

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

6
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8 IN RE: CHILD SUPPORT GUIDELINES
9 COMMITTEE MEETING
10 JUNE 13, 2008,

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Advisory Committee on Child Support

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Guidelines and Enforcement meeting held on Friday,

16

June 13, 2008, commencing at approximately

17

10:05 a.m. at the Heflin-Torbert Judicial Building,

18

300 Dexter Avenue, Montgomery, Alabama and reported

19

by Haley A. Phillips, Certified Court Reporter,

20

ACCR # 151, and Commissioner for the State of

21

Alabama at Large.

22

23

* * * * *

1 ADVISORY COMMITTEE MEMBERS PRESENT:

2 Gordon F. Bailey, Jr., Chairman
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Associate Director

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5 Gordon Persons Building
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9 Ben Patterson, Esq.
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13 ALSO PRESENT:

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24 John Kral, Esq.
25 Fathers and Families of Alabama
26 Alternate member

27 Bob Maddox, Esq.
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1 MR. BAILEY: I appreciate
2 everybody coming. It looks
3 like we don't have a quorum.

4 Other -- Well, we have two
5 more members joining us, so
6 maybe we're getting close to a
7 quorum.

8 (Off-the-Record discussion.)

9 MR. BAILEY: Let me introduce
10 Haley Phillips. She's going
11 to be our court reporter
12 today, and so if you'll speak
13 up. And when you're speaking
14 and talking about committee
15 issues, or whatever, please
16 give her your name. She needs
17 your name so we can do the
18 transcript like we did last
19 time and give everybody
20 credit, or whatever, for what
21 they say.

22 All right. Julie, would

23 you introduce yourself? And

1 let's start around the room
2 and introduce ourselves again.

3 MS. PALMER: Julie Palmer.

4 Attorney practicing mainly in
5 Shelby County, Alabama and
6 primary area of practice is
7 family law, domestic
8 relations.

9 MR. ARNOLD: Steve Arnold from
10 Birmingham, Alabama. Private
11 practitioner in family law.

12 MR. MANASCO: Mike Manasco.
13 Montgomery, Alabama. General
14 counsel for Treasurer Kay
15 Ivey.

16 MR. KRAL: John Kral. Fathers and
17 Families of Alabama. Host of
18 Fathers and Family Radio.

19 MR. BAILEY: And, John, I believe
20 you're an alternate; right?

21 MR. KRAL: Yeah, correct.

22 MR. BAILEY: Thank you.

23 MR. POLEMENI: Michael Polemeni.

1 Just a citizen member.

2 MR. BAILEY: Okay. Thanks for
3 coming.

4 MR. PATTERSON: My name is Ben
5 Patterson. I'm with Fine
6 Geddie & Associates here in
7 town. It's a governmental
8 affairs firm.

9 MS. NELSON: Faye Nelson.
10 Director of the Child Support
11 Enforcement Division.

12 MS. BUSH: Jennifer Bush. DHR
13 legal counsel.

14 MR. JEFFRIES: I'm Jim Jeffries.
15 I'm in private practice in
16 Mobile practicing primarily in
17 family law.

18 MR. BAILEY: I'm Gordon Bailey,
19 and I've been involved in this
20 program since '76 in various
21 capacities.

22 I certainly am glad

23 everybody is here. I'm trying

1 to count up, not including our
2 alternate. I don't believe we
3 have a quorum, but we'll
4 certainly continue with our
5 discussions. Wayne and --

6 Wayne, would you and Bob
7 introduce yourselves, please?

8 I'm sorry.

9 MR. JONES: Wayne Jones. Supreme
10 Court staff attorney liaison
11 for the child support
12 committee.

13 MR. MADDOX: Bob Maddox.
14 Administrative Office of
15 Courts, family court division.

16 MR. BAILEY: We were discussing
17 yesterday what constitutes a
18 quorum because we knew we were
19 going to have some members
20 missing for various reasons.

21 Judge Ford's daughter is

22 graduating from medical

23 school, and that certainly is

1 a --

2 MR. ARNOLD: Flimsy. Flimsy.

3 MR. BAILEY: -- a legitimate

4 reason for him not to be

5 here. And he certainly

6 regrets not being here. We

7 have two newly-appointed

8 circuit judges to our

9 committee. Judge Billy Bell

10 from Huntsville and Judge

11 Rosemary Chambers from

12 Mobile. And they were just

13 appointed by the court,

14 Wayne. I believe the end of

15 last week the order came out.

16 MR. JONES: That's correct. And I

17 have distributed the order to

18 everybody.

19 MR. BAILEY: Right. And so their

20 dockets prohibited them from

21 being with us today, so

22 they're not with us. And I

23 think that's -- And then I

1 think Angela Campbell from
2 Mobile had a death of a mem --
3 A close friend of hers passed
4 away yesterday, so she's not
5 with us today as well. So I
6 don't think we have a quorum.
7 We were discussing yesterday
8 what is a quorum. There are
9 22 members presently, or 24
10 now, Wayne, with the two
11 judges?

12 MR. JONES: I believe it's 22.

13 MR. BAILEY: 22 including the new
14 judges, the new committee
15 appointments. We thought it
16 certainly would be a majority
17 of over 11 to vote -- or 12 to
18 vote to constitute a quorum of
19 committee members. So does
20 anyone disagree with that?

21 Does anybody want to be heard

22 on that? That's kind of our

23 collective thinking about what

1 would constitute a quorum.

2 Anyone want to be heard on

3 that issue or disagree?

4 (No response.)

5 MR. BAILEY: Okay. All right. So

6 with that being said, I count

7 that we have four, five, six,

8 seven, eight, nine -- Let's

9 see. One, two, three, four,

10 five, six, seven, eight,

11 nine. We have nine. And

12 Penny makes ten. Here comes

13 Penny Davis. So we only have

14 ten so far. Penny, come on

15 in. We're just adding up if

16 we have a quorum or not, and

17 we were determining that it

18 would take --

19 MR. POLEMENI: And Judge Stuart is

20 here, but she's going to be

21 late.

22 MR. BAILEY: Yeah. She's -- She

23 stepped in and will be in and

1 out. She's with Girls State

2 today. That's correct.

3 MS. POLEMENI: But there still

4 won't be 12.

5 MR. BAILEY: We still won't have

6 12. But, anyway, we're

7 getting close. We're getting

8 close.

9 All right. Credit for

10 other children. Faye, I

11 believe your staff was kind

12 enough to put together the

13 results of your survey.

14 MS. NELSON: That's correct.

15 MR. BAILEY: Is this a good time

16 for you to report on it, or

17 would you -- I mean, would you

18 want to report on it or would

19 you want to have someone on

20 your staff report on it?

21 MS. NELSON: Well, I can have

22 someone on my staff to report

23 if you want specifics on the

1 handout that was distributed
2 to you this morning. We had
3 several states to respond, and
4 our policy staff was assigned
5 to compile the results that we
6 received from the various
7 states.

8 MR. BAILEY: All right.

9 MS. NELSON: So I know it's very

10 similar to what you received
11 from -- in the mail from PSI.

12 The data is very similar. But
13 if there are any specifics

14 that you want further

15 explanation on it, I have

16 staff available that can

17 explain any questions that you

18 may have about any of these

19 states' reports that you have

20 in front of you.

21 MR. BAILEY: All right. Any

22 questions of Faye or her

23 staff?

1 Jan, I believe you're --

2 You worked on this, I believe,

3 didn't you, Jan?

4 MS. JUSTICE: Yeah.

5 MR. BAILEY: So Jan Justice is

6 here --

7 MS. JUSTICE: And --

8 MR. BAILEY: I'm sorry?

9 MS. JUSTICE: And Cliff Smith.

10 MR. BAILEY: -- and Cliff Smith

11 are both here to answer any

12 questions you might have.

13 Jan, I know you put this

14 together. Would you mind just

15 telling us kind of overall

16 what this -- what the

17 conclusions or what you

18 deduced from all this

19 information?

20 MS. JUSTICE: There are a lot of

21 similarities between the

22 states and every state is

23 different. But it was

1 interesting. I thought it was
2 an interesting experience that
3 Cliff and I had the
4 opportunity to study the other
5 states a little more. And I
6 think the ones that are
7 labeled income share states --
8 and Alabama is an income share
9 state -- are the only ones
10 that we -- ones that we might
11 want to study the most. The
12 obligor model and the Melson
13 formula is a little bit
14 different and hard --

15 MR. BAILEY: Right.

16 MS. JUSTICE: -- to compare. But
17 most every state does as
18 Alabama does in providing a
19 deduction for any
20 court-ordered child support on
21 other children.

22 MR. BAILEY: Right.

23 MS. JUSTICE: A number of

1 states -- and almost all of it
2 is done -- I think every state
3 that's -- whether it's an
4 initial order or a
5 modification order. Most
6 states -- I think the majority
7 of the states do provide a
8 deduction for legal children
9 in the home, but there's a lot
10 of variation --

11 MR. BAILEY: Right.

12 MS. JUSTICE: -- in how that is
13 done. The -- I think the
14 standard practice or the
15 prevailing practice is to do a
16 dummy guideline or an imputed
17 guideline --

18 MR. BAILEY: Right.

19 MS. JUSTICE: -- where you look at
20 the number of children and the
21 NCP's income only, and you

22 decide how much he should be

23 paying for this one child

1 that's living in his home or
2 two children, or how ever many
3 children there are.

4 And then if you'll look
5 in the very last column over
6 here on the amount imputed,
7 that's what -- I had to try to
8 squeeze it all on one piece of
9 paper, one page.

10 MR. BAILEY: Great job. Great
11 job.

12 MS. JUSTICE: That stands for the
13 amount allowed for the imputed
14 deductions for children in the
15 home when no order exists.

16 That's what that column is.

17 MR. BAILEY: Okay.

18 MS. JUSTICE: As you will see,
19 there's a wide variety in how
20 they give that credit. Once
21 they do the dummy guideline

22 calculation and impute what it

23 should be, some states allow

1 only a 50 percent deduction

2 for that.

3 MR. BAILEY: Uh-huh (positive
4 response).

5 MS. JUSTICE: Some states allow a
6 100 percent deduction. And I
7 kind of thought that
8 Washington D.C.'s recent
9 update in their tables where
10 they allowed for a 75 percent
11 deduction --

12 MR. BAILEY: Right.

13 MS. JUSTICE: -- was a very -- was
14 an equitable way to look at
15 that. Several states -- A few
16 states, not very many, had a
17 table where they would allow X
18 number of dollars deducted for
19 children in the home. Not
20 many states allowed deductions
21 for legal children supported

22 by the obligor who were not in

23 the home. This could be a

1 child that's living with the
2 other parent or in some other
3 living circumstance: The NCP
4 supports the child; he's a
5 legal child but there is no
6 court order.

7 MR. BAILEY: Right.

8 MS. JUSTICE: Some states do
9 provide a reduced credit.

10 What state was that? Was that
11 Tennessee -- was one of the
12 states. And if I'm not
13 mistaken, Bob, you sent out
14 something that Jane had done
15 an extensive analysis of
16 Tennessee's guidelines. And
17 they're one of our neighbors,
18 and I thought that -- I
19 thought theirs -- The way they
20 did it I thought they really
21 tried to be very equitable.

22 When you do this imputed

23 guidelines, they allowed a 75

1 percent deduction as

2 Washington D.C. did --

3 MR. BAILEY: Uh-huh (positive
4 response).

5 MS. JUSTICE: -- for the children
6 in the home and a 50 percent
7 credit for legal children
8 outside the home where there
9 is no court order.

10 MR. BAILEY: Uh-huh (positive
11 response).

12 MS. JUSTICE: That was a unique
13 situation, though, in
14 Tennessee. And Texas provided
15 some -- some credit for legal
16 children that were not in the
17 home.

18 MR. BAILEY: Right. Jan, let me
19 ask you this. I'm sorry.

20 Didn't mean to interrupt you.

21 What was the source of you

22 receiving this data? Was it

23 the IV-D director's office?

1 Is that where we got this data
2 from?

3 MS. JUSTICE: Yes.

4 MR. BAILEY: Okay. Because, Faye,
5 you mentioned you were going
6 to ...

7 MS. NELSON: Yeah. Each of the
8 states that's listed on here
9 responded to an e-mail that I
10 sent to them to send us, you
11 know, some information about
12 how they address credit for
13 other children. And what we
14 did was just have them to
15 compile the results that they
16 sent back to me from each of
17 these states after they read
18 through and checked their web
19 site --

20 MR. BAILEY: Right.

21 MS. NELSON: -- and things of that

22 nature that they referred us

23 to in order to obtain this

1 particular data. And this is
2 the format that they put it in
3 to try to present it to the
4 body so that everybody can
5 kind of compare at least the
6 results that we received from
7 these specific states.

8 MR. BAILEY: Well, this is a great
9 job. Great job.

10 MS. JUSTICE: Thank you.

11 MR. BAILEY: How many states
12 responded, Jan? I'm trying to
13 add them up real quickly. It
14 looks like over 20 maybe.

15 MS. JUSTICE: Let me see.

16 MR. BAILEY: I didn't add them
17 up.

18 MS. NELSON: I think there were
19 about 15.

20 MR. BAILEY: 15?

21 MS. NELSON: 12 or 15. Yeah.

22 MR. BAILEY: Okay.

23 MR. ARNOLD: Gordon, could I

1 just --

2 MR. BAILEY: Yeah.

3 MR. ARNOLD: -- ask a question?

4 MR. BAILEY: Steve Arnold. I'm
5 sorry.

6 MR. ARNOLD: Steve Arnold here.

7 As I'm looking at this table,
8 has PSI done a similar
9 breakdown or has your
10 department done any breakdown
11 on the health insurance issue,
12 Faye? Can we get some similar
13 table on the health insurance,
14 which will tie into what I'm
15 going to report in a little
16 while?

17 MS. NELSON: I am not sure if PSI
18 has done this. I'm sure we
19 could poll the IV-D directors
20 for medical as well. But most
21 states are experiencing some

22 difficulty with medical

23 support, just as Alabama is

1 experiencing some difficulties
2 in decision-making on that.

3 In the medical support
4 area, of course, the IV-D
5 programs are now being
6 required to report medical
7 support to the feds in our
8 annual reports, so there is an
9 all-out effort to try to see
10 that we get this medical
11 support in our court orders --

12 MR. BAILEY: Right.

13 MS. NELSON: -- so that we can
14 improve our overall state's
15 performance in this particular
16 area.

17 MR. BAILEY: Faye, excuse me. The
18 federal regs are not finalized
19 yet, are they?

20 MS. NELSON: As it relates to
21 medical --

22 MR. BAILEY: Medical support.

23 MS. NELSON: That's correct.

1 MR. BAILEY: Do you have any idea
2 when they will be finalized?

3 MS. NELSON: We have been told
4 that we may get it within a
5 few months, but this has been
6 a few months --

7 MR. BAILEY: Right. Right.

8 MS. NELSON: -- that has extended
9 over a year's time period.

10 MR. BAILEY: Right.

11 MS. NELSON: So I know that
12 there's just difficulty, I
13 guess, on every end in trying
14 to finalize medical support
15 issues.

16 MR. BAILEY: Right.

17 MS. POLEMENI: Michael Polemeni.
18 Discussing medical support,
19 I've seen advertised the
20 low-cost insurance. I forget
21 the name that's advertised on

22 TV.

23 MS. NELSON: All Kids.

1 MR. POLEMENI: Yeah, All Kids. Is

2 that open to the noncustodial

3 parent to be able to purchase

4 that for his children for

5 those that are uninsured, you

6 know, depending on how -- what

7 their work environment is? Is

8 that -- You know, is the

9 noncustodial parent able to

10 participate in that program?

11 MS. NELSON: I'm not sure that

12 they have any restrictions on

13 whether you're a noncustodial

14 parent or a custodial parent.

15 I know that their eligibility

16 is based on income. Now, to

17 get their specific criteria --

18 It's administered through the

19 Department of Public Health,

20 so you really would have to

21 obtain information from them,

22 because the Department of

23 Human Resources -- We do not

1 administer that program.

2 MR. POLEMENI: Okay.

3 MS. NELSON: But we do provide

4 literature to individuals

5 through our child support

6 program, our food stamp

7 program, our financial

8 assistance program. We

9 provide that information to

10 all bodies so that they can be

11 aware that the program is out

12 there and that they can make

13 application through the

14 Department of Public Health.

15 And they determine the

16 eligibility --

17 MR. POLEMENI: Okay. That may --

18 MS. NELSON: -- based on the

19 guidelines that they have.

20 MR. POLEMENI: Well, that may be

21 an option in the courts that,

22 you know, when they -- someone

23 says, I can't afford that

1 health insurance that they

2 direct them there.

3 MR. BAILEY: Certainly. Go ahead.

4 MS. PALMER: Julie Palmer. Do you

5 know -- Back to the legal

6 children living in the home.

7 Do you know if the qualified

8 in-home children, as they

9 often are referred to as

10 well -- if the -- Let's say

11 the obligor has remarried.

12 Have they -- Do they take into

13 consideration the obligor's

14 new spouse's income?

15 MS. JUSTICE: No. The states that

16 took another person's income

17 into consideration would be a

18 circumstance -- There were

19 some states that it was

20 incumbent upon the obligor to

21 the -- obviously the parent of

22 the -- Excuse me. Yes. I

23 am -- I'm sorry. I'm not

1 going in the right direction.

2 There are two -- two options

3 there. If you have a child in

4 the home --

5 MS. PALMER: Uh-huh (positive

6 response).

7 MS. JUSTICE: -- either the other

8 parent is in the home or the

9 other parent is not in the

10 home.

11 MS. PALMER: Uh-huh (positive

12 response).

13 MS. JUSTICE: Yes. Okay. If the

14 other parent is in the home,

15 some states do take that

16 person's income into

17 consideration and then do the

18 dummy or imputed guidelines

19 and then, of course, divide it

20 by two, because, you know, to

21 figure out how much that one

22 obligor should be deducted, it

23 would be divided by two.

1 MS. PALMER: Uh-huh (positive
2 response).

3 MS. JUSTICE: Because, you know,
4 he only would be responsible
5 for half of that child support
6 or -- in theory. Okay. The
7 other -- the other scenario is
8 the other parent is outside
9 the home. And those states
10 do -- It is incumbent upon the
11 obligor to obtain verification
12 of the other parent's income
13 and do the dummy guidelines,
14 and, again, it would be
15 divided in half and half
16 credit would be given. There
17 were a few states that did
18 that, but that's not the
19 prevailing practice. The
20 prevailing practice does seem
21 to be just take the obligor's

22 income, because it does get

23 more complex.

1 MR. JEFFRIES: Julie -- I'm Jim

2 Jeffries. Julie --

3 MR. BAILEY: Just a minute, Jim.

4 Let me introduce -- Let me ask
5 you to introduce yourself.

6 And, Penny, y'all have just

7 joined us. We're certainly

8 glad you're here. Would you

9 introduce yourself, and then,

10 Penny, would you? And then,

11 Jim, back to your question.

12 MR. JEFFRIES: I introduced myself

13 earlier.

14 MR. BAILEY: Oh, you did? Okay.

15 MR. JEFFRIES: I'm Jim Jeffries.

16 MR. BAILEY: You did.

17 MR. JEFFRIES: I'm in Mobile.

18 Private practice.

19 MR. BAILEY: And, Penny. I'm

20 sorry.

21 MS. DAVIS: Penny Davis. I'm a

22 committee member.

23 **MR. BAILEY:** Okay. Go ahead, Jim.

1 I'm sorry.

2 MR. JEFFRIES: I was just going to

3 point Julie -- And I have the

4 records in front of me, but I

5 don't know which exhibit it

6 was of the documents that were

7 sent out. If you look on --

8 It's the one that's titled

9 Chapter VI, Adjustments for

10 Selected Guideline Factors.

11 MS. PALMER: Uh-huh (positive

12 response).

13 MR. JEFFRIES: Do you see that?

14 MS. PALMER: Uh-huh (positive

15 response).

16 MR. JEFFRIES: If you flip over

17 onto page -- It's says

18 chapter -- At the bottom left,

19 it says Chapter Roman numeral

20 six dash four. And Exhibit

21 22 --

22 MS. PALMER: Uh-huh (positive

23 response).

1 MR. JEFFRIES: -- is listed

2 there. Look at the last

3 sentence of that paragraph

4 that's right above there. It

5 talks about three states.

6 North Carolina and Tennessee

7 allow the income of the other

8 parent in the home to be

9 included, and Washington, it

10 says, requires that it be. At

11 least documented it says.

12 MS. PALMER: Okay. Thank you,

13 Jim.

14 MR. JEFFRIES: Just if that helps

15 you.

16 MS. PALMER: And the reason I'm

17 asking that -- Julie Palmer

18 again -- is one of my judges

19 in Shelby County that I was

20 speaking to about this

21 yesterday said that that -- in

22 his opinion that's something

23 that should be considered. If

1 you want to be given credit

2 for the children -- the

3 in-home children --

4 MR. BAILEY: Right.

5 MS. PALMER: -- then what is his

6 new spouse's or her new

7 spouse's income.

8 MR. JEFFRIES: Right.

9 MS. PALMER: That should be

10 factored into the

11 calculations.

12 MR. KRAL: And conversely I would

13 say what about --

14 MR. BAILEY: Your name? I'm

15 sorry. Give --

16 MR. KRAL: John Kral, alternate.

17 MR. BAILEY: Thank you.

18 MR. KRAL: -- when the ex-spouse

19 also remarries and that

20 husband's income? Is that to

21 be considered? Since we're

22 going to consider the other

23 income, there's another income

1 on the other side of the fence
2 as well. Any research on
3 that?

4 MS. JUSTICE: Most states are
5 treating the parties
6 identically rather than the CP
7 or the NCP.

8 MR. KRAL: So if the CP remarries
9 that income is also
10 considered?

11 MS. JUSTICE: If the CP
12 remarries --

13 MR. SMITH: I think they're
14 looking at --

15 MR. BAILEY: I'm sorry. You need
16 to identify yourself, Cliff.

17 MR. SMITH: I'm sorry.

18 MR. BAILEY: And, Jan, you do
19 too.

20 MR. SMITH: Cliff Smith.

21 MR. BAILEY: I'm sorry. I'm

22 sorry. Sorry. Please go

23 ahead. Sorry.

1 MR. SMITH: I think what most of
2 them are doing, they're only
3 using income based on the
4 parents of that particular
5 child, not the -- not a --
6 like a stepparent or
7 something.

8 MR. KRAL: Well, that's not what I
9 just heard her say.

10 MS. JUSTICE: Okay. Jan Justice.

11 Yes. I'm sorry. I kind of
12 made that leap, and thank you
13 so much for clarifying that.

14 Yes. They don't -- A
15 remarried spouse's income is
16 never considered unless that
17 spouse is the parent of the
18 other child.

19 MR. KRAL: But didn't you just say
20 that that does happen in some
21 occasions or that some states

22 do that? Did I

23 misunderstand?

1 MS. JUSTICE: An additional spouse
2 who is not the parent of
3 another child, I have no
4 knowledge, do you --

5 MR. SMITH: No.

6 MS. JUSTICE: -- of that spouse's
7 income ever being considered.

8 MR. KRAL: So I mis -- I'm just
9 trying to determine what I
10 understood and what I didn't
11 understand.

12 MS. JUSTICE: Because that --

13 MR. KRAL: Did I misunderstand
14 what you just said earlier?

15 MS. JUSTICE: Right. Because that
16 spouse is not legally
17 responsible for supporting any
18 children.

19 MR. BAILEY: Right. That's
20 right. Exactly. Yeah. Did
21 that clarify your question

22 or --

23 MR. KRAL: I think so.

1 MR. BAILEY: Good.

2 MR. KRAL: I'm not sure.

3 MR. BAILEY: All right. Faye, any

4 other comments you want to

5 make on this? This is a great

6 survey. Thank y'all so much.

7 This is really good, and I

8 appreciate the four -- your

9 fellow brethren and the IV-D

10 director world complying with

11 our request. This is great.

12 MS. NELSON: We do appreciate it.

13 We try to communicate with one

14 another to try to help us make

15 some decisions about our IV-D

16 programs to make them as

17 consistent as we can.

18 MR. BAILEY: And to follow up on

19 Steve's question, which I

20 suggested -- which I assume

21 was a suggestion, Steve.

22 Faye, would you feel reluctant

23 to ask them for another survey

1 on health insurance and how to
2 handle it? Is that -- Steve,
3 would you -- do you think
4 that's something that we might
5 want to have for our next
6 meeting?

7 MR. ARNOLD: Absolutely.

8 MR. BAILEY: I think so.

9 MR. ARNOLD: If that's -- If it's
10 possible.

11 MR. BAILEY: Yeah.

12 MR. ARNOLD: Just how the various
13 states treat the cost of
14 health insurance. I'm not
15 looking for the broad
16 category, Faye, of medical
17 support, just the cost of
18 health insurance. If that
19 could be narrowed. If that's
20 poss -- If you say, no, we
21 can't do it, all right, fine.

22 MR. BAILEY: She may not have any

23 more favors out there. I

1 don't know.

2 MS. NELSON: I'll follow through.

3 MR. BAILEY: I appreciate it,

4 Faye. Okay. Good.

5 MR. KRAL: Well, I'd like to ask a

6 question.

7 MR. BAILEY: Your name? You need

8 to give us your name, sir.

9 I'm sorry.

10 MR. KRAL: Okay. John Kral,

11 alternate. The information

12 that we're seeking, if I

13 understand, we're getting it

14 from other states. Where did

15 the states get their

16 information and how about

17 other sources? There's

18 thousands of organizations,

19 literally hundreds of

20 organizations that can provide

21 this information. Is there a

22 particular reason --

23 **MR. POLEMENI: Michael Polemeni.**

1 Let me --

2 MR. KRAL: -- why we're going in
3 states?

4 MR. POLEMENI: I tried to make --

5 In the last month, I've tried

6 to make contact with the

7 insurance -- I contacted the

8 American Research Institute in

9 Washington D.C., the Alabama

10 Research Institute, both

11 insurance research

12 organizations, the insurance

13 lobbyist in Alabama and an

14 insurance agent. And nobody

15 seems to be interested in

16 discussing the issue, at least

17 in the short -- in the

18 one-month time that I've been

19 seeking information, so

20 that --

21 MR. BAILEY: What specific --

22 Excuse me. I'm sorry. Mike,
23 tell us exactly what you asked

1 them that you thought --

2 MR. POLEMENI: Basically, I -- The

3 proposal that we had in front

4 of us last month --

5 MR. BAILEY: Right.

6 MR. POLEMENI: -- I presented that

7 to them, and I asked them how

8 would this impact your

9 policies or your -- your

10 industry in calculation -- in

11 calculating, just trying to

12 get some feedback. And I've

13 gotten no feedback whatsoever

14 from those other sources, so

15 I'll continue to try to get

16 additional --

17 MR. BAILEY: Right.

18 MR. POLEMENI: -- information.

19 But at this point nobody seems

20 interested.

21 MR. BAILEY: Okay. All right.

22 Before we get into health

23 insurance, and I think we're

1 kind of skipping around, let's
2 go back to credit for other
3 children. Judge Ford did a
4 survey. Bob, I think it was
5 through AOC.

6 MR. JONES: He stepped out to get
7 something.

8 MR. BAILEY: Okay. He did a
9 survey through AOC. 13 judges
10 responded. I would feel a
11 little bit better if Judge
12 Ford gave this report at our
13 next meeting. He's the author
14 of the survey, has put
15 together all the answers from
16 the 13 judges.

17 I think, Wayne, you and
18 Bob and I discussed yesterday
19 we might want to circulate
20 this again and ask the other
21 judges that did not respond if

22 they would. Judge Bell and

23 Judge Chambers did respond.

1 But we only had 13 responses,
2 and I'm not sure that's a
3 broad enough section -- or
4 cross section or survey of the
5 judges in Alabama on this
6 issue.

7 So if the committee is
8 okay with this and satisfied
9 with this, I'd like to defer
10 his report to our next
11 meeting. And, also, see,
12 Wayne, if we can get some
13 other judges that did not
14 participate to respond.

15 MR. JONES: Okay.

16 MR. BAILEY: Is that okay with
17 everybody on the committee?
18 I'm just a little reluctant to
19 give his report since he's the
20 author of it and I'm -- We'll
21 make sure that our next

22 meeting is convenient on his

23 calendar.

1 MR. KRAL: I'd like to say
2 something, if I could. John
3 Kral. How many surveys were
4 sent out?

5 MR. BAILEY: We did two surveys
6 from our last meeting. Faye
7 was kind of -- Faye Nelson was
8 kind enough to do a survey of
9 the IV-D directors. And
10 then Judge Ford did a survey
11 of judges on this issue,
12 credit for other children in a
13 child support action.

14 MR. KRAL: So how many judges were
15 surveyed or how many packets
16 or what have you were copied?

17 MR. BAILEY: It was just done by
18 e-mail from the AOC office
19 and --

20 MR. KRAL: Do we have any idea how
21 many judges were actually

22 contacted?

23 MR. BAILEY: Bob is not here, but

1 I'll ask him and get that

2 number for you.

3 MR. KRAL: And there were 13

4 responses?

5 MR. BAILEY: We had 13 re -- Isn't

6 that right, Wayne, we had

7 13 -- I think it was 13

8 responses.

9 MR. JONES: Yeah, I think that's

10 what I've seen.

11 MR. BAILEY: 13, yeah. Yeah.

12 MR. PATTERSON: Ben Patterson.

13 MR. BAILEY: Yes, Ben.

14 MR. PATTERSON: I wonder what

15 question was asked of the

16 judges.

17 MR. BAILEY: There were a number

18 of questions asked: How

19 judges address the issue. Is

20 an obligor given credit for

21 other children when there's a

22 court order. When the

23 obligor's responsible

1 supporting children are living

2 in his or her household.

3 Those kind of questions and

4 how you handle it. We got a

5 number of responses.

6 MR. PATTERSON: Thank you.

7 MR. BAILEY: All right. So we'll

8 table that for when Judge Ford

9 is with us. And, hopefully,

10 we'll have some more judges

11 respond. And I think that

12 would be the best way to

13 handle that today.

14 Faye, any other comments

15 from your survey of the IV-D

16 directors?

17 MS. NELSON: No. Unless there's

18 some questions that they'd

19 like for us to follow up on.

20 MR. BAILEY: Any questions of Faye

21 or Jan or Cliff while we have

22 them here?

23 (No response.)

1 MR. BAILEY: Health insurance
2 costs. Michael, do you want
3 to give us -- You already
4 indicated you didn't get
5 any -- And I think we had
6 talked last time about trying
7 to get an insurance
8 representative here.

9 MR. POLEMENI: Exactly. Yeah.

10 Michael Polemeni. We tried to
11 get an -- We tried to get
12 somebody from the insurance
13 industry to respond. And
14 we -- I made contact via
15 e-mail and/or voice and,
16 basically, got a hem and
17 hawing and thank you for your
18 notification and no response
19 afterwards.

20 MR. BAILEY: Okay.

21 MS. POLEMENI: But John brought

22 up -- John Kral brought up an

23 interesting thought. And go

1 ahead, John.

2 MR. KRAL: Well, other than the
3 fact that there's, you know,
4 literally hundreds of
5 organizations on the other
6 side of this fence that can
7 provide information from
8 government agencies that are
9 readily available.

10 MR. BAILEY: Okay.

11 MR. KRAL: So, I mean, that's an
12 easy avenue to pursue. All
13 you've got to do is go on the
14 Internet.

15 MR. BAILEY: All right.

16 MR. MANASCO: What is it you're
17 actually -- Mike Manasco.
18 Michael, what is it you're
19 actually trying to obtain in
20 the form of a --

21 MR. POLEMENI: Just some kind of

22 an opinion as to here's our --

23 here's what we're proposing

1 with our recommendation; what

2 do you think of it is all --

3 You know, just a what do you

4 think. Is it good? Is it

5 bad? How is this going to

6 impact your entry, if at all?

7 And they may come back and

8 say, no, you know, there's

9 nothing; you know, we don't

10 have any problem with it at

11 all. And that's okay, you

12 know.

13 MR. BAILEY: And then --

14 MR. MANASCO: You're not asking

15 them to make calculations?

16 MR. POLEMENI: No, not making --

17 no calculations. Just a quick

18 glance at it; what's your

19 opinion.

20 MR. BAILEY: All right. And then,

21 Steve, you conducted a

22 conference call, I believe,

23 with Faye and Judge Ford.

1 Would you give us a report on
2 that, please?

3 MR. ARNOLD: Yes, I'd be happy to,

4 Gordon. Steve Arnold here.

5 Just a little bit of

6 background for some members

7 who have not been in the

8 continuity of the committee.

9 Our present guidelines take

10 into consideration the cost of

11 health insurance premiums paid

12 by one or both of the

13 parties. That treatment in

14 the guidelines is by an add on

15 to basic support. Then the

16 income shares percentage is

17 applied and then it's a

18 take-out portion.

19 MR. BAILEY: Right.

20 MR. ARNOLD: And that's how it

21 does. There has been some

22 concern in the past that due

23 to the excessive or rapidly

1 rising cost of health
2 insurance that there is a
3 category of disservice to the
4 public, in that if you do the
5 take-out portion of the health
6 insurance cost, it reduces the
7 amount of support --

8 MR. BAILEY: Right.

9 MR. ARNOLD: -- received, in many
10 cases significantly and
11 probably unjustly.

12 Justice Stuart and I were
13 charged with the job of
14 discussing examination and
15 making a recommendation. We
16 did some examination. We made
17 a recommendation as to prorate
18 the amount of health insurance
19 cost premium --

20 MR. BAILEY: Right.

21 MR. ARNOLD: -- to the number of

22 children or a deduction of the

23 exact amount, if known,

1 applied to the children.

2 MR. BAILEY: Right.

3 MR. ARNOLD: That recommendation

4 was circulated. We sent it to

5 the Supreme Court, I believe,

6 and the Supreme Court has

7 said, no, we need more

8 information.

9 MR. BAILEY: Right.

10 MR. ARNOLD: Hence, you charged me

11 with forming a new committee.

12 MR. BAILEY: That's correct.

13 MR. ARNOLD: Faye and Judge Ford

14 and I are that committee. We

15 had a telephone -- We had a

16 telephone conference

17 Wednesday, June 6th, I

18 believe, where we went through

19 an examination of many

20 examples of actual

21 calculations using the new

22 table, by the way.

23 MR. BAILEY: Right.

1 MR. ARNOLD: In going through
2 those examples, we discovered
3 that there was gross
4 disservice to one segment of
5 either the payor or the
6 recipient depending on the
7 amount of the health insurance
8 premium such that we were
9 creating -- we faced the
10 possibility of creating a
11 disparity, the exact opposite
12 of what exists now.

13 MR. BAILEY: Right.

14 MR. ARNOLD: So we've reviewed
15 several examples. There were
16 several other questions that
17 Judge Ford brought up. It was
18 the consensus of this
19 subcommittee that we table the
20 recommendation for further
21 study, further examples and

22 further thought before we

23 resubmit to the Supreme

1 Court. There's some serious
2 concerns with how these
3 calculations came out. We
4 discussed the possibility of
5 looking at other states and
6 how they are presently
7 treating the premium cost of
8 health insurance in the
9 calculation.

10 MR. BAILEY: Okay.

11 MR. ARNOLD: And we're -- that's
12 what we were discussing and I
13 was making a request a moment
14 ago, Faye.

15 MR. BAILEY: All right

16 MR. ARNOLD: To further add,
17 Mr. Chairman, is it's not our
18 task to examine the viability,
19 the desirability of different
20 policies or different premium
21 structures --

22 MR. BAILEY: Right

23 MR. ARNOLD: -- or different

1 coverages. That's something
2 way beyond the scope of our
3 abilities and the scope of
4 what the guidelines should
5 be. We're looking strictly at
6 what are people paying as
7 premiums for their health
8 insurance and how should it
9 affect the calculation of
10 child support.

11 MR. BAILEY: Right.

12 MR. ARNOLD: I will give one
13 anecdote or two. I recently
14 did a calculation for a
15 self-employed person who runs
16 a service station. His -- He
17 was purchasing individual
18 health insurance at \$1200 a
19 month. When we did the
20 calculation based on what he
21 was truly earning -- we

- 22 fine-toothed it -- his
- 23 recipient, former wife, should

1 be paying him \$260 a month --

2 MR. BAILEY: Wow.

3 MR. ARNOLD: -- for her

4 contribution to their child's

5 health insurance. It was a

6 negative child support number.

7 MR. BAILEY: Wow.

8 MR. ARNOLD: And that's one

9 injustice that's going on

10 here. So that's the reason

11 why we're looking at this.

12 MR. BAILEY: Okay. Faye, did you

13 want to comment?

14 I'm sorry, Steve. Were

15 you finished? I'm sorry. I

16 didn't mean to ...

17 MR. ARNOLD: I just think that --

18 I know we don't have a quorum,

19 so there's no vote.

20 MR. BAILEY: Right.

21 MR. ARNOLD: But if we could have

22 the chairman's permission to

23 continue with the work of

1 the --

2 MR. BAILEY: Absolutely.

3 MR. ARNOLD: -- subcommittee for
4 further study.

5 MR. BAILEY: I think that's a
6 great idea.

7 Faye, did you want to
8 comment on that? Faye Nelson.

9 MS. NELSON: I just want to concur
10 with what was recorded. It
11 was a major concern of our
12 group.

13 MR. JEFFRIES: I'm Jim Jeffries.

14 Steve, you're saying that when
15 you did -- when you did your
16 little applications and
17 examples and things that if
18 you prorated the health
19 insurance payments in some way
20 that it ended up being
21 negative for the payor? Is

22 that what you were saying?

23 MR. ARNOLD: No. I was giving a

1 real-life example of what
2 it -- how it worked out in a
3 case under the present
4 guidelines.

5 MR. JEFFRIES: Okay.

6 MR. ARNOLD: No proration. Just
7 where the entire premium was
8 deducted from the basic
9 percent -- the percentage of
10 the basic child support.

11 MR. JEFFRIES: And that's what you
12 were speaking to -- Jim
13 Jeffries here. And that's
14 what you were speaking to when
15 you said that the -- there
16 were some disparities that you
17 were -- that your subcommittee
18 was very concerned about?

19 MR. ARNOLD: Correct.

20 MR. JEFFRIES: Not to do with
21 anything as far as proration

22 goes?

23 MR. ARNOLD: The examples -- Well,

1 let me give you an example of
2 what we did on the proration
3 portion of it, is that --
4 Assuming a cost of health
5 insurance for a person -- Now,
6 we did a proration. The
7 amount of child support was
8 upped significantly, meaning
9 the person who was the payor
10 not only had an upped amount
11 of child support; he still had
12 to bear full health insurance
13 costs. And in one instance,
14 we came up with a calculation
15 where it took a lot of -- a
16 high percentage of that
17 person's income just for that
18 category. So it -- it needs
19 some looking at.

20 MR. JEFFRIES: Right.

21 MS. DAVIS: The anecdote that

22 you have given --

23 **MR. BAILEY:** Penny Davis. I'm

1 sorry. Penny Davis.

2 MS. DAVIS: I'm sorry.

3 MR. BAILEY: That's all right. I

4 know who you are. Haley

5 doesn't, though.

6 MS. DAVIS: Now she does.

7 MR. BAILEY: She does now.

8 MS. DAVIS: Is the discrepancy or

9 the inequity that you find in

10 the current calculation, the

11 example that you gave -- Am I

12 understanding what you're

13 saying correctly. The example

14 you gave, the calculation was

15 based on the current way that

16 the medical is --

17 MR. ARNOLD: Did both. We made

18 calculations on the current

19 method. We did calculations

20 on the proposed method --

21 MS. DAVIS: But your example --

22 MR. ARNOLD: -- so we could

23 compare apples to apples. And

1 there's some significant
2 disparities.

3 MS. DAVIS: But the example you
4 gave momentarily -- a moment
5 ago was the current
6 application, so 100 percent of
7 the --

8 MR. ARNOLD: Yeah. The anecdote I
9 gave was based on current
10 law --

11 MS. DAVIS: Right.

12 MR. ARNOLD: -- and current
13 guidelines.

14 MS. DAVIS: And that's --

15 MR. ARNOLD: That was -- That was
16 the impetus for us looking at
17 it.

18 MS. DAVIS: Right. Exactly. It
19 would help me to deal in
20 concrete examples, so if at
21 some point when the

22 committee -- subcommittee

23 relooks at issues -- It's just

1 easier for me if I have an
2 example where John and Sally
3 and, you know, the children
4 and the numbers and how it's
5 treated with -- if you come up
6 with more than one suggestion,
7 how that would...

8 MR. ARNOLD: That's perfectly
9 reasonable. And due to, one,
10 we didn't meet until June 6th,
11 we were kind of compressed on
12 some time.

13 MS. DAVIS: Right.

14 MR. ARNOLD: Gordon surprised us
15 with this early meeting.

16 MS. DAVIS: So, ultimately,
17 everything is Gordon's fault.

18 MR. BAILEY: It is. Blame
19 everything on the chair.

20 Absolutely.

21 MR. ARNOLD: And then 102 was

22 Gordon's fault. So, you know,

23 we had a compressed time

1 frame.

2 MR. BAILEY: Right.

3 MR. ARNOLD: We met as quickly as

4 we could. We circulated some

5 things that I had some

6 personal issues regarding

7 going to the seminar and then

8 coming back to a five-day

9 trial. I just couldn't get

10 things prepared for

11 circulation to the entire

12 committee.

13 MS. DAVIS: Well, I'm really

14 speaking in terms of the

15 future.

16 MR. ARNOLD: So that's a fair

17 suggestion, and we intend to

18 do that.

19 MR. PATTERSON: Ben Patterson. I

20 have a question, I guess a

21 two-part question. It seems

22 that the health insurance

23 portion is bigger in some

1 cases than the child support

2 portion of the payment. I

3 guess that's what I'm picking

4 up.

5 MR. ARNOLD: There are cases such

6 as that, yes.

7 MR. PATTERSON: When -- How often

8 is health insurance ordered?

9 And is there any consideration

10 about whether affordable

11 health insurance is available

12 when it is ordered?

13 MR. ARNOLD: Well, I can only give

14 you the answer from a divorce

15 practitioner's perspective.

16 In circuit court, district

17 court, family court cases

18 where there is a divorce or

19 ordering of child support,

20 health insurance is just about

21 universally ordered when it's

22 available or in place.

23 MR. BAILEY: Right. That's

1 correct.

2 MR. ARNOLD: I can think of very

3 few examples where health

4 insurance is directed and

5 ordered -- not directed or

6 ordered by a court. So almost

7 universally in that regard.

8 With regard to affordability,

9 a judge sitting over a divorce

10 case doesn't really have the

11 ability to determine

12 affordability. He's presented

13 with what exists. Two people

14 come before him; man has a

15 job; woman has a job; health

16 insurance costs \$800 a month.

17 That's all the court has to

18 deal with.

19 MR. BAILEY: Sure.

20 MR. ARNOLD: They can't suggest,

21 order, decree going out and

- 22 finding new insurance,
- 23 different insurance. I guess

1 a court could limit the amount
2 of premium, but then that
3 doesn't mean anything. You've
4 still got to have it.

5 MR. PATTERSON: Still got to buy
6 it.

7 MR. BAILEY: That's right.

8 MR. ARNOLD: The insurance company
9 gets to determine the
10 premium. We've seen -- In
11 Jefferson County, we have seen
12 health insurance costs for an
13 individual be as low as \$150 a
14 month depending on what plan
15 they're on to what -- who
16 their employer is to one I
17 have seen, as I said, lately
18 as high as \$1200 a month.

19 Mine is \$1100 a month. And
20 we've -- You know, it's all
21 statistical, actuarial and

22 everything else. And so it's

23 a wide range.

1 MR. BAILEY: Uh-huh (positive
2 response).

3 MR. KRAL: So what's -- John
4 Kral. What's -- So what are
5 you saying a judge is to do?
6 I'm confused. Just consider
7 me the most confused member on
8 the committee. So what you're
9 saying is there's -- You know,
10 two people come before a judge
11 and you said there's \$800 a
12 month in, you know, health
13 care costs. Well, where did
14 that come from; how does the
15 judge use the \$800 a month?
16 I'm trying to figure out where
17 the figures are coming -- I
18 really want to understand the
19 process of how we go from A to
20 Z.

21 MR. ARNOLD: Yeah.

22 MR. BAILEY: Let me welcome Lyn

23 Stuart, our Supreme Court

1 liaison and justice.

2 JUSTICE STUART: This is Lyn

3 Stuart. Under our present

4 system, that amount of premium

5 is put into the calculation,

6 and under the way our system

7 is presently set up, each

8 parent will pay their

9 proportionate share of that

10 through the calculations based

11 on their proportionate income.

12 MR. KRAL: I mean, but where is

13 the premium coming from is

14 what I'm getting at.

15 JUSTICE STUART: Whoever pays it.

16 And it varies from parent to

17 parent. But the guidelines

18 themselves equalize that.

19 Equalize is the wrong word,

20 but ...

21 MR. ARNOLD: The amount of premium

22 to be applied into the formula

23 is universally derived from

1 someone's payroll records or

2 other documentations --

3 MR. KRAL: But it comes from the

4 parents, I guess, is what I'm

5 trying to figure out --

6 JUSTICE STUART: Right.

7 MR. ARNOLD: Sure.

8 MR. KRAL: -- is it comes --

9 JUSTICE STUART: And right now

10 it's the actual --

11 MR. ARNOLD: I think it would be

12 helpful --

13 JUSTICE STUART: -- amount paid.

14 MR. ARNOLD: I think it would be

15 helpful if you went through

16 the rule and saw how the

17 calculation was done. That

18 would give you a fundamental

19 understanding.

20 MR. BAILEY: Yeah.

21 MR. JEFFRIES: Let me -- Jim

22 Jeffries. If I can add one
23 thing, it might help you. I

1 think the example that Steve
2 was talking about -- He was
3 trying to indicate that, for
4 example, if two parties come
5 before a judge and they're
6 getting divorced and they do
7 not have health insurance,
8 then that's what -- then
9 that's the situation that's
10 presented to the judge. The
11 judge is not going to --
12 generally in my experience --
13 maybe Steve can clarify, but
14 the judge is not going to
15 order them to go out and get
16 health insurance. That's just
17 too -- That's too broad of a
18 requirement with too many
19 variables --

20 MR. KRAL: Right.

21 MR. JEFFRIES: -- that the judge

22 can't control. If they come

23 before the court with a

1 child -- excuse me -- health
2 insurance premium that is
3 heavily subsidized by their
4 employer, then that's what the
5 judge deals with.

6 MR. BAILEY: Right.

7 MR. JEFFRIES: If it's a single
8 self-employed person and
9 they've got a \$1200 a month
10 policy at the time of the
11 divorce, then that's what the
12 court deals with. And that's
13 where the number comes from
14 that goes into the
15 calculation. If that --

16 MR. KRAL: Well, if there's no
17 information provided before
18 the court, you know, then what
19 is the court to do?

20 JUSTICE STUART: It has to be
21 provided.

22 MR. ARNOLD: Has to be.

23 JUSTICE STUART: Has to be.

1 MR. ARNOLD: Steve Arnold. If the
2 court has no information, the
3 court can make no
4 determination. The court --
5 The court can only deal with
6 what is and of what is, what
7 is presented to the court.

8 MR. KRAL: Well, that's what I'm
9 trying to figure out, you
10 know. It's not a figure
11 pulled out of thin air or, you
12 know, the average. Because my
13 experience through the radio
14 and the people that I've
15 interviewed -- literally
16 hundreds of people that I've
17 talked to and hundreds of
18 couples that I've talked to --
19 you know, there's all kinds of
20 crazy scenarios out there.
21 And I'm trying to figure out

22 what the formula on a lot of

23 this stuff is exactly to be.

1 And that's why I was really
2 happy when Penny just said
3 just give me examples, because
4 that's the way I think. Just
5 give me examples. Man, woman
6 go in; they're getting
7 divorced. You know, that's --
8 You know, that's the way I
9 prefer to deal with it. It
10 makes it a lot easier on me
11 too.

12 MR. BAILEY: Michael.

13 MR. POLEMENI: Yeah. Michael

14 Polemeni. My personal
15 scenario: My health insurance
16 premiums were great when I
17 started on the initial
18 decree. They steadily got
19 worse over the years, and
20 that's something that the
21 judge never sees unless you go

22 back for a modification,

23 so ...

1 MR. BAILEY: Right. Faye. Faye

2 Nelson.

3 MS. NELSON: Faye Nelson. Gordon,

4 I do want to point out that in

5 our IV-D cases -- many of our

6 IV-D cases we have a much

7 lower percentage of orders for

8 medical support or health

9 insurance coverage.

10 MR. BAILEY: That's correct.

11 MS. NELSON: It's not every case

12 that comes before the court --

13 MR. BAILEY: That's correct.

14 MS. NELSON: -- where medical

15 support or health insurance is

16 ordered in those cases. In

17 fact, it's probably less than

18 ten percent of the cases that

19 we're working with --

20 MR. BAILEY: You're right.

21 MS. NELSON: -- that have it

22 that's provided or --

23 **MR. PATTERSON:** It's not always.

1 MS. NELSON: Right.

2 MR. BAILEY: Let me bring Lyn up

3 to date. Faye has graciously

4 agreed to contact her brethren

5 IV-D directors to do a survey

6 on health insurance as she did

7 for us on the other children

8 in the home and so on. So

9 she's graciously -- And Steve

10 and Judge Ford suggested that

11 she do that as well.

12 All right. Jan Justice.

13 I'm sorry. Jan.

14 MS. JUSTICE: Jan Justice. I just

15 wanted to bring to the

16 committee's attention the

17 child support guidelines brief

18 that Jane Venohr did on health

19 insurance premiums on January

20 10, '08. There's several

21 states that she analyzes as we

22 were talking about earlier.

23 Going back to your question,

1 Steve.

2 MR. ARNOLD: Right.

3 MS. JUSTICE: There are several

4 states analyzed in here, and

5 it does tell whether they use

6 a pro rata share as we have

7 been --

8 MR. BAILEY: Right.

9 MS. JUSTICE: -- thinking about or

10 the additional cost --

11 MR. BAILEY: Right.

12 MS. JUSTICE: -- that is due to

13 the aiding of this child and

14 some of the options that --

15 It's one, two, three, four --

16 five states.

17 MR. BAILEY: Right.

18 MS. JUSTICE: So, I mean, that's a

19 start.

20 MR. BAILEY: Right.

21 Steve. Steve Arnold.

22 MR. ARNOLD: That may be all we

23 need. Could we ask that you

1 duplicate that and distribute
2 it among the committee by
3 mail, or whatever?

4 MR. BAILEY: I think we all --

5 Bob, you've done that,
6 haven't you?

7 JUSTICE STUART: We all have it.

8 MR. MADDOX: That's been

9 distributed over the last few

10 months, and it's also on our

11 web site under the child

12 support guidelines review. We

13 put all the materials

14 considered by the committee on

15 the web site.

16 MR. ARNOLD: Do you have any idea

17 what it takes for me to get on

18 that web site?

19 MR. MADDOX: Would you like for me

20 to make copies now?

21 MR. ARNOLD: Yes.

22 MR. MADDOX: Okay. I heard that.

23 MS. JUSTICE: And it's only a few

1 pages.

2 MR. BAILEY: Good point, Steve.

3 Good point.

4 JUSTICE STUART: This is Lyn

5 Stuart. I just want to

6 commend Steve and his

7 committee --

8 MR. BAILEY: Absolutely.

9 JUSTICE STUART: -- for doing

10 those actual calculations.

11 MR. BAILEY: Absolutely.

12 JUSTICE STUART: That's going to

13 be really important, I think,

14 to the committee but also to

15 the Alabama Supreme Court. We

16 do not want to adopt something

17 that's going to have

18 unintended consequences.

19 MR. BAILEY: Absolutely.

20 JUSTICE STUART: We really want to

21 know what we're doing before

22 we make any changes.

23 MR. ARNOLD: And we appreciate

1 that position completely, and
2 that's why we're asking for
3 more time.

4 MS. POLEMENI: Michael Polemeni.

5 And I'd like to follow up with
6 that. That's kind of what I
7 was looking to find out, is
8 what they found out in the
9 subcommittee, is that there
10 are a lot of issues that need
11 to be addressed. Thank you so
12 much.

13 MR. ARNOLD: You're welcome.

14 MR. MANASCO: Gordon.

15 MR. BAILEY: Yes, sir, Mike.

16 MR. MANASCO: Part of the
17 problem since the --

18 MR. BAILEY: Mike Manasco.

19 MR. MANASCO: -- committee
20 began --

21 Mike Manasco.

22 -- is that it is
23 difficult, if not impossible,

1 to quantify and put into a
2 formula and a table and a
3 perfectly predictable set of
4 circumstances for the vast
5 array of varying factual
6 situations and incomes,
7 abilities, children
8 circumstances and all of that
9 appear before the court.

10 MR. BAILEY: Right.

11 MR. MANASCO: And that's why they
12 were called child support
13 guidelines. And they are
14 mandatory to be considered,
15 but then the court in many
16 cases --

17 MR. BAILEY: Absolutely.

18 MR. MANASCO: -- has to depart
19 from them --

20 MR. BAILEY: Absolutely.

21 MR. MANASCO: -- based upon the

22 facts of each case.

23 MR. BAILEY: Absolutely.

1 MR. MANASCO: For instance, you
2 may have a horrendous medical
3 insurance premium but you may
4 have a physically-disabled
5 child for whom that premium is
6 providing the essential
7 services. And the court, you
8 know, would be hard pressed to
9 depart, make an adjustment
10 away from it. I think that
11 the real challenge that the
12 committee has met over time is
13 crystallizing the issues --

14 MR. BAILEY: I agree.

15 MR. MANASCO: -- for the court and
16 giving the guidelines and
17 saying this is a logical and
18 legally evenhanded way to
19 approach this and the best way
20 possible. But, ultimately,
21 it's going to fall to the

22 court to consider the evidence

23 that's presented and the legal

1 obligations of the parents in
2 trying to make a fair and
3 equitable order.

4 And as Judge Ford pointed
5 out, that is much more
6 available when you have
7 practitioners representing
8 clients on the domestic
9 side --

10 MR. BAILEY: Absolutely.

11 MR. MANASCO: -- as opposed to the
12 Title IV child support
13 enforcement district attorney
14 with 500 cases and way behind
15 and all of that --

16 MR. BAILEY: That's right.

17 MR. MANASCO: -- and not a lot of
18 discovery going on --

19 MR. BAILEY: That's exactly right.

20 MR. MANASCO: -- and varying
21 employment, stability

22 questions and those kind of

23 things. So the committee has

1 done a marvelous job in the --
2 from the inception of the
3 guidelines to where they are
4 now. So there's been a study,
5 application, amendment and
6 continuing interest from the
7 practitioner level to the
8 Supreme Court.

9 MR. BAILEY: I certainly concur
10 with everything you said.

11 Absolutely.

12 MS. DAVIS: Can I make a comment?

13 MR. BAILEY: Penny Davis.

14 MS. DAVIS: I'd like to further
15 add to Steve's burden. It's
16 already --

17 MR. ARNOLD: I've been nice to you
18 lately, Penny.

19 MS. DAVIS: I know and you're my
20 favorite people. With that
21 being said, you know there's

22 another shoe that's about to

23 fall. What I think we may

1 need to consider -- I think
2 you have a difficult task to
3 begin with. But what I see
4 coming on the forefront, too,
5 is the pro se cases where you
6 have just so many people
7 because the egonomics feel
8 like they need to handle their
9 own divorce case. And I
10 think -- Whether they're
11 getting the forms off the
12 Internet or however they're
13 obtaining them. I think we
14 need to try to draft not just
15 the guideline itself but also
16 committee comments. That
17 would be beneficial to the pro
18 se people.

19 You know, John and I can
20 serve as the lowest common
21 denominator for this

22 committee. And I do that all

23 the time. I'm comfortable in

1 that role. But it's tough
2 enough and we've been debating
3 about it for a long time. We
4 need to try to put it in real
5 simple form.

6 MR. ARNOLD: I fully concur. And
7 you're not adding to my
8 burden, because I think that's
9 part of it initially anyway.

10 MR. BAILEY: And just as a point
11 of reference to -- I want to
12 give everybody on the
13 committee adequate notice.
14 The staff -- Wayne and Bob and
15 I met yesterday -- our
16 wonderful staff attorney that
17 support us in our committee
18 work. And, Wayne, I believe
19 your and Bob's suggestion was
20 that other committees -- the
21 committee members write the

22 commentary. Was that correct?

23 MR. JONES: That's correct.

1 MR. BAILEY: So I want to give
2 everybody adequate notice that
3 we may be writing the -- Which
4 I think is certainly
5 appropriate. But I -- So we
6 may want to consider that as
7 we deliberate these issues.

8 And we'll ask for volunteers
9 at the appropriate time to
10 draft some of the comments.

11 And, Penny, I believe I'm
12 looking at you.

13 MS. DAVIS: I thought you were
14 looking at Wayne.

15 MR. BAILEY: Oh, no.

16 MR. ARNOLD: Wayne left the room.

17 MR. BAILEY: See, Bob has already
18 left.

19 MS. DAVIS: Wayne is behind him.

20 MR. BAILEY: Wayne is trying to
21 leave.

22 MR. ARNOLD: You didn't see him

23 move, though, did you?

1 MR. BAILEY: So I want to give
2 everybody notice of that.

3 All right. Do we want to
4 talk -- have some further
5 discussion on health insurance
6 costs? Anybody -- I think
7 we've certainly covered it,
8 and we've got our direction
9 with Faye and Steve and Judge
10 Ford. Any other comments we
11 want to make?

12 MR. KRAL: The only comment, if I
13 could make --

14 MR. BAILEY: Sure.

15 MR. KRAL: John Kral. And it
16 really is in regard to the
17 whole picture besides just
18 health insurance, is I
19 haven't -- And it might be
20 written somewhere, but is
21 there any consideration

22 whatsoever given to the payor

23 involving injury, permanent

1 disability or anything like
2 that in regards to being able
3 to pay?

4 MR. ARNOLD: Sure.

5 MR. BAILEY: Oh, sure,
6 absolutely. I mean, that's
7 a -- that's a factual question
8 for the court or referee --
9 judge or referee to decide.
10 It certainly is.

11 MR. KRAL: But there's nothing in
12 the recommendation; it's up to
13 the court, I guess, is what
14 I'm trying -- In other words,
15 is there something written in
16 the guidelines that --

17 MR. BAILEY: It says if you're
18 disabled and can't pay,
19 you don't have -- a court --
20 No, that has nothing --

21 MR. KRAL: It just deals in

22 general with that subject

23 matter. There seems to be

1 every matter taken but that.

2 MR. BAILEY: Well, I think what

3 Mike said is certainly

4 approp -- We can't write a

5 guideline for every factual

6 situation that comes before

7 our -- I mean, I have 50 or 60

8 child support cases a day, and

9 every one of them are unique

10 almost. So you can't just --

11 I mean, I don't think we can

12 draft guidelines that would

13 cover every situation.

14 Steve.

15 MR. ARNOLD: In answer to your

16 question, there is a provision

17 in the guidelines that says

18 the judge, the determiner of

19 the child support has the

20 right to deviate --

21 MR. BAILEY: Sure. Sure.

22 MR. ARNOLD: -- if he thinks or

23 she thinks that that's what

1 justice should provide.

2 MR. BAILEY: Absolutely.

3 MR. ARNOLD: So there are

4 guidelines, and judges deviate

5 from them every day --

6 MR. BAILEY: Yeah.

7 MR. ARNOLD: -- often to take into

8 consideration people's

9 individual circumstances or

10 needs.

11 MR. KRAL: Okay. That's what I

12 was asking. And that's

13 what --

14 MR. ARNOLD: That's in the

15 guidelines.

16 MR. KRAL: I'm -- Well, I'm glad

17 you said that, because when I

18 was reading the transcripts of

19 the last meeting, there was

20 this concern that judges

21 didn't want to deviate. And

22 my experience has been that's

23 all they do is deviate,

1 because, you know, as an
2 indi -- every case is
3 individual. You almost have
4 to deviate, you know, to every
5 single case. Every single
6 case is individualistic.

7 There's no way to apply, you
8 know, one rubber stamp across
9 the board.

10 MR. BAILEY: Lyn Stuart.

11 JUSTICE STUART: Lyn Stuart. I

12 just wanted to comment that if
13 the disability of a parent
14 results in reduced income,
15 that's obviously grounds for
16 modification, and the child
17 support will be calculated
18 based upon the new income
19 level. Additionally, there
20 are certain situations where
21 the child might receive social

22 security benefits due to the

23 disability of the parent. And

1 in those cases that amount of
2 money is considered part of
3 the child support, and there
4 might be no additional child
5 support or very little
6 additional child support
7 ordered. So my experience is
8 that issue is factored into
9 every case where it presents
10 itself.

11 MR. POLEMENI: Michael Polemeni.

12 And that's good once it gets
13 into the courts, but what
14 about all those situations
15 that after the initial divorce
16 something happens? And that's
17 where a lot of the pro se
18 people or the people that just
19 don't even represent
20 themselves and just wind up
21 having that 12 percent

22 accumulate on the arrears

23 child support. What -- Is

1 there any system to where they

2 can go and --

3 MR. BAILEY: Yes.

4 MR. POLEMENI: -- get that help

5 when they don't have the money

6 to get a modification?

7 MR. BAILEY: Let me ask Bob. Bob,

8 there's a joint task force --

9 We talked about it in our

10 last forms committee, child

11 support forms committee --

12 subcommittee.

13 -- a joint task force

14 with the Bar and, I think, AOC

15 that's developing the pro se

16 forms.

17 MR. MADDOX: No, not AOC.

18 MR. BAILEY: I'm not -- I'm sorry.

19 Sorry. The private Bar and

20 the State Bar.

21 MR. MADDOX: Yes. It's -- I'm not

22 on the committee. I don't

23 know if I can speak to it.

1 MR. BAILEY: Okay.

2 MR. MADDOX: You may have to get

3 Dean up here. But Dean

4 Hartzog is on it from our

5 office.

6 MR. BAILEY: All right.

7 MR. MADDOX: But, apparently, it's

8 called Access to Justice

9 Passports. They've developed

10 a lot of pro se forms trying

11 to allow individuals to file

12 their own child support

13 visitation actions and

14 whatnot. And they're -- I may

15 have to go down and get the

16 web site.

17 MR. BAILEY: Don't worry about

18 that. We don't want you to

19 leave again, Bob. Don't want

20 you to do that.

21 MR. MADDOX: No, that's fine. I

22 can.

23 MR. POLEMENI: We can get it

1 after.

2 MR. BAILEY: Yeah.

3 MR. MADDOX: I think that's

4 helpful to get that out.

5 MR. BAILEY: Yeah. And those

6 forms have been -- They've

7 been working on those forms

8 for some time, the committee

9 has?

10 MR. MADDOX: A couple of years, I

11 think.

12 MR. BAILEY: A couple of years,

13 yeah. So they're going to be

14 distributed shortly. And just

15 as a follow up to what Bob

16 said, we've made sure -- we

17 made sure at our forms

18 committee meeting, Faye, that

19 there was going to be some

20 verbiage about not filing a

21 custody or visitation action

22 in a IV-D child support

23 proceeding which has, as you

1 know -- everybody should
2 know. Judges and referees are
3 precluded from hearing custody
4 and visitation issues in a
5 IV-D case. We can't do it,
6 prohibited from doing it.

7 Steve.

8 MR. ARNOLD: Steve Arnold again.

9 John, in answering part of
10 your question, and Michael, is
11 if circumstances change --
12 you've gone through a divorce;
13 Judge Smith has ordered your
14 child support to be 800 a
15 month and your income was 3500
16 a month and something
17 happens. You have the
18 right -- actually, you have
19 the obligation to yourself to
20 go ask -- file the proper
21 pleadings, petition, or

22 whatever, which is the adjunct

23 to what our task force are

1 doing, to ask a court to
2 modify. You can't just --
3 Like anybody else, you can
4 represent yourself. There may
5 be a filing fee or -- If
6 there's good cause, the filing
7 fees could be waived. And you
8 could come into court and ask
9 a court to adjust your child
10 support.

11 Where I have seen in the
12 34 years I've been doing
13 this -- People create gross
14 disservice to themselves
15 because they just -- they
16 don't go through that system
17 and obtain a court order.

18 They just blow it off.

19 MS. POLEMENI: Uh-huh (positive
20 response).

21 MR. ARNOLD: They say, well, I

22 can't pay so I won't pay. Or

23 my ex-wife says, okay, you're

1 in a bad situation; I'll just
2 ignore the child support for a
3 while. That creates a
4 horrible situation, because
5 the law also is a court cannot
6 accept a side agreement
7 between two people that is not
8 incorporated and ratified by a
9 court. He can't accept it.

10 MS. POLEMENI: Uh-huh (positive
11 response).

12 MR. ARNOLD: So you're
13 accumulating arrearages and
14 interest and problems. And
15 when people don't take the
16 right path, they create a
17 disservice to themselves. And
18 then you guys hear about that,
19 and it sounds like it's an
20 injustice through the system
21 when it's just the opposite.

22 They're being unjust to

23 themselves.

1 MR. POLEMENI: Yeah.

2 MR. KRAL: Well, I mean, some of

3 that might be true, but I --

4 my experience has been

5 different than that. But, you

6 know, we're not going to

7 reform the court system here.

8 I understand --

9 MR. ARNOLD: That's not our job.

10 MR. BAILEY: Not our job.

11 MR. KRAL: That's right. And I

12 understand that for one reason

13 or another. But I can tell

14 you, you know, I've had a

15 pending action for two years

16 now. Heaven forbid that I

17 would have to file a court

18 action to reduce my child

19 support and wait two years to

20 go to court and I was

21 disabled. Where would I be?

22 Two years of waiting for a

23 court date.

1 MR. BAILEY: Uh-huh (positive
2 response). Well, that's not
3 something that we're here
4 to -- Court time and
5 processing of cases, that's
6 not in our charge.

7 MR. KRAL: Right.

8 MR. BAILEY: Jan, let me ask you
9 and Cliff, did I cover that
10 about the pro se forms? I
11 think y'all were in that
12 meeting when they were
13 presented and we discussed
14 those. Did I cover that
15 correctly about the pro se
16 forms and the task force
17 that's working on that?

18 MS. JUSTICE: Yes. Yes. Jan
19 Justice. I thought Bob and
20 you did a great job.

21 MR. BAILEY: Right. Right. Good.

22 MS. JUSTICE: And I have looked at

23 that web site myself at

1 more -- taking more time, and

2 I didn't see a problem with

3 it. I thought it was great.

4 Job well done.

5 MR. BAILEY: Good. Good.

6 MS. POLEMENI: Mike Polemeni. Is

7 that available for

8 dissemination at this time, or

9 do we need to wait before we

10 let people know about it?

11 MR. MADDOX: I think the forms are

12 already on there.

13 MR. BAILEY: Yeah, I think they

14 are. I think that's correct.

15 And --

16 MR. MADDOX: And instructions.

17 MR. BAILEY: Yeah. And just a

18 quick aside. Cliff is working

19 with us on formalizing our new

20 child support forms for

21 referees and judges. And we

22 hope that will be available

23 when, Cliff? In the next few

1 months?

2 MR. SMITH: We hope the orders are

3 there hopefully within the

4 next few weeks or a month.

5 The committee is also working

6 on petitions so that will also

7 be available.

8 MR. BAILEY: And that'll certainly

9 help all of us in the child

10 support IV-D world.

11 Any other comments on

12 health insurance before we

13 move on? Anyone else?

14 Penny.

15 MS. DAVIS: I have two comments.

16 MR. BAILEY: Penny Davis.

17 MS. DAVIS: One is -- You may have

18 already said this. But if Bob

19 could send everybody in the

20 committee a copy of the web

21 site --

22 MR. BAILEY: Okay.

23 MS. DAVIS: -- then you would have

1 that.

2 MR. BAILEY: Good. Good

3 suggestion.

4 MS. DAVIS: That way y'all can

5 disperse it --

6 MR. MADDOX: I just want to wait

7 on --

8 MS. DAVIS: -- disperse it to

9 everybody. And it might also

10 be appropriate to consider

11 whether -- And y'all may

12 already be doing this. This

13 is somebody else's committee.

14 But a news release or

15 something so that the public

16 could be aware of the forms.

17 MR. BAILEY: Okay.

18 MR. KRAL: John Kral. If I can

19 just say, I -- you know,

20 honestly, it was worth the

21 trip.

22 MR. BAILEY: Good.

23 MR. KRAL: That's a fantastic bit

1 of news. To be honest with
2 you, I think it's wonderful,
3 because, honestly, you're
4 dealing with Alabama's
5 income. And 300 an hour, 200
6 an hour, 150, 125 an hour is
7 just not reasonable to the
8 average Alabamian who's out
9 there working, you know, day
10 in and day out to have to pay
11 an attorney. And I think
12 that's fantastic. And I think
13 it needs to be publicly
14 broadcast somehow that the
15 public understand that there's
16 now an alternative method.
17 And, you know, not necessarily
18 they might want to take it.
19 They still might want an
20 attorney. But I think that's
21 fantastic.

22 MR. BAILEY: Right. We'll ask

23 Bob, then, to send that to all

1 the committee members as
2 well.

3 Lyn, did you want to say
4 something?

5 JUSTICE STUART: Yes. This is Lyn

6 Stuart. I'd like to suggest
7 that y'all prepare some type
8 of notices for the clerk's
9 office to post in their
10 offices. Most people go to
11 the clerk's office looking for
12 help. They can't give legal
13 advice, but if they had
14 information about where they
15 could go --

16 MS. POLEMENI: Excellent point.

17 JUSTICE STUART: -- that would be
18 very helpful.

19 MR. BAILEY: Good. Good point.

20 MS. DAVIS: Could I also go back
21 to John's --

22 MR. BAILEY: Penny Davis.

23 MS. DAVIS: I'm sorry.

1 MR. BAILEY: It's all right.

2 MS. DAVIS: -- to John's concern

3 about the speed with which

4 cases are heard. And I

5 understand that that's not our

6 charge, but I think we are

7 going to have to deal with

8 that indirectly in that we

9 have a proposal that if the

10 Supreme Court chooses to

11 change the child support

12 guidelines and change the

13 amount, you have to deal with

14 it indirectly in that

15 everybody may -- there could

16 be a gate opening for a lot of

17 modifications.

18 MR. BAILEY: Excellent segue into

19 our next topic, Penny. Thank

20 you so much.

21 MS. DAVIS: But let me also say

22 that we may -- There are
23 situations where certain cases

1 are expedited by statute. If
2 it's a public policy decision,
3 those are important.

4 MR. BAILEY: Right.

5 MS. DAVIS: And certainly two
6 years is a long time when
7 you're dealing with the life
8 of a child --

9 MR. BAILEY: Sure.

10 MS. DAVIS: -- your pocketbook,
11 too, but certainly the child.
12 And I'm not saying that that's
13 a task that we can resolve,
14 but I think it's something we
15 need to be very, very mindful
16 of --

17 MR. BAILEY: I agree.

18 MS. DAVIS: -- and whatever we can
19 do to work on that.

20 MR. BAILEY: I agree. And I
21 regret the fact that Judge

22 Bell and Judge Chambers are

23 not with us -- Judge Ford --

1 to give the judges'
2 perspective on the time lines,
3 because they're under --
4 they're under scrutiny by AOC
5 and the courts about
6 processing cases timely.

7 Isn't that correct, Bob?

8 MR. MADDOX: Well, they are -- In

9 fact, there was a memo sent to
10 all of the judges recently
11 about canons of judicial
12 ethics requires them to submit
13 a report every six months of
14 any cases that have been
15 pending for longer than six
16 months.

17 MR. BAILEY: Right.

18 MR. MADDOX: And we're trying to,

19 I guess, speed that up a
20 little.

21 MR. BAILEY: Right.

22 MR. MADDOX: So they are to report

23 if there are any cases longer

1 than six months pending.

2 MR. BAILEY: All right. Let's

3 move to -- I'm sorry.

4 Michael.

5 MS. POLEMENI: Can you give me

6 that -- that rule or law or

7 whatever after the meeting?

8 MR. MADDOX: Sure.

9 MR. BAILEY: All right. I want to

10 thank Penny for her segue into

11 modification. Let me tell you

12 why I put this on the agenda.

13 I had several judges -- and I

14 think Bob and Wayne have also

15 had this presented to them in

16 comments or suggestions -- had

17 several judges ask me what was

18 going to happen if the court

19 chooses to adopt our new

20 schedule and make it effective

21 January 1st. Certainly not

22 presuming that, but in that

23 situation -- Because I believe

1 UPA is going to be -- Uniform
2 Parentage Act, the new act,
3 will be effective January 1st.

4 Is that right, Penny?

5 MS. DAVIS: Right.

6 MR. BAILEY: So we're just --

7 We're anticipating hopefully
8 that the new guideline
9 schedule would be effective
10 January 1st. We've had one
11 request from a judge in my
12 county that some consideration
13 be given to using the new
14 guidelines as advisory for
15 10,000 to 20,000 at this point
16 prior to January 1st, because
17 judges around the state are
18 having to figure out what to
19 do between the ten and \$20,000
20 combined income range. And
21 there's some variation on that

22 theme around the state.

23 But the modification

1 question: If the new
2 guidelines are effective
3 January 1st, does that
4 automatically mean that you
5 have a change of
6 circumstances? And we have
7 the ten percent rule. But
8 does that -- does -- Let's say
9 your old child support order,
10 your present child support
11 order is going to be reduced
12 just by adoption of the new
13 guidelines, and the new
14 guideline is an automatic --
15 or not automatic but it
16 triggers you to go to your
17 attorney and say, I have a
18 reduction in my child support
19 based on the new guideline
20 chart. Should that be grounds
21 for modification? Should

22 we -- We still have the ten

23 percent rule. Should the

1 guidelines apply to only new
2 child support orders? So
3 we've had those questions
4 asked, and we need some
5 discussion on that.

6 MS. PALMER: Gordon. Julie
7 Palmer.

8 MR. BAILEY: Yes, Julie.

9 MS. PALMER: Also, if the
10 insurance premium is
11 changed --

12 MR. BAILEY: Right.

13 MS. PALMER: -- as well that could
14 trigger --

15 MR. BAILEY: Right.

16 MS. PALMER: Even if the actual
17 money part doesn't change
18 maybe less than the ten
19 percent but the insurance
20 premium --

21 MR. BAILEY: Certainly.

22 MS. PALMER: -- where I was paying

23 \$1200, now there's five

1 kids --

2 MR. BAILEY: Good point.

3 MS. PALMER: -- you know, or six

4 and now it's reduced to \$200.

5 That could trigger it as well.

6 MR. BAILEY: Absolutely.

7 MR. PATTERSON: Ben Patterson.

8 What kind of burden would this

9 put on the court if the

10 adoption of the guidelines was

11 a reason to go back for a

12 modification?

13 JUSTICE STUART: If that alone

14 was, incredible. They

15 couldn't handle it.

16 MR. BAILEY: Yeah. It would be --

17 If that in and of itself was

18 grounds for modification, just

19 having a new guideline

20 schedule, that would be

21 enormous.

22 MR. PATTERSON: Yeah.

23 MS. DAVIS: Do you mean new

1 guidelines or the application

2 of the percentage, ten

3 percent?

4 MR. BAILEY: I think he just --

5 You just meant adoption of new

6 guidelines, would that trigger

7 a modification.

8 MR. PATTERSON: Sure.

9 MR. BAILEY: And I don't think it

10 would in and of itself. I

11 don't think it should.

12 MR. PATTERSON: Yeah.

13 MR. BAILEY: But if that were part

14 of the comments, yes, it would

15 be --

16 MS. DAVIS: But I thought it

17 would --

18 MR. BAILEY: -- a lot of cases

19 being filed.

20 MS. DAVIS: -- be dealing with

21 this -- when you -- whether we

22 should apply this ten
23 percent. There's currently on

1 the guidelines a rebuttal of

2 presumption of ten percent.

3 MR. BAILEY: Right. Absolutely.

4 MS. DAVIS: And I thought the

5 issue was going to be whether

6 you apply the ten percent rule

7 when you're calculating based

8 on the application of the new

9 guidelines --

10 MR. BAILEY: Right.

11 MS. DAVIS: -- to that.

12 MR. BAILEY: Right.

13 MS. DAVIS: Not just the existence

14 of new guidelines.

15 MR. BAILEY: Right. Well, we've

16 had those questions too, so I

17 think that's something we

18 ought to deal with in the

19 comments and clarify it.

20 Because if we don't, I think

21 it's going to leave a lot of

22 people with questions, and it

23 may result in inappropriate

1 filings.

2 MS. DAVIS: You may have to --

3 That may be more appropriate

4 to put the -- in the

5 guidelines itself rather than

6 the comments.

7 MR. BAILEY: Okay.

8 MS. DAVIS: Because you're really

9 talking about applicability.

10 MR. BAILEY: Right.

11 MS. DAVIS: Probably the

12 applicability ought to be in

13 the guidelines.

14 MR. BAILEY: The adoption of the

15 new chart, then, does not

16 trigger a modification; only

17 if it's a ten percent change

18 in the existing order.

19 MS. DAVIS: Whatever the court

20 decides.

21 MR. BAILEY: Right. Right.

22 MS. DAVIS: I just think that the

23 determination of the

1 applicability probably would

2 be more appropriate for the

3 guidelines rather than

4 comments. I think you can

5 beef up what you -- with

6 comments. But that --

7 Usually, when you do statutory

8 (unintelligible) reform, the

9 applicability is in the

10 statute that you pass.

11 MR. BAILEY: Right.

12 MS. DAVIS: And so virtually I

13 think it should be in the

14 guidelines itself.

15 MR. BAILEY: Okay. Michael.

16 MS. POLEMENI: Michael Polemeni.

17 And this is just my personal

18 opinion. But along those

19 lines, I think to reduce the

20 modification caseload for the

21 courts, if there were -- if

22 this rule -- When this rule

23 goes into effect or if there

1 was something that said that
2 if there's a reduction in
3 payments, instead of going
4 back and modifying, the cost
5 may be more absorbent than the
6 actual monies received from
7 the modification to go through
8 the courts. Maybe set up a
9 trust account that would
10 automatically put that excess
11 into the child's trust fund
12 rather than going -- And I
13 think a lot of people would be
14 more acceptable to the monies
15 going directly to a child's
16 account than going to the
17 other -- the ex, essentially.
18 That may be -- I don't know.

19 JUSTICE STUART: This is Lyn

20 Stuart. I think that would be
21 beyond the scope of what --

22 MR. BAILEY: It is.

23 JUSTICE STUART: -- this committee

1 could even recommend.

2 MR. BAILEY: I think so.

3 JUSTICE STUART: I mean, that

4 would go to the substantive

5 law of the state, and I don't

6 think we can do that.

7 MR. BAILEY: I agree.

8 MR. ARNOLD: Just to kind of help

9 define the problem we're

10 facing. You can look at it

11 from both sides.

12 MR. BAILEY: Right.

13 MR. ARNOLD: We have a new

14 schedule going into effect

15 possibly, if the Supreme Court

16 approves it, January 1.

17 MR. BAILEY: Uh-huh (positive

18 response).

19 MR. ARNOLD: Heretofore, our

20 guidelines have stopped at

21 combined gross income of

22 10,000. This chart is now

23 going to fill in between

1 10,000 combined income and

2 20 --

3 MR. BAILEY: Right.

4 MR. ARNOLD: -- anecdotally.

5 Let's assume I've got a case

6 where the combined income is

7 \$15,000. That was two months

8 ago. And that's a negotiable

9 amount of child support. So I

10 represent the wife, and I do a

11 good job. And I say, you

12 know, based on his income, I

13 think \$3,000 a month is good

14 and the other side agrees to

15 it. This is from a divorce

16 lawyer's perspective.

17 MR. BAILEY: Right.

18 MR. ARNOLD: And I understand all

19 the --

20 MR. BAILEY: Right.

21 MR. ARNOLD: -- other segments

22 that we're looking at. And

23 then the guidelines pass and

1 wife looks at it and says,
2 uh-oh; husband looks at it and
3 says, oh, boy. Just because
4 we now have the ten to \$20,000
5 range, I do the cal -- the
6 calculations are done and the
7 calculations say it should be
8 \$1750 a month, which is
9 something in the range here if
10 you look at it.

11 MR. BAILEY: That's right.

12 MR. ARNOLD: That's easily more
13 than ten percent.

14 MR. BAILEY: Right.

15 MR. ARNOLD: Should that recipient
16 now suffer and the payor
17 benefit? Or vice versa.
18 Let's say there were some
19 other economic considerations
20 in the divorce decree and the
21 recipient, wife in this

22 situation, was only receiving

23 \$1,000 a month because there

1 were other things.

2 MR. BAILEY: Right.

3 MR. ARNOLD: Now, with new

4 guidelines into effect, it's

5 supposed to jump to 1750 --

6 MR. BAILEY: Right.

7 MR. ARNOLD: -- or whatever.

8 MR. BAILEY: Right.

9 MR. ARNOLD: Should that -- I'm

10 just trying to define the

11 problem --

12 MR. BAILEY: Right. Right.

13 MR. ARNOLD: -- so that we can

14 exam it for discussion

15 purposes, if that helps.

16 MR. BAILEY: Well, to follow up on

17 what Penny said about putting

18 it in the guidelines -- And

19 Bob has been kind enough to

20 furnish me with an appendix

21 from Rule 32. This was in the

22 ninety-three --

23 MR. MADDIX: Yes.

1 MR. BAILEY: -- ninety-three

2 version. This says, preface

3 relating to scope. This rule

4 is amended effective October

5 4, 1993 and shall apply to all

6 new actions filed or

7 proceedings instituted on or

8 after October 4, 1993. Any

9 actions or proceedings

10 instituted before October 4,

11 1993 shall be governed by Rule

12 32 as it read before October

13 4, 1993.

14 MR. ARNOLD: But that doesn't stop

15 new actions.

16 MR. BAILEY: No. No. It just --

17 MR. ARNOLD: If I have a decree in

18 place --

19 MR. BAILEY: Right.

20 MR. ARNOLD: -- and I have an

21 order in place and the new

22 guidelines come into effect --

23 Say my decree is three years

1 old or something like that.

2 MR. BAILEY: Right. Right.

3 MR. ARNOLD: The mere passage of

4 this new table would not

5 prohibit me from the way it is

6 now --

7 MR. BAILEY: That's right.

8 MR. ARNOLD: -- from saying, hey,

9 I've got a new table; I'm due

10 a reduction here or an

11 increase just because there's

12 a new calculation.

13 MR. BAILEY: Don't we all

14 anticipate there'll be some

15 new filings with the passage

16 of a new schedule?

17 MR. ARNOLD: Absolutely.

18 MS. DAVIS: I have a suggestion.

19 MR. ARNOLD: It's going to be my

20 relief act.

21 MS. DAVIS: Could we -- We can use

22 the chalkboard or something

23 over there -- just write down

1 all the possibilities -- all
2 possibilities that we can

3 think of as to the --

4 MR. BAILEY: Sure.

5 MS. DAVIS: -- to the application

6 of the new statutes? Like,

7 you know, upon -- whether you

8 say that all existing

9 calculations will -- of child

10 support guidelines should be

11 under -- you know, calculated

12 under the existing or if you

13 say all of them now will be

14 calculated under the new ones,

15 or just all the different

16 probabilities that we can come

17 forward. Then examine those

18 and see which ones we think --

19 the pluses and minuses of each

20 of those.

21 MR. BAILEY: You're talking about

22 all the different options we

23 might have?

1 MS. DAVIS: The options. The
2 options that we can come up
3 with.

4 MR. BAILEY: All right.

5 MS. DAVIS: And then after we
6 identify all the options, then
7 examine the pluses and minuses
8 of those options.

9 MR. BAILEY: Well, this is
10 kind of -- This is dead.

11 MS. DAVIS: Were that to write we
12 could do that.

13 MR. BAILEY: Were that to write it
14 would work. Good suggestion,
15 Penny.

16 MS. DAVIS: Do we have something
17 that can write, because that
18 won't write? Do we have
19 another ...

20 MR. MADDOX: I'll go. I have to
21 get him something too.

22 MR. BAILEY: Go ahead.

23 MR. MANASCO: Just a comment.

1 MR. BAILEY: Yes. Mike Manasco.

2 MR. MANASCO: The underlying basis

3 for a modification has always

4 been a material and

5 substantial change --

6 MR. BAILEY: Sure.

7 MR. MANASCO: -- in the

8 circumstances of the

9 parties --

10 MR. BAILEY: Right.

11 MR. MANASCO: -- that is

12 continuing such that it would

13 impact child support

14 obligation --

15 MR. BAILEY: Right.

16 MR. MANASCO: -- as opposed to

17 just a new table.

18 MR. BAILEY: Right. Right.

19 MR. MANASCO: I think that if we

20 have a commentary or we put it

21 in the rule, in addition to

22 possibly limiting it to new

23 cases, to go ahead and specify

1 that the passage of the
2 guidelines themselves shall
3 not constitute a material and
4 substantial change in
5 circumstances unless it's
6 intending to an independent
7 change in circumstances that
8 affects the parties in need
9 and ability. Just flesh it
10 out, because, otherwise, it
11 would be thousands.

12 MR. BAILEY: I think that's a good
13 approach.

14 MR. ARNOLD: That is the solution.

15 MR. BAILEY: Yeah, I think that is
16 the solution.

17 MR. PATTERSON: Ben Patterson. I
18 think that sounds like a
19 reasonable ...

20 MR. BAILEY: Can you write that
21 down for us, Mike?

22 MR. MANASCO: I will.

23 MR. BAILEY: The court reporter

1 has it I know. I hope -- I'm
2 sure she does. But that is an
3 excellent solution.

4 Penny, do we need to
5 explore more options on the
6 board? I think Mike has got
7 it.

8 MR. ARNOLD: Exactly. That is --
9 That is the solution.

10 MR. KRAL: So in layman's terms to
11 define that, it would be
12 there's a ten percent change
13 in --

14 MR. MANASCO: Let me give it to
15 you from your perspective as a
16 paying parent.

17 MR. KRAL: Okay. There you go.

18 MR. MANASCO: If it's going to be
19 an increase, you don't want it
20 to be increased just because
21 there's a new table.

22 MR. KRAL: Right.

23 MR. MANASCO: Okay. And what you

1 want to do is say consider my
2 circumstance; nothing about me
3 has changed; I'm still making
4 the same money and I've got to
5 pay more.

6 MR. KRAL: Right.

7 MR. MANASCO: And that's what the
8 basic rule of modification has
9 always been. The court must
10 look first to has there been a
11 substantial and material
12 change in circumstances of the
13 parties, particularly in the
14 inability to pay or the needs
15 of the child sufficient to
16 empower this court to change
17 child support.

18 So it's keeping the child
19 support while we are
20 quantifying these kinds of
21 schedules individualized to

22 the degree that just because

23 we have a new schedule it's

1 not going to affect you.

2 MR. KRAL: Right. So if I got a

3 raise of 20 percent, then we'd

4 go in and then they'd use the

5 new tables or --

6 MR. MANASCO: It would --

7 MR. KRAL: -- or if I were to get

8 a decrease of 20 percent, then

9 they'd use --

10 MS. DAVIS: So what I --

11 MR. ARNOLD: Yeah. That would be

12 a material change in

13 circumstances.

14 MS. DAVIS: What I understand is

15 the rebuttal of presumption

16 would not apply; correct?

17 MR. ARNOLD: No.

18 MR. BAILEY: No.

19 MR. ARNOLD: That's not -- That's

20 not a correct understanding.

21 MS. DAVIS: Well, the rebuttal of

22 presumption will not apply if

23 the reason for the ten percent

1 deviation is because of the

2 new --

3 JUSTICE STUART: Guidelines.

4 MS. DAVIS: -- guidelines.

5 MR. ARNOLD: Ignore the ten

6 percent.

7 MS. DAVIS: I don't think we

8 can -- I don't think we can.

9 MR. ARNOLD: That has nothing to

10 do --

11 MR. MANASCO: Ignore the ten

12 percent. The first step is to

13 determine has there

14 independent of a new schedule

15 occurred a material and

16 substantial change in

17 circumstances.

18 MS. DAVIS: But what I think

19 that's saying -- The

20 guidelines now say there is

21 a -- built into the guidelines

22 a rebuttal of presumption that

23 there is a significant change

1 enough to change the amount
2 being paid if the calculation
3 results in a ten percent
4 deviation.

5 MR. BAILEY: That's correct.

6 MS. DAVIS: So I think we have to
7 consider that rebuttal of
8 presumption because --

9 MR. ARNOLD: But you can't get to

10 the rebuttal of presumption
11 until you have asserted and
12 proven a material change in
13 circumstances. A ten percent
14 increase/decrease could only
15 be triggered by the existence
16 of a -- another preceding
17 change in circumstances.

18 That's the key. And what
19 Michael was saying is the mere
20 passage of the tables will not
21 operate to create a material

22 change in circumstances.

23 MR. JEFFRIES: Jim Jeffries. I

1 think what Penny is saying --

2 I understand what you're

3 saying. You're -- There's a

4 threshold question of proving

5 a material change in

6 circumstances before you get

7 to the calculation part;

8 right?

9 MR. ARNOLD: And the ten percent.

10 MR. JEFFRIES: Okay. But what

11 Penny is saying, I believe, is

12 that just -- that you have to

13 go ahead and do the

14 calculation based on the

15 information that you have to

16 see if there is a ten percent

17 change and that that change in

18 and of itself can be the

19 material change in

20 circumstances.

21 MR. ARNOLD: That's not so.

22 That's not so.

23 MR. JEFFRIES: I mean, I think

1 that's what --

2 MS. DAVIS: I think the practical

3 thing that generally happens

4 today -- And I like what

5 you're saying, but I'm trying

6 to wrap it around -- being the

7 low common denominator that I

8 am. If I'm his client and I

9 come in and he's done the old

10 calculations -- And let's

11 assume there's no guide -- no

12 new change in the guidelines.

13 What I do is I walk in now and

14 I say, I just found out my

15 ex-husband got a big raise;

16 I've lost my job or my hours

17 have been cut down --

18 MR. ARNOLD: Yeah.

19 MS. DAVIS: -- let's calculate

20 here, because my neighbor told

21 me that it was a ten percent

22 difference in hers and hers

23 changed. So I come to you;

1 here's his new figures; here's
2 my new figures. It's ten
3 percent. You walk into court
4 and say, this is a ten percent
5 change. That means there's a
6 rebuttal of presumption at
7 that point under the new --
8 under the current guidelines
9 that there should be a change
10 in the child support payments;
11 right?

12 MR. ARNOLD: No. That's not --

13 Your whole premise there was,
14 first, the client came to Jim
15 and said, my ex-husband just
16 got a big raise --

17 MS. DAVIS: Yeah. And I lost part
18 of mine.

19 MR. ARNOLD: -- and I lost part of
20 mine. That's the material
21 change in circumstances that

22 is threshold.

23 MS. DAVIS: Right. I --

1 MR. ARNOLD: So you come to me as
2 a lawyer and say, my
3 ex-husband just got a big
4 raise; I lost my job. Okay.

5 That is a material change in
6 circumstances, Ms. Davis. Now
7 let's apply the formula.

8 MR. BAILEY: Right.

9 MR. ARNOLD: And we go through the
10 calculation. And
11 notwithstanding your
12 ex-husband's raise and your
13 reduction, it doesn't come to
14 ten percent.

15 MS. DAVIS: Right.

16 MR. BAILEY: Right.

17 MR. ARNOLD: Then the rebuttal of
18 presumption is against you.

19 MR. BAILEY: Right.

20 MS. DAVIS: Right.

21 MR. ARNOLD: But you have to get

22 through that first threshold

23 of change --

1 MR. BAILEY: Absolutely.

2 MR. ARNOLD: -- of circumstances

3 before the ten percent.

4 MS. DAVIS: We've got these pro se

5 forms that we're about to give

6 people, and what they're going

7 to do is they're going to take

8 these calculations and say in

9 these calculations this is

10 what we have here.

11 MR. ARNOLD: But what -- Yeah, I

12 understand. And that is a

13 typical modification. But

14 what we're talking about right

15 now for the purposes of this

16 table -- Let's assume that at

17 the time of original

18 calculation, husband making

19 5,000; wife making three --

20 MS. DAVIS: Your example of you

21 being the great lawyer getting

22 3,000 is the perfect example.

23 Two weeks later the guidelines

1 come out and all of a sudden

2 they're applying --

3 MR. ARNOLD: And they still have

4 the same amount of money.

5 MS. DAVIS: Right.

6 MR. ARNOLD: There's no material

7 change of circumstances.

8 MS. DAVIS: Yeah, I agree. I

9 just --

10 MR. ARNOLD: And the mere -- The

11 existence of the new table

12 doesn't trigger their right to

13 get a modification.

14 MR. BAILEY: Right.

15 MS. DAVIS: I'm just saying that

16 we're going to have to be

17 judicious in how we word

18 that --

19 MR. BAILEY: Absolutely.

20 MS. DAVIS: -- so that it doesn't

21 have that kind of triggering

22 device that the pro se person

23 is going to see when they come

1 to the table.

2 MR. BAILEY: Exercising the

3 prerogative of the chair, I'd

4 like to appoint Mike to chair

5 a subcommittee with Jim and

6 Penny to draft appropriate

7 language for us to consider at

8 our next meeting.

9 MR. MANASCO: Okay.

10 MR. BAILEY: Will you accept?

11 MR. MANASCO: Absolutely.

12 MR. BAILEY: All right. Jim,

13 would you work with Mike?

14 MR. ARNOLD: Sure.

15 MR. BAILEY: Penny, would you

16 accept with your immediate

17 appointment which is not

18 reviewable or appealable?

19 MS. DAVIS: I better keep my mouth

20 shut.

21 MR. BAILEY: No. No. We don't

22 want -- Julie.

23 MS. PALMER: Julie Palmer. Okay.

1 What about -- Let's say that
2 the child support part, that
3 material change isn't there
4 but because of the change in
5 the insurance premium, where
6 it was \$1,000, let's say, for
7 the family coverage and now
8 because there's five people on
9 that coverage but only -- I
10 only have one child and then
11 that makes the change. Now --
12 It was \$1,000 on this CS-42
13 where you've got to put the
14 child support in and now it's
15 \$200. Is that a material
16 change?

17 MR. ARNOLD: That's -- That is an
18 evaluation and judgment a
19 practitioner or a court has to
20 make.

21 MR. BAILEY: That's right.

22 MR. ARNOLD: And I would think the

23 circumstances you described

1 would indicate that is a
2 material change in
3 circumstances and that would
4 open up the door to a review
5 of possible modification.

6 MS. PALMER: Because the incomes
7 haven't changed.

8 MR. ARNOLD: The same as --

9 MS. PALMER: It's just the cost of
10 the insurance.

11 MR. ARNOLD: The same as child
12 care. Same thing. Mother has
13 two children; she's spending
14 \$1,000 a month if you
15 calculate the child care
16 according to the cap for the
17 county they're in and then two
18 years goes by and they're both
19 out of child care. There's
20 now nothing going out. That's
21 a material change in

22 circumstances. That doesn't

23 speak to what we're looking at

1 as the -- If everything else
2 is all the same and all being
3 equal, the mere passage of the
4 new table doesn't trigger a
5 recalculation.

6 MS. DAVIS: Since I'm on this
7 subcommittee, let me get some
8 clarification.

9 MR. BAILEY: Penny Davis.

10 MS. DAVIS: I'm sorry. Penny
11 Davis. The scenario you went
12 through is the cleanest one.
13 Two weeks later nothing has
14 changed. But in reality most
15 of the cases are going to be
16 two or three years old and --

17 MR. ARNOLD: And we're going to
18 have to face that.

19 MS. DAVIS: -- somebody -- That's
20 the bulk of the cases.

21 Everybody's health insurance

22 will have changed. You've got

23 a child who's -- who was in

1 day care for full time; now
2 they're part time in day care
3 because of school, so that's
4 going to change. Now, the
5 income for both the parties
6 may have changed.

7 MR. ARNOLD: Then you're looking
8 at exactly what you're looking
9 at, yes, that may trigger --

10 MS. DAVIS: So our decision --

11 MR. ARNOLD: Then your ten percent
12 rule comes into effect.

13 MS. DAVIS: -- is that the new
14 filing, the application will
15 be the new guidelines;
16 correct?

17 MR. ARNOLD: Yes, ma'am. That
18 would be right.

19 MR. BAILEY: Let me -- Mike, I'm
20 sorry. Let me add one more
21 thing. Jennifer, to even

22 complicate things more. Under

23 your child support IV-D

1 program, you're required to
2 review cases every four years.

3 Am I correct in that?

4 MS. BUSH: Every three years.

5 MR. BAILEY: Every three years.

6 I'm sorry. Every three years.

7 Would you accept appointment

8 as well to this committee to

9 be sure that we are dealing

10 with that issue from your

11 standpoint, because you have

12 ten or 27,000 cases pending

13 now. So we want to be sure

14 that DHR has input into this

15 review process as well in the

16 modification. Would you work

17 with Jim and Penny and Mike on

18 that committee?

19 MS. BUSH: Yes, I will.

20 MR. BAILEY: Thank you. I wanted

21 to be sure we got that

22 covered. Okay.

23 Now, Michael.

1 MR. POLEMENI: Michael Polemeni.

2 I'd like to recommend that the
3 verbiage be put in something
4 that Penny can understand.

5 That would help us all.

6 MS. DAVIS: Good luck.

7 MR. KRAL: Don't leave me out. Me
8 too.

9 MS. DAVIS: Yeah, me and John.

10 MR. POLEMENI: And me too.

11 MR. PATTERSON: Ben Patterson.

12 This is just an observation.

13 Similar to other things I've

14 dealt with in the past,

15 there's probably a lot of

16 families out there that could

17 apply for a modification based

18 on the ten percent change

19 right now just for one reason

20 or another. Haven't done it.

21 Not aware that there's been

22 such a modification.

23 MR. ARNOLD: Oh, yeah.

1 MR. BAILEY: I think that's true.

2 MR. PATTERSON: Just the passage

3 of this and the publicity is

4 going to cause a lot of people

5 to go out and re-evaluate, and

6 I think you will have a lot of

7 filings just as a result of

8 this.

9 MR. ARNOLD: Sure there will be.

10 MR. PATTERSON: But not because of

11 the rule because there is a

12 general change. It's just

13 prompted them.

14 MR. ARNOLD: You're right.

15 There's going to be a lot of

16 categories of individuals --

17 MR. BAILEY: Sure.

18 MR. ARNOLD: -- with different --

19 all different socioeconomic

20 levels. There's going to be

21 those who say an opportunity;

22 I'm aware of it; let me go see

23 Jim Jeffries and see if we can

1 change support. And there's
2 going to be some who say, you
3 know, I don't want any part of
4 the court system; I don't want
5 to even see my ex-husband
6 except for this, that and the
7 other.

8 And, you know, I had a
9 lady come to me the other day
10 who was owed \$190,000 in back
11 child support. \$190,000. Her
12 husband makes around 400
13 grand a year. She said, nah,
14 I just don't feel like taking
15 him to court. Every issue
16 comes up. So, yeah, we're
17 going to get a lot of
18 filings. We are. And we're
19 going to get a lot of people
20 who don't. We will. It's --
21 It's just inherent in what

22 we're doing. We'll work

23 through it. We'll live with

1 it.

2 MR. BAILEY: Well, I think --

3 MR. ARNOLD: The courts will too.

4 MR. BAILEY: Yeah. I don't want

5 to speak for the courts

6 certainly, but I think the

7 court will be gratified that

8 we are dealing with this issue

9 now rather than next fall or

10 winter when we have new

11 guidelines in place and

12 everybody starts calling and

13 says, well, what about a

14 modification.

15 JUSTICE STUART: No. I think it's

16 critically important --

17 MR. BAILEY: Right.

18 JUSTICE STUART: -- you know, that

19 we adopt this. I like what

20 Mike has said as far as a way

21 to handle it. That just needs

22 to be very, very clear.

23 MR. BAILEY: I agree.

1 MR. KRAL: John Kral. I -- What

2 I'm confused about again is

3 when we say ten percent, what

4 do we mean? Ten percent a

5 year, ten percent a month?

6 MR. ARNOLD: Ten percent change in

7 your actual --

8 MR. BAILEY: In the amount of your

9 child support --

10 MR. ARNOLD: -- child support to

11 be paid --

12 MR. BAILEY: Yeah.

13 MR. JEFFRIES: -- per month.

14 MR. ARNOLD: Per month.

15 MR. KRAL: Give me a real life

16 scenario.

17 MR. ARNOLD: All right. If you're

18 obligated to pay \$400 per

19 month --

20 MR. KRAL: Okay.

21 MR. ARNOLD: -- and you redo the

22 calculations and it would only

23 give you a change of \$25, the

1 presumption is that's not a
2 material change and there
3 would be no support (sic) in
4 your child support. If it's
5 more than -- If it's more -- a
6 change of greater than \$40 per
7 month either way, then the
8 presumption favors one person,
9 so ...

10 MR. BAILEY: Right.

11 Mike Manasco.

12 MR. MANASCO: Mike Manasco. And
13 important to remember that the
14 presumption is rebuttable
15 going both ways.

16 MR. BAILEY: Absolutely.

17 MR. ARNOLD: It's rebuttable.

18 MR. BAILEY: Absolutely.

19 MR. MANASCO: I mean, if you
20 get -- got a lawyer and the
21 court looks -- got a client

22 that gets less than ten

23 percent but it's rebuttable,

1 you still need a
2 remodification because of
3 other things. Or if you've
4 got an increase coming, just
5 like Steve just described, the
6 payor can certainly pay it
7 right now. I understand that
8 but these are my circumstances
9 now.

10 MR. BAILEY: Right.

11 MR. KRAL: So the ten percent, if

12 I'm to understand it right --
13 John Kral. The ten percent,
14 if I'm to understand it right,
15 is, like, after we do the
16 calculations on the -- what is
17 it, CS-42? Because I'm
18 guessing, like Bob said, that
19 when people read this they're
20 going to say ten percent. And
21 the people that read it are

22 going to say, well, ten

23 percent of what; ten

1 percent -- well, he's making
2 ten percent more money or
3 she's making ten percent more
4 money, and then they're going
5 to go run and file because
6 they made ten percent more
7 money.

8 MR. ARNOLD: Right. The verbiage
9 in the child support
10 guidelines specifically states
11 a change in support of ten
12 percent.

13 MR. BAILEY: Right. Right.

14 MR. ARNOLD: Not a change of
15 income, not a change of
16 combined. A change in the
17 support of ten percent.

18 MS. PALMER: Julie --

19 MR. BAILEY: It's in the
20 guidelines.

21 MS. PALMER: Julie Palmer. But I

22 think with this new legal link

23 that people aren't going to

1 read the ten percent in
2 support. They're just going
3 to see ten percent and they're
4 going to go.

5 MR. KRAL: That's right. That's
6 exactly my point. Because on
7 the radio it's understood as
8 ten -- if there's a ten
9 percent change in income, head
10 for the court as fast as you
11 can. And that's what they
12 understand it to be.

13 MR. ARNOLD: That's
14 misinformation.

15 MS. DAVIS: Maybe this could be --
16 I haven't read this, so maybe
17 the forms could -- Whoever is
18 on this committee, maybe they
19 could address that issue or we
20 might just let them know that
21 we think that could

22 potentially be a problem

23 because of the child

1 support -- I assume the people
2 that are doing this are aware
3 that there may be an --

4 MR. MADDOX: Again, I'm not --

5 MS. DAVIS: -- immediate change --

6 MR. MADDOX: -- involved in that
7 committee. Maybe I should be.

8 MR. BAILEY: Well, you said --
9 Bob, you said Dean --

10 MR. MADDOX: Not that I'm
11 volunteering, but ...

12 MR. BAILEY: -- Dean from your
13 office is involved?

14 MR. MADDOX: Dean Hartzog is the
15 other attorney and all -- kind
16 of like the AOC staff person
17 on the committee.

18 MR. BAILEY: Penny, you and Mike
19 and Jim and Jennifer may want
20 to contact them and get with
21 them and see where they are

22 and --

23 MS. DAVIS: They may want to

1 have -- Just once they get a
2 new -- once -- If the court
3 chooses to change the
4 guidelines, you know, they
5 might just have a link to
6 those changes. And so the
7 information that would be
8 worded in a consumer friendly
9 way to answer questions
10 like --

11 MR. BAILEY: Right.

12 MS. DAVIS: -- kind of "what if"
13 scenarios. What if so and so
14 has happened? What should I
15 do? That kind of thing.

16 MR. POLEMENI: Yeah.

17 MS. BUSH: Jennifer Bush. Gordon,
18 I agree with you that we need
19 to have some input, AOC and
20 DHR, with this committee.

21 MR. BAILEY: Right.

22 MS. BUSH: Because we have, as you

23 know, a documents form

1 committee where we are working
2 on documents that will meet
3 all of the federal guidelines
4 for child support.

5 MR. BAILEY: Absolutely.

6 MS. BUSH: And it seems to be not
7 efficient to have a totally
8 separate committee that is
9 creating forms which may not
10 have all of the required
11 information.

12 MR. BAILEY: I agree.

13 MS. BUSH: And it just seems like
14 it would be easier in Alabama
15 if you had one set of forms
16 that would be available pro
17 se --

18 MR. BAILEY: Good suggestion.

19 MS. BUSH: -- or to attorneys and
20 used by DHR and not DHR as
21 opposed to several versions of

22 the same thing. And that

23 way -- Because cases do --

1 They come to DHR for services
2 and then they leave us for a
3 time, and then they'll come
4 back and apply for services.

5 And the more consistency you
6 have there, I think, the
7 better for everyone.

8 MR. BAILEY: I agree. I think,
9 Mike, as chair of this
10 subcommittee, I think Jennifer
11 has a great point. Maybe you
12 could contact the group that's
13 responsible for these pro se
14 forms and have some dialogue.
15 I think that's a great point
16 Jennifer just made.

17 All right. Not to rush
18 everybody, but I'm trying to
19 get everybody out of here
20 around twelve, if we can. And
21 are there any more discussion

22 on mod -- I'm so glad we had

23 this discussion today, because

1 I think it's going to solve a
2 lot of problems if the court
3 chooses to adopt the new
4 schedule January 1st. I think
5 it will solve a lot of -- not
6 only for practitioners but
7 also for DHR cases.

8 Okay. All right. Any
9 other discussion? Not trying
10 to cut it off, but any other
11 discussion on that before we
12 move on to our next issue,
13 which is review of guidelines
14 every four years by ADC. You
15 have in your handout today the
16 current Rule G which provides
17 that the -- advisory committee
18 on guidelines appointed by the
19 Supreme Court shall review
20 every four years the
21 guidelines and the schedule of

22 basic child support

23 obligations. And then if the

1 ADC --

2 And that's Callie Dietz,
3 our director, Bob. That's the
4 Administrative Office of
5 Courts director.

6 -- determines that --
7 this is the current rule,
8 which is lined through --
9 determines that no change is
10 required in the guidelines or
11 in the schedule, the ADC shall
12 so advise the Supreme Court.
13 We would like to change that.
14 We talked about changing it
15 last time when we met and put
16 in the language, any
17 recommendations concerning the
18 child support guidelines be
19 approved by the majority of
20 the committee shall be reduced
21 to writing and sent to the

22 court from the committee.

23 Because in the past

1 there's been some -- I think
2 some confusion about sending
3 it all, in what form. We've
4 had some situations where we
5 weren't clear that the
6 committee's recommendations
7 were clarified for the Supreme
8 Court. And what we'd like to
9 do is make it from the
10 committee directly to the
11 court, and, of course, send a
12 copy as well to the ADC --
13 that's Callie Dietz, director
14 of AOC -- for a distribution
15 to the trial court. So that's
16 basically what we're talking
17 about doing, and we can't vote
18 on it today because we don't
19 have a quorum. But I would
20 entertain any discussion on
21 that issue at this time.

22

Ben.

23

MR. PATTERSON: Just

1 a suggestion.

2 MR. BAILEY: Ben Patterson.

3 MR. PATTERSON: This may be a

4 little nitty. But do you want

5 to approve it by a majority of

6 the committee or a majority of

7 those voting?

8 MR. MADDOX: We had talked about

9 that.

10 MR. BAILEY: We talked about that

11 yesterday, and it should be by

12 a majority of the committee.

13 Didn't we decide that, Bob, in

14 our discussions yesterday? So

15 that would be a quorum of at

16 least 12.

17 MR. PATTERSON: So you would have

18 to have all 12 approving?

19 MR. BAILEY: We'd have to have 12

20 people to vote and approve it,

21 yes.

22 MS. DAVIS: So we could send it

23 out to the committee. There's

1 no requirement that it be done
2 in a committee meeting.

3 MR. BAILEY: Oh, I'm confused.

4 I'm sorry. No. We just want
5 to consider this today for
6 possible language.

7 MR. PATTERSON: I guess what I'm

8 thinking, though, is if you
9 say a majority of the
10 committee and you only have 12
11 present, you'll have to have a
12 unanimous vote to adopt it.

13 MR. MADDOX: Correct.

14 MR. BAILEY: Well, that's true.

15 That's true. But we've had
16 real good attendance in the
17 past, Bob, haven't we? I
18 mean, this -- I think because
19 of an unusual set of
20 circumstances. We've had two
21 new members appointed by the

22 court that couldn't join us

23 today for docket reasons. So

1 we've had -- we've had, I
2 think, real good attendance in
3 the past, so ...

4 MR. ARNOLD: Ben's point is --

5 MR. BAILEY: Well taken, sir.

6 Mike. Mike Manasco.

7 MR. MANASCO: I don't know exactly

8 what rules would control any
9 of these kind of committee

10 meetings, whether it be

11 Robert's Rules, or whatever.

12 But, ordinarily, you've got to

13 have a quorum to conduct

14 business.

15 MR. BAILEY: That's correct.

16 MR. MANASCO: And if you conduct

17 your business and you take the

18 vote, the majority of the

19 quorum --

20 MR. BAILEY: Right.

21 MR. MANASCO: -- would be the

22 deciding factor as opposed to

23 having to have a unanimous

1 vote of 12 in order to pass.

2 MS. DAVIS: Right. So if you have

3 12 here, then seven would be

4 sufficient?

5 MR. MANASCO: Yeah.

6 MR. BAILEY: Yeah. I see what

7 you're saying.

8 So do you think, Ben, we

9 need to change that? Is that

10 your --

11 MR. PATTERSON: That would be my

12 recommendation, to modify it

13 to say having the quorum

14 present, the majority of those

15 voting.

16 MR. BAILEY: I think that's a good

17 point.

18 Bob, can we --

19 MR. MADDOX: That's not my

20 decision.

21 MR. BAILEY: I know. I mean, can

22 you -- Next time we meet, can

23 we add that provision in what

1 the committee reviews?

2 MR. MADDOX: Oh, okay.

3 MR. BAILEY: Yeah. We're not

4 going to make that decision

5 today. But I want to ask Bob

6 to put that in the proposed

7 language for us all to review

8 next time we meet. Good

9 point. Thank you. Good

10 point.

11 All right. Any other

12 discussion on that issue?

13 (No response.)

14 MR. BAILEY: Now, it's my

15 understanding, Lyn, that

16 Callie has not sent the new

17 guidelines schedule to the

18 court yet. She was waiting

19 for this meeting to occur

20 today to see if we took any

21 further action.

22 JUSTICE STUART: Yes, sir.

23 MR. BAILEY: Is it -- And we can't

1 vote on this, but is it the
2 census of those present --
3 Would it be a consensus of all
4 of us that we -- that I ask
5 Callie if she would consider
6 going ahead and sending the
7 new schedule to the court for
8 their review, or would you
9 rather defer it until we meet
10 later on?

11 Lyn.

12 JUSTICE STUART: I'm sorry. This
13 is Lyn Stuart. I think to do
14 that as incomplete as the
15 situation is at this point in
16 time would be a waste of
17 time.

18 MR. BAILEY: All right.

19 JUSTICE STUART: This is just my
20 personal opinion, and I can
21 only speak for myself. But I

22 don't think the court is going

23 to consider it at this point

1 in time. I mean, at least --
2 at least what Mike Manasco is
3 working on has got to be part
4 of -- Y'all can table the rest
5 indefinitely, but I think that
6 has got to be --

7 MR. BAILEY: Good.

8 JUSTICE STUART: -- part of what
9 is submitted to the court.

10 And I don't think the court
11 will review it until we have
12 that.

13 MR. POLEMENI: I appreciate you
14 being the one to make that --

15 MR. BAILEY: Absolutely. Thank
16 you. No. I'm glad you did.

17 JUSTICE STUART: That's just too
18 credible. I mean, there's
19 just no way we could --

20 MS. DAVIS: It's part of that
21 decision.

22 JUSTICE STUART: Yeah.

23 MR. BAILEY: All right. So I

1 think -- I think we've got
2 good direction on that. All
3 right. And, Lyn, one more
4 thing that -- Mike, one more
5 thing. I think we mentioned
6 it earlier. I've had one or
7 two judges ask me, as we said
8 earlier, could they go ahead
9 and use the 10,000 to \$20,000
10 range as a guide. I don't
11 know how we would put that in
12 any kind of advisory direction
13 to judges. But that's just
14 been something that's been
15 mentioned to me by a couple of
16 judges, so ...

17 JUSTICE STUART: This is Lyn
18 Stuart. It's in their
19 discretion anyway, so why --

20 MR. BAILEY: I don't --

21 JUSTICE STUART: -- couldn't they

22 use it if they wanted to?

23 **MR. BAILEY:** That's an excellent

1 point. Excellent point.

2 MR. MANASCO: I don't think they

3 should be saying that we have

4 looked at the ten to 20 and

5 believe it should apply in

6 this regard. But, you know,

7 until it's passed as advisory,

8 it's not advisory. But if

9 they want to look at that, I

10 mean, and take into

11 consideration anything else

12 that they've heard in evidence

13 or that sort of thing, then,

14 sure, that'd be fine. But I

15 wouldn't want us to bless

16 them --

17 MR. BAILEY: No.

18 MR. MANASCO: -- using them as

19 advisory until it was

20 determined that they are in

21 place and are advisory for a

22 period of time, or whatever.

23 MR. BAILEY: I think it does show

1 the need for the judges to
2 have that in place at some
3 point in time. I think it
4 would be very helpful to them
5 to have the ten to 20 range to
6 use in the guidelines.

7 MR. ARNOLD: What's the time line
8 here anyway?

9 MR. BAILEY: Well, I guess when we
10 wrap everything up and present
11 it to the court. The court
12 has rules conferences
13 periodically.

14 JUSTICE STUART: We do. But
15 because this has been pending
16 so very, very long, I believe
17 the court will take it up at
18 its very next general
19 conference. I don't think we
20 would wait for a rules
21 conference.

22 MR. ARNOLD: Well, we've already

23 made the recommendation of the

1 table.

2 MR. BAILEY: The schedule. That's
3 correct.

4 MR. ARNOLD: Now, based on
5 conversation today, it would
6 be advisable for this
7 committee to ultimately
8 resolve the issue of the --

9 MR. BAILEY: Modification.

10 MR. ARNOLD: -- Mike's
11 subcommittee --

12 MR. BAILEY: Right. Right.

13 MR. ARNOLD: -- then join the
14 table with that -- whatever
15 recommendation it is and then
16 present it.

17 MR. BAILEY: Right.

18 MR. ARNOLD: So getting Mike's
19 work done and joined with the
20 other recommendation that's
21 already in place was going to

22 take some amount of time.

23 MR. BAILEY: Probably a couple of

1 months.

2 MR. ARNOLD: And then submission
3 to the court.

4 MR. BAILEY: Right.

5 MR. ARNOLD: So for how long would
6 there be any gap anyway
7 between submission to the
8 court and implementation, if
9 we're looking at January 1st
10 2009?

11 MR. BAILEY: Well, Justice Stuart
12 just said she didn't think the
13 court would want to wait for a
14 rules committee but would take
15 it up in its general
16 conference. And you have
17 those monthly?

18 JUSTICE STUART: Well, I mean,
19 it's obviously not going to
20 get here in time for us to
21 consider it next Wednesday.

22 MR. BAILEY: Well, I understand

23 that.

1 JUSTICE STUART: We're not going

2 to meet in July. We'll meet

3 in the middle of August. If

4 it were ready by then, I think

5 we'd consider it in the middle

6 of August. Otherwise, perhaps

7 more realistically, we're

8 talking about the middle of

9 September.

10 MR. BAILEY: Right. Right.

11 JUSTICE STUART: But I don't think

12 the court -- I don't think the

13 court would feel uncomfortable

14 with adopting it the middle of

15 September and having it

16 effective January 1.

17 MR. BAILEY: Perfect. Great.

18 MR. ARNOLD: So then you're

19 only -- So then you're only

20 talking about a three month

21 interim period --

22 MR. BAILEY: Right.

23 MR. ARNOLD: -- where they're

1 adopted but not yet effective.

2 MR. BAILEY: That's correct.

3 MR. ARNOLD: So why worry about

4 whether that new section is

5 advisory or not?

6 MR. BAILEY: I agree. I'm just --

7 I'm just the messenger. I'm

8 reporting some inquires.

9 MS. DAVIS: If I were a judge,

10 then I would -- if I know

11 they're out there and I think

12 they might ultimately be, I

13 would go ahead --

14 MR. ARNOLD: Yeah, I would too.

15 MS. DAVIS: -- and use them.

16 MR. ARNOLD: Because that's what

17 I'm going to be faced with

18 down the road.

19 MR. BAILEY: Sure.

20 MS. DAVIS: -- because they're

21 going to know in a few

22 months --

23 MR. ARNOLD: Let me lock myself --

1 MS. DAVIS: -- somebody is going

2 to come back and modify --

3 MR. BAILEY: Sure. Sure.

4 MS. DAVIS: -- or think they might

5 come back and modify.

6 MR. ARNOLD: Absolutely.

7 MR. BAILEY: And we'll be sure and

8 have Judge Chambers, Judge

9 Bell, Judge Ford discuss that

10 with us at our next meeting

11 too. I'm sure they'll have

12 some good input into --

13 excellent input into that

14 situation.

15 All right. Steve, great

16 segue. You and Penny, I can

17 tell y'all are right on the

18 ball. Great segue into our

19 next meeting. We're looking

20 at some dates. Bob, I think

21 the next available time for

22 this room is -- Did you tell

23 me August 29th?

1 MR. MADDOX: Yes, sir.

2 MR. BAILEY: All right. Mike,

3 will that give you time for

4 your committee to meet and

5 draft the appropriate

6 language?

7 MR. MANASCO: It will.

8 MR. BAILEY: Steve, will that give

9 your -- I'm sorry. Julie.

10 MS. PALMER: What day of the week

11 is that?

12 MR. BAILEY: That's a Friday. Do

13 we want to consider another

14 day?

15 MS. PALMER: I believe that is the

16 Friday before Labor Day,

17 though, is it not?

18 MR. BAILEY: Oh, you're right.

19 That's correct. Do we want to

20 consider another meeting day

21 that week rather than Friday?

22 We've just met on Friday, but

23 I don't think that's in

1 concrete or stone. We can

2 certainly have another day.

3 Bob, would this room be

4 available on that Thursday or

5 Wednesday?

6 MR. MADDOX: I'll have to check

7 before we leave.

8 MS. PALMER: I'd stay away from

9 the Thursday as well, because

10 I already have travel plans

11 for that weekend.

12 MR. BAILEY: Okay. You think we

13 ought to stay away from the

14 week of -- the week before

15 Labor Day and go to the week

16 before, which is the week of

17 August -- August 18th, week of

18 August 18th. But this room is

19 not available on Friday the

20 22nd. But could we meet on

21 the 20th, Bob? Do you want --

22 It's a Wednesday. Is that a

23 good day for everybody or a

1 bad day?

2 MS. DAVIS: I have a suggestion.

3 Why don't we send out -- Why

4 don't we let Bob give us

5 several dates to look at, and

6 just send those out and see

7 where you get the most -- best

8 attendance.

9 MR. BAILEY: All right. That's a

10 good idea. Now, is Friday a

11 good day or a bad day for our

12 committee? We've always

13 historically met on Friday,

14 but we can change that, look

15 at some other days.

16 MR. POLEMENI: Good day for me.

17 MS. PALMER: Good day.

18 MR. JEFFRIES: Good day.

19 MS. DAVIS: Good day for me.

20 MR. BAILEY: Friday seems to be a

21 good day for everybody.

22 MS. DAVIS: The only problem I

23 have is our office generally

1 meets our committees on
2 Fridays, because it's a good
3 day for everybody. But given
4 enough time -- There's some
5 committees I have to be at.

6 MR. BAILEY: Right.

7 MS. DAVIS: Some I can miss.

8 MR. BAILEY: Right.

9 MS. DAVIS: So if we can work
10 around -- My attendance is not
11 necessarily --

12 MR. BAILEY: Let me ask Justice
13 Stuart -- And I'm not trying
14 to commit you necessarily.
15 But if we met on September
16 5th --

17 Bob, is the room
18 available on September 5th?

19 MR. MADDOX: No, sir.

20 MR. BAILEY: Okay. I was going to
21 see if that would give you

22 enough time to --

23 MR. MADDOX: The only date in

1 September it's open is

2 September 26th.

3 MR. BAILEY: Wow. That's on a

4 Friday now. If we looked at

5 some other dates ...

6 MR. MADDOX: Well, I can go real

7 quick and get them to print it

8 off to see when --

9 MR. BAILEY: Would y'all like Bob

10 to do that before we leave and

11 let's try to ...

12 MR. MADDOX: I think that would be

13 better, because I think it

14 would be easier --

15 MR. BAILEY: Do that if you will,

16 Bob.

17 MS. PALMER: Labor Day is, like,

18 September 1st or 2nd this

19 year. It's really, really

20 early.

21 MR. BAILEY: It is.

22 MS. PALMER: It's the first Monday

23 in September. Now, maybe it's

1 not. I don't know.

2 MR. JEFFRIES: September 1st.

3 That's right. What I was

4 thinking is that's not --

5 that's really an August

6 weekend. It's not September.

7 MR. BAILEY: Labor Day is

8 September 1st. That's a

9 Monday. You're right.

10 Absolutely. It's early,

11 really early.

12 MS. PALMER: It's really early

13 this year.

14 MR. BAILEY: Yeah.

15 JUSTICE STUART: If we push back

16 into September -- You know, I

17 don't know. It's going to

18 depend on how quickly AOC or

19 whoever is actually

20 preparing --

21 MR. BAILEY: Right.

22 JUSTICE STUART: -- you know,

23 formal materials so that the

1 court can get that out to
2 folks as to whether, you know,
3 it's going to be ...

4 MR. ARNOLD: Yeah. That's
5 dissemination.

6 JUSTICE STUART: Although I will
7 say, you know, the court
8 considered it at some length
9 the first time it was
10 presented, so the court will
11 not be unfamiliar with the
12 situation. They'll be very
13 familiar --

14 MR. BAILEY: That's correct.

15 JUSTICE STUART: -- with the
16 situation.

17 MR. BAILEY: If we could look at
18 some other days other than
19 Friday, I think we can
20 probably get this room or get
21 an appropriate place to meet.

22 MS. DAVIS: We could always meet

23 at the law school in

1 Tuscaloosa. I know a lot of
2 people are from -- But
3 Montgomery may be more central
4 for all of you with your
5 schedule.

6 MR. BAILEY: Julie, I'm glad you
7 brought up the Labor Day
8 situation.

9 MS. PALMER: And, Gordon, I guess
10 the only other thing is y'all
11 had somehow put this e-mail
12 that I got from a member --

13 MR. BAILEY: Yes. I meant to call
14 on you. I'm sorry. I failed
15 to do that. Do you want to
16 comment on that real quick
17 while Bob gets the ...

18 MS. PALMER: Well, just -- Yeah.
19 Since he's -- we're waiting on
20 him anyhow.

21 MR. BAILEY: Yeah.

22 MS. PALMER: Bob had asked me to

23 send out a notice to the

1 Alabama Family Law Section
2 just about the meeting that
3 was coming up. I believe this
4 was from -- even before the
5 last meeting that we had. And
6 someone e-mailed me back from
7 Madison County asking about
8 joint custody versus split
9 custody.

10 MR. BAILEY: Right.

11 MS. PALMER: The rules talk about
12 split custody: I have one
13 child, you have another.

14 MR. BAILEY: Right.

15 MS. PALMER: But it does not talk
16 about I have the kids one
17 week; you have the kids one
18 week. Now, the courts don't
19 normally do that, but it does
20 happen in cases. I had a case
21 yesterday, as a matter of

22 fact. So -- And I wrote back

23 to her, you know, saying that

1 pretty much what we do is how
2 it's described under split
3 custody. But I don't know if
4 there needs to be a section
5 added as to joint custody, how
6 it would be calculated, which
7 in my opinion it'd be about
8 the same, but -- So that's
9 just to follow up on that
10 e-mail that was in the
11 packet.

12 MR. BAILEY: Steve, correct my
13 memory, and I have senior
14 moments all the time it seems
15 like. I asked Jim to
16 introduce himself twice, so
17 I've had one this morning.

18 MR. ARNOLD: What's your name
19 again?

20 MR. BAILEY: Yeah. Judge Zanaty
21 convened the subcommittee that

22 drafted the provision that

23 Julie just referred to about

1 shared custody and how you
2 calculate. Were you on that
3 committee? Did I --

4 MR. ARNOLD: I wasn't on that
5 committee, but I conferred
6 with Judge Zanaty.

7 MR. BAILEY: You had some input on
8 that?

9 MR. ARNOLD: I had a little input
10 on that.

11 MR. BAILEY: That was a result of
12 Judge Zanaty's subcommittee to
13 the child support guideline
14 committee --

15 MS. PALMER: Okay.

16 MR. BAILEY: -- that drafted that
17 provision.

18 MS. PALMER: All right. Well --

19 And I guess per the e-mail
20 from the first -- from the
21 family law section. Should

22 there be a section in here
23 that specifically talks about

1 joint custody and how to
2 calculate the child support as
3 well as the split custody --

4 MR. BAILEY: Right. Right.

5 MS. PALMER: -- just to again make
6 it clear for those --
7 especially the pro se people
8 who might be coming in as
9 well.

10 JUSTICE STUART: Lyn Stuart. If
11 you put that in the rule, you
12 need to be really, really
13 clear that you define what you
14 mean by joint custody.

15 MR. ARNOLD: Absolutely.

16 JUSTICE STUART: Because it is the
17 general practice in lots of
18 places in this state to award
19 joint legal custody and then
20 award physical custody. And
21 we don't need for there to be

22 confusion about that.

23 MS. PALMER: No. No. It would

1 have to say specifically joint
2 physical custody and give a
3 definition, you know, type of
4 thing; whether it be six
5 months with me; six months
6 with you; a month with me, a
7 week, that sort of thing.

8 MR. ARNOLD: And to add to that
9 discussion, Julie -- Steve
10 Arnold here again -- is when
11 we had the presentations of
12 the different models before,
13 one model included looking at
14 the amount of time and setoff
15 and calculation for that, and
16 that is a nightmare.

17 MR. BAILEY: I agree.

18 MR. ARNOLD: And we want to avoid
19 that. I'm afraid that if you
20 got into the just joint
21 custody definitions, then you

22 start leaking over into that

23 nightmare. And I'm

1 individually not too prone to

2 want to go there at all.

3 MS. PALMER: Well -- And, again --

4 MR. ARNOLD: That's dangerous.

5 MS. PALMER: -- I'm mentioning it

6 because they put this e-mail

7 in this packet. So that's the

8 only reason I'm mentioning it.

9 MR. BAILEY: You're just the

10 messenger.

11 MS. PALMER: I'm just the

12 messenger again.

13 MR. BAILEY: Mike.

14 MS. POLEMENI: I've done --

15 Michael Polemeni. I've done

16 that joint custody issue, and

17 Alabama law says -- And I

18 don't want to lecture you on

19 Alabama law -- but says joint

20 physical custody doesn't

21 necessarily mean equal

22 custody --

23 MR. ARNOLD: Right.

1 MR. POLEMENI: -- and that --

2 MR. KRAL: Equal time.

3 MR. POLEMENI: -- equal time. And

4 that is a big thing that a lot

5 of us lay people -- You know,

6 when we say joint physical

7 custody, we assume 50

8 percent. And that's the thing

9 that kills us.

10 MR. BAILEY: Right. Right.

11 MS. POLEMENI: And that may -- And

12 defining that issue a little

13 bit better may be helpful.

14 MR. ARNOLD: If I can add

15 something there for you, Mike,

16 is I don't know how the

17 committee is staffed or who's

18 on the committee yet, but

19 there is -- The legislature,

20 as we passed out before, has a

21 task force --

22 MR. BAILEY: Right.

23 MR. ARNOLD: -- to look at Alabama

1 law in general and possibly
2 recommend a reorganization of
3 our divorce laws.

4 MR. BAILEY: Right.

5 MR. ARNOLD: I've --

6 MS. DAVIS: I think that's --

7 MR. ARNOLD: That is one of the
8 issues and best place for that
9 task force.

10 MR. POLEMENI: Yes, absolutely.

11 Absolutely.

12 MR. ARNOLD: What does all this
13 really mean? Right now our
14 definition of joint custody is
15 ephemeral.

16 MS. DAVIS: Well, there is a
17 statutory -- And I think
18 that's what you're referring
19 to.

20 MR. POLEMENI: Right.

21 MS. DAVIS: In the code, there's a

22 joint custody law.

23 MS. POLEMENI: Right.

1 MS. DAVIS: And it statutorily
2 defines joint custody as being
3 joint legal and joint
4 physical.

5 MS. POLEMENI: Uh-huh (positive
6 response).

7 MS. DAVIS: The terminology that's
8 used in that is sole physical,
9 but the terminology that's
10 used out in the heartlands and
11 the byways and the highways is
12 primary physical custody.

13 MR. BAILEY: Right.

14 MS. DAVIS: So the average person,
15 when they see joint custody,
16 it really means, as Justice
17 said, joint legal as far as
18 what the courts are really
19 ordering.

20 MR. POLEMENI: Right.

21 MS. DAVIS: They're ordering joint

22 legal and primary physical

23 custody. And so whoever is on

1 that, you may be -- And you

2 may be --

3 MR. ARNOLD: I hope to be.

4 MS. DAVIS: -- Justice Stuart who

5 is going to be --

6 MR. ARNOLD: The joint custody and

7 shared custody, they're so

8 ephemeral.

9 MR. BAILEY: Right.

10 MS. DAVIS: Right.

11 MR. ARNOLD: But the terminology

12 is so critical when it comes

13 to subsequent modifications of

14 custody.

15 MR. POLEMENI: Absolutely.

16 MS. DAVIS: Right.

17 MR. BAILEY: Right.

18 MR. ARNOLD: So it has a real

19 effect and a no effect all at

20 the same time. And it's

21 going to be tough to live

22 with.

23 **MR. BAILEY:** As maitre'd of the

1 committee and trying to find a
2 seating chart and outside
3 seating with no smoking -- The
4 dates that we have
5 available -- Bob has given me
6 the dates that it is not
7 available, so I'm going to try
8 to put that with my calendar
9 that I have here. It is
10 available on Wednesday, August
11 13th. Now, Lyn has pointed
12 out very succinctly that the
13 court probably would need our
14 recommendations well in
15 advance of September 1st. So
16 we don't want to try to get
17 into September if we want to
18 make this effective January
19 1st. So I think that's kind
20 of what we want to do, make it
21 effective, if we can, January

22 1st.

23 Lyn said the court would

1 like to have it around the 1st
2 of September. So we've got
3 Wednesday the 13th. We've got
4 Tuesday the 19th. And I'm
5 trying to stay away from the
6 week of Labor Day, week before
7 Labor Day. So is a Wednesday
8 or Tuesday best for
9 everybody? I know it's not
10 best. In the world we'd like
11 Friday. But is that -- Is a
12 Tuesday or Wednesday just
13 prohibited for anybody on the
14 committee right now?

15 (No response.)

16 MR. BAILEY: All right. Would you
17 prefer a Wednesday or a
18 Tuesday? What's the
19 preference?

20 MR. POLEMENI: Tuesday.

21 MS. PALMER: Doesn't matter.

22 MS. POLEMENI: Tuesday.

23 MR. KRAL: Tuesday.

1 MR. BAILEY: Did we say Tuesday?

2 MR. POLEMENI: Tuesday.

3 MR. BAILEY: Anybody -- Tuesday

4 works. What about Tuesday the

5 19th? Bob, I don't see any

6 conflict on the 19th. I see a

7 conflict on the 15th, the

8 20th, the 21st but not on the

9 19th. Can we set our next

10 meeting, then, for Tuesday the

11 19th? Bob, can you reserve

12 the room for us?

13 MR. MADDOX: I will.

14 MS. PALMER: At 10 a.m.?

15 MR. BAILEY: 10 -- Does that suit

16 everybody, or do we want to

17 meet earlier or later?

18 MR. ARNOLD: Ten is good.

19 MS. PALMER: Ten is good.

20 MR. BAILEY: Now, one other

21 question. Would you like for

22 me to see if I can find some

23 lunch money for us, because I

1 think when we meet this next
2 time on the 19th, we ought to
3 try to get -- everybody plan
4 to be here, spend some time
5 and let's go through -- have
6 lunch if we could -- if I can
7 find a deep pocket, have lunch
8 and finish the day and try to
9 finish this. Because as
10 somebody asked me the other
11 day, he said, Gordon, do you
12 think you're going to wrap
13 some things up; we've only
14 been working on it 15 years.

15 So does that sound good
16 to everybody, if we can find a
17 source of revenue from
18 somebody to have lunch and
19 then stay most of the day and
20 finish up? Okay. All right.

21 We have our direction. Thank

22 y'all so much for coming. I

23 really appreciate it. Any

1 other business before we

2 adjourn?

3 MR. ARNOLD: I move we double our

4 pay.

5 MR. BAILEY: I second that. All

6 right. We're adjourned.

7 Thank y'all so much. See you

8 on the 19th, August 19th.

9

10 * * * * *

11 MEETING ADJOURNED

12 * * * * *

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1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA:

3 ELMORE COUNTY:

4 I, Haley A. Phillips, Certified Court
5 Reporter, ACCR # 151, and Commissioner for the
6 State of Alabama at Large, do hereby certify that I
7 reported The Advisory Committee on Child Support
8 Guidelines and Enforcement meeting held on Friday,
9 June 13, 2008.

10 The foregoing 199 computer-printed pages
11 contain a true and correct transcript of the
12 meeting.

13 I further certify that I am neither of kin
14 nor of counsel to the parties to said cause nor in
15 any manner interested in the results thereof.

16 This 14th day of July 2008.

17

18

19

20 Haley A. Phillips, ACCR #151
21 Expiration Date: 9/30/08
Certified Court Reporter and

Commissioner for the State
of Alabama at Large

22

23