your motion, Billy?

7 JUDGE BELL: Yes, that is my motion.

8 MR. BAILEY: All right. Julie.

9 MS. PALMER: I have a friendly amendment. Where
10 it says petitioner has proven a material
11 change in the parties' circumstances, do we
12 need to add the child in there, that the
13 child has had some change in circumstances,
14 like an illness?

15 JUDGE BELL: Well, you could even take parties
16 out if that's your amendment. And I'll
17 accept that if you want to strike parties.

18 MR. BAILEY: I think that's fine.

19 JUDGE BELL: Okay. I accept that.

20 MR. BAILEY: That's good.

21 Do we have a second on Billy's
22 motion?

23 MR. MANASCO: Second.

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1 MR. BAILEY: Mike seconded.

2 MS. BUSH: I was going to offer a friendly
3 amendment --

4 MR. BAILEY: All right. Go ahead.

5 MS. BUSH: -- to (c).
6 MR. BAILEY: All right.
7 MS. BUSH: It was suggested just striking
8 jurisdictional. I would suggest rewording
9 it ever so slightly, to strike that first
10 line completely where it ends at consider
11 and then word it, a party seeking
12 modification must plead and prove that there
13 has occurred a material change in
14 circumstances, and the rest of the
15 sentence. So that you would delete that
16 first line, and modification of a child
17 support order that is the -- delete those
18 words just to make to read ...
19 MR. BAILEY: Let me clarify that. Your friendly
20 amendment is to new paragraph (b). (c) is
21 now (b).
22 MS. BUSH: Yes.
23 MR. BAILEY: So your friendly amendment is to old

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1 (c), new (b) ...
2 MS. BUSH: To have it read as follows: A party
3 seeking modification must plead and prove
4 that there has occurred a material change in
5 circumstances that is substantial and
6 continuing since the last order of support.
7 MR. BAILEY: Judge Bell, do you accept that
8 friendly amendment?
9 JUDGE BELL: Yeah. And the only reason I

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included that first language, I didn't want

10

to hurt Mike's feelings too bad.

11

MR. BAILEY: He's a lawyer. He doesn't have

12

feelings. Lawyers don't have feelings, do

13

we, Mike? We lost them, didn't we, Jim?

14

Julie, we don't have them anymore. Steve,

15

they're gone. Julie, they're gone.

16

MR. MANASCO: They're still there. I hear Judge

17

Bell, a fundamental requirement --

18

MS. BUSH: I have a question.

19

MR. MANASCO: I accept it.

20

MS. BUSH: Did we delete (d)? The old (d), is

21

that still in there?

22

MR. BAILEY: Old (d), the first sentence

23

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1 remains. The rest is deleted.

1

MS. BUSH: Can I have another friendly

2

amendment?

3

MR. BAILEY: If you say may I.

4

MS. BUSH: May I, please. If we could delete the

5

words "the existence of the Child Support

6

Guidelines or" and just begin the sentence

7

with periodic.

8

MR. BAILEY: I don't understand that.

9

MS. BUSH: Instead of saying the existence of the

10

guidelines themselves don't create a proof

11

of a material change in circumstances, what

12

we want to say is the periodic changes to

13

the guidelines in and of themselves do not

14

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constitute proof of a material ...

15

MR. BAILEY: I thought we were trying to clarify,
though, that our new schedule doesn't in and
of itself create a modification. I thought
that was the thinking. I may be wrong.

16

17

18

19

20

MS. BUSH: The periodic change. But, see,
existence of the guidelines themselves --

21

22

JUDGE BELL: Are not a material change.

23

MR. BAILEY: They're not a material change.

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1

MS. BUSH: They never will be because they're
already in existence.

2

3

MR. BAILEY: Well, that's true.

4

MR. JEFFRIES: I think that's language from where
the guidelines were adopted originally.

5

6

MR. BAILEY: Exactly right.

7

MR. JEFFRIES: I don't know if it matters either
way.

8

9

MR. BAILEY: Judge Bell, do you want to accept --
do you want to delete that, the
guidelines --

10

11

12

JUDGE BELL: I reject that.

13

MR. BAILEY: Lyn, when did we lose control --
when did I lose control of the committee?
Was that about 2:30 or 3:00?

14

15

16

All right. Jennifer, you understand
that he has not accepted your friendly
amendment?

17

18

19

MS. BUSH: Got it.

20 MR. BAILEY: Any other proposed friendly
21 amendments on the motion that is before us?
22 (No response.)
23 MR. BAILEY: Have a call for the question. I'm

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1 sorry. Any further discussion? Don't want
2 to rush us too much.
3 MR. POLEMENI: The only thing I have is my issue
4 with the ten percent. And I don't know
5 where that would be, if that's for the next
6 meeting or ...
7 MR. BAILEY: It probably is in the future.
8 Any further discussion on Judge Bell's
9 motion, seconded by Mike?
10 (No response.)
11 MR. BAILEY: Call for the question. All in
12 favor, say aye and raise your right hand.
13 (Vote taken.)
14 MR. BAILEY: It looks like it is unanimous -- I'm
15 sorry, not unanimous. We have two noes and
16 one abstention. The rest are voting yes, so
17 the motion carries.
18 Mike, I think that covers your portion
19 of the agenda. Mike, you did a great job as
20 always. Good job. And, Jennifer, Jennifer,
21 great job. Judge Ford, great job.
22 Everybody did a great job.
23 Now, one thing. We can do this

1 quickly and try to get y'all out of here by
2 four. Quickly, a proposed redrafting of the
3 language which was Attachment D is now going
4 to be Handout D, review of the Child Support
5 Guidelines. We talked about it earlier.

6 Steve, as a result of what Lyn so
7 judicially pointed out about the situation
8 we had with our last set of recommendations
9 that went to the Court -- were going to the
10 Court and then were -- there was some
11 discussion about some changes that were
12 made, this we think solves that issue. We
13 think this solves the issue. The committee
14 is the one that reports to the Supreme Court
15 rather than the ADC basically is what this
16 says.

17 JUDGE FORD: I move we send this recommendation
18 to the Supreme Court.

19 MR. BAILEY: Judge Ford moves that we adopt this
20 language. Do we have a second?

21 MR. WHITMIRE: Second.

22 MR. BAILEY: Let me ask one quick question. Bob,
23 you and Wayne were satisfied with this

1 language?

2 MR. MADDOX: Yes, and I want to note on the
3 record that Callie Dietz, the current

4 Administrative Director of Courts, has
5 looked at this and has agreed to it.
6 MR. BAILEY: Thank you. Good point, Bob.
7 MR. JEFFRIES: I was just about to ask, what if
8 she changes it when we send it over there.
9 (Brief interruption.)
10 MR. BAILEY: It is late in the day.
11 I'm sorry, Jennifer.
12 MS. BUSH: I have one issue --
13 MR. BAILEY: We haven't voted on this yet. I'm
14 sorry.
15 MS. BUSH: Okay.
16 MR. BAILEY: Any further discussion on Handout D,
17 the proposed language to change review of
18 the guidelines?
19 (No response.)
20 MR. BAILEY: All right. I'll call for the
21 question. All in favor say aye and raise
22 your right hand.
23 (Vote taken.)

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1 MR. BAILEY: Looks like it is unanimous with one
2 abstention from Justice Stuart.
3 All right. Jennifer.
4 MS. BUSH: There was one other issue with Rule
5 32.1 that I know we have not discussed with
6 the committee --
7 MR. BAILEY: All right.
8 MS. BUSH: -- if I could just have five minutes.

9 Rule 32.1 is the child support
10 information sheet that everyone who is a
11 party to a divorce must fill out. It
12 includes date of birth, social security
13 number, your mother's maiden name, your
14 driver's license, everything on there.

15 At this point in time, it is made a
16 part of the court record. With the advent
17 of electronic filing, these documents with
18 all this sensitive information is being
19 scanned into Alacourt and anybody can pull
20 up any domestic relations case and get all
21 of that sensitive information.

22 I simply suggest that we add one
23 sentence to Rule 32.1 stating that the child

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1 support information sheet is not a part of
2 the court record and shall not be included
3 as such.

4 MR. BAILEY: Okay.

5 MS. BUSH: Really, what it's used for, the
6 parties give the information, put it on the
7 sheet. It's given to the clerk of court.
8 The clerk of court puts that information
9 from that worksheet into the computer, and
10 after that there's no need for that separate
11 sheet to be scanned.

12 On the Alacourt system, there are
13 security levels where just the general

14 public will not see a social security
15 number. They won't see that private
16 information, but it is stored in AOC's
17 computer.

18 JUDGE FORD: Is it in the file?

19 MS. BUSH: Sir?

20 JUDGE FORD: Is it in the file?

21 MS. BUSH: We're suggesting that it not be placed
22 in the court file because DHR has it on our
23 system. AOC has it on their system. If

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1 it's in the court file, it will be scanned
2 and put on Alacourt. Once the clerks use
3 that worksheet and put all the information
4 into Alacourt, there's no reason it couldn't
5 be shredded.

6 MS. PALMER: My only friendly amendment to that
7 would be that when you do an income
8 withholding order, the obligor's social
9 security number shows up on the income
10 withholding order. So is there any way that
11 that can also be not made public
12 information? You've still got a social
13 security number out there.

14 MR. BAILEY: That's a good point.

15 MS. BUSH: I think it could be, but it would
16 require an amendment to the IWO statute not
17 making it part of the court order. Because
18 that IWO is a federally-mandated form and we

19 can't change anything about it and everybody
20 has to use it, so -- but I do think you can
21 take it out of the court records so that it
22 won't get on Alacourt.

23 MR. BAILEY: Bob, is this something y'all run

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1 into in family court at AOC a lot? Is this
2 a big issue? Small issue?

3 MR. MADDUX: I wish Mary Moore had not left
4 because I really wanted a clerk's
5 perspective on this. We had discussed this
6 a little bit in our office yesterday, and
7 we're just really concerned from an AOC
8 perspective how the clerks are going to
9 separate that piece of paper from a paper
10 court file as well as an electronic file.
11 You basically have a public record normally,
12 and one piece of paper is going to be
13 confidential in that whole public record
14 file. It may cause trouble with the
15 clerks. We may have to run it by them. I
16 don't know --

17 MR. BAILEY: Jennifer, is that required by the
18 federal regs?

19 MS. BUSH: Not required. We can table it. I
20 just wanted to bring it to everybody's
21 attention that all that information is being
22 scanned onto Alacourt. Anybody can go get
23 it at any time.

1 MR. BAILEY: That may be for another day.

2 MR. WHITMIRE: Just don't get a divorce.

3 MR. BAILEY: Does anybody have anything else
4 other than what is on our agenda that is of
5 immediate importance?

6 Bob.

7 MR. MADDOX: One more quick thing I wanted to
8 point out. If you look at the current Rule
9 32 -- and the Court may address this part on
10 the Preface Relating To Scope part, it still
11 has the old '93 effective dates in here. I
12 assume the Court will change that date to
13 make it effective.

14 Wayne, anything else? And thank you
15 again for lunch, Wayne. It was just
16 wonderful. Great lunch. And I'll write the
17 Chief Justice for the committee.

18 Bob, anything else?

19 MR. MADDOX: Are we going to address the advisory
20 use of the proposed guidelines?

21 MR. BAILEY: Oh, we didn't. That's right. I'm
22 glad you pointed that out. I think we
23 discussed earlier and I think we covered it

1 that --

2 JUSTICE STUART: I don't think -- at this point
3 in time, it doesn't look like they're going
4 to be out there early enough for anybody to
5 use them.
6 MR. BAILEY: Maybe we could suggest to the Court
7 that if the Court does approve the new
8 schedule, that between the time they approve
9 it and the effective date, the trial courts
10 would be encouraged to consider them as
11 advisory only?
12 Would that be something we could
13 recommend to the Court?
14 JUSTICE STUART: If they're effective on January
15 1 -- I don't think they're going to get
16 approved otherwise until mid-November. What
17 good is it ...
18 JUDGE BELL: Where can I get a copy of that?
19 MR. BAILEY: Bob can hand you one before you
20 leave or on the way out the door,
21 absolutely, the new schedule.
22 JUDGE BELL: If I'm handling cases like that --
23 and I do every week --

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1 MR. BAILEY: It'd be helpful.
2 JUDGE BELL: -- and I know this new schedule is
3 coming, that would be a pretty good
4 reference point.
5 MR. BAILEY: Does anybody real quick before you
6 leave -- Michael, don't leave yet. Does

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7 anybody want to volunteer to help us with
8 the commentary? And if no one volunteers,
9 the chair will exercise its prerogative.

10 All right. Mike says he'll volunteer.
11 Jennifer. Penny, I know you will. Judge
12 Ford and Judge Bell have already graciously
13 volunteered. And Justice Stuart has
14 volunteered to oversee our entire
15 operations.

16 JUSTICE STUART: I said I'd be a consultant.

17 MR. BAILEY: As consultant. That's right.

18 Jim said he'll volunteer, too.

19 Listen. I want to thank y'all so
20 much. We did a lot of work today, folks.
21 And it's been 15 years, and I want to really
22 applaud y'all very much. Y'all just did a
23 great job. Thanks for staying with me.

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1 Do we have a motion to adjourn?

2 (Simultaneous discussion by committee
3 members.)

4 MR. BAILEY: We're adjourned. Thank y'all so
5 much.

6 (Meeting adjourned at 3:56 p.m.)

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* * * * *
MEETING ADJOURNED
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REPORTER'S CERTIFICATE

STATE OF ALABAMA:
MONTGOMERY COUNTY:

I, Lisa J. Green, CCR, Registered Professional Reporter, and Commissioner for the State of Alabama at Large, do hereby certify that I reported the Advisory Committee on Child Support Guidelines and Enforcement meeting held on Tuesday, August 19, 2008.

The foregoing [] computer printed pages contain a true and correct transcript of the meeting.

I further certify that I am neither of kin nor of counsel to the parties to said cause nor in any manner interested in the results thereof.

This 3rd day of September 2008.

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Lisa J. Green, ACCR #334
Expiration Date: 9-30-2008
Registered Professional Reporter
and Commissioner for the State
of Alabama at Large

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