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Revised document: C:\Users\Amanda Cox\OneDrive - Alabama Appellate Courts\Desktop\amanda files 2\Amanda Cox files\Child Support Committee\2021-update\Committee Comments\Committee Comments.draft10.wpd

Deletions are shown with the following attributes and color:

~~Strikeout~~, **Blue** RGB(0,0,255).

Deleted text is shown as full text.

Insertions are shown with the following attributes and color:

Double Underline, Redline, **Red** RGB(255,0,0).

The document was marked with 19 Deletions, 18 Insertions, 0 Moves.

~~Comment to Amendments~~
~~Effective~~Appendix D
Proposed Committee Comments to Amendments to Rule 32, Ala.
R. Jud. Admin.

COMMITTEE COMMENTS TO THE AMENDMENT TO RULE 32
EFFECTIVE January __, 2022

Rule 32 was amended effective January __, 2022, to address certain issues and to make technical changes.

The first paragraph of this Rule, entitled, "Preface Relating to Scope," provides that the amended Rule is effective January __, 2022. The amended Rule applies to all new actions filed or proceedings instituted on or after that date. Any actions or proceedings instituted before January __, 2022, will be governed by Rule 32 as it read before that date.

The Appendix to Rule 32, the Schedule of Basic Child-Support Obligations ("the Schedule"), was updated after a review in compliance with Rule 32(G). The original Schedule was developed through research sponsored by the National Center for State Courts. The Alabama Administrative Office of Courts contracted with the Center for Policy Research ("CPR") to assist the Committee in its review. The revised Schedule is based on the latest extensive economic research on the cost of supporting children at various income levels. Specifically, the revised Schedule is based on estimates of child-rearing that were developed by applying the fifth Betson-Rothbarth study (which is the most current) to 2013-2019 expenditures data and updated to September 2021 price levels. The revised Schedule ~~is also based on~~uses gross income and has been adjusted for Alabama's income distribution relative to the income distribution for the United States.

Other assumptions incorporated in the Schedule include:

(1) Tax ~~exemptions~~assumptions. The Schedule assumes that ~~the custodial parent will take the federal and state income tax exemptions for the~~

~~children in his or her custody~~all income is taxed at the rate of a single taxpayer based on Federal and State income-tax withholding formulas;

(2) Health-care costs. In respect to health-care costs, the Schedule assumes unreimbursed medical costs up to \$250 per child per year. These assumed costs include medical expenses not covered or reimbursed by health insurance, Medicaid, or All Kids, or insurance from another public entity up to \$250 per child per year; and

(3) Visitation. The Schedule is premised on the assumption that the noncustodial parent will exercise customary visitation rights, including summer visitation. Any abatement of child support because of extraordinary visitation should be based on visitation in excess of customary visitation.

The revised Schedule includes combined gross incomes ranging from \$0 to \$30,000 a month. The previous schedule only addressed combined monthly gross income amounts up to \$20,000. The data to address combined monthly gross incomes up to \$30,000 is now available and will aid parties, attorneys, and judges in setting an appropriate child-support obligation.

Rule 32(C)(1) provides that the court may use its discretion in determining child support when the combined adjusted gross income is above the uppermost levels of the schedule. When the combined adjusted gross income exceeds the uppermost limit of the schedule, the amount of child support should not be extrapolated from the figures given in the Schedule, but should be left to the discretion of the court.

Because the revised Schedule addresses combined monthly gross income amounts down to \$0, Rule 32(C)(1) has been amended to no longer give courts "discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels."

~~Rule 32(B)(8) has been~~ ... of the schedule."

Rule 32(A)(1)(e) was amended to reflect that the assumption that the custodial parent will claim the federal and state income-tax exemptions for the children in that parent's custody is not based on the Schedule but, instead, is based on the Internal Revenue Service tax code.

Rule 32(B)(8) was amended to add subpart (b); that subpart provides for an adjustment for the payment of work-related child-care costs similar to the adjustment for the payment of the costs of health-care coverage found in Rule 32(B)(7)(f). The adjustment for the payment of work-related child-care costs has been added to Form CS-42. Form CS-42 has ~~also~~ been further amended so that the amounts for work-related child-care costs and health-care-coverage costs are only required to be entered once instead of twice.

Rule 32(C), entitled "Determination of Recommended Child-Support Obligation," was amended by adding subsection (5). Subsection (5) provides ~~for an alternative child-support calculation based on the self-support reserve ("SSR") in Form CS-42, makes certain changes to the minimum order requirement, and adds a provision stating when a zero order is to be entered~~a Self-Support Reserve ("SSR") Calculation in the Form CS-42.

45 C.F.R. § 302.56 requires that child-support guidelines must "[t]ake[] into consideration the basic subsistence needs of the noncustodial parent." Currently, Alabama addresses that concern through the implementation of a SSR adjustment built into the Schedule. The Committee recommended moving the SSR adjustment out of the Schedule and implementing the SSR adjustment calculation as provided in Rule 32(C)(5). This Rule change will aid in transparency and will allow the amount of the SSR to be updated in the future without updating the entire Schedule.

Rule 32(C)(5)(a) explains that the ~~alternative child-support~~SSR calculation ~~based on the SSR~~ is used to ensure that the obligor's basic subsistence needs are met in accordance with 45 C.F.R. § 302.56.

Rule 32(C)(5)(b) explains that the amount of the SSR is \$981. ₪ The amount

of the SSR which was previously incorporated into the Schedule was based on the 2007 federal poverty guidelines, adjusted for Alabama incomes. The amount of the SSR has been updated to reflect the 2021 federal poverty levels, adjusted for Alabama incomes, which is consistent with the updated Schedule.

Rule 32(C)(5)(c) ~~and (d)~~ explains s how to perform the ~~alternative child-support calculation based on the SSR and determine final child-support order amount for each parent (before consideration of the Zero-Dollar or Minimum Child-Support Order provision in Rule 32(C)(6)).~~ SSR calculation to determine the "Income Available After SSR." Rule 32(C)(5)(c) also addresses the 85% economic incentive. To apply the economic incentive, the amount of income available for support after adjusting for the SSR will be multiplied by a factor of 0.85; that product will be entered on Line 12 of the Child-Support Guidelines form as the "Income Available for Support." The economic incentive is applied so that not all of the party's increased earnings are considered in determining the child-support obligation. The Federal and State payroll taxes for full-time minimum wage is 13%. Rounding the percentage to 85% addresses the payroll taxes on the increased earnings and also allows the obligor parent to keep a small portion of his or her increased earnings. The tax-rate assumption regarding the SSR was previously included in the Schedule.

Rule 32(C)(5)(d) explains that the "Recommended Child-Support Order" on Line 13 of the Child-Support Guidelines form is the lesser of "Each Parent's Adjusted Child-Support Obligation" on Line 10 of the Child-Support Guidelines form and the "Income Available for Support" entered on Line 12 of the Child-Support Guidelines form. If the amount entered on Line 12 is less than \$50, there is a rebuttable presumption that a \$50 minimum amount should be entered.

Rule 32(C) was amended to also add subsection (6), entitled Zero-Dollar ~~or Minimum Child-Support~~ Order.

~~Rule 32(C)(6)(a)~~ That subsection provides for a rebuttable presumption that a zero order shall be entered in specified limited situations. ~~Rule~~

~~32(C)(6)(b) provides for a rebuttable presumption that a minimum \$50 order (less any payments toward health-care coverage or work-related child-care costs) shall be entered if the conditions for the zero-dollar child-support order in subsection (C)(6)(a) are not met, and the obligor has a gross income less than an amount based on the most recent federal poverty levels, adjusted for Alabama incomes. Rule 32(C)(6)(c) explains that Lines 14 and 15 of Form CS-42 shall be used only if either Rule 32(C)(6)(a) or (b) applies. It further explains that, if either Rule 32(C)(6)(a) or (b) applies, the Final Child-Support Order shall be equal to the Final Child Support Order after Payments Adjustment entered on Line 15. If neither Rule 32(C)(6)(a) nor Rule 32(C)(6)(b) applies, the Final Child-Support Order shall be equal to the Child Support Obligation before Consideration of Zero Order or Minimum \$50 Obligation entered on Line 13.~~

The provision in Rule 32(C)(6)(a) that there is a rebuttable presumption that a zero-dollar order applies where an obligor "has no gross income and receives only means-tested assistance" is not intended as an impediment to a trial court's discretion under Rule 32(B)(5) to impute income to a parent that the court finds is voluntarily unemployed or underemployed. ~~Similarly, the provision in Rule 32(C)(6)(b) regarding a rebuttable presumption of a \$50 minimum order under certain circumstances set out therein is not intended to remove a trial court's discretion to impute income under Rule 32(B)(5).~~ Rule 32(B)(5) is unaffected by the zero ~~and minimum~~ order provisions.