

1                   MEETING OF THE ADVISORY COMMITTEE  
2           ON CHILD SUPPORT GUIDELINES AND ENFORCEMENT  
3                   FOR THE STATE OF ALABAMA  
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11                   The following proceedings were held in  
12   the meeting of the Advisory Committee on Child  
13   Support Guidelines and Enforcement for the State  
14   of Alabama on Thursday, March 3, 2016,  
15   commencing at approximately Alabama at 10:03  
16   a.m. at the Heflin-Torbert Judicial Building,  
17   300 Dexter Avenue, Montgomery, Alabama 36014,  
18   and was taken before Haley Tunnell, Court  
19   Reporter and Commissioner for the State of  
20   Alabama at Large.  
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23                               \* \* \* \* \*

1 APPEARANCES

2 HONORABLE JULIE PALMER, Chair  
3 Circuit Judge Domestic Relations Division  
4 Birmingham Division, Jefferson County

5 STEPHEN WRIGHT, Esquire  
6 Birmingham, Alabama

7 PENNY DAVIS, Esquire  
8 Alabama Law Institute Tuscaloosa, Alabama

9 HONORABLE AUBREY FORD  
10 Macon County District Judge

11 HONORABLE WADE DRINKARD  
12 Marengo County District Judge

13 JIM JEFFRIES, ESQUIRE  
14 Mobile, Alabama

15 HONORABLE LYN STUART  
16 Associate Justice  
17 Alabama Supreme Court

18 STEVE ARNOLD, ESQUIRE  
19 Birmingham, Alabama

20 JENNIFER BUSH, ESQUIRE  
21 Alabama Department of Human Resources

22 LATHESIA SAULSBERRY  
23 Alabama Department of Human Resources

24 HONORABLE WILLIAM BELL via phone  
25 Madison County Circuit Judge (retired)

26 DREW WHITMIRE, ESQUIRE via phone  
27 Birmingham, Alabama

28 MICHAEL POLEMENI, via phone  
29 Alabama Family Rights Association  
30 National Parents Organization

1 MARY MOORE via phone  
Perry County Circuit Clerk  
2  
3 BRAD MEDARIS, Esquire  
Supreme Court Clerk's Office  
4 SCOTT HOYEM, Esquire  
Administrative Office of Courts  
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1                   CHAIR PALMER: Well, good morning,  
2                   everyone. I want to call the advisory  
3                   committee on child support guidelines and  
4                   enforcement meeting to order.

5                   All right. Today is Thursday,  
6                   March 3rd. It is 10:03.

7                   I want to welcome everyone here.  
8                   I'm going to have everyone introduce  
9                   yourselves in just a minute, and then  
10                  we'll make sure that we have a quorum.  
11                  But I just want to say that I'm very  
12                  honored to be appointed as chair of this  
13                  committee; however, it is with a broken  
14                  heart that I accept it, because I'm only  
15                  here because Gordon Bailey passed away.  
16                  And, excuse me, but he was a mentor, and I  
17                  just loved him to death, and I believe, he  
18                  was one of the original members of the  
19                  committee.

20                  And then we also lost another  
21                  friend this past year, and that was Judge  
22                  John Davis. He died maybe around  
23                  Christmastime, I want to say, and so

1           that's two people that were very important  
2           to this committee and just as mentors to  
3           me. And I just wanted to remember them.

4                   All right. Well -- and I want to  
5           thank Bob Maddox, as always, and Brad  
6           Medaris and then Scott Hoyem. I just met  
7           Scott today, so they have been a great  
8           help, getting everything organized.

9                   Like I said, I am Julie Palmer.  
10          I'm a senior judge, Circuit Court for  
11          Domestic Relations in the Birmingham  
12          division of Jefferson County.

13                   And so with that, we'll start  
14          with Mr. Wright.

15                   MR. WRIGHT: I'm Steve Wright. I'm  
16          a practicing attorney in Birmingham,  
17          Alabama.

18                   CHAIR PALMER: Ms. Davis?

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

21                   HONORABLE DRINKARD: I'm Wade  
22          Drinkard, Marengo County District Court  
23          Judge.

1                   MR. JEFFRIES:   Jim Jeffries.   I'm a  
2                   private attorney in Mobile, Alabama.

3                   HONORABLE STUART:   I'm Lyn Stuart.  
4                   I'm an associate justice of the Alabama  
5                   Supreme Court and a former Juvenile  
6                   District and Circuit judge in Baldwin  
7                   County.

8                   MR. ARNOLD:   I'm Steve Arnold in  
9                   private practice in Birmingham.

10                  MS. BUSH:   Jennifer Bush, DHR legal  
11                  counsel.

12                  MS. SAULSBERRY:   Lathesia  
13                  Saulsberry, Child support division  
14                  director, Alabama Department of Human  
15                  Resources.

16                  CHAIR PALMER:   Do we have a quorum?

17                  MR. HOYEM:   I think we need to check  
18                  and see if there's anybody that is in  
19                  attendance on a conference call.

20                  CHAIR PALMER:   Okay.

21                  HONORABLE BELL:   Yeah.   This is  
22                  Billy Bell.   I'm calling in from  
23                  Huntsville.   I am a retired circuit judge.

1                   CHAIR PALMER: Anybody that was  
2                   added on Mr. Bell broke his leg doing  
3                   something heroic, right, Mr. Bell -- Judge  
4                   Bell?

5                   HONORABLE BELL: It was. I'm trying  
6                   to start a tree trimming business.

7                   CHAIR PALMER: That's what he gets  
8                   going in his retirement. I guess, had the  
9                   chain saw and, it kicked back and knocked  
10                  you off the ladder; is that correct?

11                  HONORABLE BELL: The limb I cut is.  
12                  But I tell folks that if I got my choice  
13                  being retired with a broken leg or trying  
14                  divorce cases again, I'll take the  
15                  retirement with the broken leg.

16                  CHAIR PALMER: And then, Judge Bell,  
17                  Judge Aubrey Ford just walked in.

18                  HONORABLE FORD: Hello, Judge Bell,  
19                  how are you?

20                  HONORABLE BELL: Doing great. Thank  
21                  you.

22                  HONORABLE FORD: Well, you don't  
23                  sound like you're doing too great, but

1           that's okay.

2                   HONORABLE BELL: Well, I'm just not  
3           walking today, but I'm doing wonderful.  
4           Thank you.

5                   HONORABLE FORD: Great.

6                   CHAIR PALMER: And then so I do  
7           believe we have a quorum now.

8                   MR. WHITMIRE: And this is Drew on  
9           the phone.

10                  CHAIR PALMER: Drew who?

11                  MR. WHITMIRE: Drew Whitmire.

12                  CHAIR PALMER: Oh. Hey, Drew.

13                  MR. WHITMIRE: Hey, gang. I have a  
14           bad cold type flu, so you don't want me  
15           around.

16                  CHAIR PALMER: No. And then Heather  
17           Fann, who is the chair of the family law  
18           section had an emergency hearing at 8:30  
19           this morning. She was going to try to  
20           make it, but she also has the phone  
21           number. So she might be joining us as  
22           well.

23                  MR. POLEMENI: You have Michael



1 Polemeni.

2 CHAIR PALMER: Okay, Michael.

3 So are you taking good care of  
4 Judge Bell for us in Huntsville then?

5 MR. POLEMENI: I'm trying to. He  
6 should have called me about that tree.

7 HONORABLE BELL: It's gone. I can  
8 assure you, Michael.

9 CHAIR PALMER: All right. Anybody  
10 else on the phone? All right.

11 Then I'm going to consider that  
12 we have a quorum.

13 I would like to thank Judge  
14 Aubrey Ford for being here as well. He's  
15 been on the committee -- I don't know from  
16 the inception, but pretty darn close to  
17 it.

18 HONORABLE FORD: Oh, yes. From the  
19 inception, that's right. Shows you how  
20 old I am.

21 MR. ARNOLD: Easy now, Judge.

22 CHAIR PALMER: And he is and -- I  
23 guess, you retired in January of last

1           year?

2                   HONORABLE FORD:   Yes.

3                   CHAIR PALMER:   But he has agreed to  
4           help me, since this is my first time to  
5           chair this, to guide me along in the path  
6           of righteousness here.  And I appreciate  
7           that, Judge Ford, very, very much.

8                   Everything should have received a  
9           copy of the transcript from the last time  
10          we met, which was, I believe, 2014.  I  
11          believe, that's when Gordon Bailey was  
12          just was diagnosed with his illness, and I  
13          believe, Judge Ford actually conducted the  
14          meeting at that time.

15                   HONORABLE FORD:   I did.

16                   CHAIR PALMER:   So has everybody had  
17          a chance to review the minutes?

18                   MR. JEFFRIES:   Yes.

19                   CHAIR PALMER:   Okay.  Anybody have  
20          any corrections to them?  These were  
21          mailed out -- e-mailed out fairly early  
22          along.

23                   HONORABLE DRINKARD:   I move they be

1 approved.

2 HONORABLE FORD: Second.

3 CHAIR PALMER: Anybody second?

4 HONORABLE FORD: Second.

5 CHAIR PALMER: Okay. Judge Ford  
6 seconds.

7 Anyone apposed?

8 All right. The minutes are  
9 approved.

10 MR. HOYEM: Judge Palmer, if I  
11 could, I'd like to make sure that the  
12 record reflects that the Administrative  
13 Office of the Courts posted notice of  
14 today's meeting on our website on  
15 January 29th and also sent out notice to  
16 media statewide, announcing the meeting.

17 CHAIR PALMER: Yes, I have that. It  
18 appears that the news release went out on  
19 January 29th, 2016.

20 MR. HOYEM: Yes, ma'am.

21 CHAIR PALMER: Thank you.

22 All right. We got an update on  
23 schedule discussion. A notice went out

1 back in 2014, asking that the child  
2 support schedule be updated, because it  
3 had not been updated since 2009.

4 And part of the committee's  
5 charge is that we have to meet every  
6 four years and review that schedule. So  
7 offers went out in 2014. I believe,  
8 according to Mr. Maddox, that we only got  
9 one person that gave us a response back.

10 HONORABLE FORD: That's correct.

11 CHAIR PALMER: Okay. And I'm trying  
12 to get that person's name. I apologize.

13 It looks to be a Mark Rogers.  
14 And Bob Maddox confirmed with Dr. Rich  
15 Hobson that if the committee agrees to  
16 accept Mr. Roger's proposal to update the  
17 schedule at the rate of \$14,000, AOC will  
18 pay one-third, and DHR will reimburse  
19 two-thirds of the Title IV-D money  
20 pursuant to this year's IV-D budget for  
21 fiscal year 2016.

22 MR. JEFFRIES: Can I ask for  
23 clarification? I think I know this, but

1           the update will be updating based on the  
2           formula that we already have in place; is  
3           that correct? All of the guidelines that  
4           we went through, that's going to be in  
5           place. It's just a matter of the  
6           economics being updated? The dollars and  
7           cents being updated; is that correct?

8                   CHAIR PALMER: That's my  
9           understanding.

10                   Judge Ford?

11                   HONORABLE FORD: Yes. It's agreeing  
12           with in line of current economic services.

13                   MS. DAVIS: Right.

14                   CHAIR PALMER: And some of that, I  
15           believe, we'll learn that discussions of  
16           2014 that there has been some deflation as  
17           well; such as, the price of gasoline has  
18           since these schedules were issued in 2009.

19                   So it may not be that the amounts  
20           go up. It may be that they go down, or it  
21           may be that they stay the same, within one  
22           or \$2 of where they are now.

23                   So I probably was sent a copy of

1           the updates in the schedule, but I can  
2           honestly say that I have not -- I don't  
3           have them in front of me.

4                         Steve Arnold?

5                         MR. ARNOLD: Question, please.

6                         If we accept his proposal, does  
7           he give a timeframe?

8                         CHAIR PALMER: I don't have that  
9           information. You might have that  
10          information in front of you.

11                        MR. JEFFRIES: I believe, it says  
12          60 days.

13                        CHAIR PALMER: Okay. There should  
14          be -- it's an e-mail dated -- graphically  
15          typed.

16                        It's a letter to Bob Maddox,  
17          dated February 23rd of 2014.

18                        MR. JEFFRIES: If you look at the  
19          last paragraph, Steve, it mentions that  
20          the final report would be completed a few  
21          months after a contract is finalized.

22                        CHAIR PALMER: I believe, that's on  
23          the back page; is that correct?

1 MR. JEFFRIES: Right.

2 CHAIR PALMER: It's on the back  
3 page.

4 MS. DAVIS: Do we want to clarify  
5 that as -- put a time certain?

6 CHAIR PALMER: Well, I believe --  
7 and, Justice Stuart, if you'll help me  
8 with this as well.

9 Whatever we adopt, the Supreme  
10 Court is going to have to approve it  
11 anyhow; correct?

12 JUSTICE STUART: They do not. I  
13 think, Penny is saying a time period for  
14 him to present the report. Just because  
15 he presents it, doesn't mean that we'll  
16 even adopt it.

17 It's simply a study to assist us  
18 in determining what the changes are in the  
19 economic circumstances in the state of  
20 Alabama, and then we'll have to decide  
21 whether the charts should be changed.

22 MS. DAVIS: But, I think, rather  
23 than just saying it'll be a few months, a

1           few months in our definition might be two,  
2           as we suggested, or it might be eight in  
3           his perspective, and I just think it would  
4           be better to get clarification.

5                   CHAIR PALMER:   Okay.

6                   MS. DAVIS:   I don't know that we --  
7           that's his proposal, so I guess it would  
8           be a counter appearance -- not a counter  
9           -- maybe a clarification, not really a  
10          counter.

11                  MR. WRIGHT:   Why don't we say it  
12          will be acceptable upon his agreeing to  
13          direct --

14                  MS. DAVIS:   -- in X-amount of time;  
15          right, if the committee chooses to do so.

16                  CHAIR PALMER:   Well, we would have  
17          to have another meeting, so I would say  
18          August possibly, and then that he would  
19          have the information to us by August.  
20          That will give us a chance to review it.  
21          We'd either approve it or not approve it.  
22          And then we would go to the Alabama  
23          Supreme Court for their review, and then



1           upon their review, then that possibly  
2           might be something that could go into  
3           effect, let's say, January 1st of 2017.

4                   HONORABLE DRINKARD: Well, if we got  
5           to meet in August, we would need to get it  
6           before we meet in August. That's six  
7           months down the road, so are we talking  
8           about just throwing it out and give it  
9           five months to do this or less?

10                  CHAIR PALMER: Well, it's March the  
11           3rd, I believe.

12                  HONORABLE STUART: How about 120  
13           days?

14                  MS. DAVIS: That's fine. Because  
15           it's just dollars and cents, it's fine.  
16           We've been here before.

17                  CHAIR PALMER: Well, if we do 120  
18           days and include the month of March, since  
19           it's March the 3rd, March, April, May,  
20           June would be -- the end of June would be  
21           approximately 120 days.

22                   And I don't know if any of us  
23           want to meet in July would be my only

1           thing.

2                   MS. DAVIS:   That would give us time  
3           to study it.

4                   CHAIR PALMER:   And then have the  
5           meeting in August.

6                   Judge Ford, what's your opinion on  
7           that?

8                   HONORABLE FORD:   I think that's  
9           wonderful.   Gives you enough time to study  
10          before the August meeting and gives enough  
11          time to get on contracts.

12                   HONORABLE STUART:   And he indicates  
13          that his bid includes traveling here to  
14          Montgomery to do a presentation for the  
15          committee, which I think is going to be  
16          essential, because I don't think we have  
17          an economist on the committee, and I think  
18          we would have some questions.

19                   CHAIR PALMER:   We don't have one  
20          anymore.   As a matter of fact, that was  
21          one thing on my list to talk about, was  
22          that our economist did resign his  
23          position.

1                   And so we probably need to get  
2           another person on the committee, I  
3           believe.

4                   Where is his e-mail? It's from  
5           Ben Patterson with the economist. He sent  
6           an e-mail, and I forwarded this to Bob  
7           Maddox that he had resigned his position  
8           as of January the 11th of 2016.

9                   So we do need to get another  
10          economist, I guess, on the panel. Does  
11          anybody know anyone locally, or does that  
12          go out for a bid? Does somebody -- do we  
13          advertise that we're looking someone to be  
14          on the committee?

15                  HONORABLE STUART: It's really just  
16          appointed to the committee. In my  
17          experience, it's simply someone who has  
18          volunteered to agree to serve.

19                  CHAIR PALMER: Okay. Mr. Medaris  
20          and Mr. Hoyem, I'm going to have y'all  
21          help me and get with Mr. Maddox and see if  
22          we can find somebody local, maybe through  
23          one of the universities here in town or

1 Auburn or Alabama that would be willing to  
2 volunteer to be on this committee.

3 MR. HOYEM: An economist?

4 CHAIR PALMER: Yes, sir.

5 Okay. So do I hear a motion to  
6 have Mark Rogers -- contact him and tell  
7 him to go ahead and start his study? He  
8 has 120 days to get it to us. That would  
9 be June 30th, 2016, approximately.

10 We'll study it for the month of  
11 July, and then we will meet again in  
12 August to review that.

13 MR. WRIGHT: Submitted.

14 CHAIR PALMER: Okay. That's Steven  
15 Wright.

16 HONORABLE DRINKARD: I second that  
17 motion.

18 CHAIR PALMER: Okay. Judge  
19 Drinkard?

20 HONORABLE DRINKARD: Drinkard.

21 CHAIR PALMER: Yes. Judge Drinkard.

22 Any objections?

23 Any other comments?

1                               So be it.

2                               Okay. Next on the agenda is a  
3                               joint custody discussion. This, again,  
4                               was from 2014.

5                               And, Judge Bell, I believe you  
6                               were on this committee as well, about the  
7                               joint custody decisions as far as how  
8                               child support is to be calculated.

9                               HONORABLE BELL: Well, I had  
10                              discussed what I -- how I handled that  
11                              with Jim Jeffries. And I think he was  
12                              kind of polling and seeing from other  
13                              judges how that was handled in their  
14                              courts.

15                             CHAIR PALMER: Okay. Mr. Jeffries,  
16                             I'm going to let you start this  
17                             discussion.

18                             MR. JEFFRIES: Okay. Thank you.

19                             As Billy mentioned, we -- Billy  
20                             and Judge Palmer and I -- have been on a  
21                             sort of small committee, to look into  
22                             different ways that we could address child  
23                             support in joint physical custody

1           situations.

2                       As everyone is aware, we have no  
3           guidance other than just a mention of a --  
4           of that being a possible deviation in our  
5           rules with the increase in the occasions  
6           that judges and parties, in my experience  
7           at least, are entertaining joint physical  
8           custody situations. I thought it would be  
9           an appropriate thing for us to at least  
10          consider.

11                     Steve Arnold at the last meeting  
12          mentioned that this is a topic that has --  
13          that this is not the first time it's been  
14          brought up. And it's a much more  
15          difficult topic than we might understand.  
16          And after my review of different  
17          situations and attempts, to figure out how  
18          other states do it, I tend to kind of  
19          agree with Steve. It is a much more  
20          difficult topic than you might believe.

21                     And I found that it's been very  
22          difficult for me, myself, to survey -- to  
23          have the time to survey other

1           jurisdictions and how they do it.

2                       Just as an example, and some of  
3           the materials that we were given for  
4           today, we have the Michigan child support  
5           formula, which is -- I don't know that --  
6           I just printed one page. It is on  
7           page 15, yes, of the Michigan child  
8           support formula manual from January 1 of  
9           2013.

10                      And if you go to this page, you  
11           will see what, to me, looks like algebra.  
12           It is a fairly complicated formula, which  
13           deals with what they call a parental time  
14           offset, where they take the approximate  
15           number of nights the child will spend with  
16           each parent, apply this formula to the  
17           basic court obligation, and come out with  
18           an amount -- an adjusted amount from their  
19           base support obligation.

20                      On the other end of the spectrum,  
21           you have an example from the -- also  
22           materials that we were provided today from  
23           the state of Connecticut, which,

1            basically, they have a special provision  
2            in their child support guidelines. And I  
3            can point you to it, if anybody wants to  
4            look at it.

5                        But the gist of it is that they  
6            really don't have any sort of particular  
7            guidance for how to handle child support  
8            in a joint custody situation. They just  
9            specifically list that on their formula  
10          guideline sheet as a reason for the Court  
11          to deviate from their base support  
12          obligation.

13                      There is no particular -- again,  
14          no particular instruction for how the  
15          Court is to -- or the judge or the parties  
16          are to handle the deviation.

17                      And that's been my experiences.  
18          As the Court is well aware -- excuse me.  
19          As the committee is well aware, there are  
20          50 states and 50 different ways that child  
21          support is calculated, and I anticipate  
22          that would be what we would find. I don't  
23          know if we would be able to find someone



1           that is similar to ours.

2                       But, basically, I have not had  
3           the resources to do that on our own. I  
4           know that Judge Bell -- Billy, can you  
5           hear me?

6                       HONORABLE BELL: Yes, I can.

7                       MR. JEFFRIES: Judge Bell, uses what  
8           I describe or what I think of as a  
9           modified split custody formula, and Judge  
10          Michelle Thomason, who I practice in front  
11          of in Baldwin County, Alabama, they often  
12          use the same formula, which, basically, is  
13          taking the split custody calculation,  
14          which is in our rule, and once you get to  
15          the number at the bottom, you -- whichever  
16          party would pay child support to the other  
17          party, the child support number is then  
18          divided in half.

19                      And I'm not sure where -- Billy,  
20          can you -- do you remember where that  
21          formula came from?

22                      HONORABLE BELL: I did it. It's  
23          just something that I came up with,

1           because, obviously, in a joint custody  
2           situation, then both parents are sharing  
3           in the care, custody, and control, and as  
4           a result, paying for the expenses for the  
5           child or children, while child or children  
6           is with that parent, so it didn't, in most  
7           situations, seem fair to me to order full  
8           Rule 32 child support.

9                       That just seemed, to me, that  
10          you're paying the other parent for their  
11          one-half of whatever percentage of the  
12          one month they're going to exercise joint  
13          custody, and then other parent will hold  
14          the other one for their one-half of the  
15          month.

16                     So I just figured the Rule 32 got  
17          the difference between the two parents'  
18          obligations and divided it in half, or if  
19          it was not an equal time situation by  
20          whatever percentage they were going to  
21          exercise of each month. It's just  
22          something I came up with.

23                     MR. JEFFRIES: Judge Palmer, is that

1           similar -- isn't that similar to the way  
2           that you handle child support and joint  
3           custody situations as well?

4                   CHAIR PALMER:  It is.  I award true  
5           joint legal and physical custody from the  
6           bench at least 50 percent of the time,  
7           because our community, you've got  
8           Homewood, Vestavia, Hoover, which are --  
9           you know, if you go five feet, you're in  
10          one community to the other.

11                   So as far as delivering the  
12          children to school, and oftentimes by the  
13          time is case is heard, that's what the  
14          parties have been doing anyway, and if  
15          it's working for them anyhow, I'm not  
16          going to change it just because -- well,  
17          just because, if it's working for them,  
18          because they're the ones who have to  
19          coparent and live their lives.

20                   So what I do, I do the formula,  
21          and then if -- I would to pay someone  
22          \$300, and then someone were to pay me \$100  
23          for child support, then I'd be taking the

1           -- subtracting the 100 from the 300, and  
2           then I would have to pay \$200.

3                       Since I heard Judge Thomason talk  
4           at the beach, and I believe Mike Fellows  
5           out of Lee County does the same thing,  
6           then that's gets divided in half, so I've  
7           got \$100, and I pay you \$100. And that's  
8           the way that it's done, so that I would  
9           not be paid \$100, but yet, now I got to  
10          turn around and pay you \$200. So I try to  
11          balance it out like that.

12                      The hardest thing that I see is  
13          the daycare expenses, depending on the age  
14          of the child. How does that get paid? So  
15          -- because, oftentimes, I have the child;  
16          I don't need daycare expenses. My mother  
17          is going to be able to keep the child for  
18          me, but you do need daycare expenses,  
19          because you're not from the area. You  
20          don't have any family to keep the child.  
21          So that's been the big downfall on that,  
22          is how do you calculate child support -- I  
23          mean, daycare expenses in the child

1 support.

2 And also sometimes one parent is  
3 very good about paying the daycare  
4 expenses, and then the other parent says,  
5 Well, I didn't have any money this week;  
6 you pay it, and I'll catch up next week  
7 with it. And so sometimes that gets to be  
8 a problem too.

9 So I like to put the daycare  
10 expenses obligations on one parent, and  
11 then adjust it like that, if daycare is  
12 needed by both parents.

13 Judge Ford, what have you seen in  
14 the past?

15 HONORABLE FORD: My question is  
16 having collection issues. Unless you have  
17 a real good accountability as far as who's  
18 paying when, I see some real collection  
19 issues coming about; particularly, in the  
20 current system. So if you have two  
21 parties who are really diligent about  
22 following the Court's order, then you have  
23 no problem.

1                   But if you try to institute it  
2           into the same type of system, and what I  
3           did primarily is IV-D child support, where  
4           folks are not very diligent. You are  
5           going to have some real issues.

6                   CHAIR PALMER: Well, and like I  
7           said, most of the time that I award it,  
8           they've been doing it for the most part  
9           amongst themselves for, like, the last  
10          year, year and a half. Every now and  
11          then, one person is adamant that they do  
12          not want to split custody, and then the  
13          other side is, like, I think it's great.  
14          I think it's working. Look at the  
15          children's grades, look at their  
16          attendance, look at their -- they're not  
17          going to counseling, they're not having to  
18          see a therapist type of thing. So that's  
19          what I see.

20                   I don't know if that noise -- is  
21           somebody coming in or somebody dropping  
22           off?

23                   MR. HOYEM: I really don't know.

1                   CHAIR PALMER: It sounds like an SOS  
2                   coming through.

3                   MS. MOORE: Mary Moore.

4                   MR. HOYEM: Hey, Mary.

5                   MS. MOORE: Hey. How are you doing?  
6                   Sorry to be late.

7                   MR. HOYEM: Okay. I think you're  
8                   in.

9                   CHAIR PALMER: And Mary --

10                  MS. MOORE: And I've got a couple of  
11                  meetings going on.

12                               Can I mention one thing right  
13                  quick?

14                  CHAIR PALMER: Yes, ma'am. And this  
15                  is Mary Moore. I believe you're a clerk  
16                  of court for what county, Mary?

17                  MS. MOORE: Perry County, Alabama.

18                  CHAIR PALMER: Yes, ma'am. Welcome.

19                  MS. MOORE: Thank you. Thank you.

20                               I want to mention one thing that  
21                  I did notice, and I know it's probably out  
22                  of the line and out of order and not in  
23                  the right -- on the agenda at this time.

1                   But I got a packet that was  
2           prepared for a pro se, and I think it's  
3           wonderful. I have only one thing that I  
4           would like to discuss, and that's interest  
5           on child support.

6                   As you know, there is some laws  
7           that talk about child support. If you pay  
8           child support, you stay current within --  
9           for two years, then you can request a  
10          rebate of the interest. And I'm thinking  
11          I'm wording that right.

12                   But I think that needs to --  
13          there needs to be some instructions or  
14          something that's posted on the website as  
15          well as at the circuit clerks; certainly,  
16          included in that packet that would address  
17          interest.

18                   CHAIR PALMER: Okay. Well, we  
19          haven't gotten that far, Ms. Moore.

20                   MS. MOORE: Okay. Well, when you  
21          get to that, if you all will just mention  
22          it, because I've got another meeting. So  
23          that's why I wanted to bring it to y'all's



1           attention, in case I get off the phone.

2           So just when you get to that, if you would  
3           just discuss that and think about that for  
4           a second.

5                   CHAIR PALMER:   Okay.   Sure will.

6           Thank you.

7                   MR. ARNOLD:   May I ask you a  
8           question?

9                   CHAIR PALMER:   Yes, sir.

10                  MR. ARNOLD:   Billy, on your model,  
11           and as Judge Palmer had indicated, what  
12           consideration is given when there is wide  
13           disparity in incomes.

14                  HONORABLE BELL:   Well, somebody is  
15           dialing in.   I don't know what that is,  
16           but I can't -- I'm sorry.   I can't hear.

17                  MR. ARNOLD:   What consideration --

18                  CHAIR PALMER:   Hello?

19                         Again, I think, Heather might be  
20           calling in as well.

21                  HONORABLE BELL:   Well, I thought  
22           they were through.

23                  MR. ARNOLD:   It's hard to overcome

1           that.

2                   HONORABLE BELL:  Yeah.  It really  
3           is.  Okay.  Go ahead.  I'm listening.

4                   MR. ARNOLD:  My question is, what  
5           consideration do you give when there's  
6           wide disparity in the parties' incomes?

7                           I can see on a theoretical basis,  
8           if incomes are relatively close together,  
9           how that balancing may work and be  
10          somewhat equitable, but if you have wide  
11          disparity, the adjustment to one person,  
12          relatively speaking, has a much higher  
13          impact than it does on the other person,  
14          and it works to someone's gross  
15          disadvantage.

16                   HONORABLE BELL:  Well, and, Steve,  
17          it certainly could, and I think that our  
18          inquiry as a committee needs to be, number  
19          one, do we thing we need to put in a  
20          formula for joint custody or not?

21                           If we do, obviously, the judges  
22          can still deviate from it, when stating  
23          good reasons.  One of those reasons could

1           be the disparity in the income.

2                       If we don't want to put a formula  
3           in, then, of course, that ends the  
4           discussion. If the majority of the  
5           committee wants to come up with formula,  
6           then we need to then decide what formula  
7           we want to propose to the Supreme Court.

8                       MR. ARNOLD: Well, that segues into  
9           my other questions and comments. Having  
10          experienced conversation with people in  
11          states, where they try to do this  
12          adjustment for time, it gets extremely  
13          complicated, as Jim was commenting about.

14                      And this committee specifically  
15          rejected on previous meeting, trying to  
16          institute a formula that considered amount  
17          of days with each parent and the  
18          adjustments therefore, which means we're  
19          coming down to -- really, guidelines are  
20          becoming an on-the-shelf item, and  
21          judicial discretion is more often used  
22          than the guidelines. I think we're seeing  
23          kind of that trend.

1                   And, two, are we endangering by  
2           this kind of variance or this broad of a  
3           variance, are we endangering IV-D funds or  
4           other administrative or regulatory issues?  
5           Those are questions, not comments.

6                   HONORABLE BELL: Yeah. And I  
7           appreciate that, and I certainly agree  
8           with that.

9                   And all the cases that I've tried  
10          that joint custody is going to be ordered,  
11          I try to look at all the factors and try  
12          to figure out whether the guideline  
13          application is going to be contrasted and  
14          unjust and equitable, like it's supposed  
15          to, and then I deviate.

16                  And, you know, you may be right,  
17          Steve. There's really no scientific  
18          formula or a simple scientific formula  
19          that we can put in that fits the lay  
20          people and those trained in the law will  
21          be able to file and apply.

22                  So, Judge Palmer, I would ask  
23          that we vote now as a committee. Do we

1           feel like we need to insert a joint  
2           custody formula in the Rule 32?

3                   MS. MOORE: I'd like to make a  
4           comment. This is Mary Moore, circuit  
5           clerk in Perry County. And because of the  
6           fact that I deal with a lot of those and I  
7           have a brother that is going through a  
8           situation like this with joint custody, it  
9           was so difficult, and the judge did  
10          actually try to come up with some type of  
11          formula.

12                   But it was so, so very difficult,  
13          because there's so many variables. And I  
14          think when you're considering that one is  
15          not going to apply.

16                   And in my brother's situation and  
17          then other situations, it appears that the  
18          judge should be able to deviate and use  
19          his own discretion, as long as you're  
20          working with the parties and the  
21          attorneys. And, you know, sometimes, you  
22          know, it may even need mediating.

23                   But coming up with a formula is

1           probably going to be so difficult, because  
2           you've got so many variables in different  
3           counties, different areas of the state,  
4           and so many things.

5                     I think it should be the judge's  
6           discretion. But we -- you're right. We  
7           should vote on.

8                     CHAIR PALMER: Okay. Judge Ford has  
9           the floor.

10                    HONORABLE FORD: I think one of the  
11           issues is the fact that when we're using  
12           the guidelines, it's sort of one size fits  
13           all, because you're talking about IV-D and  
14           non IV-D.

15                    In IV-D cases, you've got a whole  
16           different dynamic that you're dealing  
17           with, and I don't know if you can come up  
18           with a formula that is going to be  
19           applicable in both types of cases.

20                    HONORABLE DRINKARD: I also -- this  
21           is Judge Drinkard. I also agree with  
22           Aubrey. And what I think, Billy, is  
23           suggesting to.

1                   So I'm going to go ahead and put  
2                   it on the floor. I'm going to move that  
3                   this committee not recommend or adopt or  
4                   whatever the correct word is a formula  
5                   regarding joint physical custody and leave  
6                   it as currently is, up to the judge.

7                   MR. WRIGHT: I second that.

8                   CHAIR PALMER: Okay. Steve Wright  
9                   seconds.

10                  And Judge Ford?

11                  HONORABLE FORD: I just seconded it.

12                  CHAIR PALMER: And Judge Ford  
13                  seconded it.

14                  All right. Anybody for any  
15                  discussion on this?

16                  MR. JEFFRIES: Let me -- let me just  
17                  make a couple comments.

18                  CHAIR PALMER: Okay. Jim Jeffries.

19                  MR. JEFFRIES: I certainly  
20                  appreciate all the opinions of the people  
21                  on this committee.

22                  It seems to me that the things  
23                  that we're talking about -- I did not have

1           the privilege of being on the committee  
2           when we adopted guidelines, but the  
3           arguments that are being put forth to not  
4           address this as a committee, I would bet  
5           you were the same arguments against having  
6           guidelines in the first place.

7                       They could be inequitable in  
8           one case or the other. They might one  
9           size fits -- it's hard to have a  
10          one-size-fits-all sort of -- sort of  
11          formula.

12                      And I tend to believe that this  
13          is something that's at least worth  
14          surveying from an ALI standpoint or  
15          perhaps adding some sort of comparative  
16          analysis with Mr. Rogers.

17                      CHAIR PALMER: And that's what I was  
18          going to see, if he had -- if Mr. Rogers  
19          in his formulas that he's going to update  
20          ours, if something like that is occurring.

21                      MR. JEFFRIES: And I'll say one  
22          other thing as well, if I might.

23                      One of the options that I think



1           we have is to -- even if we decide to do  
2           nothing; for whatever reason, we decide to  
3           do it, another option would be to help  
4           parties, practitioners, judges with some  
5           -- perhaps some comments about the  
6           discretionary ability of the judges, and  
7           here's an example of some how judges do  
8           it.

9                           And this goes back to my -- one  
10          of my issues with guidelines and these  
11          supposed discretion that judges have to  
12          deal with inequities is that it's not --  
13          too often, it's not done.

14                          The instruction that judges have  
15          to go by the guidelines leads us to  
16          situations where they -- judges too often  
17          do not exercise their discretion. And I  
18          know that's an issue with individual  
19          judges, and that's not something that we  
20          can necessarily control. What a judge  
21          feels is their discretion or is not there  
22          discretion.

23                          I just think there are some other

1 options for us as a committee charged with  
2 dealing with child support guidelines, to  
3 deal with them in some way other than the  
4 way we have, which is just, hey, it's  
5 discretionary. That's an ability to --  
6 the judge has an ability to deviate from  
7 that.

8 CHAIR PALMER: All right. Comment,  
9 Judge Ford?

10 MR. JEFFRIES: That's my discussion.

11 CHAIR PALMER: Okay. Judge Ford?

12 HONORABLE FORD: I do think that  
13 you're right. It could be a training  
14 issue for judges during our conference to,  
15 number one, acquaint them with the fact  
16 that there is a real issue with the joint  
17 and split custody and child support; and,  
18 secondly, as you indicate, to give them at  
19 least some methods that have been  
20 appointed to address the issue.

21 I think, right now, for most  
22 judges, it is, you know, I take it as I  
23 see it, and I'm going to apply it the best

1 I can. But at least, if you have some  
2 type of some direction in which you can do  
3 or how you can accomplish the goal, I  
4 think, is a lot better than having no  
5 direction at all.

6 CHAIR PALMER: Okay. Penny Davis?

7 MS. DAVIS: Well, I was going to say  
8 exactly what Jim said. Perhaps as an  
9 alternative to just deciding not to add  
10 formulas into the guidelines, that we  
11 ought to at least consider adding some  
12 committee comments, which I think would be  
13 appropriate under the reasons for  
14 deviation, where it talks about shared  
15 custody and visitation appears substantial  
16 in excess of the customary order. I see  
17 the same form there that was decided when  
18 they were doing the calculations there.

19 Ordinarily, when you do committee  
20 comments, it has to be associated with  
21 some section in there, so I think it would  
22 be appropriate if we don't choose to  
23 change the guidelines, per say, that we

1           can could at least put in some comments  
2           that we give some examples and  
3           consideration for those that would assist  
4           that maybe the judges that don't go to the  
5           meeting and also assist attorneys, who,  
6           obviously, would not be going to the  
7           judges' meetings in terms of preparing the  
8           documents and the pro se people that would  
9           be preparing the documents.

10                       The other thing is kind of a side  
11           comment. The language here used is  
12           custody and visitation.

13                       CHAIR PALMER: And Ms. Davis is  
14           referring to -- I believe, it's page 1; is  
15           that correct?

16                       MS. DAVIS: Yes. I'm sorry.

17                       CHAIR PALMER: Under Rule 32  
18           guidelines.

19                       And everyone should have that  
20           packet in front of team.

21                       MS. DAVIS: It's a guideline 1A on  
22           the reasons for deviating from the  
23           guidelines.

1                   If we do something -- if the  
2           committee chooses not to do something in  
3           the guidelines, per say, the comments  
4           would be helpful and because everybody  
5           won't be going to the judges' conference.  
6           It's helpful to have something in writing.

7                   But what I was going to reference  
8           is that the terminology here is physical  
9           custody and visitation. As some of you  
10          know, who are on the committee, family law  
11          committee, we're trying to move away from  
12          the idea that a parent has visitation with  
13          their child.

14                   And there was -- there's a bill  
15          that has been introduced that uses the  
16          term "primary physical custodian" and  
17          "non-residential custodian" parent.

18                   I think the Court already uses  
19          that. I mean, many of the judges and  
20          lawyers uses the term primary and physical  
21          custodian parent, even though the term in  
22          the code is "sole custody."

23                   So at some point it might be

1           appropriate; particularly, if the bill  
2           passes, or even if it doesn't, to rethink  
3           the term "visitation." If a bill passes  
4           that designates the parent to that, we may  
5           want to consider making our language  
6           consistent with code. It may not pass,  
7           but we can certainly update the philosophy  
8           here away from visitation.

9                   CHAIR PALMER: Okay. Anybody else  
10           have anything?

11                   Well, what I'd like to do then is  
12           table Judge Drinkard's motion right now.

13                   When we come back in August,  
14           we'll have come up with some sort of  
15           language for the comments.

16                   Possibly, we've got the divorce  
17           on the bench, which is a statewide  
18           continuing legal education for family law  
19           practitioners. I believe, we can have  
20           either a breakout session or just a survey  
21           as to some instructions there. We also  
22           have the summer judges' conference that's  
23           going to be in the July, so before our

1           next meeting, that we can get with some  
2           different judges throughout the state to  
3           see how they work things, some suggested  
4           verbiage, and possibly not have a formula  
5           but at least, have some comments in there  
6           as Ms. Davis and Jim Jeffries have  
7           suggested.

8                         Anybody have any comments about  
9           that?

10                        MR. ARNOLD: I have a question. If  
11           the verbiage of the comments, is that  
12           something that requires the Supreme  
13           Court's approval as well?

14                        HONORABLE STUART: It is.

15                        MR. ARNOLD: So that's a significant  
16           concern and not in a negative way, but we  
17           certainly have to address an adjustment.

18                        CHAIR PALMER: Yes. And that would  
19           be part of the August meeting, and that  
20           would go to the Court as well, along with  
21           if we decide to update the numbers for the  
22           child support schedule as well.

23                        But, I believe, we had some good

1 discussion here, and possibly, we all  
2 could do a little bit more work.

3 And, Mr. Arnold, I know you and  
4 Mr. Wright are going to be going to AAML  
5 meetings between now and then, which we  
6 know is the American Academy of  
7 Matrimonial Lawyers, and possibly just  
8 take a general survey of lawyers in other  
9 states and see what kind of formulas they  
10 use and report back to us in August about  
11 that as well.

12 So, I think, we've got a lot of  
13 good resources to see what other people  
14 are doing about this same situation. But,  
15 like I said, it's the coming thing, at  
16 least, in Jefferson County, Baldwin  
17 County, Huntsville, throughout the state  
18 that I know of where it is truly split  
19 custody, because you don't visit with your  
20 children. You have custody of your  
21 children. Grandma visits, Aunt Julie  
22 visits, but the parents have custody.

23 And when it's all physically



1           possible and you've got two good  
2           responsible parents, I think they both  
3           should see the children as much as  
4           possible.

5                               Ms. Davis?

6                       MS. DAVIS:   Would it be possible to  
7           ask AOC, or whoever the appropriate entity  
8           is, to ask the Jefferson judges and tell  
9           them the committee will be considering  
10          some changes related to this act of  
11          commentary and ask those judges who are  
12          willing to send their suggestions, and if  
13          any of them have standard formulas that  
14          they use in those kind of cases, to send  
15          that, and if they could compile that and  
16          sent that out to the committee, that would  
17          be a good starting point to where we are  
18          in the state.

19                       CHAIR PALMER:   Mr. Hoyem?

20                       MR. HOYEM:   I suggest that maybe  
21          asking this at the Judges Association or  
22          the District Judges Association, as  
23          opposed to asking 250, 400 different

1 judges how they do it. I would suggest  
2 maybe --

3 CHAIR PALMER: Okay. Justice  
4 Stuart?

5 HONORABLE STUART: Yeah. I think I  
6 would disagree with that, because the  
7 associations are simply all the judges as  
8 a body and people attend or don't attend.  
9 They have executive committees, who do  
10 their sort of day-to-day business, and  
11 then they only vote on really big issues.  
12 So I really think it is going to take  
13 sending it out to everyone in order to get  
14 a response.

15 CHAIR PALMER: With 400 judges,  
16 we'll probably get 40 responses, I would  
17 think.

18 Or also, at the judge's  
19 conference, Jeremy Taylor, Judge Bell, has  
20 been doing a fairly good job. He knows  
21 his stuff. Of course, he's got big shoes  
22 to fill with you. But he's been doing an  
23 excellent job with the case law update.

1                   But if nothing else, we could  
2           give out those surveys during that case  
3           law update. They usually have, at least,  
4           two sessions of that, and have them fill  
5           that out at the time, which again, is  
6           going to be July, and we could have those  
7           back before August, and we could just send  
8           them down to everybody before they go out.  
9           Judges don't even have to put their name  
10          on there, if they don't want to.

11                   But, I think, between e-mailing  
12          everybody something and then physically  
13          giving them this survey at the judges'  
14          conference, that we could get quite a few  
15          responses back.

16                   HONORABLE FORD: I really think most  
17          of this is going to on a circuit level, as  
18          opposed to the district court. It will be  
19          interesting to see if district judges do  
20          address the issue, how they do it.

21                   CHAIR PALMER: Well, you got, of  
22          course, family court judges that are on  
23          the district level. I don't know how

1           often they do a week and a week. But I  
2           know, in Jefferson County, we have a  
3           district judge who sits as a special  
4           sitting circuit court judge. In Marion  
5           County, in Winston County, the district  
6           judges there hear all the divorce work.

7                       So there's special sitting  
8           circuit judges. So I think that there's  
9           going to be some exceptions to that rule  
10          that we can't --

11                      HONORABLE FORD: What I'm saying  
12          really on the IV-D level, how, if they're  
13          addressed and how it's addressed, because  
14          it's such a diverse population income-wise  
15          and just how they relate to each other.  
16          It's a very interesting issue on that  
17          level.

18                      CHAIR PALMER: Yes. Yes.

19                      Go ahead. Penny Davis.

20                      MS. DAVIS: Do you think it will be  
21          appropriate in the memorandum that we send  
22          out to separate, actually separate any  
23          issues that they have in the IV-D cases;

1           for instance, in the general population,  
2           or would that not be appropriate?

3                   HONORABLE FORD: I think -- yeah. I  
4           think just send one letter. I would just  
5           say that --

6                   MS. DAVIS: No. I was talking about  
7           it would be, I think, in the question that  
8           you ask.

9                   HONORABLE FORD: That may be. Yeah.  
10          Because there is a diversity in the  
11          population; sometimes dealing with folks  
12          who have never had a relationship  
13          together. They just had a child together,  
14          and now all of a sudden, now you're trying  
15          to meld together two people who really  
16          don't really know each other than sexual.

17                   HONORABLE DRINKARD: I made my  
18          motion to put this on the floor for the  
19          discussion we had. And listening to what  
20          we're saying, I think, it would be  
21          appropriate at this time that I would  
22          withdraw my motion, assuming you will  
23          withdraw your second to that motion. And

1           let's await the results of all of this  
2           input we hope we're going to get, and then  
3           when we have the next meeting, it will  
4           come back up at that time with more input.

5                   MR. WRIGHT: I will withdraw.

6                   CHAIR PALMER: And, Judge Ford, are  
7           you doing to withdraw your second to this?

8                   HONORABLE FORD: I will.

9                   CHAIR PALMER: All right. Thank you  
10          very much.

11                   MR. JEFFRIES: I have one comment.

12                   CHAIR PALMER: Okay. Mr. Jeffries.

13                   MR. JEFFRIES: And I was lucky  
14          enough to serve on several committees with  
15          Penny Davis, and I'm always amazed with  
16          the ability of the Alabama Law Institute  
17          to concisely put information together for  
18          us; for example, the Social Security  
19          offset and the child support memorandum  
20          that we have the benefit of reviewing  
21          today, I think, in terms of our reviewing  
22          possible comments or anything even  
23          remotely close to that going forward, if

1 Penny would be able to have the Alabama  
2 Law Institute put something together for  
3 us in a survey-type form. I don't want to  
4 -- I know you're really busy right now,  
5 but maybe before the August meeting, that  
6 would be possible?

7 MS. DAVIS: Yeah. I'd be happy,  
8 Judge Palmer, if she'd like for us to do  
9 that.

10 CHAIR PALMER: Please.

11 Okay. All right. Anything else  
12 on this topic before we move forward?

13 Scott Hoyem?

14 MR. HOYEM: I wanted to clarify for  
15 -- when we have custody arrangements that  
16 you're referring to come about, how do  
17 they come about?

18 Do they come up about by  
19 agreement more of the time, or are these  
20 custody agreements that are imposed on  
21 parents?

22 MR. JEFFRIES: Well, it depends on  
23 where -- depends on which county you have

1           your divorce.

2                   MR. HOYEM: Under Alabama law, are  
3           these arrangements that you're talking  
4           about?

5                   CHAIR PALMER: Eight-five percent --

6                   MR. HOYEM: Judges can impose, as  
7           opposed to being brought to the Court by  
8           agreement.

9                   So the only time that these  
10          issues generally would come up would be  
11          during a modification.

12                  MR. JEFFRIES: No. By law, it is  
13          available as a custody order in every  
14          case. In reality, just for example, and  
15          the judges that I practice in front of in  
16          Mobile County, it would never occur unless  
17          it was by agreement by them, or at least  
18          they rarely occur, unless it was by  
19          agreement.

20                  However, in Baldwin County, we  
21          have a judge who that is her default  
22          custody arrangement, where -- in other  
23          words, unless the parties have some



1           particular reason why they shouldn't do  
2           true joint physical custody, that's what  
3           they're going to do, whether they want to  
4           or not, whether one party wants to or not.

5                       Does that answer your question?

6                       MR. HOYEM:   When we do have that, we  
7           want the same standard to be applied in  
8           all the counties.

9                       MR. JEFFRIES:   Seems like it would  
10          be.

11                      CHAIR PALMER:   Well, you'd think so.  
12          We have a unified judicial system, but we  
13          don't have a uniform judicial system.  So  
14          my thoughts of how I do my custody awards  
15          are completely different than Walker  
16          County, let's say, or Mobile County or  
17          Marengo County or Perry County.

18                      So it's really up to each judge.  
19          We have the case law out there, and we've  
20          got some statutory-type of things, where  
21          the judges are supposed to start out with  
22          joint custody.  That's the ideal thing,  
23          and then you hear the testimony, and you

1           hear the witnesses and talk to the  
2           children and do everything, and then you  
3           have to decide if that split custody is  
4           actually going to work in this case or is  
5           it not.

6                        So that's where you start, but  
7           where you end up is a whole different  
8           story.

9                        Penny Davis?

10                      MS. DAVIS: Well, I think this is  
11           the generally the question. If the  
12           custody bill at this point passes, then  
13           instead of requiring, as the law does now,  
14           that parents submit a custody plan, only  
15           if they want joint custody, this will  
16           require all parents to submit custody  
17           plans to the judges.

18                      And just like the current law  
19           says, that if both parents submit and  
20           request joint custody, that the judge will  
21           enter that unless for good cause he writes  
22           or she writes why they shouldn't. So  
23           there's always the judicial discretion to

1           override that.

2                       And the same will be said for --  
3           the same will be the law for any custody  
4           plan that they have. So if the father and  
5           mother here decide that and -- I'm going  
6           to use Billy, if he's a still awake.  
7           Billy is my husband. He's my standard  
8           husband in this committee.

9                       CHAIR PALMER: He is.

10                      MS. DAVIS: If Billy is my husband  
11           and I get a divorce, if we both submit the  
12           same plan and even though that now that  
13           Billy is a stay-at-home dad, he is going  
14           to be the primary physical custodian of  
15           the child, and I will be what will now be  
16           called the non-residential custodian  
17           parent; then, we would both submit a plan.  
18           He would be the primary and -- but if we  
19           both submit the same parenting plan, then  
20           the judge would agree to that, unless they  
21           use their discretion and override that.

22                      And so the answer would be that  
23           in most of these plans, if the law changes

1           going forward, then it would be plans that  
2           hopefully a lot larger percentage of  
3           parents will agree to. Not all of them.

4                   CHAIR PALMER: Well, I believe too,  
5           Mr. Hoyem, that that would be -- make the  
6           courts more uniform as well, as far as  
7           some of rulings from the judges, as far as  
8           the custody issues go.

9                   MS. DAVIS: The secondary part of  
10          that is that in conjunction with doing  
11          that, where we have a committee of experts  
12          that are developing the model parenting  
13          plans, and if the bill passes or part of  
14          the bill is requirement for those plans to  
15          be placed on the bill and AOC's website,  
16          and so developing a handbook for judges  
17          and a handbook for the parents and model  
18          plans for -- based on the ages of the  
19          child and the different custody  
20          arrangements.

21                          So that would perhaps lead to  
22          more -- potentially, lead for more  
23          uniformity.

1                   CHAIR PALMER: Well, okay. So we  
2                   are going to table the joint custody  
3                   discussion. Judge Drinkard is taking his  
4                   motion off the table. We're going to come  
5                   back in August. Everybody is going to  
6                   have more research. We're going to have  
7                   the information before you beforehand.

8                   The bill that Penny Davis has  
9                   just discussed might actually become law  
10                  at the time. So we will put that back on  
11                  the agenda in August.

12                  I am going to skip through the  
13                  agenda, since Mary Moore has several other  
14                  meetings to go to. We're going to move to  
15                  No. 7, which is the child support  
16                  instruction update.

17                  So Ms. Moore? Is she still with  
18                  us? Mary Moore, are you still on the  
19                  line? Well, I take it that she's not.

20                  Well, then we'll go back to the  
21                  schedule, and that's Social Security  
22                  disability offset discussion.

23                  Ms. Davis.

1                   MS. DAVIS: I'm not sure -- I think  
2                   Billy Bell is more responsible for me  
3                   doing this, but I'm going to make it --

4                   HONORABLE BELL: I'm good at  
5                   delegation.

6                   MS. DAVIS: That's right. I was  
7                   asked to present the information. You  
8                   probably have more information than you  
9                   want in the packet, but I was just wanted  
10                  to get the highlights.

11                  CHAIR PALMER: And the packet is  
12                  called "The Memo"; is that correct?

13                  MS. DAVIS: There's a memo and  
14                  there's a second memo with a number of  
15                  statutes from other states.

16                  CHAIR PALMER: Does everybody have  
17                  that in front of them? There's two.  
18                  One's dated February 16th, and one's dated  
19                  February 22nd.

20                  MS. DAVIS: Right. The first one is  
21                  just kind of an overview of the current  
22                  law in Alabama, and then the second one is  
23                  just also a little bit of an overview of

1           what some of the other states do.

2                       But if we do -- I don't know at  
3           this point what direction the committee  
4           wants to go.

5                       But just kind of going over  
6           briefly the current status. We have a  
7           number of cases that have dealt with  
8           whether parents should be given credit for  
9           third party Social Security disability  
10          benefits and that sort of thing.

11                      And the memo kind of divided out,  
12          as you know, if the parent gets Social  
13          Security, then the children get a separate  
14          check for themselves in some instances.

15                      One of the cases dealt with how  
16          do you treat arrearages. If they are -- a  
17          lot of times, because of the backlog in  
18          the federal government, once someone  
19          applies for benefits, they don't get it  
20          immediately, but once they get it, there's  
21          a big lump sum check that comes back, if  
22          they're awarded custody.

23                      And we have case law, and I won't

1 read all of this, because you can read the  
2 memo, that has said that Social Security  
3 payments can be applied retroactively to  
4 cover arrearages that occur after receipt  
5 of the benefits. You can sort of read  
6 that. So that's the current law in  
7 Alabama.

8 There's another case that dealt  
9 with whether the receipt of benefits would  
10 then be the result of the termination of  
11 the parents' obligation with court. There  
12 are other cases that have dealt with -- in  
13 Alabama with whether a -- if a child is  
14 receiving a benefit on behalf of a  
15 stepparent, instead of the obligor, would  
16 that offset, and, of course, it said no.

17 So the general rule seems to be  
18 if a benefit is derived from the obligor  
19 parent, the parent who is obligated to  
20 pay, then they get a credit for that. If  
21 it's a third party, like a stepparent,  
22 then they're not generally going to get  
23 credit for that. And that's kind of where



1           we are.

2                       I think the question that was  
3           presented to the committee is, do we want  
4           to put something in the guidelines that  
5           either takes the current case law and puts  
6           in the guidelines, so that -- and the form  
7           that's used -- the forms that are used, so  
8           that the lay people, who are filing out  
9           these forms, the pro se people, as well as  
10          perhaps the less-informed lawyers and  
11          other people that might not know the case  
12          law, do we want to put that in? Do we  
13          want to put more references of that in the  
14          committee comments?

15                     And the second memo deals with  
16          what some other states have done. Many  
17          states do allow offsets or credits,  
18          whatever or however you want to call them  
19          for those. And, I guess, it's just -- my  
20          understanding, I was supposed to let y'all  
21          know what the law is now in terms of case  
22          law, and then the committee will then  
23          decide, if you want to address it in

1           anyway, so that's...

2                   CHAIR PALMER:   Judge Drinkard?

3                   HONORABLE DRINKARD:   As Judge Ford,  
4           I probably deal with IV-D cases.   I do  
5           domestic relations, DR cases, on special  
6           assignment, but primarily IV-D.   I have  
7           this issue come up quite frequently in  
8           IV-D cases.

9                   We've got a lot of our fathers  
10          who go on Social Security, and the  
11          children get benefits, and it just gets  
12          sort of complicated.   So I do think we do  
13          need to address it, and I would like to  
14          see something in there.

15                   And I could not help but notice  
16          my good friend Judge Bell's e-mail  
17          concerning the Michigan statute, which is  
18          on page 20.   And after I went back and  
19          looked at it, after he e-mailed it, I got  
20          to looking at that thing, and I said, you  
21          know, I agree completely.   I believe, I  
22          sent out an e-mail as a follow up.   I  
23          agree 100 percent with Billy.

1                   I like that Michigan provision as  
2           to how to handle that. It's about as  
3           simple and straightforward as it gets. I  
4           think, even some of us moron judges can  
5           understand this as well as the common lay  
6           person. That's my two cents' worth.

7                   CHAIR PALMER: Well, now, the  
8           Michigan statute, is that different than  
9           the Michigan child support schedule that  
10          we had earlier in our hands?

11                  HONORABLE DRINKARD: It's on  
12          page 20.

13                  MR. JEFFRIES: It's a different part  
14          of what I was explaining. It's the same  
15          packet.

16                  HONORABLE BELL: It's the Michigan  
17          child support guidelines, as I remember.

18                  MR. JEFFRIES: Same packet.

19                  CHAIR PALMER: Page 20?

20                  HONORABLE FORD: 3.07, page 20.

21                  CHAIR PALMER: 3.07A?

22                  HONORABLE FORD: Yeah.

23                  CHAIR PALMER: Which reads, for

1           those that don't have it in front of you,  
2           page 20, 3.07A, the title is called Social  
3           Security Benefit Credit:

4                       "Credit Social Security  
5           retirement survivors or disability  
6           insurance paid for the children based on  
7           the support payers' earnings record  
8           against the parent's support obligation as  
9           follows: Determine the total child  
10          support obligation, determine the monthly  
11          benefit amounts that is attributed to the  
12          payer and that the support recipient  
13          receives for the children, and then  
14          subtract that amount from the total child  
15          support obligation. If the children's  
16          payer-based benefits exceeds the total  
17          support amount, then no additional amount  
18          should be ordered. If the children's  
19          payer-based benefits are less than the  
20          payer's total support amount, then the  
21          difference between the benefits received  
22          for the children and the total support  
23          amount becomes the ordered obligation."

1                   HONORABLE DRINKARD: That's about as  
2                   straightforward and simple as you can make  
3                   it, right there.

4                   HONORABLE FORD: And that's actually  
5                   what our case law is.

6                   CHAIR PALMER: That is. But that  
7                   explains it very well, if we wanted some  
8                   sort of guidelines in there.

9                   What I see and the argument that  
10                  I get is SSI. I know you can't include it  
11                  for purposes of child support  
12                  calculations. I know that part cannot be  
13                  -- have an income withholding order  
14                  against; however, I have custody of a  
15                  child, who is getting SSI benefits. Now,  
16                  I thought there were some caselaw out  
17                  there -- everybody help me remember  
18                  this -- that if it's true SSI,  
19                  Supplemental Security Income, then if I've  
20                  got custody of that child, then that \$500  
21                  that child gets go towards in my income  
22                  category. Doesn't that money have to be  
23                  assessed to some parent, or is that

1           custodial parent just getting an extra  
2           \$500 every month?

3                   HONORABLE DRINKARD: They're getting  
4           an extra \$500.

5                   HONORABLE FORD: This is the  
6           problems you're dealing with.

7                   HONORABLE DRINKARD: This is the  
8           problem that comes up in the IV-D cases.

9                   HONORABLE FORD: Frequently.

10                  HONORABLE DRINKARD: Very, very  
11           frequently in the IV-D cases. I'd say 50  
12           percent of them or more.

13                  CHAIR PALMER: Well, should that be  
14           addressed, because I think that's a true  
15           inequity. You're getting it. You're  
16           depositing it in your back account every  
17           month. It's not like there's a trust  
18           account for the child, or that money is  
19           just going specifically towards that  
20           child. It's being deposited into that  
21           custodial parent's bank account, but yet,  
22           the noncustodial parent is not getting any  
23           credit for that.

1                   HONORABLE FORD: I think what  
2                   problem you have with the system that we  
3                   deal with the one-size-fits-all, there's  
4                   so many issues out there that become so  
5                   complicated that that no longer becomes a  
6                   guideline.

7                   I think perhaps it needs to be  
8                   addressed maybe in comments or in training  
9                   opportunities, but I don't -- I don't  
10                  think we need to make it so complicated  
11                  that it's no longer a document that you  
12                  can depend upon to come up with the result  
13                  that you're looking for.

14                 CHAIR PALMER: Well, Ms. Bush, you  
15                 have been very quiet over there. What  
16                 about this issue?

17                 Jennifer Bush.

18                 MS. BUSH: I would have to go back  
19                 and look at the federal law, but I know  
20                 SSI is not considered an income. It's not  
21                 income-based, and that's one of the main  
22                 reasons in Rule 32 that we excluded for  
23                 the definition of income. I know federal

1           law prohibits any type of garnishment or  
2           lien on SSI.

3                   CHAIR PALMER:   And I'm in agreement  
4           with that.

5                   MS. BUSH:   I believe federal law  
6           also defines it as not income.   And so  
7           that would be my concern, is if we start  
8           including it as income for the custodial  
9           parent, we may violate some -- not child  
10          support or IV-D federal law but some  
11          Social Security federal law.

12                          That's my thought, that there's a  
13          legal reason we don't count it as income.

14                   MR. JEFFRIES:   Is that different  
15          from what we're talking about, though?

16                   CHAIR PALMER:   It is.   It's not SSDI  
17          or SSRI; it's just SSI.

18                   MR. JEFFRIES:   It's totally  
19          different, so we would should be okay.

20                   HONORABLE DRINKARD:   I think we  
21          should just address it, just like it is  
22          right now, and leave the SSI issue out of  
23          it.



1                   MS. BUSH: I would say that before  
2                   we made a decision, we would need to go  
3                   back and look and check the federal law.

4                   But my understanding -- because  
5                   that's something we do run into when a  
6                   recipient receives SSI. We can't do any  
7                   collection against it as far as  
8                   garnishment, liens, wages.

9                   CHAIR PALMER: But I'm not talking  
10                  about the parties. I'm talking about the  
11                  child, the minor child that's getting that  
12                  money.

13                  MS. BUSH: But I still think the  
14                  category of SSI, whoever is receiving it,  
15                  is not considered income under federal  
16                  law.

17                  CHAIR PALMER: Okay. Anybody on the  
18                  phone have any comments about that?

19                         Drew? Judge Bell? Michael?  
20                  Mary?

21                  MR. POLEMENI: When foster parents  
22                  adopt, they do get in many cases a monthly  
23                  subsidy after the adoption, and then after

1           the couple divorces, that subsidy if for  
2           the child. It's the child's SSI. So it's  
3           sort of what you're talking about.

4                       I see a lot of subsidies passing  
5           through adoptions.

6                       MR. JEFFRIES: The only thing that I  
7           would add to the discussion is that I  
8           agree with Judge Drinkard, that we need to  
9           address this. I think it needs to be  
10          credited to the payor in the right way,  
11          however we decide that's best.

12                      I would even say that we -- I  
13          would be in favor of expanding the type of  
14          credit that can be -- that a payor can  
15          receive.

16                      I know somebody has mentioned  
17          that railroad retirement benefits as a  
18          possible credit, but I think the credit  
19          should be expanded not just Social  
20          Security but any benefit -- almost --  
21          well, could at least consider other  
22          benefits that a child receives on behalf  
23          of the payor to reduce the amount of

1 out-of-pocket child support that he  
2 necessarily has to pay.

3 Too many times, it seems to me,  
4 that when you have someone who's on  
5 disability, they typically go through a  
6 period where they don't go right back to  
7 the court to change their child support.  
8 There is period of them getting on  
9 disability in the first place, and they  
10 have this huge arrearage that really for  
11 no fault of their own in a lot of  
12 respects. And I would say that the credit  
13 could be applied to any arrearage as well.

14 I know there was some discussion  
15 in the cases that Penny gave us, where  
16 that was an issue that was not favored,  
17 and I don't disagree with that point. I  
18 think it should be considered.

19 MS. BUSH: It's my understanding now  
20 that if a parent -- that circumstance  
21 occurs, where, let's say, a person is  
22 disabled in January, and they don't get  
23 their -- they don't get approved for

1           Social Security until June, and so for six  
2           months, they don't pay their child  
3           support, and then they get a lump sum, and  
4           then the child receives a lump sum.

5                     It's my understanding that the  
6           case law now will allow that child's lump  
7           sum that represents January through June  
8           to be credited towards any arrears that  
9           occurred during that time period.

10                    It's the arrears that occur prior  
11           to the disability that the case law says  
12           you should not take that money and apply  
13           it to arrears that existed and occurred,  
14           you know, two or three years earlier,  
15           maybe when the person was working and  
16           could pay but just did not pay.

17                   MR. JEFFRIES: And that could be an  
18           appropriate way to look at it. I'm  
19           just -- my thought is that when the  
20           disability begins, it's not necessary very  
21           clear a lot of times, and there can be  
22           years of inability to work full-time or  
23           even at all, where this huge arrearage

1           comes up, and then the disability is  
2           found, and then the lump sum goes back to  
3           the finding of the disability.

4                       I agree with you basically is  
5           what I'm saying, I think. I just think  
6           there can be some questions as to when it  
7           starts. And you've got some real  
8           inadequacies to the payor with these huge  
9           arrearages that are not realistic for them  
10          to pay back.

11                     HONORABLE FORD: The thing we're  
12          talking about, if the child receives SSI,  
13          should we --

14                     HONORABLE STUART: We're not talking  
15          about SSI.

16                     CHAIR PALMER: We're off that.  
17          We're back SSRI and SSDI survivor  
18          benefits, so.

19                     And as far as the railroad that  
20          Jim was talking about, apparently, the  
21          railroad employees don't pay Social  
22          Security. That is their Social Security,  
23          is their retirement.

1                   So I don't know why that would  
2           not be given a credit. I mean, a payment  
3           is a payment, no matter where it comes  
4           from, I would think, so.

5                   MR. JEFFRIES: Well, I think that's  
6           the way it should be, and that we not  
7           limit it to have the wording "Social  
8           Security disability payments" to -- on  
9           behalf of the child, where it's a  
10          retirement -- excuse me, a railroad  
11          situation.

12                  CHAIR PALMER: Well, is that some  
13          language that we could add if we decide to  
14          use the language in the Michigan child  
15          support formula and credit Social Security  
16          retirement, survivor benefits, or  
17          disability insurance benefits, and add  
18          railroad retirement in there?

19                  MS. BUSH: And don't forget  
20          veteran's benefits.

21                  CHAIR PALMER: And veteran's  
22          benefits?

23                  MS. BUSH: And they're treated a lot

1           like Social Security now.

2                   MR. ARNOLD:   Just say third party  
3           payers.

4                   CHAIR PALMER:   Third party payers,  
5           to exclude SSI.

6                   MR. JEFFRIES:   Or other third party.

7                   HONORABLE DRINKARD:   That would  
8           solve the problem.

9                   HONORABLE FORD:   That would make it  
10          inclusive.

11                  MS. DAVIS:   You do or don't want to  
12          include SSI?

13                  HONORABLE STUART:   I think you have  
14          to.

15                  CHAIR PALMER:   I think you have to.

16                  MR. ARNOLD:   You have to include or  
17          exclude?

18                  HONORABLE FORD:   Exclude.

19                  MR. JEFFRIES:   Exclude.

20                  MS. BUSH:   And you want to think  
21          about too whether -- because the current  
22          case law is that whatever the benefit is  
23          must be due to the obligor's disability or

1           their pension or whatever it is, because  
2           there have been times when people -- maybe  
3           the custodial parent -- I'm going to use  
4           that the old language that we're under  
5           now, because that bill hasn't passed, just  
6           to be clear.

7                       For example, if a custodial  
8           parent just dies, and then the child is  
9           receiving benefits or a -- if there's a  
10          benefit -- for example, if the child  
11          receives for their disability, right now  
12          the case law is it's only a benefit that  
13          is due to the obligor.

14                      So you might want to think about  
15          clarifying that, whether you want to  
16          include it, or if you want to open it up  
17          for benefits that are due to someone  
18          else's disability.

19                      CHAIR PALMER: Well, I believe the  
20          Alabama Supreme Court has ruled that it  
21          can't be, like, a stepparent's disability.

22                      MS. DAVIS: That's the current law.

23                      CHAIR PALMER: So Michigan uses the



1           term "support payers." While we use  
2           "payor," they use "payer."

3                   MS. DAVIS: It says, "Regarding  
4           record against the parent's support  
5           obligations." It doesn't say "stepparent"  
6           nowhere. Contributable to the payer.

7                   CHAIR PALMER: Contributable to the  
8           payer.

9                   MS. DAVIS: Contributable to the  
10          payer, so if it's a stepparent who's  
11          getting it, that would be critical to  
12          their record.

13                  CHAIR PALMER: All right. Well, do  
14          I hear a motion that we adopt the Social  
15          Security benefit language, or is that  
16          something for August that we want to  
17          review one more time and charge that ALI,  
18          Alabama Law Institute, with preparing  
19          something for us to review in August and  
20          adopt it at that time?

21                  MR. ARNOLD: I think there is a  
22          procedure we have to go through.

23                  HONORABLE STUART: Well, I just was

1           going to say. You can adopt it today, if  
2           you want to, or you can wait until August.  
3           I don't believe our court is going look at  
4           this piecemeal. Y'all are going to have  
5           to give us one big package, because it  
6           just doesn't make sense to do -- you can't  
7           just tweak one little thing and then try  
8           to come back and do something much more  
9           major. It will be a waste of time.

10                   HONORABLE DRINKARD: So you're  
11           saying you'd prefer -- even if we adopted  
12           it today, you'd prefer we wait and present  
13           it all at the August meeting?

14                   HONORABLE STUART: Altogether.

15                   HONORABLE DRINKARD: I understand  
16           that.

17                   MS. DAVIS: Let me -- I'm sorry to  
18           interrupt.

19                           What I was going to suggest, if  
20           you want me to, I'll work with Judge  
21           Palmer, as a chair, and come up with some  
22           language very similar to the Michigan, and  
23           see we if we can tamper with the meaning

1           based on the current case law.

2                       If Jennifer will check and see  
3           about the SSI and confirm that that's  
4           totally off the table, because -- and let  
5           me -- the reading I get from the committee  
6           is we want all third party payments,  
7           whether it's Social Security benefits or  
8           railroad, whatever, to -- for that person,  
9           it's based on their credit, on their  
10          record, their employment record or  
11          whatever, that that parent get credit for  
12          it.

13                     If it's based on a third party,  
14          then we do not, which would -- both of  
15          this would be consistent. And if we want  
16          the arrearage to only relate to the  
17          timeframe that -- are we doing the  
18          arrearage too or just doing this one?

19                     CHAIR PALMER: I don't know about  
20          that arrearage part, if that should be  
21          addressed in here or not.

22                     HONORABLE DRINKARD: I don't think  
23          that should be addressed in here.

1                   MS. DAVIS:    Okay.  We'll just stick  
2                   with that.  Okay.  Because their law is, I  
3                   think -- what Jennifer says is the current  
4                   law is the current law, basically.

5                   If I recall, the Court suggested  
6                   that it be used, any of the money that's  
7                   placed on arrearage, to offset the  
8                   arrearage or give credit against arrearage  
9                   before that timeframe, like a January 1  
10                  example, then that really is taking the  
11                  child's money away from them and making  
12                  the child pay for it.

13                  HONORABLE DRINKARD:  I would suggest  
14                  then let's close this discussion and move  
15                  it forward to the August meeting and then  
16                  come back, based on what Penny has just  
17                  suggested, with the idea being that the  
18                  Michigan model is the model that we're  
19                  going to follow.

20                  CHAIR PALMER:  Any seconds?

21                  MR. JEFFRIES:  I second that.

22                  CHAIR PALMER:  Jim Jeffries seconds.

23                  Any other comments or response?

1                   Okay. We'll put that on the  
2                   agenda for August then.

3                   All right. Is Mary Moore on the  
4                   line again? Ms. Moore?

5                   Well, the child support  
6                   instructions update. Now, we're on No. 7.  
7                   I believe, that is part of your packet as  
8                   well. It should say, "Alabama Access to  
9                   Justice Commission Update on Child Support  
10                  Resources, February 22nd, 2016." It  
11                  should be the top page. And then there's  
12                  some instructions for self-represented  
13                  litigants on how to change a support  
14                  order, request to change a support order,  
15                  request for a contempt hearing, an actual  
16                  CS41, and the instructions on the CS41.  
17                  That's what we're moving to now.

18                  Okay. Well, out of the  
19                  approximately 3,700 cases that was filed  
20                  in Jefferson County Domestic Relations  
21                  Court, Birmingham division, approximately  
22                  25 percent of those were self-represented  
23                  litigants. Self-representative verses

1 self-representative or they started out as  
2 self-representative, trying to change a  
3 child support order.

4 So -- and, of course, they call  
5 the judge's office, or they go to the  
6 clerk's office, and they want legal  
7 advice, and we can't give them legal  
8 advice. So we need to get something out  
9 there that is simplified and this is how  
10 you do it, because a lot of people go in  
11 for -- let's say DHR does a collection,  
12 and they have been on disability, but they  
13 got this old order out there from eight  
14 years ago. They need to know how to  
15 change the order. Their job has changed.

16 So let's get into that discussion  
17 now. And the poor clerk's office, as  
18 undermanned as they are, they are  
19 constantly having to deal with this. I  
20 know Judge Ford has got my name next to  
21 it, but I'm going to let you put some  
22 comments in here, if you would, please.

23 HONORABLE FORD: Before we start --

1                   CHAIR PALMER: I think that's a lot  
2                   of the -- you've been talking about IV-D  
3                   issues this morning.

4                   HONORABLE DRINKARD: I have been  
5                   come up with IV-D issues quite frequently.  
6                   A guy will come up and say, I lost my job,  
7                   or I got a different job, making less  
8                   money than I do.

9                   My standard answer is, You need  
10                  to go to DHR and file a modification with  
11                  DHR. We will come back next month and  
12                  address it after you have filed your  
13                  modification petition.

14                  At that point, he then has an  
15                  attorney, because the assistant DA is  
16                  standing right there, helping them.  
17                  That's what I do. I know that's a  
18                  conflict.

19                  MS. BUSH: No, sir. I just wanted  
20                  to add, DHR services are available to both  
21                  custodial and non-custodial parents.

22                  HONORABLE DRINKARD: That's how I  
23                  handle it in my court. That's what I do.

1 MS. BUSH: It may be that people  
2 aren't aware of that or noncustodial  
3 parents aren't aware of that, but if they  
4 come to us, if they don't have a case, we  
5 can open up a case, if we're not already  
6 involved. If we are involved, then they  
7 can come in, and we can do a review.

8 HONORABLE DRINKARD: Yes.

9 CHAIR PALMER: So what about if DHR  
10 has not ever been involved in the case,  
11 and now it's just, I need my child support  
12 changed. Can I come to you to do that?  
13 There has never been a case open.

14 HONORABLE FORD: Apply for services.

15 MS. BUSH: Yes. You can come apply  
16 for services. Whatever -- whether you're  
17 custodial, noncustodial, married,  
18 unmarried, whatever your circumstances  
19 are.

20 HONORABLE DRINKARD: And I have that  
21 happen, and that's my standard answer.  
22 That's my judicial assistant's standard  
23 instructions to tell them, Go see the



1 Department of Human Resources.

2 CHAIR PALMER: Because what I get,  
3 when I explain that to the  
4 self-represented litigants, in my  
5 courtroom, is that we went through DHR.  
6 They told us since we never had a case and  
7 they never collected any money for us that  
8 they can't handle my case. They only  
9 collect the money.

10 So that's just some bad advice  
11 that they are getting?

12 MS. FORD: I think there's a  
13 difference in what people are told when  
14 they go to DHR. They are highly  
15 different. Because they go DHR, DHR will  
16 say, no, we can't do it. DHR attorney  
17 really is put into a real box, because  
18 one day, you're representing the custodial  
19 parent, and the next day, you're  
20 representing the noncustodial parent to  
21 reduce what was ordered for the custodial  
22 parent, which, I think, is a conflict  
23 there anyway.

1                   I would just allow -- if you want  
2           a modification, write it on a piece of  
3           paper, I want a modification, and the  
4           reason why, and I will just go ahead and  
5           file it with the clerk's office without  
6           any cost, and I'll consider it.

7                   Because many guys go down to  
8           DHR -- I'm not certain with the training  
9           the staff gets, but they would -- we can't  
10          deal with that issues.

11                  HONORABLE DRINKARD: Well, Aubrey,  
12          we -- I never had that problem with my DHR  
13          people. They work 100 percent with me on  
14          that. Maybe, it's different  
15          jurisdictions.

16                  HONORABLE FORD: It is different  
17          jurisdictions.

18                  HONORABLE DRINKARD: I have never  
19          had that problem. It works perfectly with  
20          our system.

21                  CHAIR PALMER: Works perfectly.  
22          That's good.

23                  HONORABLE STUART: How are they

1           dealing with conflict of interest?

2                   MS. BUSH: Well, I want to clarify  
3           as far as DHR's attorneys. There's a  
4           statute that's 38-10-7.1 that specifically  
5           states that DHR attorneys represent DHR  
6           only. It doesn't matter the style of the  
7           case. They represent DHR only, and they  
8           are Alabama State Bar opinions -- I can't  
9           quote the numbers, but I can provide them  
10          to you -- that specifically state that a  
11          DHR child support attorney can go in and  
12          file a petition to modify child support  
13          downward, and at the same time, file a  
14          petition for contempt for arrears they  
15          have already accrued.

16                   It's not a conflict, because they  
17          represent DHR. They do not represent that  
18          custodial parent or that noncustodial  
19          parent or the child.

20                   I've heard over the years  
21          different things. Oh, I represent the  
22          parent, or you represent the child. No.  
23          We're not part -- DHR attorneys are not

1           the guardian ad litem or anybody's  
2           attorney but DHR's.

3                   HONORABLE DRINKARD:   You're  
4           absolutely correct.  I remember when that  
5           issue came up some years ago when we still  
6           had the Child Support Association.  Yeah,  
7           that's correct.

8                   And, essentially, all they do is,  
9           they come back the next month, we've got  
10          the guidelines.  That's it.

11                   MS. BUSH:  And the analogy I've used  
12          to explain that is, if you have an  
13          attorney that represents a bank, a bank  
14          has customers.  And so the bank's  
15          attorney, you know, may take some action  
16          that may benefit those bank customers; it  
17          may not.  But the attorney always  
18          represents the bank.

19                   And it may also -- I think, we  
20          call -- DHR calls it participant's  
21          clients, and attorneys call their  
22          clients -- use the same language, but we  
23          don't call them "customers."

1                   CHAIR PALMER: We have a CI, what  
2                   they're referred to. CI.

3                   I don't know what that even  
4                   means, but that's what Jack Wallace uses  
5                   all the time. This is the CI.

6                   MS. BUSH: I talked to Jack Wallace  
7                   this morning. I'll find out what a CI is.

8                   MR. ARNOLD: Side comment. I  
9                   understand how DHR takes a position that  
10                  we represent DHR of the state of Alabama  
11                  and not individual litigants.

12                  But once a DHR lawyer starts  
13                  advising an individual that they don't  
14                  represent, they've crossed a significant  
15                  line.

16                  HONORABLE DRINKARD: Well, I  
17                  misspoke a while ago when I said that. I  
18                  know Jennifer. She's absolutely right. I  
19                  know that's the situation.

20                  I misspoke when I said that they  
21                  had an attorney. That Assistant DA that's  
22                  up there, frankly, he's just standing off  
23                  to the side, and I'm doing it. That's

1           what happening. I'll be quite honest with  
2           you.

3                   MS. BUSH: We may have some training  
4           issues from these comments.

5                   HONORABLE DRINKARD: What really  
6           comes up though, that's, frankly, to me,  
7           simple. What comes up is, when you've got  
8           a divorce case, and you've got a party  
9           that comes in to divorce and wants to  
10          modify the divorce, and they don't have an  
11          attorney, and they file a pro se petition,  
12          and they don't have the foggiest idea what  
13          they're supposed to do when you walk in  
14          that courtroom.

15                          And you can't them advise them as  
16          the judge about how they're supposed to do  
17          it, and they're sitting there, and you  
18          say, Okay, you filed your petition. Go  
19          forward. And they're sitting there  
20          saying, What do you mean, go forward?  
21          That's the problem with the IV-D issues,  
22          several of them, actually. The problem is  
23          the DHR cases.

1                   CHAIR PALMER: Well, let's look at  
2                   this. It's called, "Request of Change of  
3                   Child Support." That's a form that you  
4                   can get online. I believe, you can also  
5                   get it at AlabamaLegalHelp.org, and then  
6                   the -- I believe, most of the clerks'  
7                   offices have this.

8                   And it's got form PS, which I'm  
9                   not sure what "PS" actually means. And  
10                  then last time this was revised was in  
11                  January 2008, so I don't know if there's  
12                  anything on here that does need to be  
13                  revised.

14                 Does anyone have anything? Is  
15                 there anybody in the audience that has  
16                 actually tried to modify their own child  
17                 support as a self-represented litigant, if  
18                 y'all have any comments on this. We're  
19                 not technically at y'all's time for  
20                 comments from the public, but I'd like to  
21                 hear from y'all, as far as these forms go,  
22                 if anybody has attempted do this  
23                 themselves.

1                   HONORABLE FORD: I've never seen  
2                   this.

3                   CHAIR PALMER: Yeah. I get to see  
4                   them a lot. Our clerk's office gives  
5                   these out a lot along with Request for  
6                   Contempt Hearing.

7                   HONORABLE DRINKARD: I've been doing  
8                   this for 16 years, and this is the first  
9                   time I've ever seen this form. I've never  
10                  seen it in court.

11                  CHAIR PALMER: It's called a  
12                  "Request for Change Child Support."

13                  MS. DAVIS: PS32.

14                  CHAIR PALMER: Yes. When Judge Ford  
15                  was saying, just write it down, I often  
16                  time tells them, you know, it's not in  
17                  front of me to modify your child support  
18                  today.

19                  HONORABLE DRINKARD: That's right.

20                  CHAIR PALMER: I can't do anything  
21                  about that. You've got to file something.  
22                  I tell them you have got to go down to  
23                  your clerk's office and get the proper



1 forms while you're down there, and once  
2 that gets filed, then I can modify your  
3 child support, but I can't do anything  
4 with it today. Today is just strictly  
5 about collecting the past due support.

6 HONORABLE FORD: Which also is the  
7 access of justice issues. Some clerk's  
8 offices say you have to pay 300 to \$500 or  
9 whatever to file.

10 CHAIR PALMER: 300 to 400 in  
11 Madison.

12 HONORABLE FORD: And, you know,  
13 here's a guy who doesn't have a job, and  
14 you're saying, you have to pay \$300 to  
15 even get before court.

16 CHAIR PALMER: But there's your  
17 Affidavit of Hardship, a substantial  
18 hardship. We sign those quite often as  
19 well.

20 But just trying to make it easier  
21 for the clerk's office, the form that they  
22 have, again, is -- revised the last time  
23 is from April of 2008, is called "How to

1           Change a Child Support Order."

2                       I believe this is really fairly  
3           simple. PS -- what does "PS" mean? I've  
4           seen "CS," but I don't know what "PS"  
5           means. Is that pro se?

6                       HONORABLE FORD: I think it's  
7           pro se.

8                       CHAIR PALMER: Okay. And then they  
9           don't understand about how people have to  
10          get served and that sort of thing.

11                      So, again, again with the  
12          Internet now, a lot of people think they  
13          can be their own attorney, or they just  
14          can't afford an attorney, and I completely  
15          understand that.

16                      But at the same time, the judge  
17          cannot be their lawyer for them, nor can  
18          our staff.

19                      So does anybody have any  
20          suggestion? Because this does come under  
21          the forms we're looking at. It's under  
22          Alabama Access to Justice Commission.

23                      MS. DAVIS: You referred to the form

1           that people can fill out, saying they  
2           don't have enough resources.

3                   CHAIR PALMER:  Affidavit of  
4           Substantial Hardship, which has not been  
5           revised since 1992.  It's a terrible form,  
6           terrible.  It's got to be revised.

7                   MS. DAVIS:  Okay.  Is that -- is  
8           that anywhere in close proximity or on the  
9           same website as this, so that it will  
10          easily accessible to the same people?

11                   CHAIR PALMER:  It should be, and the  
12          clerk's office has -- our clerk's office,  
13          anyhow, has them.  And that has to be  
14          completed first and either approved or not  
15          approved by the Court, and then it's  
16          strictly the prepayment of the fees.

17                   And the court reserves the right  
18          to charge a reimbursement for that.

19                   MS. DAVIS:  If they draw --

20                   CHAIR PALMER:  If they find out they  
21          got some money, or now, all of a sudden,  
22          you know, as of last week, didn't you have  
23          11 rental houses?  Well, yeah.  You signed

1           them all over to your daughter? Well,  
2           yes. And now you don't have any income as  
3           of today, but two weeks ago you did  
4           income.

5                   MS. DAVIS: Well, they finally got  
6           the judgment paid.

7                   CHAIR PALMER: Possibly. From the  
8           car wreck case or whatever.

9                   HONORABLE STUART: The instruction  
10          form on page 2 refers to the Affidavit of  
11          Substantial Hardship, but if the form is  
12          not being provided along with these other  
13          forms, it should be.

14                  MS. DAVIS: That was my point. You  
15          articulated that much better than I did.  
16          That was my point.

17                  HONORABLE STUART: If they're asking  
18          for a response to this, that, I think, is  
19          what our response should be. That form  
20          needs to be with these.

21                  CHAIR PALMER: So that needs to be  
22          provided along with the Request to Change  
23          Child Support?

1                   HONORABLE STUART: All of these I  
2                   would think, because you have to prepay  
3                   court costs or have it approved, the  
4                   Affidavit of Substantial Hardship, to get  
5                   into court on anything.

6                   CHAIR PALMER: On anything.

7                   Well, I don't have a copy of the  
8                   Affidavit of Substantial Hardship with me,  
9                   but it is kind of hard to understand.  
10                  Again, it's been, I think, since 1992  
11                  since the last time it was revised.  
12                  That's not in front of this committee.  
13                  That's not our job.

14                  But I would highly recommend to  
15                  anybody from AOC that y'all look at that.  
16                  I know there's a forms committee. But  
17                  that form definitely has to be approved --  
18                  I mean, improved.

19                  All right. Anybody have anything  
20                  else while you're looking at these? The  
21                  only other comment I get, looking at the  
22                  CS-41, of course, this is an old form  
23                  that's in front of us, that -- so this

1           should be revised as of July, I want to  
2           say, of last year, where the insurance  
3           section is different.

4                       So where it has on No. 5, that's  
5           where you break down the percentage. So  
6           we need to make sure that, I guess, all of  
7           the clerks' offices, all of the judges'  
8           offices are using the correct CS-41 form  
9           as well.

10                      The biggest complaint that I get  
11           about the new CS-41 form is that about the  
12           insurance in an initial divorce. There's  
13           four of us on the policy; however, after  
14           the divorce is over, there's only going to  
15           be three of us on the policy. So that's  
16           been a little confusing, but I think  
17           that's more of an education type of thing  
18           than it is the actual form.

19                      Does anybody have any comments  
20           about that?

21                      MR. JEFFRIES: What do you do? I  
22           know what I do.

23                      CHAIR PALMER: What? On the

1 insurance?

2 MR. JEFFRIES: Like, in an initial  
3 divorce situation.

4 CHAIR PALMER: All right. After the  
5 divorce is already through, people aren't  
6 on their insurance. So I have them divide  
7 it by three divided, not by four, which is  
8 the amount currently under that policy,  
9 because within 30 days of you filling out  
10 that form, that other person is not going  
11 be on your insurance.

12 MR. WRIGHT: Although, the premium  
13 might not change.

14 CHAIR PALMER: Although, the premium  
15 might not change.

16 HONORABLE FORD: That's true.

17 CHAIR PALMER: And while we have  
18 this, let's look on the back of the  
19 examples. We have revised the CS-41, but  
20 I don't know if we've revised the back of  
21 the CS-41.

22 So while I have everybody --  
23 there, again, this might be something that

1           we look at in August. This might be  
2           something that we have under income, under  
3           other income. At No. 4, non-income --  
4           non-employment-related income, dividends,  
5           interest, annuities, capital gains, gifts,  
6           prizes, preexisting periodic alimony.

7                       Under No. 1 you've -- excuse me.  
8           Under -- where it says "gross income,"  
9           gross income does not include child  
10          support received for other children or  
11          benefits received from means tested public  
12          assistance, including but not limited to  
13          temporary assistance for needy families,  
14          known as TANF, supplemental Social  
15          Security income, food stamps, and general  
16          assistance.

17                      But we do possibly need to look  
18          in there, if we're going to change the  
19          language to the Rule 32 to match what they  
20          say in the Michigan. It's got Social  
21          Security benefits. We might need to  
22          define that or any third parties; such as,  
23          SSDI, SSRI, veterans, and then the



1 railroad as well. So I think this might  
2 be a good opportunity for us to look at  
3 the back of the CS-41 as well as the front  
4 of the CS-41.

5 HONORABLE STUART: And what we  
6 discussed earlier, weren't we discussing  
7 benefits that were paid to the children?  
8 And here, we're only looking at the income  
9 of each of the parents.

10 CHAIR PALMER: Well, I'm going to  
11 put a charge on all of us for August to  
12 look at the back of the CS-41 and see if  
13 there's anything that needs to be changed,  
14 eliminated, added under anything in there.  
15 Because it does quote Rule 32 of Judicial  
16 Administration provides the following  
17 definitions.

18 MS. DAVIS: Employment income of  
19 No. 1 does include Social Security  
20 benefits, so if the parent is receiving  
21 something, that's income to him, as  
22 opposed to the child's check.

23 CHAIR PALMER: But a lot of people

1           get VA benefits now, VA. So I don't know  
2           if that should be in there. I don't know  
3           that it says it in there.

4                       Because while VA disability  
5           cannot be considered for the purposes of  
6           calculating alimony, it can be considered  
7           income for the purposes of calculating  
8           child support.

9                       So, again, that's my charge to  
10          all of us to come back in August. So our  
11          response for -- under Child Support  
12          Instruction Forms Update is to have the  
13          Affidavit of Substantial Hardship, along  
14          with the Requested Change of Child  
15          Support.

16                      MR. JEFFRIES: Didn't Ms. Moore  
17          mention something about addressing  
18          interest somewhere?

19                      CHAIR PALMER: Interest. That, I  
20          think, would go under Request for Contempt  
21          Hearing, possibly.

22                      HONORABLE STUART: And I wish that  
23          she were on the line so that we knew

1 exactly what she said, because I thought  
2 she was suggesting that after a period of  
3 time or so many payments were made that  
4 interest be waived, and I don't think that  
5 can be done.

6 CHAIR PALMER: There is statute, but  
7 the parties have to agree to that. And if  
8 they don't agree to that -- now, sometimes  
9 when DHR gets involved, if the payor is  
10 current, y'all do agree to waive your  
11 interest from time to time or mark it in  
12 half or something.

13 MS. BUSH: Yes. The entity to whom  
14 the interest is owed, so if it's state  
15 interest, we have a policy as to when --  
16 according to the statute how much we will  
17 rebate.

18 And it's my understanding, I  
19 think now, that we rebate initially 50  
20 percent, and then after another 12 months  
21 of paying regularly, we will rebate the  
22 remaining interest. That's my belief.  
23 I'm not looking at that policy.

1                   HONORABLE STUART: I guess, my point  
2                   is, if it's covered by a statute, why  
3                   would we be addressing it?

4                   CHAIR PALMER: I think, if you'll  
5                   look at Request for Contempt Hearing,  
6                   possibly because on No. 4, the other  
7                   parent owed back support, plus interest.  
8                   So maybe they have a lot of explaining.  
9                   Tell me about the interest. How did I get  
10                  the interest?

11                  MR. JEFFRIES: That may be what  
12                  she's talking about. Tell her how to  
13                  calculate the interest.

14                  JUDGE PALMER: Well, that's not the  
15                  clerk's job, to calculate the interest.

16                  MS. BUSH: I thought she was wanting  
17                  to petition a form on consent, because you  
18                  have to have a consent in writing in the  
19                  court files.

20                               And so I got the impression the  
21                               same way that we're providing, you know,  
22                               Request of Change of Child Support, they  
23                               were wanting a request to rebate interest.

1                   CHAIR PALMER: They have that form  
2                   in there.

3                   MS. BUSH: Because it sometimes  
4                   comes up in a contempt, but it sometimes  
5                   just comes up in a modification, because  
6                   some people file it as a freestanding  
7                   action.

8                   CHAIR PALMER: Or maybe just a copy  
9                   of the statute on the back? Something  
10                  like that that shows that an option for  
11                  the parties.

12                  MS. BUSH: I think that would be a  
13                  good idea.

14                  CHAIR PALMER: Ms. Davis?

15                  MS. DAVIS: I have a question. What  
16                  I don't know -- I don't know the answer to  
17                  this. Has there been a court ruling on,  
18                  you know, parents cannot not waive child  
19                  support. And it seems to me -- I  
20                  understand there's, you know, a sense of  
21                  extension between the interest of the  
22                  child support, but that still seems to me  
23                  as the parents waiving interest.

1                   If they're waiving interest, if  
2           it's interest based on the child support,  
3           I'm just wondering if anybody has  
4           challenged that statute?

5                   MR. WRIGHT:  You're talking about  
6           arrearage now?

7                   MS. DAVIS:  I'm talking about --  
8           yeah.  The interest on the arrearage of  
9           child support.

10                   Because Bill and I can't get  
11           together and decide that he no longer has  
12           to pay child support.  He's been ordered  
13           to pay it, but we've decided, don't  
14           bother, you know, you're laid up, you  
15           don't have to pay it, or don't bother if  
16           you don't exercise your child custody  
17           visitation, then I won't force you to pay  
18           it.

19                   Parents can't just -- one parent  
20           can't waive child support.  That's not  
21           right.  It's the law.  And I know there's  
22           a statute there, but I just wondered if  
23           anyone's ever challenged the parents

1 joint -- and I understand why the -- I'm  
2 sure the underlying theory is, if they're  
3 apt to pay it if they know if they pay it  
4 regularly, and they get the benefit of  
5 waiving the interest, and, again, that's  
6 not something for us to decide. I'm just  
7 wondering.

8 HONORABLE STUART: I'm not aware of  
9 a case, but that case will probably go the  
10 Court of Appeals first.

11 MR. ARNOLD: The Court of Civil  
12 Appeals has ruled calculation of interest  
13 is the Court's job. There's been about  
14 three or four cases on that.

15 CHAIR PALMER: But they don't give  
16 us the tools to calculate it. That's what  
17 I've figured out since I've been on the  
18 bench. We've got a great CS-42 tool to  
19 actually do the child support, but if we  
20 had an Excel spreadsheet that we can click  
21 on, that would help as well.

22 MR. ARNOLD: And then the formula  
23 for -- the statute for applying interest

1           to child support arrears is different than  
2           the statute for applying interest to other  
3           kinds of civil monetary judgments. And  
4           the way the statute for child support  
5           reads, it's virtually impossible to apply  
6           if there's ever been a partial payment or  
7           a series of partial payments and where you  
8           put them, it's totally virtually  
9           impossible.

10                         In answer to your question, I  
11           think people can waive or through  
12           compromise, would be the right word,  
13           compromise. Who does the interest belong  
14           to, in your case or your IV-D cases. Who  
15           does the interest belong to? Does it  
16           belong to the recipient of the child  
17           support? Does it belong to the child?  
18           Does it belong to the state? Does a  
19           portion or it? I think, that's a  
20           significant issue.

21                         CHAIR PALMER: Well, DHR has got  
22           that all figured out; at least, that's  
23           what they argue in front of me. They know



1 exactly to the penny where it all goes.

2 So, Ms. Bush, I'm going to let you explain  
3 that today.

4 MR. ARNOLD: I've been around Mr.  
5 Wallace's computations a few times, and he  
6 does it completely wrong. I think it's a  
7 great class action lawsuit.

8 MS. DAVIS: I think the money should  
9 go the child. I mean, it's the child's  
10 money. I mean, if the underlying ruling  
11 is that the child support is money for the  
12 child, then it seems to me that the  
13 interest -- because they didn't pay it,  
14 that child has in theory incurred the  
15 obligation of going out and paying the  
16 debt that they paid, and anyway...

17 MR. ARNOLD: But DHR represents the  
18 state. DHR can't advise the recipient;  
19 especially, if it's a child; therefore,  
20 you need a GAL in each case.

21 I'm tackling the cert here, I  
22 know, but it's for demonstration of a  
23 point. And who has the right then to

1 speak about the interest or the payments?

2 MS. BUSH: Let me just state that  
3 it's my understanding case law states that  
4 while child support is for the benefit of  
5 the child, it does belong to the custodial  
6 parent and here's why: Let's say you have  
7 a child support guidelines of 500 a month,  
8 and they're not paid. Well, the  
9 guidelines are saying it's going to take  
10 \$500 a month to feed, cloth, shelter that  
11 child.

12 So when one party doesn't pay  
13 their portion, that money, theoretically,  
14 is coming out of somebody else's pocket,  
15 being the custodial parent. So those  
16 arrears that accrue are owed to the  
17 custodial parent to pay back the money  
18 they expended for their share and for the  
19 other person's share when they did not  
20 pay.

21 And when it comes to state  
22 arrears, those occur when DHR has paid out  
23 TANF or financial assistance to help

1 support the child during a certain time  
2 period.

3 MS. DAVIS: So you're saying there  
4 already is case law about that?

5 MS. BUSH: That's my understanding.  
6 I can't quote the actual cases for you,  
7 but I do know that -- while it is for the  
8 benefit of the child, it is to reimburse  
9 the person who extended the funds while  
10 the other person did not pay their portion  
11 for that particular month.

12 And back to interest. It is very  
13 confusing because child support is a final  
14 judgment. Every month, it comes due. And  
15 because of that, it is going to --  
16 whatever interest rate was in effect when  
17 that child support payment came due is the  
18 interest rate that will attach to that  
19 child support payment and will continue.

20 For example, interest changed  
21 from 12 percent to the 7 1/2 percent in  
22 September of 2011. Any arrears that  
23 accrue prior to September 2011 accrue

1           12 percent interest and continue to accrue  
2           12 percent today, even though it is now  
3           7 1/2. Of course, anything after  
4           September '11 is 7 1/2 percent.

5                     Our computer is designed to  
6           actually calculate it at 12 percent and  
7           7 1/2 percent for anything after September  
8           2011.

9                     MR. ARNOLD: Well, my comment isn't  
10          about the rate of interest. The comment  
11          is the application of payments. If I  
12          pay -- if I'm sued in an automobile wreck,  
13          and I have an outstanding money judgment  
14          against me, and I'm making payments on it,  
15          the interest is applied first, so the  
16          payment is applied first to principal;  
17          therefore, reducing the principal.

18                    And child support is first  
19          applied the other way. There's a  
20          difference. I might have it backwards.  
21          But it makes the calculation virtually  
22          impossible when there's partial payment.  
23          It's application is the issue, not the

1 percentage applied. I understand the  
2 percentage.

3 HONORABLE DRINKARD: Well, that's  
4 why when this idea about adding interest  
5 first came over, I said it was the most  
6 insane idea I have ever heard in my life,  
7 because it's going to be impossible to  
8 manage, but I got over it.

9 MR. ARNOLD: I second that motion.

10 CHAIR PALMER: Well, and a lot of  
11 what I see, I'm sure Judge Drinkard and  
12 Judge Ford have seen more astronomicals,  
13 it's from 1978 and they're trying to  
14 collect back child support.

15 If you only owe \$50,00 in back  
16 child support, they owe \$250,000 in  
17 interest, and it's never going to be paid  
18 off. It's just never going to be paid  
19 off, and those are the ones that we should  
20 try more of and just find it not  
21 collectible. I mean, you're just not  
22 going to be able to collect that, because  
23 now that person is 70 years old, and

1           they're getting \$741 in Social Security  
2           benefits.

3                   HONORABLE DRINKARD: Well, we could  
4           beat this dead horse.

5                   CHAIR PALMER: We sure could,  
6           couldn't we?

7                   HONORABLE DRINKARD: If we beat it  
8           long enough, it'd turn blue. But what  
9           Jennifer's saying and let's say the child  
10          become 19 years of age, so the support  
11          ceases, but this \$25,000 in arrears, and  
12          the next day the momma dies. What happens  
13          to that arrears? It's just sitting there.  
14          If it belonged to Momma, a custodial  
15          parent, then does it go to her estate?

16                   MS. BUSH: Yes. It belongs -- it is  
17          a debt that belongs to her estate or his  
18          estate.

19                   HONORABLE DRINKARD: And then it's  
20          up to however she -- the intestate laws or  
21          a will, if there's a will.

22                   MS. BUSH: Yes. If the estate is  
23          not probated, and the estate does not

1           pursue that debt, then it does not get  
2           collected, but it would go to that  
3           person's estate.

4                   CHAIR PALMER: Well, a rebate of  
5           interest, that's Code Section 30-3-6.4,  
6           rebate of interest. It became effective  
7           August 1st of 2004, and the parent has  
8           paid -- you have to enter a repayment  
9           agreement.

10                   And the agreement has to be, if  
11           you pay for 12 months -- if the parent has  
12           paid the past due amount and has paid the  
13           current child support payment for 12  
14           months before petitioning the Court, the  
15           parent has entered into a repayment  
16           agreement, has made all payments on the  
17           agreement for at least 12 months, and has  
18           paid the current child support for 12  
19           months before petitioning the Court, and  
20           before a court may order a rebate of  
21           interest, each party to whom interest is  
22           owed must agree in writing to the rebate  
23           of interest and the amount of interest

1           rebated. A court of competent  
2           jurisdiction may reinstate the interest  
3           rebated upon a subsequent filing of  
4           contempt to the Court for failure to pay  
5           child support.

6                       So it all has to be by agreement.  
7           I don't believe the Court can order it.  
8           It would have to be an agreement amongst  
9           the parties.

10                      Does everybody agree to that.

11                      HONORABLE BELL: Yeah. There's been  
12           recent a case that a judge didn't impose  
13           the interest, just saying it was  
14           ridiculous, and they could not never pay  
15           it back. That judge got reversed on that.

16                      I really and -- respectfully, I  
17           don't agree with what Jennifer said. If  
18           there's a judgement and the custodial  
19           parent dies, it's not going to their  
20           estate. You may have three or four other  
21           children, but only one of them for which  
22           the child support was paid for. I can't  
23           imagine any court saying that all four of



1           the children ought to inherit that  
2           judgment for past due child support.

3                   I think it goes the child. I  
4           think, the interest and the child support  
5           can't be waived, except pursuant to the  
6           statute that Judge Palmer just read.

7                   That's just my opinion. But I  
8           think that's consistent with the case law  
9           up to this point.

10                   CHAIR PALMER: Okay. Well, this has  
11           been a very good discussion. I don't know  
12           what this has got to do with the forms.  
13           But we might want to put that statute  
14           possibly on the back of the Petition to  
15           Change Child Support or at least have that  
16           available. Just like Justice Stuart said,  
17           if we're going to have the Affidavit of  
18           Hardship available, then possibly just  
19           have that statute available for people to  
20           look at and use as a negotiation tool to  
21           encourage people to get their child  
22           support paid on a more timely basis,  
23           because I don't know where else you're

1           going to be earning 12 percent or 7 1/2  
2           percent on your money in this day and age.  
3           All right.

4                   MR. POLEMENI: I have one question  
5           here on page 6 of CS-41.

6                   CHAIR PALMER: Okay. And this is  
7           Mike?

8                   MR. POLEMENI: This is Michael,  
9           yeah.

10                          At the bottom of the page, under  
11           other income, and the second line,  
12           employment of the self-employment, I would  
13           think that would be a comma there.

14                   CHAIR PALMER: Line 6. On the  
15           actual form or on the back of the form?

16                   MR. POLEMENI: On the back of the  
17           form. The bottom of other income, second  
18           line, it reads, Employment of  
19           self-employed or operation of a business.  
20           I imagine that should read, Employment or  
21           self-employed, or a comma there.

22                          Does that make sense?

23                   CHAIR PALMER: Yes, Michael. That

1           does. Thank you so much.

2                       So we're going to readdress this in  
3           August as well. August is going to be  
4           very busy month. Probably going to take  
5           more than two hours for that one, so y'all  
6           bring your lunch.

7                       Okay. So the daycare chart  
8           discussion.

9                       Jennifer Bush.

10                      HONORABLE BELL: Before we do that,  
11           brothers and sisters, I'm going to have to  
12           drop off, but I appreciate all your work  
13           very much.

14                      And I hope to be there in person  
15           for the August meeting.

16                      CHAIR PALMER: Same here, Billy.  
17           Take care of yourself.

18                      HONORABLE BELL: Thank y'all.  
19           Bye-bye.

20                      CHAIR PALMER: Okay. Jennifer?

21                      MS. BUSH: As you know, Rule 32  
22           references DHR's child care program  
23           provider rate. DHR operates a child care

1           program. And on thing I think it's  
2           important to note is that that program is  
3           not mandated and not intended to pay the  
4           full cost of child care.

5                     It is intended to provide a  
6           supplement to low income families and to  
7           pay a portion of the daycare with the  
8           participant picking up whatever the DHR  
9           subsidy does not cover. The participants  
10          will contribute cost, and then DHR will  
11          pay a portion of the cost. And so it's  
12          never been intended to pay a full 100  
13          percent.

14                    Now, DHR has to review the  
15          provider rates every two years, and the  
16          way it does that is it conducts a market  
17          survey, and DHR does that through an  
18          agreement with AUM.

19                    AUM actually prepares the survey,  
20          prepares the questions, formats it, sends  
21          it out, gets the results in, and then  
22          tabulates and compiles all those results.  
23          They -- AUM gets the addresses from DHR.

1           We provide the addresses for every  
2           licensed daycare facility in Alabama.  
3           There are church exempt facilities,  
4           meaning that DHR does not have to license  
5           those, but they are required to report  
6           their existence and their address.

7                       So the survey is sent out to all  
8           church exempt daycare providers and all  
9           licensed childcare providers. And there  
10          are approximately 3,000 to 4,000  
11          providers.

12                      The responses to the survey are  
13          sent back either paper, or they can be  
14          sent back electronically online. They can  
15          go online and provide their rates. And  
16          that is what the market survey is to find  
17          out: What are your rates for the  
18          different categories? You know, infant to  
19          two years, two year to four year, small  
20          facility versus a larger facility.

21                      And you're going to get -- with  
22          that market survey, you're going to get  
23          daycare that may, you know, provide

1           organic granola grown in the Himalayas,  
2           and you're going to get daycare that  
3           provide, you know, basic baby food or food  
4           for the child. So you do get a range of  
5           high end and low end.

6                       And once that's done, then the  
7           results are tabulated. It's important to  
8           note that right now, under the current  
9           regulations, DHR is not required to change  
10          the daycare rates, only to review them and  
11          to conduct a market survey. Very similar  
12          with our child support guidelines. We  
13          must review them and look at them, but  
14          we're not required to actually change  
15          them. And they haven't been changed since  
16          2009. Now, the last survey was 2014.  
17          We're in process of doing another survey  
18          this year, but it has not been completed.

19                      And, also, it's my understanding  
20          that the federal childcare regulations are  
21          being reviewed by the Feds. And they even  
22          have a comment period that ended in  
23          February, so there may be some changes to

1           the childcare regulations. I can give you  
2           the current regulations, but I didn't  
3           provide those to you, because I've been  
4           told there are going to be some changes to  
5           them.

6                       I think the important to note is  
7           from DHR's perspective, those childcare  
8           rates were never meant or intended to be a  
9           100 percent, this is what you can pay and  
10          get childcare for. It is a subsidy.

11                   CHAIR PALMER: Well, my issue with  
12          the chart has been, if you adjust --  
13          everyone that I get, it still says October  
14          the 1st of 2009, and I believe, in 2014,  
15          the discussion was that DHR could just say  
16          these have been reviewed, and these are  
17          the rates as of October the 1st, 2015.

18                   So that the forms we have that  
19          we're using, those don't look like either  
20          the courts or the attorneys or somebody is  
21          not using the most current chart, whether  
22          there's no change to it, then there's no  
23          change, but just to say it's been

1 reviewed.

2 And I believe it's across the  
3 top, Justice Stuart. I don't have a copy  
4 in front of me that says the last -- that  
5 says October 1st, 2009, on one of those  
6 pages on the top.

7 Steve Arnold.

8 MR. ARNOLD: I have an issue with  
9 what Jennifer is describing. Jennifer is  
10 describing this chart as being an amount  
11 of subsidy; yet, child support guidelines  
12 say the cost of childcare, but not to  
13 exceed -- as it's written, not to exceed  
14 the subsidy, which, again, puts people of  
15 all levels in very despaired  
16 circumstances.

17 MS. BUSH: And so -- do I hear a lot  
18 that the daycare or childcare rates are  
19 actually higher than what DHR's rates are.

20 So, like I said, the market  
21 survey covers high end and low end. I  
22 just want to make sure that everyone is  
23 clear. It may be that you might be able



1           to obtain childcare at the DHR rate, and  
2           you may not.

3                   HONORABLE FORD: More than likely,  
4           you're not.

5                   MS. BUSH: But DHR -- yeah. But DHR  
6           is not saying you should be able to. This  
7           is just our subsidy for that particular  
8           program that has been used in these  
9           guidelines.

10                   CHAIR PALMER: And then when did  
11           this come out? Because I know the one in  
12           front of me says, State of Alabama  
13           provider rates, maximum weekly full-time  
14           rates for childcare subsidy programs  
15           services October the 1st, 2015, to  
16           September 30th of 2016.

17                   I did that receive this. So I  
18           don't know where that actual form came  
19           from.

20                   MS. BUSH: Is that in the Rule 32?

21                   CHAIR PALMER: It's the very last  
22           page of the Rule 32, yes, ma'am.

23                   HONORABLE STUART: It appears to me

1           just from this very preliminary  
2           discussion, plus the discussions we've  
3           every time this committee has met, that  
4           the language concerning childcare costs  
5           needs to be redrafted completely.

6                   CHAIR PALMER:  There was a -- at one  
7           of our last meetings, and I believe y'all  
8           approved it, that one of the exceptions to  
9           the childcare forms or Rule 32 is if  
10          there's a 20 percent more than what the  
11          actual cost of the daycare provider is,  
12          then the courts can use the full amount  
13          versus this amount.

14                   And I apologize, Judge Ford.  I  
15          interrupted you.

16                   HONORABLE FORD:  I was just saying  
17          that, originally, when we started, the  
18          reason why we use this formula or these  
19          rates, because it was just all over the  
20          board.

21                   And so the committee felt that if  
22          we at least have a form that, of course,  
23          either the rates -- childcare costs a

1 whole lot more now.

2 MS. DAVIS: Yeah. The comment you  
3 referenced, we -- I think that was at  
4 least a step forward and an  
5 acknowledgement that the reality of  
6 people's childcare costs are substantially  
7 greater in many cases than what they are  
8 permitted to use, and it may be that it is  
9 time to revisit.

10 The argument that I've heard over  
11 the years against just putting the amount  
12 in is that somebody might abuse and just  
13 go to the most expensive versus, you know,  
14 a cheaper version. I don't know that  
15 that's likely to happen. It could, but --

16 CHAIR PALMER: Mr. Arnold, Steve  
17 Arnold.

18 MR. ARNOLD: The economist who is  
19 now charged with doing a review of the  
20 chart -- just, for example, you have a  
21 chart that sets an amount of child support  
22 for and then you add the childcare, but  
23 the differential between the amount you

1           can add per the guidelines and the child  
2           support guideline figure, there's a huge  
3           gap there as well.

4                       So I would make a suggestion that  
5           the economist be charged to include some  
6           economic base for that different -- adding  
7           that differential into the cost of raising  
8           a child for purpose of completing the  
9           chart.

10                   CHAIR PALMER:   Are you talking  
11           Mr. Rogers?

12                   MR. ARNOLD:   Yes.   And he would --

13                   CHAIR PALMER:   And Judge Drinkard is  
14           going to have to leave in just a few  
15           minutes, and we're about ten minutes away  
16           from finishing.

17                   HONORABLE DRINKARD:   One other  
18           problem that comes up, in the IV-D cases,  
19           we have a pretty good percentage of these  
20           cases, where the child is being cared for  
21           by a grandmama or an aunt and not by a  
22           center, and Mama comes in and says, Well,  
23           I'm paying my grandmama X number of

1           dollars a week to take care of my baby  
2           while I'm working or whatever. That's not  
3           addressed. We have to just play that by  
4           ear. I don't know whether it should be  
5           addressed.

6                       I'm just saying that's one thing  
7           that we run into very frequently in the  
8           black belt counties and maybe in other  
9           counties where grandmama or aunt is  
10          actually doing the daycare, sometimes at  
11          no charge. You don't know whether to  
12          believe whether they're telling the truth  
13          when they're saying they're paying X  
14          number of dollars a week a day or a month  
15          or whatever.

16                     She's giving her \$100 a week, and  
17          she's turning it around and giving it  
18          right back to her is what's happening.

19                     HONORABLE STUART: Let me ask you  
20          this question. Maybe this is not  
21          addressed here, but is this what is  
22          addressed under full-time rates, the  
23          second sentence, The maximum full-time

1           rate applicable to informal care providers  
2           shall not exceed \$35 a week.

3                   MS. DAVIS:   Justice Stuart, where  
4           are you on that?

5                   HONORABLE STUART:   I'm on the very  
6           last page, in the middle of the page,  
7           second sentence on full-time rates.

8                   MR. ARNOLD:   But the guideline  
9           itself says, Required to provide from a  
10          licensed source for children.

11                   So the chart has a comment there  
12          about that, but that doesn't delve into  
13          the guidelines into Rule 32 itself.

14                   HONORABLE STUART:   It just needs to  
15          be addressed.   It really does.

16                   MR. ARNOLD:   I couldn't agree more.

17                   HONORABLE DRINKARD:   And I  
18          apologize, but I have another appointment  
19          that I've got to get to.

20                   CHAIR PALMER:   Well, thank you for  
21          all your comments and helpfulness today.

22                   Okay.   Well, here's, yet, another  
23          thing for August.   And, Mr. Arnold, since

1           you've been so enthusiastic about this,  
2           I'm going to put this on you to report  
3           back to us in August.

4                   MR. ARNOLD:   When in August?

5                   CHAIR PALMER:   I don't know.   It  
6           will probably be about the middle of  
7           August, maybe on a Friday or -- not a  
8           Friday in case anybody is going to an  
9           Alabama or Auburn or Alabama State or some  
10          sort of football game like that.   But  
11          probably about the middle to the end of  
12          the August right in there.

13                   MR. ARNOLD:   Because I'm going to be  
14          out of town until August 6th.

15                   CHAIR PALMER:   Okay.   Well, we'll be  
16          sure to have it after August the 6th then,  
17          because everybody knows that August in  
18          Montgomery, there's not a better time.   No  
19          humidity.

20                           Well, all right.   And then the  
21          last thing that I have on here is  
22          suggestions received since last meeting.  
23          I don't know that we had any suggestions

1 received since last meeting.

2 Okay. And then comments from the  
3 public.

4 AUDIENCE: Judge Palmer, there's a  
5 list that Bob put in there of suggestions.

6 CHAIR PALMER: Okay. I apologize.  
7 Suggestion No. 1 is Rule 32 suggestions.

8 Suggestion No. 1: I was hoping  
9 you might be able to point me in the right  
10 direction on a Rule 32 issue. This is a  
11 Huntsville case. Again, it has to do with  
12 daycare.

13 HONORABLE STUART: Yeah. We just  
14 discussed it.

15 CHAIR PALMER: So we will -- we will  
16 bring this up next time we're here.

17 Suggestion No. 2: I think the only  
18 thing I brought up was when calculating  
19 gross income should be after mandatory  
20 federal taxes and state taxes should be  
21 deducted. All too often, I see  
22 calculations where after child support is  
23 paid, the taxes are deducted from gross.



1           They are left with literally nothing in  
2           which to survive. Perhaps if  
3           consideration was given to taxes, it might  
4           result in a better payment of child  
5           support.

6                     Well, I know Steve Wright, Steve  
7           Arnold, Judge Ford, y'all were a part of  
8           the original crew that got this started, I  
9           think, in 1982; is that correct?

10                    MR. WRIGHT: I think that's correct.

11                    CHAIR PALMER: And taxes were  
12           discussed at that time.

13                             Do y'all remember?

14                    HONORABLE FORD: The discussion was  
15           around what is gross income, and I  
16           think -- not certain whether taxes was a  
17           part of that discussion.

18                             But it was the fact that gross  
19           income for people differ a lot, because of  
20           other deductions from income.

21                             Again, I'm not certain taxes --  
22           do you recall if taxes were made a part of  
23           the discussion?

1                   MR. WRIGHT: Again, I think, the  
2                   entire premise of the guidelines and the  
3                   schedules were based on gross income, and  
4                   it came from the -- but I don't know if  
5                   there was ever any discussion of applying  
6                   the schedules, because that would raise a  
7                   lot of questions.

8                   CHAIR PALMER: It would. We've seen  
9                   people manipulate their tax. They either  
10                  claim zero deductions and they get taxed a  
11                  lot, or they claim nine deductions, even  
12                  though they don't have nine children, and  
13                  have very few taxes taken out. And  
14                  there's a tax lien. Is that considered a  
15                  tax or not?

16                  So that's my understanding as to  
17                  the why it is purely just gross and not  
18                  after taxes type of gross, because that  
19                  could be manipulated by whomever the filer  
20                  is and the amount of deductions that you  
21                  take.

22                  Suggestion No. 3: My suggestion  
23                  was a little controversial. I have had

1           several clients who were owners or  
2           partners in a business that paid for the  
3           owners, partners health insurance or part  
4           of the health insurance. And the end of  
5           the month or year, depending on the  
6           accounting method; that is, amount taken  
7           from any profit of the business before  
8           paying out the profits or paying bonuses.  
9           The payment for medical insurance is  
10          coming from a third person business, just  
11          like a stepparent carries the insurance  
12          comes from the same pot of money.  
13          Arguable?

14                        I thought, in Rule 32, there was  
15          a comment at some point about somebody who  
16          was self-insured. You get to take it out,  
17          but you get to put it back in.

18                        And who's still on the line? Is  
19          that you, Drew? Is that you, Michael?

20                        MR. POLEMENI: Ask that again?

21                        CHAIR PALMER: I was just curious as  
22          to who was still on the line.

23                        MR. POLEMENI: I'm still here.

1                   CHAIR PALMER:   Okay.   That's  
2           Michael.

3                   MR. WHITMIRE:   Drew is still here.

4                   CHAIR PALMER:   Okay.   Thank you,  
5           Drew.

6                               Well, Mr. Wright, do you have any  
7           memory of that issue as to the insurance?

8                   MR. WRIGHT:   Yeah.   I'm not sure I  
9           understand what the question is.   But if  
10          it's should a person be able to add to  
11          their form amount.

12                   CHAIR PALMER:   It's a small  
13          business, owners or partner in a business.

14                   MR. WRIGHT:   Okay.   Well, if they're  
15          an owner of the business and it's paid out  
16          of the profits of the business, they're  
17          still paying.

18                   CHAIR PALMER:   They are.   I've seen  
19          it where it was done twice.   They -- it  
20          was a part of their adjusted gross, when  
21          you're self-employed, that you have your  
22          Schedule C, but then it was wanting to be  
23          taken off again on the child support

1 guidelines.

2 So it was my understanding you  
3 either add that premium back into your  
4 gross income, and then you take it back  
5 out, but you don't get to count it twice  
6 is, I guess, where I'm coming from, if  
7 it's a small business.

8 You see what I'm saying?

9 MR. WRIGHT: I would agree with  
10 that. I'm not sure about the tax.

11 MR. ARNOLD: I would agree with it  
12 both ways. You can't add it into income  
13 twice, and you can't take it out as an  
14 expense twice.

15 It has to be one or the other.

16 CHAIR PALMER: One or the other.

17 MR. WRIGHT: One or the other;  
18 right.

19 CHAIR PALMER: So that's my  
20 understanding, if it's a small business,  
21 like that.

22 MR. ARNOLD: So there are small  
23 businesses where for tax-reporting

1           purposes, the cost of insurance is added  
2           to your income, and then your insurance is  
3           paid by the company, so you're really  
4           washing out. That's where you just have  
5           to be careful with your math and alert.

6                   CHAIR PALMER: So I hope that  
7           answers No. 3. And there's another page.

8                           And that has to do with this  
9           child support form as of April of 2015.  
10          Can this language be clarified? Language,  
11          No. 5, when it has to do with the health  
12          insurance. I'm not covered by myself or  
13          by my employer; but then No. 2, covered by  
14          the health insurance, I pay X amount each  
15          month, or the amount is paid on my behalf  
16          each month on my, I would think, employer  
17          or my spouse.

18                   MR. WRIGHT: Or spouse.

19                   CHAIR PALMER: Or spouse. And for  
20          family coverage, family policy coverage,  
21          under which the child or children are  
22          covered, and, two, the total amount of  
23          people covered under that policy are or

1           is, and then the pro rata portion of the  
2           medical insurance premium attributed to  
3           the child or children, who are subject to  
4           the support order, which should be  
5           calculated by dividing the total medical  
6           insurance premium actually paid or on  
7           behalf of the parent ordered to provide  
8           the insurance by the total number of  
9           persons, adult and/or children, covered,  
10          and then by multiply the result by the  
11          number of children who are subject to the  
12          support order is the sum of blank.

13                 Like we've talked about earlier,  
14           it's an original divorce. There are four  
15           of us on that policy now, but we're about  
16           to be divorced. So the way I tell the  
17           attorneys to calculate it in my court and  
18           the way I calculate is, there's only going  
19           to be three people by the time that order  
20           comes out that is going be covered under  
21           that policy.

22                 The other -- if there's a  
23           modification, I believe, one of -- is --

1 I've remarried, and now my current spouse  
2 has the insurance. My current spouse,  
3 myself, his two children, my two children,  
4 and our child is covered under that.  
5 There's seven people covered under that  
6 policy, but only two are subject to this  
7 support order.

8 So whatever the amount is divided  
9 by seven times two, and that's how you  
10 come up with the amount of the health  
11 insurance, because before, it was the  
12 whole premium, and yet, people who were  
13 not subject to the support order were  
14 getting credit for that, and sometimes it  
15 came out that the custodial parent got  
16 zero money because the health insurance  
17 premium was so high.

18 So I hope that covers that.

19 AUDIENCE: No. 4 on the front,  
20 Judge.

21 CHAIR PALMER: Number 4 on the  
22 front. Oh, I apologize.

23 Could military retirement income



1           be included in the definition of income?

2                       Well, you know, there's some good  
3           case law about that now. For the military  
4           retirement income, yes; military  
5           retirement disability, which is what I see  
6           a lot, is I've got a 60-percent disability  
7           rate, so my retirement was \$5,000 a month.  
8           Now, I've got -- I'm just going to use 50  
9           percent. It's easier math. Now it's --  
10          and I've got a 50-percent disability  
11          rating, so 50 percent of that 5,000 is  
12          considered disability and only 25 percent  
13          of that is considered retirement.

14                      For the purposes of calculating  
15          child support, the whole \$5,000 is  
16          included. For the purposes of calculating  
17          alimony or making the award of alimony or  
18          adjusting alimony, then the disability  
19          part cannot be included.

20                      Goldman v. Goldman.

21          September 1st, 2015. That was my case. I  
22          can tell you all about it. Quote you  
23          chapter and verse.

1                   So as far as military retirement,  
2           if it's just strictly retirement, it's all  
3           considered income for the purposes of  
4           calculating child support. If part of  
5           it's disability and part of it's  
6           retirement, it's still 100 percent used  
7           for the calculation of child support.

8                   Does anybody have any argument  
9           about that or disagreement?

10                  MR. CLARK: Can I discuss that?

11                  CHAIR PALMER: Yes, sir. We're  
12           almost to that portion. Let me get my  
13           list back out.

14                  All right. Jim Clark put his  
15           name down first. And you're Mr. Clark.  
16           Hello, Mr. Clark.

17                  MR. CLARK: I just -- I was at the  
18           last meeting in July, and I brought this  
19           up, and Mr. Maddox said he'd put it on the  
20           list, so it's on the list.

21                  I've had two circuit judges rule  
22           two different things, and what worried me  
23           is the appellate court affirmed no opinion

1           on a ruling that my ex-spouse's portion of  
2           my retirement is property. My portion of  
3           it is income. So for child support  
4           computation, the Appellate Court of  
5           Alabama has ruled that it is property for  
6           my former spouse, because that's how we  
7           divided it at divorce, and we asked for  
8           equal rights. It's either property or  
9           income.

10                       The circuit judge court said that  
11           you've got my ruling, and the only thing  
12           they gave the appellate court was affirm  
13           of no opinion.

14                       CHAIR PALMER: Okay. So for your  
15           purposes, it is child support, but for  
16           your former wife's purposes, it wasn't  
17           included as her income calculated?

18                       MR. CLARK: By the first circuit  
19           judge, it was, right after I retired, but  
20           two years later, when they modified, a new  
21           judge ruled it was not income for my  
22           former spouse. It was divided in the  
23           divorce as property, so she gets it as a

1           property settlement.

2                       That's not my concern. My concern  
3           is that the appellee court affirmed it.  
4           That's my concern. So now I have a  
5           special-needs child who turned 18 this  
6           last week. When his money goes to trust,  
7           when he turns 19, guardian's appointed,  
8           that trust money -- my former spouse will  
9           not be contributing the true income that  
10          she has to report, and the deviation --  
11          and the deviation No. E -- or Letter E  
12          says, that which considers to the interest  
13          of the child.

14                      So if the child were to get the  
15          full consideration of her income, he would  
16          get more into the trust that could be used  
17          for his interests.

18                      HONORABLE STUART: I think it's an  
19          individual situation that, I think, a  
20          lawyer would need to explain to you or  
21          have to be, again, taken up through the  
22          court system. I don't think that this  
23          committee can comment on individual

1 situations.

2 MR. CLARK: But all I'm asking is  
3 that under gross income definition, it  
4 does pensions. It doesn't say pensions  
5 for who, though; whether it's the military  
6 member or his ex-spouse or an ex-spouse.  
7 So it says all sources of income. It's  
8 report as a 1099 to both spouses, so the  
9 IRS designates it as income.

10 CHAIR PALMER: Okay. That's  
11 interesting. Very interesting.

12 MR. CLARK: Yeah. I'm in a catch  
13 22, because I couldn't go the Supreme  
14 Court. The lawyers wouldn't take it that  
15 far, and I think it's because they have to  
16 practice in front of this judge.

17 CHAIR PALMER: Okay. Well, thank  
18 you, Mr. Clark.

19 And Tim Smith.

20 MR. SMITH: Thank you, Judge Palmer,  
21 and to the sitting in Justice Stuart.  
22 Thank you all for being here. Just a  
23 moment. I'm not going to hold us up

1           before we miss lunch.

2                       The form for joint custody or  
3           shared parenting time or the phrase we're  
4           using now -- I know the committee looked  
5           at stepping by that. I would just ask  
6           that you definitely take that on, because  
7           that is the way of the future. That is  
8           where custody issues are going toward.

9                       Also, there was conversation in  
10          the meeting today about how there's  
11          inequity as far as which court you're  
12          under, which area of the state you live on  
13          as to how that's dealt with. So now I  
14          think the committee can't go past it.  
15          It's difficult as it's going to be, you're  
16          going to have to sit down and deal with  
17          that, because you can't have Rule 32,  
18          where you're worrying about child support,  
19          and making sure everybody is dealt with  
20          fairly under the state, and then step  
21          around and not deal with something as  
22          critical as shared parenting time, because  
23          we've already said we've got judges in

1           certain parts of the state that are  
2           actually dealing with that in their  
3           courtroom. And we have judges in other  
4           parts of the state that aren't.

5                       So it's been put forth before the  
6           committee, and I don't see how you can  
7           step around that, because you open  
8           yourself up to something at the federal  
9           level. I'm not saying a lawsuit by  
10          someone, but if I'm in a county, and I  
11          have a judge that deals with me in one way  
12          under Rule 32, and then someone else with  
13          an identical situation is dealt with in a  
14          different way by a judge in a different  
15          county, that's the whole essence of  
16          Rule 32, is to get it where it's dealt  
17          with the same for all individuals. I'd  
18          say that.

19                       I don't have anything else other  
20          than we've talked arrearage and how  
21          arrearage is dealt with and how interest  
22          is dealt with and whether you can forgive  
23          interest. We've never discussed or I've

1           never been here when the committee has met  
2           and heard the committee discuss  
3           overpayment. When someone is overpaid,  
4           where does that money go? There's nothing  
5           in Rule 32 that deals with an overpayment.  
6           And it does happen, because I've spoken  
7           with a number of people before, where they  
8           have overpaid; the money has been giving  
9           to the obligee, I believe it is, so  
10          they've paid, and now it's found that they  
11          overpaid, and they have no recourse under  
12          the law or under the rules.

13                       So I would ask that definitely  
14          you look at dealing with overpayment  
15          issues.

16                       Other than that, I thank you for  
17          everything you're doing. Everybody here  
18          is a volunteer. And I thank the members  
19          back there in the gallery for coming too.  
20          And good to see y'all again. I'll see you  
21          in August.

22                       CHAIR PALMER: Okay. Thank you.

23                       Anybody need to make any comments



1           about that?

2                   All right. Any other business we  
3           need to take care of today?

4                   Well, school starts back anywhere  
5           from August 6th, 7th, 8th, so we probably  
6           don't need to meet around then. We  
7           probably don't need to meet that Friday  
8           before Labor Day, because people are going  
9           to be on the road and travelling.

10                   So anybody going -- if you've got  
11           a calendar either by your phone or actual  
12           old paper kind of thing, old school, which  
13           I don't usually use this calender at all,  
14           but I've got it in front of me, so I'm  
15           actually going to try to use it.

16                   Are Thursdays better? Are  
17           Mondays better? I would think schools  
18           start back anywhere from August the 8th.

19                   Jim, you still have school-aged  
20           kids. What time do you start back?

21                   MR. JEFFRIES: I don't know yet.

22                   CHAIR PALMER: So let's look  
23           possibly the week of August 15th through

1           the 19th or August 22nd through the 26th,  
2           those two weeks right in there. I'm not  
3           asking anybody that we're going to pick a  
4           actual date today, but it would be  
5           somewhere within those two things.

6                       The committee members, is there  
7           anybody --

8                       MS. DAVIS: Mondays will be harder  
9           for me.

10                      CHAIR PALMER: Mondays will be  
11           harder for you?

12                      MS. DAVIS: Class on Monday  
13           afternoons.

14                      MR. JEFFRIES: Fridays are better  
15           for me.

16                      CHAIR PALMER: How about Fridays for  
17           everybody? Fridays are usually my better  
18           day as well, if I'm not going to have a  
19           docket that day. Most lawyers don't  
20           complain that you don't have a docket on  
21           Friday.

22                      So we're looking at possibly  
23           Friday, August 19th, or possibly Friday,

1 August the 26th.

2 Mr. Wright?

3 MR. WRIGHT: I have a court conflict  
4 on the 19th.

5 CHAIR PALMER: And then one other  
6 person is no longer on the committee, and  
7 that is Randy Nichols. So I don't know if  
8 he needs to be replaced by someone.

9 I apologize. I have not educated  
10 myself on how many people are to be on the  
11 committee.

12 HONORABLE STUART: There's a federal  
13 court order that dictates who is to be on  
14 this committee. So I would assume Bob  
15 Maddox or someone else with the AOC can  
16 look at that and let us know whether we're  
17 in compliance of that.

18 CHAIR PALMER: Mr. Medaris?

19 MR. MEDARIS: I was just going to  
20 say that it looked like everybody's term  
21 expires this year, so it will be time to  
22 reappoint. So we'll be probably sending  
23 letters out from the clerk office's about

1           this position. So I just wanted to make  
2           you aware of that.

3                   CHAIR PALMER: Okay. Thank you.  
4           Does anybody have anything else?

5                   Madame Court Reporter, do you  
6           need anything from us?

7                   All right. Well, there's  
8           probably some old coffee left, if anybody  
9           wants it for the road or a bottle of water  
10          or anything like that.

11                   Otherwise, we stand adjourned.  
12          Thank you very much.

13                   (Proceedings concluded at 12:28  
14          p.m.)

15                   \* \* \* \* \*

16                   END OF PROCEEDINGS

17                   \* \* \* \* \*

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## 1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA  
3 ELMORE COUNTY

4 I, Haley Tunnell, Court Reporter,  
5 Commissioner for the State of Alabama at Large,  
6 hereby certify that on Thursday, March 3, 2016,  
7 I reported the proceedings in the foregoing  
8 cause and that pages 3 through 156 contain a  
9 true and accurate transcription of the  
10 proceedings set out herein.

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

14  
15 /s/ Haley Tunnell  
16 HALEY TUNNELL, Court Reporter  
17 Commissioner for the  
18 State of Alabama at Large  
19 ACR TL2040, Expires 10/01/16  
20 MY COMMISSION EXPIRES: 02/25/19  
21  
22  
23

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