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MEETING OF THE ADVISORY COMMITTEE
ON CHILD SUPPORT GUIDELINES AND ENFORCEMENT
FOR THE STATE OF ALABAMA
FRIDAY, NOVEMBER 4, 2022
10:00 A.M.

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**THE ADVISORY COMMITTEE ON CHILD SUPPORT
GUIDELINES AND ENFORCEMENT MEETING** was held before
Jeana S. Boggs, Certified Court Reporter and
Commissioner for the State of Alabama at Large, at
300 Dexter Avenue, Montgomery, Alabama, and via
Virtual videoconference, commencing at 10:00 A.M.,
Friday, November 4, 2022.

1 APPEARANCES

2 GUEST:

3 DR. JANE VENOHR
4 Center for Policy Research
5 Denver, Colorado
6 (VIA VIRTUAL)

7 COMMITTEE MEMBERS:

8 PROFESSOR PENNY DAVIS, Chair
9 Adjunct Professor of Law
10 University of Alabama School of Law
11 Tuscaloosa, Alabama

12 MELODY BALDWIN, Esquire
13 District Attorney's Office
14 Child Support Division
15 Dadeville, Alabama

16 JENNIFER BUSH, Esquire
17 Assistant Attorney General
18 Legal Division
19 Alabama Department of Human Resources
20 Montgomery, Alabama

21 PROFESSOR BRIAN GRAY
22 Professor Emeritus of Statistics
23 Culverhouse College of Commerce
The University of Alabama
Tuscaloosa, Alabama

JIM JEFFRIES, Esquire
Private Practice Attorney
Mobile, Alabama

LATHESIA MCCLENNY
Director
Child Support Enforcement Division
Alabama Department of Human Resources
Montgomery, Alabama

THE HONORABLE JULIE PALMER
Private Practice Attorney and
Part-time Referee, Shelby County
Hoover, Alabama

1 THE HONORABLE MICHAEL D. SHERMAN
Circuit Judge
2 13th Judicial Circuit
Mobile, Alabama

3 KATIE STEINWINDER, Esquire
4 Private Practice Attorney
Montgomery, Alabama

5 JOAN-MARIE SULLIVAN, Esquire
6 Private Practice Attorney
Huntsville, Alabama

7 THE HONORABLE CALVIN WILLIAMS
8 Circuit Judge
15th Judicial Circuit
9 Montgomery, Alabama

10 DREW WHITMIRE, Esquire
Private Practice Attorney
11 Birmingham, Alabama

12 OTHER PERSONS ATTENDING:

13 STEPHANIE BLACKBURN, Esquire
Central Staff Attorney
14 Supreme Court of Alabama
Montgomery, Alabama

15 JEANA BOGGS, COURT REPORTER
16 Boggs Reporting & Video LLC
Montgomery, Alabama

17 APPEARANCES OF THE PUBLIC:

18 VERNECIA HOWELL
19 LISA CLARK
CLIFFORD SMITH
20 SCOTT JOHNSON, ESQUIRE

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23

1 PROFESSOR DAVIS: All right. Good
2 morning, folks. We appreciate everyone
3 coming. Obviously we miss Bob because
4 Stephanie --

5 MS. BLACKBURN: Obviously.

6 PROFESSOR DAVIS: -- is wearing
7 multiple hats today. So, and as luck
8 would have it, a little snafu at the
9 beginning, but that's okay. We are now
10 able to get up and function. So, we are
11 happy to have Dr. Jane Venohr join us from
12 the Worldwide Web.

13 Let me remind everybody -- I think
14 y'all know our Court Reporter, Jeana
15 Boggs. And as always, don't do I do, do
16 as I say, which is to ask you to identify
17 yourself and not to speak over would be
18 helpful to her.

19 And anything else I need to remind
20 them?

21 THE COURT REPORTER: No.

22 PROFESSOR DAVIS: Okay. Thank
23 you. She does a great job listening to us

1 and typing and do all the things that good
2 court reporters do.

3 We are going to start by having
4 everyone to introduce themself. First, we
5 will start with the Committee and then we
6 will go with the public. If anybody from
7 the public has not signed up, there is a
8 list to sign for the public, and there is
9 an agenda over there. But we will start.

10 Judge, would you like to start by
11 introducing yourself?

12 HON. WILLIAMS: Yes. Good
13 morning. I'm Judge Calvin Williams,
14 Circuit Judge, Montgomery County Family
15 Court.

16 PROFESSOR GRAY: I'm Brian Gray.
17 I'm Professor of Emeritus of Statistics at
18 the University of Alabama.

19 HON. SHERMAN: I am Michael
20 Sherman. I'm a Circuit Judge down in
21 Mobile handling domestic relations cases.

22 MS. SULLIVAN: Joan-Marie
23 Sullivan. I'm a practicing attorney in

1 Huntsville, Alabama.

2 HON. PALMER: Julie Palmer, Child
3 Support Referee, Shelby County.

4 PROFESSOR DAVIS: And I'm Penny
5 Davis. I'm the Chair of the Committee.

6 MS. BLACKBURN: Stephanie
7 Blackburn. I work with the Supreme Court
8 Clerk's office. I'm the liaison.

9 MR. JEFFRIES: Jim Jeffries. I'm
10 an attorney in Mobile.

11 MS. BUSH: Jennifer Bush with DHR
12 Legal.

13 MS. MCCLENNEY: Lathesia
14 McClenney, Child Support Director, DHR.

15 MR. WHITMIRE: Drew Whitmire,
16 Attorney in Birmingham.

17 MS. BALDWIN: Melody Baldwin,
18 Assistant DA, Fifth Circuit.

19 PROFESSOR DAVIS: And we will
20 start over here with the public.

21 MR. JOHNSON: Yeah. I'm Scott
22 Johnson. I'm an attorney, and just
23 visiting to learn.

1 PROFESSOR DAVIS: We're happy to
2 have you. Thank you, Scott.

3 MR. SMITH: I am Cliff Smith, DHR
4 Policy Manager for Child Support.

5 MS. CLARK: Lisa Clark, Policy
6 Program Specialist.

7 MS. HOWELL: Vernecia Howell, DHR
8 Policy.

9 PROFESSOR DAVIS: Thank you all
10 for coming. I will ask now and also ask
11 at the end does anybody from the public
12 want to speak at this point?

13 MR. SMITH: No.

14 PROFESSOR DAVIS: Okay. All
15 right. Well, thank you.

16 Stephanie, do before we have a
17 quorum?

18 MS. BLACKBURN: I am so happy to
19 say that we do have a quorum.

20 PROFESSOR DAVIS: All right. Yay.

21 MS. BLACKBURN: It's wonderful.

22 PROFESSOR DAVIS: And I would like
23 to say thank all of you for making a

1 special effort to come, many of you from
2 Mobile, Tuscaloosa, and then going back
3 via Huntsville to teach a class and then
4 going back to Tuscaloosa. So, may get the
5 mileage award, which means nothing other
6 than gratitude for that. And we
7 especially appreciate everyone making an
8 effort to have a quorum today. We do hope
9 to be able to tend to business today.

10 Stephanie, will you talk about our
11 notice to the media?

12 MS. BLACKBURN: Yes. On October
13 12th, a notice when out to the media
14 outlets that we were having a meeting with
15 the Child Support Committee here today and
16 the public was invited.

17 PROFESSOR DAVIS: Okay. Did the
18 public respond with any documents they
19 would like to share with the Committee?

20 MS. BLACKBURN: No. I have not
21 received any.

22 PROFESSOR DAVIS: Okay. Thank you
23 very much.

1 All right. Everyone has a packet
2 in front of you that's got the information
3 we're looking at. The first thing is the
4 transcript. And so, does anyone have any
5 changes or recommendations with regard to
6 the transcript?

7 (No response).

8 PROFESSOR DAVIS: Okay. If not,
9 do I hear a motion to approve the
10 transcript?

11 HON. SHERMAN: So moved.

12 PROFESSOR DAVIS: Thank you,
13 Judge. Do I have a second?

14 MS. SULLIVAN: Second.

15 PROFESSOR DAVIS: Second. Okay.
16 So, we have moved and a second. All in
17 favor say "aye."

18 (Committee members saying
19 "aye").

20 PROFESSOR DAVIS: Okay. Thank
21 you.

22 All right. We are immediately
23 going to jump into business that's on the

1 agenda unless someone has something first
2 that we need to bring to the attention of
3 the Committee.

4 (No response).

5 PROFESSOR DAVIS: Okay. The first
6 item of business is the report from the
7 Shared Physical Custody Reimbursement,
8 Child Support Committee, and that is --
9 there is a memorandum that you will see
10 relating to that.

11 Now, we have listed on the agenda
12 Melody as the Chair, but she's having
13 throat issues. And Judge Sherman had
14 already been involved in doing some of the
15 drafting. And so, he has graciously
16 agreed to present that also.

17 HON. SHERMAN: Yes. So, you have
18 the memo dated November 4th that our
19 Subcommittee drafted, and you see we are
20 proposing to present to the Supreme Court
21 an amendment to Rule 32 that would create
22 what we have called a Shared Physical
23 Custody Adjustment for child support where

1 there's 50/50 custody.

2 This is -- The language in this
3 proposed Rule that's in this memorandum is
4 identical in substance to the language
5 that was presented at last month's Child
6 Support Committee meeting. We made some
7 revisions to them primarily to correct
8 some typographical mistakes, one I think,
9 but also some stylistic changes for
10 clarity that did not change the substance
11 of the proposal. The only thing
12 substantive that we've changed since the
13 last meeting is in paragraph --
14 subparagraph (c) where we had originally
15 talked about in this -- let me back up for
16 a second for those who weren't here.

17 There was some concern of this
18 joint or Shared Custody Adjustment being
19 applied in certain cases, and one of the
20 parents negotiating to get that with no
21 real intent to actually exercise their
22 shared custody but rather to get a
23 reduction in child support.

1 And so, to address that, we wanted
2 to present -- have some mechanism in the
3 Rule to allow judges to remove the
4 adjustment or recalculate child support as
5 if there was no shared custody in those
6 cases. So, this is what subparagraph (c)
7 is about.

8 And the proposal is, as it's
9 written right now -- and this is a slight
10 change from last month -- is that if that
11 parent -- let's just say it's the father
12 for ease of reference. If the father is
13 not exercising his shared custody 50/50 as
14 set out in the agreement but he got the
15 benefit of it, and the mother petitions
16 the court to have the court remove that
17 adjustment or recalculate child support as
18 if that wasn't in place, the test that we
19 had in there now is, if the father has not
20 exercised 14 of his overnight -- 14 days
21 of his visitation within the preceding 12
22 months. It did say within the past
23 calendar year -- 14 days in the past

1 calendar year, and we changed that
2 preceding 12 months with the idea of, you
3 know, if on February 1st a petition is
4 filed the look-back would only be 30 days;
5 whereas, if you do 12 months, you have got
6 a better representation of what he is
7 actually exercising in that instance.

8 So, that's really the only
9 substantive changes, changing it from 14
10 days within the preceding calendar years
11 and 14 days within the 12 months preceding
12 the filing of the petition. It does
13 require a petition. And I think it's
14 important to note that what we are talking
15 about there is that it would give the
16 court the ability to find that to be a
17 reason to change child support without
18 respect to whether custody is being
19 modified. I think in most of those cases,
20 that mother in the example I gave would be
21 also asking to modify custody potentially.
22 But whether they did or they didn't, it
23 would be grounds to modify the child

1 support and remove this Shared Custody
2 Adjustment.

3 So, I won't go through the entire
4 Rule because we covered it at the last
5 meeting, but I did want to point out that
6 was the subjective change.

7 The other thing we've done since
8 the last meeting is come up with a draft
9 of some Committee Comments, which you see
10 is the last two pages of that memorandum.

11 And that is the report of our
12 Subcommittee, and I am happy to answer any
13 questions. And I'm sure Melody, to the
14 extent she can, is happy to do also.

15 PROFESSOR DAVIS: So, I will open
16 up the floor for any questions from the
17 Committee members.

18 Judge?

19 HON. WILLIAMS: Judge Williams.

20 I want to thank the Subcommittee.
21 I think they have done a great work on
22 putting this together. I just have one
23 thought or a question, and it may be

1 immaterial to moving forward on the
2 adoption of these changes.

3 But is there a need to say at "for
4 more than 14 days into 12 months
5 immediately preceding" as opposed to just
6 leaving it more than 14 days in the 12
7 months preceding? So, we narrow it to the
8 12 months immediately preceding --

9 PROFESSOR DAVIS: You're
10 suggesting the word "immediately"?

11 HON. WILLIAMS: -- so no one can
12 suggest that it's an open period of 12
13 months prior to the filing. I don't want
14 attorneys coming in and saying, well, you
15 know, we only counted 12 months but not
16 immediately preceding.

17 HON. SHERMAN: I think certainly
18 the intent that it's the immediately
19 preceding. It may add some clarity if we
20 have that in there. It's a good
21 suggestion I think.

22 PROFESSOR DAVIS: Yes. Anybody
23 have any other thoughts?

1 So, it would be added on
2 subsection (c) --

3 HON. WILLIAMS: And (d).

4 PROFESSOR DAVIS: -- and (d).

5 HON. PALMER: And on that topic --

6 PROFESSOR DAVIS: Let me see. Is
7 there another spot on the Comments?

8 MS. SULLIVAN: Yes. The last
9 paragraph, Penny. Well, the last two
10 paragraphs actually.

11 HON. SHERMAN: Yes.

12 MS. BALDWIN: Judge Sherman, this
13 is Melody Baldwin.

14 And the only thing I think I would
15 add as we are considering whether or not
16 we are going to recommend, as with
17 whatever changes we make today, is that
18 subparagraph (b) of paragraph (d).

19 PROFESSOR DAVIS: (d) as in "dog."

20 MS. BALDWIN: (b) as in "boy."

21 PROFESSOR DAVIS: (b) as in "boy."

22 Okay.

23 MS. BALDWIN: Relying on which

1 form the Committee actually ultimately
2 votes on which we haven't done. There was
3 a straw vote when we didn't have a quorum
4 that we liked the form that was the
5 shorter version, the Vermont form without
6 the cross-credits as Professor Gray
7 presented before us today. Everybody has
8 a copy of it. Because that language would
9 have to be changed probably. I don't
10 remember what the line numbers were on the
11 other form. So, that's just something I
12 thought we need.

13 PROFESSOR DAVIS: Are the line
14 numbers -- Well, we have in front of us
15 the form. So, we can double-check the
16 line numbers now. And so, did you --
17 Professor Gray, did you use the same line
18 numbers that were in here?

19 PROFESSOR GRAY: It should match.

20 PROFESSOR DAVIS: It should match
21 up. That's what I assumed. Let's
22 double-check. So...

23 HON. SHERMAN: The reference --

1 this is Judge Sherman.

2 The reference to Line 10 it says
3 each parent child-support obligation,
4 which is what is on that form, reference
5 to Line 13 is correct as it is. But I
6 think Melody's point is that we haven't
7 yet adopted the Worksheet. So, if we
8 adopted a different Worksheet, we need to
9 rephrase that paragraph.

10 PROFESSOR DAVIS: That's an
11 excellent point. I was thinking we might
12 want to look at them together once we
13 looked at especially this and then also
14 look at the form. But that's a good
15 point. So, if we for some reason -- I
16 don't think we will change it, but if we
17 do change, you are right, we will need to
18 do that.

19 HON. PALMER: Julie Palmer. The
20 only thing that I see now that Judge made
21 that comment about "immediate" and maybe
22 this is the exact same thing, but 12
23 consecutive months preceding a filing

1 versus just 12 months.

2 PROFESSOR DAVIS: So, you want it
3 to read -- Tell me exactly how you want it
4 to read.

5 HON. PALMER: Twelve consecutive
6 months preceding the filing of the
7 petition to modify, versus just 12 months.

8 HON. SHERMAN: So, we take out
9 "the" before that?

10 HON. PALMER: Possibly.

11 HON. SHERMAN: The 12 --

12 HON. PALMER: Uh-huh (positive
13 response).

14 PROFESSOR DAVIS: Filing of the
15 petition to modify.

16 HON. PALMER: Fourteen days in
17 twelve months preceding the filing.

18 PROFESSOR DAVIS: So, immediately
19 preceding? You want to leave in
20 "immediately."

21 HON. PALMER: Oh, yeah,
22 definitely.

23 PROFESSOR DAVIS: Okay.

1 HON. PALMER: Just take the word
2 "the" out. Yes.

3 HON. SHERMAN: And add
4 "consecutive" after "12"?

5 HON. WILLIAMS: I think we could
6 use either/or when you use the
7 "consecutive," or we can use
8 "immediately," whichever one I guess is a
9 better flow, better word.

10 MS. BALDWIN: Well, to make it
11 absolutely clear, you can leave in both.

12 HON. SHERMAN: A room full of
13 judges and lawyers.

14 MS. BALDWIN: Leave it in.

15 HON. WILLIAMS: Okay. Fourteen
16 days and --

17 HON. SHERMAN: So, it would
18 read -- what we are saying is the proposal
19 would read "fails to exercise his or her
20 physical custody of a child for more than
21 14 days" -- would it say -- "in 12
22 consecutive months immediately preceding"?

23 HON. WILLIAMS: Yes. 14 days and

1 12 consecutive months immediately
2 preceding.

3 HON. SHERMAN: We would make that
4 change in subparagraph (c) and (d) and in
5 the last two paragraphs of the Committee
6 Comments.

7 PROFESSOR DAVIS: So, leave in the
8 word "12" -- "in the 12"?

9 HON. WILLIAMS: No. Take out
10 the --

11 PROFESSOR DAVIS: Take out "the 12
12 months."

13 PROFESSOR GRAY: I would keep the
14 "the" because there are a lot of 12
15 consecutive months immediately preceding.

16 HON. WILLIAMS: Twelve consecutive
17 months. It makes sense.

18 PROFESSOR DAVIS: So, it would be,
19 "Fails to exercise his or her physical
20 custody for 14 days in the 12 consecutive
21 months immediately preceding"?

22 HON. SHERMAN: Yes.

23 HON. WILLIAMS: There would be no

1 confusion there.

2 HON. PALMER: Well, we think.

3 MS. BLACKBURN: We will find a way
4 I'm sure.

5 PROFESSOR DAVIS: Okay. Other
6 thoughts? Any more belts and suspenders
7 we need to do?

8 MR. JEFFRIES: Penny, Jim
9 Jeffries.

10 I had a concern about the language
11 generally describing 14 days in (c) "fails
12 to exercise 14 days" and then just
13 because --

14 PROFESSOR DAVIS: And that would
15 be changed if we decide that to "in 12
16 consecutive months immediately preceding."

17 MR. JEFFRIES: Right. What I'm --
18 This is kind of a comment and a
19 suggestion. But I like the language in
20 (d) where it specifically says the parent
21 willfully failed to exercise his or her
22 physical custody. I think that's a good
23 clarification for parents who change their

1 schedule voluntarily which is, of course,
2 encouraged.

3 HON. SHERMAN: Like, by agreement
4 of the parents you mean?

5 MR. JEFFRIES: By agreement or
6 work schedule or something that's not
7 necessarily willful.

8 HON. PALMER: An illness. An
9 illness.

10 MR. JEFFRIES: An illness. I
11 think the word "willfully" is a good term
12 to use in (d), and I wonder if maybe for
13 clarity it needs to be in (c) as well.
14 That would be my comment.

15 HON. WILLIAMS: Well, I think the
16 distinction between (c) and (d), if I am
17 not mistaken, is that it gives the court a
18 discretion to find if the petition alleges
19 that the parent failed to do this exercise
20 visitation in this period, that the Court
21 find that he or she willfully did so and
22 posed the appropriate, I guess, remedy to
23 it.

1 MR. JEFFRIES: I don't disagree,
2 Judge. And I noted as well in (c) that it
3 says "may consider" --

4 HON. WILLIAMS: Yes.

5 MR. JEFFRIES: -- not necessarily
6 "shall." I mean, there is a lot of
7 discretion there.

8 HON. SHERMAN: The idea -- So,
9 originally before this current -- this is
10 Judge Sherman. Sorry. I forgot about
11 that.

12 Before this original draft that we
13 landed on, there was discussion that there
14 be almost -- I forget the language we were
15 using, but basically that in my example, I
16 said "father." So, in that case, that the
17 father might have to pay back the mother
18 all of the benefit he had received in the
19 lower child support all the way back to
20 whenever the order was done. And we saw a
21 lot of problems with that. I saw a lot of
22 problems with that in terms of trial
23 courts trying to determine when did they

1 stop doing it and counting days, and there
2 would be so much litigation --

3 MR. JEFFRIES: Yeah.

4 HON. SHERMAN: -- and factual
5 dispute. And so, we are tried to narrow
6 the focus. And in only -- We tied it,
7 first of all, to the petition. So, it
8 can't just be, you know, the mother -- in
9 my example, the mother -- is just allowing
10 the father not to exercise it without
11 doing anything and that rolls on for
12 years, and then maybe dad files a petition
13 to modify child support, and she says,
14 okay, fine, I am countersuing you for all
15 the money you owe me for the last four
16 years.

17 So, we tried to narrow the focus,
18 but we were still making a distinction.
19 We still wanted there to be potentially
20 some financial disincentive to a party to
21 do what we are trying to avoid they are
22 doing, which is why we included (d) to
23 allow them to be on the hook, so to speak,

1 for that petitioning party's attorney's
2 fees and costs for having to do that. And
3 in that instance, because there was going
4 to be a financial penalty, so to speak, we
5 felt like we had to raise the burden a
6 little bit is what you are pointing out to
7 the willfulness.

8 And so, it was an intentional
9 decision to have it in (d) and not in (c),
10 but we did discuss it or at least I
11 thought about whether it should be or
12 shouldn't be, and I am certainly open to
13 that discussion. You know, as a trial
14 judge, we did -- I felt comfortable with
15 it as it is because it is so discretionary
16 in the trial court. I mean, if somebody
17 is trying a case with me in the example
18 you gave or Judge Palmer where the person
19 has been hospitalized, I mean, that's
20 not -- I don't think that is what the Rule
21 is intending. But we could consider
22 adding that language to see, and it would
23 certainly raise the bar to that

1 modification of child support, I think, if
2 that's what we want to do.

3 MR. JEFFRIES: Or it could be
4 something in the Comments that's more
5 instructional about that?

6 HON. SHERMAN: I also thought
7 about the Committee Comments talking about
8 the distinction, willful not. I didn't do
9 that in these Committee Comments and maybe
10 some language about why we included it in
11 (d) if that's what we ended up doing and
12 not in (c) and some examples when it would
13 be willful, you know, it could be
14 instructive to trial courts.

15 MS. SULLIVAN: Joan-Marie
16 Sullivan.

17 I serve on this Committee as the
18 Past-President of the Family Law Section.
19 And obviously when this initial draft came
20 out, I polled my Committee members and
21 many of them have problems with that 14
22 days just because it's such a defined
23 number. I mean, obviously I didn't

1 prevail in my argument with this
2 Committee.

3 But I know that Penny presented it
4 at our recent CLE, and I think there were
5 about 70 attorneys there. And some of
6 them had talked about, like, could we put
7 a provision here that said if it's done by
8 agreement so that maybe something that's
9 in the Committee Comments that, when you
10 presented that, I remember that was one of
11 the comments that you received at the
12 time. But, yeah, I --

13 PROFESSOR DAVIS: Yeah. And I
14 think based on a prior conversation, the
15 thought was that by having judicial
16 discretion, that what would happen in
17 front of the judges the party would say:
18 We agree to it. So --

19 MS. SULLIVAN: Sure.

20 PROFESSOR DAVIS: -- you know, you
21 could choose a word less than willful but
22 more than just the failure. You could
23 have "unexcused" or something like that

1 which might --

2 HON. SHERMAN: If Jim, with his
3 experience, and Joan-Marie with hers and
4 these other lawyers that they have talked
5 to think that's a red flag, we probably
6 need to address it somehow however we
7 decide to address it.

8 MS. SULLIVAN: As I explained
9 previously, and I'm in a land of
10 engineers, and I think they are going to
11 go, oh, 14 days, we are done.

12 HON. SHERMAN: Yeah.

13 MS. SULLIVAN: And so, you know, I
14 want there to be some more disincentive
15 for people to take something back when
16 it's done by agreement, and certainly
17 don't want to quell the ability for
18 parties to coparent.

19 HON. SHERMAN: You want them to
20 agree, as you said. And if it does come
21 before a trial court, that's a difficult
22 issue for a judge, you know, to exercise
23 that discretion in. It often comes down

1 to just he said/she said in trying to
2 evaluate their credibility. There may not
3 be any documentary evidence, text, or
4 anything else that said that they did
5 agree to it when, in fact, they may have.
6 And I don't think we are trying to punish
7 the father, in my example, in that
8 instance if the parties agree and they had
9 a legitimate reason to agree, his work
10 schedule changed or something.

11 So, I mean, I think it's a valid
12 concern.

13 HON. WILLIAMS: I think -- I think
14 it gives the parent the right to say, in
15 my view based on my perception, is a
16 petition worth filing because he or she
17 has missed these days or these periods,
18 and then it's up to the court to determine
19 if that was a willful act. Because the
20 court's determination on finding may be
21 well different than the petitioner's
22 belief. Right?

23 So, I think that's why it's left

1 to the court's discretion to find that it
2 was willful in spite of what the pleadings
3 say.

4 PROFESSOR DAVIS: Is there a word
5 other than "willful"?

6 HON. SHERMAN: You could say
7 something like "without just cause" or --

8 MR. JEFFRIES: "Excessive" is
9 something that I thought about. An
10 excessive number of days in the 12 months.

11 HON. SHERMAN: That could become
12 very subjective.

13 PROFESSOR DAVIS: Yeah. I think
14 the -- Well, the Committee could certainly
15 revisit the issue of settling on a set
16 time. You could have -- I thought your
17 objection was not the 14 days per se but
18 the fact that it was not without excuse or
19 willful or something like that.

20 MR. JEFFRIES: That was.

21 PROFESSOR DAVIS: Okay.

22 MR. JEFFRIES: And I just -- I see
23 kind of -- To Joan-Marie's point, I see

1 this 14-day window being something that is
2 overly suggestive. I don't know any other
3 way to say it.

4 MS. SULLIVAN: And what I had
5 voiced prior is, you know, I am concerned
6 that you are going to have a parent who
7 really needs the other parent to take the
8 child, and they are going to go, oh, crap,
9 if I go beyond that 14 days, I am going to
10 get a hit on my child support and then
11 just keep them in a room with a tablet,
12 you know, with a babysitter that doesn't
13 need to be there just so that they can
14 make sure that they don't fall within that
15 14-day frame. And I has expressed concern
16 about that 14-day number, as well, instead
17 of, you know, a substantial amount of
18 visitation. But I understand that.

19 PROFESSOR DAVIS: So, your primary
20 objective is if it's without agreement of
21 the parties?

22 MS. SULLIVAN: I just think the 14
23 days is such a tight number that, you

1 know, it will just sort of -- I mean,
2 people are going to adding up and go, oh,
3 we are on day 14, let's go, instead of
4 trying to coparent.

5 MR. JEFFRIES: And to that point,
6 as well, we are missing sort of a category
7 I think of non-agreed missing of days
8 where the other party, the father in our
9 example, has some legitimate reason. He
10 wants to go to a wedding -- I am just, you
11 know -- I mean, 14 days over the period of
12 12 months can be accumulatively met fairly
13 easily I would think. Just under
14 different circumstances. You know, if you
15 had somebody that gets COVID and can't
16 exercise for seven days or five days,
17 however, seven, I guess it would be,
18 because you have to include the weekends
19 if it was a week-to-week thing. And then
20 all of a sudden you are into -- once that
21 one week occurs, you are into only seven
22 more days cushion: If it is not by
23 agreement, you know, I am going to the

1 Bahamas with my girlfriend and I am not
2 about going to be able to pick up the
3 kids. Oh, no, you're not, you better --
4 you know.

5 That's what -- I mean, that's
6 more --

7 HON. SHERMAN: The point contrary,
8 though, to -- So, I hear the concern that
9 having a bright line would suggest filing
10 more frequently maybe than we might want.
11 However, I think you can make the exact
12 same point if it's a subjective test. If
13 we said, for example, if the -- if one of
14 the parents misses a significant -- fails
15 to exercise a significant amount of their
16 time, well, you are going to have people
17 in your office saying that the four days
18 he didn't exercise was significant.

19 MR. JEFFRIES: Right.

20 HON. SHERMAN: And it is not the
21 14 -- it's not close to 14. So, I mean, I
22 think you can -- you're going to have that
23 issue to the extent that people are even

1 educated on what the rule says. I mean,
2 most of them are going to be hearing
3 lawyers telling them what the Rule says.

4 But to the extent that they are
5 educated on what the Rule says, I think
6 you are going to have the same issue and
7 ultimately it's going to come down to
8 getting sound, legal advice from lawyers
9 and judges applying the Rule fairly and
10 consistently however we define it.

11 So, I would -- I mean, I am not
12 set in stone on any of this. I am willing
13 to listen to all of the benefit from the
14 wisdom of this group. But I prefer -- I
15 mean, I like having a bright-line test but
16 making it discretionary.

17 And then, if we wanted to say
18 something like, where I thought you were
19 going, Jim, was something more like it is
20 not just 14 days. There has to be some
21 other element to it whether it's willful
22 or it's without just cause or absent an
23 agreement or some other language; that

1 there's still a brighter line for judges
2 and trial courts and lawyers and
3 everything, but also that it excepts from
4 it some of these instances, valid
5 instances, that y'all are raising.

6 MR. JEFFRIES: Jim Jeffries.

7 It does say clearly more than 14
8 days, and it says "may."

9 HON. SHERMAN: Yes. Right.

10 MR. JEFFRIES: So, to your point,
11 I hear what you are saying too.

12 MS. SULLIVAN: But as a
13 practitioner, I think I am going to have
14 an easier job convincing my client that it
15 doesn't fall into this if it says
16 something more nebulous, you know, and say
17 that's not significant, instead of, oh,
18 it's 14 days, here we go.

19 So, you know, I understand. I
20 think, if nothing else, we have to have
21 something in it that says "without undue
22 cause" or something that gives us a little
23 bit more ability to convince ours clients

1 that this is not what the intent of this
2 is.

3 PROFESSOR DAVIS: Yeah. Penny
4 Davis. I actually remembered.

5 I think we settled on more than 14
6 days because that's a month that they
7 didn't exercise their visitation rights.
8 Because if you have 50/50, then that's
9 more than a month that they didn't, which
10 is a significant amount --

11 MR. JEFFRIES: Totally.

12 PROFESSOR DAVIS: -- from our
13 perspective. But we could add -- Getting
14 back to the willful versus agreements, we
15 could add something after where it says,
16 "a parent fails to exercise his or her
17 physical custody of a child," and then we
18 say something like "without agreement of
19 the other party for more than -- other
20 parent for more than," that way you at
21 least have the argument that parties agree
22 to it which if that -- if that's your
23 concern, primary concern, is that you want

1 people to be able to trade out their time
2 and to agree to it. Then I think that
3 would --

4 HON. SHERMAN: I would --

5 PROFESSOR DAVIS: -- resolve that
6 and still give the judge discretion
7 in other instances.

8 HON. SHERMAN: I would
9 respectfully disagree.

10 PROFESSOR DAVIS: Okay.

11 HON. SHERMAN: And the reason is
12 that I think, to Joan-Marie's point, we
13 want them to coparent and agree. And if
14 we tie the language to agreement, they are
15 just not going to agree in the first
16 place. Right?

17 MR. JEFFRIES: Right. Yeah.

18 HON. SHERMAN: So, if we make it
19 something like without undue cause or just
20 cause --

21 MS. SULLIVAN: Without just cause.

22 HON. WILLIAMS: Sufficient
23 cause --

1 HON. SHERMAN: -- without
2 sufficient cause.

3 HON. WILLIAMS: -- failed to
4 exercise.

5 HON. SHERMAN: And we could
6 include in the Committee Comments that one
7 of the things that doesn't meet that, if
8 we wanted to specifically mention
9 agreements -- we can do it in the
10 Comments -- to help lawyers and judges
11 understand what we intended.

12 I would be a little hesitant to
13 put that in the actual Rule itself, just
14 personally. I think that might undermine
15 our desire that parents try to work those
16 things out and agree. And if the language
17 says, oh, if I agree to this, that goes
18 away, then they are less likely I think.

19 HON. WILLIAMS: Judge Williams.

20 So, I am thinking this is kind of
21 tantamount to a show-cause petition,
22 which, you know, we use in contempt
23 proceedings where we get the other party

1 to come in to show cause why they
2 shouldn't be held in contempt, though this
3 is more of a modification.

4 But if we add in, Jim, after -- in
5 subparagraph (c) "in a parent without
6 sufficient cause fails to exercise his or
7 her physical custody of a child for that
8 period of time," would that encompass the
9 court's discretion to find, you know,
10 willfulness based on some agreement or
11 other arrangement to maybe get around?

12 MR. JEFFRIES: I think that's --
13 that's kind of what I am thinking.

14 PROFESSOR DAVIS: Did you say
15 without just cause --

16 HON. WILLIAMS: Sufficient --
17 without sufficient cause.

18 PROFESSOR DAVIS: Without
19 sufficient cause. Okay.

20 MR. JEFFRIES: You know, and if
21 it -- just another kind of thought in this
22 processes is, if it's more than -- missing
23 time for more than sufficient cause, then

1 that could get us into a mod -- you know,
2 if it's significant enough to get us to a
3 modification of the physical -- the joint
4 physical custody order, that could be kind
5 of part of whatever parties do.

6 PROFESSOR DAVIS: Of course, we
7 are not talking about the order of
8 custody. This is only relating to the
9 support.

10 MR. JEFFRIES: I know. But, I
11 mean, am I wrong that this -- if we are
12 talking about when there is 50/50 custody,
13 though, right?

14 PROFESSOR DAVIS: Right.

15 HON. PALMER: Would it not be
16 filed as a rule nisi if you are trying to
17 collect your money?

18 MS. SULLIVAN: It's a petition to
19 modify.

20 HON. SHERMAN: It's a petition to
21 modify child support.

22 HON. PALMER: Okay.

23 HON. SHERMAN: And it says that

1 the Rule. The Rule says that.

2 MS. SULLIVAN: And I think, you
3 know, Judge and I were talking before the
4 meeting. I think we all kind of
5 anticipated that it may go hand-in-hand
6 with a custody modification, as well.

7 PROFESSOR DAVIS: Right.

8 MR. JEFFRIES: Right. That's
9 an element --

10 MS. SULLIVAN: I guess this could
11 be a standalone.

12 MR. JEFFRIES: Yeah. That's an
13 element, though, I think, that if it's
14 more than too much, then we are possibly
15 modifying custody.

16 MS. SULLIVAN: Correct.

17 HON. SHERMAN: In my own view, I
18 think you are more likely to see them
19 modifying child support and not custody
20 under this provision where they are pro se
21 people I think. I think a lot of times
22 you are going to have -- if there is a
23 private attorney like you guys that do

1 this all the time, and somebody has -- I
2 mean, they are basically seeing the kid
3 every other weekend, y'all are probably
4 going to plead both --

5 MR. JEFFRIES: Right.

6 HON. SHERMAN: -- alternatively.

7 MR. JEFFRIES: Right. That's
8 exactly what I -- you are right. I mean,
9 I agree. That's exactly my point that if
10 it's --

11 MS. SULLIVAN: Right.

12 MR. JEFFRIES: You know, if we are
13 talking about 18 days --

14 HON. SHERMAN: Yeah.

15 MR. JEFFRIES: -- over the course
16 of a year, you know, we are not
17 necessarily getting into a modification of
18 custody, and you still have the sufficient
19 cause as Judge mentioned.

20 HON. SHERMAN: I really like that
21 language --

22 HON. WILLIAMS: Yeah.

23 HON. SHERMAN: -- that he is at.

1 MR. JEFFRIES: I think that really
2 helps.

3 HON. WILLIAMS: That way we are
4 not telling them to just, you know, model
5 everything for an agreement to be breached
6 and then you, you know, run to the court.
7 Sufficient cause is based on what the
8 judge finds it to be.

9 MR. JEFFRIES: Right. And there
10 is also -- Jim Jeffries again.

11 The cost benefit sort of --

12 HON. SHERMAN: Yes.

13 MR. JEFFRIES: -- underlying issue
14 as well that, you know, if it's 18 days,
15 are they really going to file a motion to
16 modify child support to get back \$150, you
17 know, which is more than the filing fee.

18 HON. SHERMAN: Not if they've got
19 -- for the record, I better not say that.

20 MR. JEFFRIES: So, I am with you,
21 Judge. I agree with Judge Williams'
22 language. I think that would be a
23 helpful, suggestive practice point for

1 engineers and just people that are going
2 to be difficult.

3 PROFESSOR DAVIS: In theory and
4 initially when the judge ordered joint
5 custody, he or she was thinking that the
6 parties could get along. And so --

7 HON. PALMER: No. No.

8 MS. SULLIVAN: No.

9 PROFESSOR DAVIS: You're in
10 Huntsville. That's worse.

11 MS. SULLIVAN: Madison County, our
12 standing pendente lite order says joint
13 from the get-go, week-on/week-off. So,
14 they don't even know the parties when they
15 enter that order.

16 PROFESSOR DAVIS: Right. I'll
17 rephrase that. Then the majority of the
18 jurisdictions, after there has been a
19 hearing, that's a thought at least the
20 judges entertain.

21 Okay. So, right now there's two
22 different issues on the table as far as
23 potential amendments. Do we want to

1 address those first before we go into
2 other suggestions?

3 MR. JOHNSON: Scott Johnson.

4 HON. PALMER: I don't think you
5 can speak yet.

6 PROFESSOR DAVIS: Yeah. This is
7 the Committee. Yeah. So, let's --
8 Anybody have any others before we deal
9 with these two?

10 MR. JEFFRIES: I don't.

11 PROFESSOR DAVIS: Okay. The --
12 well, still in the order that they were
13 presented. The first one dealt with the
14 consecutive and the immediacy of it. And
15 so, I think the language that was settled
16 on is for more than 14 days in the 12
17 consecutive months immediately preceding.
18 So, all -- and that would be placed in
19 every instance where the reference to the
20 14 days in both the language to the Rule
21 itself as well as to the Committee
22 Comments.

23 So, any other discussion before we

1 have a vote on that?

2 (No response).

3 PROFESSOR DAVIS: Okay. All in
4 favor of the change throughout the Rule
5 relating to the time frame, if you would,
6 just raise your right hand.

7 (Committee members raising
8 hands.)

9 PROFESSOR DAVIS: Okay. Thank
10 you. Any opposed?

11 (No response).

12 PROFESSOR DAVIS: So, it's
13 unanimous. Thank you.

14 The next language that I guess
15 technically was Judge Williams' suggestion
16 would be that "afterwards a parent fails"
17 we add "without sufficient cause."

18 HON. WILLIAMS: Before it could
19 be --

20 PROFESSOR DAVIS: Pardon?

21 HON. WILLIAMS: I was thinking it
22 was before "fails."

23 HON. SHERMAN: "Parent without

1 sufficient cause fails."

2 PROFESSOR DAVIS: Before the word.
3 Thank you. "A parent without sufficient
4 cause fails."

5 HON. SHERMAN: And that's in
6 subparagraph (c) only, correct? We leave
7 "willfully" as it was?

8 PROFESSOR DAVIS: Yes. So, that's
9 subsection (c). And is there a reference
10 in the Comments? Let's see.

11 HON. SHERMAN: Yes, there is.
12 Next to the last paragraph, it tracks that
13 language. Next to the last paragraph.

14 PROFESSOR DAVIS: Yes.

15 HON. SHERMAN: We are leaving
16 "willful".

17 PROFESSOR DAVIS: It would be on
18 page two.

19 MS. SULLIVAN: I see.

20 PROFESSOR DAVIS: So, it would be
21 "a parent," and then add the words
22 "without sufficient cause fails," second
23 to the last paragraph on the Comments.

1 Okay. Any further discussion on
2 that?

3 (No response).

4 PROFESSOR DAVIS: All right. Do
5 we have -- We didn't do a motion the last
6 time. I guess we technically should. Do
7 we have a motion for that?

8 HON. SHERMAN: I so move.

9 PROFESSOR DAVIS: Okay. Thank you
10 for your motion.

11 MR. JEFFRIES: I'll second.

12 PROFESSOR DAVIS: Second. All in
13 favor, "aye"?

14 (Committee members raising
15 hands).

16 PROFESSOR DAVIS: Nay? Like sign?

17 (No response).

18 PROFESSOR DAVIS: Okay. Do we
19 have to go back since I didn't do the
20 motion? We'll go backwards and have a
21 motion, I guess, technically on the first
22 one.

23 HON. SHERMAN: I think Judge

1 Williams made that.

2 HON. WILLIAMS: I so moved.

3 HON. SHERMAN: And I'll second his
4 motion.

5 PROFESSOR DAVIS: We have a
6 second. All right. So, if the record
7 reflects we have a post-motion and second,
8 and everybody approved. Thank you.

9 If Bob wasn't here and Stephanie
10 is too nice to call me on it, so thank
11 you.

12 All right. Any other suggested
13 language changes?

14 (No response).

15 PROFESSOR DAVIS: Okay. At this
16 point, we will do the whole -- we will
17 have a vote on the entire act -- I mean,
18 Rule.

19 HON. SHERMAN: Is that
20 including --

21 PROFESSOR DAVIS: Pardon?

22 HON. SHERMAN: Are you including
23 the Committee Comments, because I just

1 want to ask a question about that.

2 PROFESSOR DAVIS: Yeah. Before we
3 do that, let's look at the -- also at the
4 Schedule. But go ahead and add anything
5 on Comments.

6 HON. SHERMAN: Just before we have
7 a final vote on the Committee Comments for
8 this particular issue, I didn't know if we
9 want to -- I mean, I don't want to -- We
10 have had to delay a vote on this a couple
11 of times because we didn't have a quorum.
12 We have a quorum today.

13 But I don't know if we want to
14 consider amending and adding to the
15 Committee Comments any language that might
16 flesh out more of the addition we just
17 made about "without sufficient cause" and
18 give any examples talking about agreements
19 or not. I am not saying we need to do
20 that. I am asking the question whether we
21 want to consider that or not.

22 PROFESSOR DAVIS: With the
23 additional language changes that we just

1 voted on, is there a need to give examples
2 in the Comments?

3 HON. SHERMAN: That's the question
4 I am raising. I certainly did not do that
5 before because we weren't making that
6 distinction.

7 PROFESSOR DAVIS: Historically, I
8 don't think there is a lot of that in the
9 Rule Comments, but it doesn't mean we
10 certainly can't do so.

11 MR. JEFFRIES: Or maybe just to --
12 Jim Jeffries.

13 Maybe just an emphasis on the --
14 that the 14 days is not meant to be some
15 sort of bright-line rule and emphasize the
16 discretion of judges, something like that?

17 HON. SHERMAN: I mean, that's in
18 there, I think, in the Committee Comments
19 as well as the Rule itself.

20 MR. JEFFRIES: Okay. Then it
21 might be fine.

22 MS. SULLIVAN: I don't see any
23 need for it.

1 HON. SHERMAN: You think the
2 Committee Comments are okay?

3 MS. SULLIVAN: I do.

4 HON. SHERMAN: Okay.

5 PROFESSOR GRAY: There is one
6 little problem in that next to the last
7 paragraph in the Comments.

8 PROFESSOR DAVIS: Okay.

9 PROFESSOR GRAY: In the middle of
10 the paragraph, it says, "at least 14
11 days." And I think we are saying more
12 than 14.

13 PROFESSOR DAVIS: Yes.

14 MS. STEINWINDER: The same for the
15 last paragraph.

16 HON. SHERMAN: Yes.

17 PROFESSOR GRAY: And the last one
18 paragraph.

19 PROFESSOR DAVIS: So, we delete
20 "at least" and add instead "more than."
21 Okay.

22 MR. JEFFRIES: Jim Jeffries.

23 Do we need to add -- Do we need to

1 add the language from (c) in the Rule
2 where we say "the 12 consecutive months
3 immediately preceding"? Do we need to do
4 that?

5 PROFESSOR DAVIS: Yeah.
6 Everywhere that's mentioned in the
7 Comments.

8 MR. JEFFRIES: Okay. Okay.

9 HON. SHERMAN: We already did
10 that.

11 MS. SULLIVAN: Just from a
12 grammatical standpoint because I am kind
13 of a nerd, it says in the subparagraphs
14 "where a parent fails to exercise" --

15 PROFESSOR DAVIS: Which paragraph
16 are you referencing?

17 MS. SULLIVAN: Subparagraph. It's
18 the second to the last paragraph.

19 HON. SHERMAN: On the Committee
20 Comments.

21 MS. SULLIVAN: In the Committee
22 Comments.

23 PROFESSOR DAVIS: Okay.

1 MS. SULLIVAN: It says, "in cases
2 where a parent fails to exercise the time
3 sharing they were granted," it really
4 should be "he or she was granted." And
5 the parent is the noun --

6 HON. SHERMAN: Yes. Thank you.

7 MS. SULLIVAN: -- and then we go
8 to a pronoun, and that may be --

9 HON. SHERMAN: To "he or she was."

10 MS. SULLIVAN: To "he or she was."

11 HON. SHERMAN: I've seen it
12 somewhere else.

13 MS. SULLIVAN: Yes. I saw it
14 before. I didn't see it.

15 PROFESSOR DAVIS: Okay. Anybody
16 else see a place in Comments?

17 MS. SULLIVAN: That's all it was.

18 PROFESSOR DAVIS: Did you find
19 another place?

20 MS. SULLIVAN: No, ma'am. That
21 was it.

22 PROFESSOR DAVIS: Okay. I think
23 that the -- Who is it that gets this after

1 we do?

2 HON. SHERMAN: Reporter of
3 Decisions.

4 PROFESSOR DAVIS: Reporter of
5 Decisions? Yeah, they would probably
6 catch that, but we like to send it as
7 clean as we can just in case.

8 All right. Anything else?
9 Anybody noticed anything else?

10 (No response).

11 PROFESSOR DAVIS: All right. We
12 will -- Would that change be in the form
13 of a motion, Joan-Marie?

14 MS. SULLIVAN: Yes, I so move.

15 PROFESSOR DAVIS: Okay. Do we
16 have a second?

17 HON. PALMER: I'll second.

18 PROFESSOR DAVIS: Second. Thank
19 you.

20 All in favor, right hand.

21 (Committee members saying
22 "aye").

23 PROFESSOR DAVIS: Right or left

1 hand. Okay.

2 (Committee members raising
3 hands).

4 PROFESSOR DAVIS: Okay. All
5 opposed?

6 (No response).

7 PROFESSOR DAVIS: Okay. All
8 right. Anything else related to the Rule
9 itself and the Comments?

10 (No response).

11 PROFESSOR DAVIS: Let's turn our
12 attention to the Form, the Form that's
13 designated CS-42-S. And we did get an
14 answer back that Stephanie had indicated
15 that we could do basically what we wanted
16 to. But they were comfortable with the
17 "S".

18 MS. BLACKBURN: The dash "S" or I
19 guess the parenthesis "S" whichever we
20 wanted to do.

21 PROFESSOR DAVIS: Right. And so,
22 what you see in front of you is a dash
23 "S". The main thing, we didn't want it to

1 look like a five. Little prints gets
2 littler as time passes.

3 Okay. Brian, you mind going over
4 the Form one more time?

5 PROFESSOR GRAY: One more time?

6 PROFESSOR DAVIS: One more time.

7 PROFESSOR GRAY: Okay. So, this
8 is the Form that we came up with for the
9 shared parenting situation, Shared 50%
10 Physical Custody situation. And, again,
11 the top lines basically map out very
12 similar to what we have on the Form CS-42.
13 When you get down to Line 5, that's where
14 the one-and-a-half multiplier comes in
15 which is different, obviously, than the
16 previous Form.

17 The work-related childcare costs,
18 the healthcare coverage costs are in here
19 just as they were before. The new section
20 down below, Lines 11 through 13, is where
21 we take care of the shared physical
22 custody calculations. And then, finally,
23 the support order -- the child-support

1 order at the end in Line 14.

2 We had another version that we had
3 created that basically computes things the
4 same way pretty much, but it takes about
5 three more lines to do it. And we did
6 have a Committee straw poll that suggested
7 that this Form was preferred over that
8 Form -- that approach.

9 PROFESSOR DAVIS: Okay. Does
10 anybody have any questions for Professor
11 Gray relating to the Form 42 -- CS-42-S?

12 PROFESSOR GRAY: We should mention
13 this is the version that Vermont follows
14 that Dr. Venohr found for us.

15 PROFESSOR DAVIS: Right. Okay.
16 Any questions or comments?

17 (No response).

18 PROFESSOR DAVIS: At this time, is
19 the Committee ready to vote on accepting
20 both the Rule, the Comment, and the Form
21 and sending that with the amendments that
22 have been approved by the Committee to the
23 Supreme Court?

1 HON. SHERMAN: Is Dr. Venohr on
2 the call still?

3 PROFESSOR DAVIS: She is.

4 HON. SHERMAN: Can I ask her a
5 question before we do that?

6 PROFESSOR DAVIS: Absolutely. Dr.
7 Venohr?

8 HON. SHERMAN: Good morning, Dr.
9 Venohr. Can you hear me okay? This is
10 Judge Sherman.

11 My question -- Recently, I had a
12 trial where I was considering joint
13 physical custody, and under our current
14 Guidelines, of course, we don't really
15 have any guidance other than we can
16 deviate from Rule 32 for that. And as an
17 experiment, I used this Guideline that we
18 are talking about as I was considering my
19 ruling just to see what it would provide.
20 And I was anticipating that it would be a
21 child support obligation for the father
22 that was less than our current Guidelines,
23 because he makes more money -- quite a bit

1 more money than the wife did, or the
2 mother did in that case.

3 But when I ran the Guidelines, it
4 turned out that he would be paying more
5 child support with joint custody using the
6 150% multiplier than he would have paid
7 under the other Guidelines. So, with
8 joint custody, he would be paying more
9 child support than if he had just had
10 weekend visitation -- every other weekend
11 visitation.

12 I am curious if that -- That
13 surprised me, but I am wondering is the
14 reason for that and is that an -- I guess
15 it's a two-part question. Is that an
16 outlier? And, secondly, is the reason for
17 that because there was such an income
18 disparity in that case that taken with the
19 income disparity and the 150% multiplier
20 that's why that was the result?

21 DR. VENOHR: Yeah. And most
22 States handle that by adding a clause that
23 if the sole custody order is less than the

1 shared parenting order, then use the sole
2 custody amount.

3 But you are right. If there is a
4 large disparity of income, then by design
5 it's purposeful that that multiplier, that
6 150% is going to result in a higher
7 amount.

8 HON. SHERMAN: Okay.

9 PROFESSOR DAVIS: Does that happen
10 very often, Dr. Venohr?

11 DR. VENOHR: You know, I don't
12 know -- I don't have enough statistics
13 from Southern States to really know if
14 there is a regional trend. But what we
15 see in other States -- which would be New
16 Hampshire, Arizona, so I don't know how
17 comparable that is -- that to have that
18 big income disparity, it's maybe -- I
19 would guesstimate like 10% of the shared
20 parenting cases. You know, what we see
21 more typical just with female earnings
22 increasing over time, but these are, you
23 know, Arizona and New Hampshire is that we

1 are seeing closer incomes, particularly in
2 shared custody, equal custody cases, that
3 the incomes are usually the 40% to 60% --
4 the parent -- the paired parents' income
5 is usually about 40% to 60% of the
6 combined income.

7 PROFESSOR DAVIS: Okay. Thank
8 you.

9 DR. VENOHR: I did have a
10 question. I was looking over the
11 Adjustments. So, you are not -- It looks
12 like you are not weighing it by time. It
13 is an offset. You are not taking the
14 difference in multiplying it by 50%. Does
15 that make sense? Professor Gray might
16 know what I am asking.

17 HON. SHERMAN: I asked Professor
18 Gray that question I think this morning.
19 I thought it was supposed to be the
20 difference at the bottom of the form.

21 PROFESSOR GRAY: I think she's
22 talking about the work-related child-care
23 costs and healthcare coverage costs?

1 DR. VENOHR: Oh, no. When you do
2 the cross-credits, you do the proration of
3 the 150%, and then you multiply it by the
4 percentage of time which would be 50%, and
5 then you take the difference. I didn't
6 see that step in there, but that might be
7 purposeful. I might have just missed it.
8 I haven't been hearing quite right on the
9 last few calls.

10 PROFESSOR GRAY: Yeah. I think
11 that may have shown up more in the 17-line
12 form where we did the -- where maybe it
13 was explicit. I can't recall right
14 offhand. I think the fact that --

15 DR. VENOHR: Yeah. The only
16 reason I bring it up now is based on Judge
17 Sherman's comment that, if you intended to
18 have that in there, it would lessen the
19 impact that Judge Sherman would -- just
20 described.

21 PROFESSOR GRAY: Okay. And that's
22 to adjust the other costs, the child-care
23 costs and the healthcare-coverage costs by

1 the time or --

2 DR. VENOHR: No. It's applied to
3 the basic obligation. It has nothing to
4 do with the add-ons.

5 HON. SHERMAN: I think he does
6 that in Line 12, doesn't he? Isn't that
7 what that is?

8 PROFESSOR DAVIS: Yeah. That's
9 the shared 50% calculation.

10 DR. VENOHR: Yeah. Was that
11 attached to what Bob sent? I didn't see
12 it, the latest Worksheet.

13 PROFESSOR DAVIS: No.

14 PROFESSOR GRAY: No. This was not
15 in that set. This was a last minute and
16 realized we needed to have this Form for
17 the meeting. But this Form is unchanged
18 except for a few text corrections from the
19 last two versions from the last two
20 meetings.

21 DR. VENOHR: Yeah. Let me pull
22 it, then, Professor Gray, and just look.
23 The only -- I just want to double-check

1 because it does tie into Judge Sherman's
2 question. Even though -- even if you are
3 not doing what I described, it still could
4 occur. But if you are doing what I
5 describe, it's going to occur less often
6 if that makes sense.

7 PROFESSOR DAVIS: Yeah. And I
8 think Line 12 --

9 PROFESSOR GRAY: I think Line 12
10 does that.

11 PROFESSOR DAVIS: -- does that.

12 PROFESSOR GRAY: Why we do it
13 here.

14 PROFESSOR DAVIS: Right.
15 Stephanie is forwarding you the email
16 right now so we can look at that.

17 So, while she is capturing that,
18 does anybody have any other questions
19 relating to the -- a Committee member have
20 any other questions relating to the Form?

21 (No response).

22 PROFESSOR DAVIS: See, they get
23 applause over there. We don't get an

1 applause. We're just nose to the
2 grindstone for our group.

3 MR. JEFFRIES: A thankless job.

4 PROFESSOR DAVIS: It is very
5 thankless.

6 Did the email come in, Dr. Venohr?

7 DR. VENOHR: (Indicating thumbs
8 up).

9 PROFESSOR DAVIS: Okay. Good. I
10 think Line 12 is where you give the credit
11 for shared 50% custody, it's referencing.
12 Which I think it's helpful that it's on
13 the Form so that the public, particularly
14 the pro sès, can see that it does occur.
15 Right?

16 Any other thoughts?

17 (No response).

18 PROFESSOR DAVIS: Okay. So, we
19 have before us the Rule, the Comments and
20 the Form to present while we have a
21 quorum, which there should be applause for
22 a quorum.

23 HON. SHERMAN: So, do we want --

1 In light of Dr. Venohr's response to my
2 question, do we want to consider whether
3 to add the language that she mentioned
4 that some States have that in the event
5 the -- this Form results in a higher child
6 support amount, that we would use the
7 other or not?

8 PROFESSOR DAVIS: It is seems to
9 me that it would have been past -- the
10 additional costs occur anyway. So,
11 doesn't that just shift a greater burden
12 to the parent that actually has less
13 resources?

14 HON. SHERMAN: I think it does --
15 I think it would. I think the policy
16 question is that -- do we want to do that
17 or do we want to -- I mean, I think we
18 have got some statutes that say that the
19 public policy of our state is that we
20 should encourage joint custody. It is not
21 going to encouraged joint custody to have
22 Child-Support Obligations to pay more
23 child support with joint custody than

1 without, although I hear Dr. Venohr saying
2 that's going to be in the minority of
3 cases; 10% is not insignificant. I'm
4 asking the question.

5 You are right, though, Penny. I
6 think the tradeoff is, somebody is going
7 to have those costs. If the data is
8 correct, which it is, that it's at least
9 50% more to raise a child in two homes
10 than one, then it would effectively mean
11 the parent with less resources are going
12 to incur more of that.

13 PROFESSOR DAVIS: Right. And the
14 policy --

15 MR. JEFFRIES: I think -- sorry.

16 PROFESSOR DAVIS: -- internally in
17 there historically has been that the child
18 not suffer. And so, you put the entire
19 pot of money in there, and they pay
20 proportionally to what their resources
21 are. So, I think it would counter that
22 policy. But that's certainly something
23 that can be presented. Ultimately the

1 Supreme Court would make that decision.

2 MS. SULLIVAN: Could we have
3 something in there that at least suggested
4 to judges that they could do that, not
5 make it mandatory but just say --

6 PROFESSOR DAVIS: Not make what
7 mandatory?

8 MS. SULLIVAN: That they go with
9 the lower amount to, you know, say in
10 there that --

11 HON. SHERMAN: I think by
12 definition, then, you are deviating from
13 Rule 32, because we are creating Rule 32
14 now in joint custody. Right now they can
15 do whatever they wanted to. But after
16 the -- If this Rule is adopted, they would
17 have to find some reason to deviate -- I
18 think find some reason to deviate from
19 this new method of calculating Rule 32
20 support, which I think you are going to
21 have a hard time doing in that instance to
22 shift it. But I mean, theoretically it
23 could, but it's going to be a deviation

1 from it.

2 PROFESSOR DAVIS: Right.

3 HON. SHERMAN: If you say you can
4 do that instead of this, we are really not
5 making this the rule.

6 PROFESSOR DAVIS: Right. And I
7 think isn't uniformity one of the things
8 the Feds really like?

9 MS. BUSH: Yes. You would want
10 uniformity.

11 HON. SHERMAN: What do you mean?
12 I know what uniformity is. In what
13 context? What are you talking about?

14 MS. BUSH: The regulations that
15 govern child support stress the uniformity
16 being applied across the State in
17 different courts in a uniform manner. So,
18 you certainly can have discretion and have
19 reasons to deviate, but you do want
20 uniformity.

21 HON. WILLIAMS: So -- Judge
22 Williams.

23 So, are we saying that there would

1 be no discretion for the court as we do in
2 other calculations to deviate upward or
3 downward, I mean, transportation, other
4 expenses that the other parties have taken
5 on?

6 HON. SHERMAN: You still have
7 that.

8 PROFESSOR DAVIS: You still have
9 that, yeah.

10 HON. WILLIAMS: We still would
11 have that?

12 PROFESSOR DAVIS: Yes.

13 HON. SHERMAN: My point was simply
14 that if we said -- When you have joint
15 shared physical custody, and this is how
16 you calculate child support when you have
17 that, but if this amount is more than the
18 amount they would have paid under --
19 without the shared custody adjustment,
20 they can use that as a reason to deviate.
21 To me, that undermines the point of having
22 that rule in the first place.

23 MR. JEFFRIES: Even though

1 technically -- Jim Jeffries.

2 Even though technically the
3 discretion --

4 HON. SHERMAN: The discretion is
5 still there.

6 MR. JEFFRIES: -- is still there.

7 HON. SHERMAN: Correct.

8 MR. JEFFRIES: Right.

9 HON. SHERMAN: But we wouldn't be
10 building it in the Rule. To me, it's
11 contradicting the Rule by putting it in
12 the Rule.

13 PROFESSOR DAVIS: Penny Davis.

14 I guess my focus has always been
15 on the child.

16 HON. SHERMAN: Yes.

17 PROFESSOR DAVIS: And it seems to
18 me that if you have somebody that really
19 has that much money, then if they wind up
20 paying a few hundred dollars more a month,
21 I would rather that happen than the child
22 that's living two weeks out of the year
23 have to worry about being able to -- the

1 parent having to provide milk or bread or
2 whatever they need. If there is that --
3 If you have got somebody that's on minimum
4 wage, \$10 or \$11, I don't know what your
5 situation was, but substantially different
6 than this other person, the child is going
7 to be in that household for two weeks.

8 And so, if they are still having
9 to pay a disproportionate amount, then my
10 concern is how that would impact on the
11 child. That's just my personal thought.

12 Okay. So, does anybody have any
13 specific language they want to change, or
14 do we want to go ahead and vote on this?
15 Entertain any suggestions.

16 (No response).

17 PROFESSOR DAVIS: Okay. Hearing
18 none, do I hear a motion that we approve
19 the Rule, the Comments, and the Form as
20 suggestions to present to the Supreme
21 Court and have a final say-so on what
22 actually happens?

23 HON. WILLIAMS: Judge Williams.

1 I move that we adopt and accept
2 the full changes to Rule 32 Alabama Rules
3 of Judicial Administration along with the
4 CS-42-S form.

5 PROFESSOR DAVIS: Is there a
6 second?

7 HON. WILLIAMS: Along with the
8 Comments.

9 PROFESSOR DAVIS: Comments. Thank
10 you. Is there a second?

11 MR. JEFFRIES: I'll second.

12 PROFESSOR DAVIS: Jim Jeffries
13 second. All of favor show by right hand
14 or left hand.

15 (Committee members raising
16 hands).

17 PROFESSOR DAVIS: Any opposed?

18 (No response).

19 PROFESSOR DAVIS: All right. Good
20 job, gentlemen and ladies. We have dealt
21 with that for several weeks, and I think
22 that's a major accomplishment.

23 Do we want to give ourselves a

1 round of applause?

2 (Applause).

3 PROFESSOR DAVIS: They will wonder
4 next door about us.

5 Okay. Our second agenda item is
6 the report for the Child Support For
7 Multiple Children's Subcommittee, and
8 Judge Sherman was the Chair of this
9 Committee.

10 HON. SHERMAN: So, you have before
11 you another memo dated November 4th that
12 takes up -- you may recall that Judge
13 Terry Moore of the Court of Civil Appeals
14 had presented to us a couple of years ago
15 a concern he had and some suggested
16 changes to address those concerns. His
17 concerns primarily dealt with cases where
18 you have multiple children, and you are
19 establishing child support. And it's
20 apparent that within some short time frame
21 of one or more of those children will
22 become emancipated. And we have all read
23 the case opinions where those cases have

1 been tried and gone up on appeal. And,
2 you know, either the parent has been
3 overpaying child support, the noncustodial
4 parent, because child support was
5 calculated, let's say, on three children,
6 one aged out six months after the divorce,
7 and it was never modified. So, they have
8 been overpaying support. Or in the cases
9 we read in the appellate courts, it's
10 usually they cut the child support, say,
11 by a third in that instance thinking that
12 it's a per capita calculation which we all
13 know it is not. And so, they end up on
14 the hook for a large child support
15 arrearage. And there's really nothing the
16 appellate court can do about that, nothing
17 the trial court can do about that under
18 our current law.

19 So, that was one -- That was the
20 major concern he had. The other one was
21 he wanted to simplify the procedure to
22 allow those modifications and also, I
23 think, you know, the parental issue that

1 appellate courts have with trial judges
2 not making sure that there's a CS-42 Form
3 in the record. That was another concern
4 he had voiced.

5 So, a Subcommittee was formed. We
6 addressed the issues. We had previously
7 presented a memo with a couple of
8 different options. Then the discussions
9 on this issue got tabled as we made the
10 major revisions to Rule 32 that recently
11 were passed by the Supreme Court with the
12 new schedule of Child-Support Obligations.
13 And now that all that is behind us, we
14 wanted to take that issue back up.

15 So, that Subcommittee met again
16 since our last meeting, and we are
17 presenting this now. We have narrowed the
18 proposal to one which was based on the
19 straw poll of the Committee-at-large that
20 we had taken before all this was tabled.

21 So, to simplify the matter, we
22 just are presenting one proposal that is
23 before you today that essentially allows a

1 court at the time -- and it is
2 discretionary. The language says "may"
3 order child support using separate
4 Worksheets in those cases where there are
5 multiple children, and it's apparent that
6 one or more will age out within the time
7 frame we put was within two years of that
8 order.

9 Then, when the trial court is
10 establishing a child support, they can
11 calculate child support today saying,
12 based on three children, this is the
13 obligation; however, in 18 months when the
14 oldest child ages out, the obligation will
15 automatically become this. And both
16 spreadsheets are filed with the court,
17 made part of the court record. The
18 modification then becomes automatic.
19 There is no requirement that that party --
20 or the parties come back to court for
21 subsequent modification. It happens
22 automatically.

23 What doesn't happen

1 automatically -- I think it's important to
2 say -- is an income withholding order is
3 not amended. So, if there is not an
4 income withholding order and the Rule --
5 and the proposal that is before you makes
6 this clear, I think, or it's intended to
7 make it clear, that the burden is going to
8 be on the parent, the obligor parent,
9 because they are paying it -- it's coming
10 out of their check -- to go do the
11 administrative procedure necessary to
12 amend their wage order, which at least in
13 my clerk's office and I think it's this
14 way throughout the State, is a form and a
15 very tiny filing fee to amend that wage
16 order.

17 The other thing -- let me see.

18 The other thing it does -- So, paragraph
19 one is the issue that I just mentioned,
20 and all of that is discretionary.

21 The paragraph two is intended to
22 be mandatory language telling trial courts
23 to include this language that we have set

1 out in the indented paragraph, which is
2 simply meant to educate the parties so
3 that they understand. Unless we have done
4 what it says in paragraph number one, then
5 your obligation doesn't automatically
6 modify. And so, it's just meant to help
7 them understand that they would need to do
8 something else to modify their child
9 support if we haven't -- if the trial
10 court hasn't exercised their jurisdiction
11 or discretion, rather, in paragraph number
12 one to do it ahead of time.

13 The other thing that I think is
14 important to know is that, although we are
15 providing a mechanism for an automatic
16 recalculation of child support, that
17 doesn't prohibit either party from filing
18 a petition to modify child support.

19 So, we are saying that today child
20 support for these three children is X, and
21 18 months from now it's going to be Y.
22 Well, between now and 18 months from now,
23 somebody may have lost a job; they may

1 have gotten a significant raise; daycare
2 might have been in there before, and it is
3 not now.

4 So, there's a lot of different
5 variables that could affect that so that
6 the Y child support might not be
7 appropriate 18 months from now. So, they
8 still have the ability to file a petition
9 like they always would, and that's in the
10 Rule to make that clear.

11 PROFESSOR DAVIS: Does anybody
12 have any questions?

13 (No response).

14 PROFESSOR DAVIS: Let's look first
15 regarding the language of the Rule itself,
16 and then we will look separately at the
17 Comments.

18 HON. WILLIAMS: Judge Williams.

19 So, I would be interested -- I
20 mean, for a non-partisan and not involving
21 attorneys that come under IV-D, that have
22 multiple children, how do you think this
23 would affect those cases whether DHR

1 cases, and there's multiple children,
2 which frequently there are? I mean, would
3 that apply to these type cases, as well?

4 HON. SHERMAN: Yes, it would.

5 MS. BUSH: Well, in the Committee
6 Comments -- Jennifer Bush.

7 In the Committee Comments, there
8 is a -- if you look at the second
9 paragraph towards the bottom, it does
10 state that, if there is an income
11 withholding order in place, that needs to
12 be amended as those older children become
13 ineligible. And in those cases, it
14 specifically -- the language designation
15 of the obligor parent was specifically
16 chosen, should follow the procedures
17 requiring that income withholding order to
18 be amended. And the thought process
19 being, it's the person who is paying has
20 the most motivation if it's going to be
21 decrease to go in there and make sure
22 their employer, who they know have the
23 contact information for, gets that amended

1 income withholding order and takes on that
2 responsibility.

3 So, that is one way it would be
4 dealt with.

5 HON. WILLIAMS: So, my other
6 question is: If that -- which it often
7 happens, that obligor doesn't file the
8 request and usually cases now to modify,
9 because the child has emancipated, always
10 late. But in this instance, if we adopt
11 this Rule, if they are late in filing or
12 requesting that the income withholding
13 order to be changed, do they get the
14 benefit of getting some of that
15 overpayment back or are they just out of
16 money? Does this speak to that?

17 HON. SHERMAN: It is not dealt
18 with -- that question is not answered
19 directly. I can tell you just my
20 instinctual response to that would be that
21 the reduction was made automatic by court
22 order. So, if I was paying \$800 a month
23 and now I should be paying \$600 a month

1 but I'm still having \$800 a month taken
2 out of my paycheck, I think I have got a
3 \$200 overpayment in child support.

4 HON. WILLIAMS: But they were late
5 filing.

6 HON. SHERMAN: I understand. I
7 think -- I think as it's written, that's
8 my interpretation of it. Now, whether we
9 want to address it somehow beyond what we
10 have to specifically take on that issue, I
11 don't see --

12 HON. WILLIAMS: That's going to
13 automatically going to create a credit
14 pursuant to the previous order, but they
15 have an obligation to the previous order
16 to file timely. And now the custodial
17 parent is going to be out of a couple of
18 \$100 to pay back because they slept on
19 getting their --

20 HON. SHERMAN: Well, it's probably
21 not going to be a couple of \$100. It's
22 probably going to be about \$3,000 by the
23 time he gets to you or me.

1 MS. BUSH: Jennifer Bush.

2 Judge Williams, I have confirmed
3 that the DHR child support computer has
4 the ability to put a post-dated change.
5 So, it would be able to put the current
6 amount of child support; and at a future
7 date, 18 months from now, in the example,
8 if we have that date, we can put that date
9 in the computer and it will automatically
10 lower the child support to the new amount
11 on that date.

12 And that practical impact of that
13 would be, when that changes if excess
14 money kept coming in, what's going to
15 happen on our computer system is -- and we
16 are going to go with the new lower amount
17 that's occurred after the 18 months is
18 past. If more money comes in because that
19 income withholding order has not changed,
20 it would apply first to the lower current
21 child support amount. And then, of
22 course, we all know about allocation.

23 MR. JEFFRIES: Yes.

1 MS. BUSH: But it would then -- If
2 there was no allocation involved and there
3 was only one case, it would then apply to
4 your principal custodial parent arrears.
5 So --

6 HON. SHERMAN: And then if there
7 are no arrears --

8 MS. BUSH: It would apply to
9 interest. And if there's none of that, it
10 would go into a prepaid account.

11 HON. WILLIAMS: Okay. Back to the
12 automatic --

13 HON. SHERMAN: Prepaid just means
14 it's --

15 MS. BUSH: It's my
16 understanding --

17 HON. WILLIAMS: Oh, prepaid?

18 MS. BUSH: Yeah. Generally most
19 of the prepaids just sits there on the
20 off-chance that -- you know, it can be --
21 I am not saying it can't be removed, but
22 it would sit there on the off-chance that
23 current is not paid in the next month, and

1 then it would pop up. You lose your job,
2 and we pull from that prepaid.

3 MS. MCCLENNY: That's a good
4 explanation.

5 MS. BUSH: Okay.

6 HON. PALMER: But what if you are
7 not DHR? What if you are a private case?

8 HON. SHERMAN: Well, if it is not
9 DHR -- Do y'all have accounts in the
10 clerk's office that tracks?

11 HON. PALMER: Uh-uh (negative
12 response).

13 MR. JEFFRIES: Jim Jeffries.

14 Judge Williams, can I ask you a
15 question?

16 Are you suggesting that we specify
17 that, for example, if the obligor does not
18 follow through with his obligation that he
19 does not -- he or she does not get credit
20 like to clarify that or --

21 HON. WILLIAMS: I think that we
22 would have need, in my opinion, some
23 clarifying language because we could get

1 into one of these situations that we
2 address under the shared custody
3 arrangement where somebody files
4 something, and then as retaliation other
5 parties file something and say, well, you
6 know, I would have paid you child support,
7 you know, when I shouldn't have been
8 paying it because I didn't file my, you
9 know, IWO change or amendment, and I'm
10 going to do it, and I am going to require
11 that you -- in retaliation for you filing
12 something against me, pay me \$3,000 that
13 you owe me for not having filed.

14 So, they have -- they have no
15 limitations on that, it seems, under this
16 current Rule change.

17 I mean, there is some precedent
18 under Alabama law to say that they are not
19 entitled to have that money back in the
20 example of alimony. That's what the
21 case --

22 MR. JEFFRIES: That's what I was
23 going to say. It's child support too.

1 It's considered a gift.

2 HON. PALMER: Julie Palmer.

3 Can we put a date of filing, that
4 you can go back as far as the date of
5 filing versus the date when it should have
6 been changed? Because, again, if you
7 sleep on your rights, you lose your
8 rights. And if you don't pay the -- I
9 think in Jefferson it's a \$40 filing fee
10 they get the income withholding order
11 amended, and then you lose that money when
12 you don't file. It's on you, which I
13 believe this clearly says in here.

14 But I think we do, again, a bright
15 line as to when you have to pay the money
16 back versus the day after the child turned
17 19 or the date that you filed.

18 HON. WILLIAMS: Especially in
19 cases of a custodial parent making
20 significantly less. Now she's stuck with
21 a \$3,000 credit that, you know, some
22 judges will say, well, it's going to come
23 out of your future child support or you

1 are going to have to pay it back somehow
2 to the obligor parent because you should
3 not have received it even though he slept
4 on his time to file.

5 MS. BUSH: This is Jennifer Bush.

6 My understanding is right now
7 there is not a repayment provision in
8 here.

9 HON. SHERMAN: That is correct.
10 It's silent.

11 MS. BUSH: And so, if you don't
12 amend your income withholding order, you
13 are the obligor, then it's silent. There
14 is no -- there's no requirement here that
15 you get paid back.

16 So, you are motivated -- and it is
17 only a two-year time frame. So,
18 hopefully, if you are the obligor, you
19 would be aware.

20 HON. SHERMAN: Well, that's true.
21 It is limited to two years.

22 MS. BUSH: It's two years.

23 HON. SHERMAN: The reason we put

1 the obligation on the obligor is obvious.
2 I mean, it's what you said earlier. If I
3 have -- if I'm paying \$800 a month and I
4 know my order says now I am supposed to be
5 paying \$600 because my daughter just
6 turned 19, but \$800 is coming out of my
7 income every -- I assume most people are
8 going to go down there and amend it. But
9 we also know there are going to be a lot
10 of cases where they are not.

11 And so, then the question becomes
12 what happens in those cases? I think that
13 as the Rule reads right now, it would be
14 just what you said awhile ago the way DHR
15 would do it. Theoretically, that's the
16 way it should be done. That is considered
17 overpayment of child support because the
18 court order says you should be paying \$600
19 a month.

20 So, the point Judge Williams
21 brings up is a legitimate point: Do we
22 want to address it, and how do we want to
23 address it.

1 But in those instances, I think
2 that money would be considered a credit
3 towards child support or arrears or
4 interest. Or if none of that's there,
5 then it's an overpayment.

6 HON. WILLIAMS: Yeah. And I
7 appreciate, you know, DHR having the
8 triggers in place to stop it. But even
9 when you are putting that money into an
10 account that's just accruing is not going
11 back to that obligor, and I have seen
12 numerous cases where they are coming in
13 and saying DHR is not doing this or they
14 are allocating my child support for this
15 child to other cases that I don't think it
16 should be going to, but that's DHR's
17 rules.

18 And so, I can foresee instances
19 where they are going to say, well, one,
20 they shouldn't have allocated the money
21 from this child to another case that I am
22 on to why are they holding my money and
23 not giving it back to me when I shouldn't

1 have been paying it. And they are going
2 to ask the court to order DHR to give it
3 to them.

4 MS. BUSH: Yes, sir. And this is
5 Jennifer Bush with DHR Legal.

6 I want to point out that this
7 scenario happens pretty much every time a
8 child support order ends and your youngest
9 child emancipates and you have an income
10 withholding order. I mean, this is the
11 exact same scenario occurs where the
12 income -- the termination of the IWO takes
13 a little while to kick in.

14 And in that scenario, we do -- at
15 the end -- I don't know that we can do it
16 with a computer on this. But when the
17 last child emancipates and there's no
18 current support owed, then that current
19 account is closed and that money is just
20 held and then it's returned to the person.

21 So, assuming there's no other
22 children, allocation totally separate
23 issue, and it's federal requirement that

1 we allocate. So, I am not getting into a
2 scenario of an allocation. But assuming
3 there's one child, we do deal with this
4 all the time.

5 And the prepaid account I
6 mentioned, let's say your child support is
7 lowered and there is no arrears, no
8 interest, nothing, and it goes into that
9 prepaid account. DHR does have the
10 capability of manually going in there and
11 refunding that money, so it can happen. A
12 lot of times it is held, especially if no
13 one brings it to our attention and no one
14 asks for it to be returned. And then in
15 the event, there is a loss of a job --
16 which that frequently happens with us;
17 there is going to be a disruption of
18 employment and current is not paid -- it's
19 going to immediately be pulled from that
20 prepaid account and then apply.

21 So, I don't know if that addresses
22 your question. But what I am trying to
23 say is we deal with this scenario already

1 when child support ends and there's a lag
2 with that IWO.

3 MS. SULLIVAN: And in a private
4 case, what if there is a court delay? It
5 doesn't really address. It just says
6 follow the proper procedure. But what if
7 that income withholding order doesn't
8 immediately get signed and money comes
9 out. I just think there needs to be a
10 little bit more consideration of that
11 issue that the judge brought up.

12 HON. PALMER: And Julie Palmer.

13 Or if the company doesn't get it
14 or there is a delay there, then what are
15 you going to do? I mean, I think we need
16 to address that issue, as well. Maybe
17 allow them 30 days -- up to 30 days before
18 that child emancipates to file the
19 petition so that the IWO can get to the
20 company in time, and the company can
21 change their income withholding that they
22 are doing on the employee's check, or they
23 just needs to be some sort of repayment I

1 think.

2 MR. JEFFRIES: Jim Jeffries.

3 Can you put an effective date?

4 Judges might know this more than me. But
5 put an effective date on a new IWO?

6 HON. SHERMAN: Well, we talked
7 about that. The question would be whose
8 responsibility is it going to be to put
9 that prospective wage order in effect. I
10 mean, there still has to be a processing
11 of an order.

12 And so, I can sign and date an
13 order ahead of time, but somebody has,
14 then, got to know to take that order and
15 now issue it out, and is that going to be
16 on all the clerks around the State? Is
17 that going to be, you know, the judges?
18 Whose responsibility is that going to be?

19 We discussed that and landed on we
20 wanted to avoid putting that on the clerks
21 to have to do that in all their cases, and
22 that's why we put it on the obligor of
23 that responsibility.

1 MR. JEFFRIES: I was meaning,
2 like, let's say somebody comes to me and
3 they question me about in a private
4 setting, hey, how do I -- my child support
5 is supposed to reduce on X day, how do I
6 get my income withholding order changed?
7 And I would say to the point some people
8 made about the timing of it, actually the
9 timing that it takes because it's
10 different all the time. Sometimes it's
11 quick, and sometimes it is not.

12 But if you said -- if I was able
13 to say, look, if it was me, you know, I
14 would file it 60 days before and just let
15 the court know that, as of a certain day,
16 this IWO is supposed to be in effect. So,
17 it's basically giving instructions to the
18 employer that they can do this as of a
19 certain date. I don't know if that makes
20 sense or what.

21 HON. WILLIAMS: Judge Williams.

22 I get them all the time usually
23 from the receiving custodial parent to

1 update an IWO because of a change in
2 employment or whatever. And it comes in
3 as a notice of change of address or
4 whatever, and then we update the IWO.

5 So, I will issue it based on the
6 notice to the court that something has
7 changed on the IWO as far as the
8 withholding and which it would be directly
9 to. So, I would assume, if we are going
10 to require that, the obligor sends it to
11 the employer, which I think they would
12 have to go through the court first.

13 HON. SHERMAN: They would.

14 HON. WILLIAMS: So, they would
15 need to file something through the court
16 for the court to order that change to the
17 employer before it can change.

18 HON. SHERMAN: Yeah, Judge. They
19 will have to go to the clerk's office,
20 file the amended -- it's a form that
21 you've all used, amended wage order, pay
22 the \$25 or \$40, whatever it is. And then
23 that goes to the judge. The judge signs

1 it. That goes back to the clerk. The
2 clerk issues it to the employer.

3 So, there's some time, and then
4 the employer has to put it into effect.
5 So, there is time that it takes.

6 And in the example that Judge
7 Williams gave for change of employment,
8 that the effective event has already taken
9 place. The court order is not changing.
10 They are just in a different place.

11 In the example you are giving, you
12 are suggesting that we would be entering
13 an order that the wage order is going to
14 change at some point in the future within,
15 say, 60 days. I don't know that -- I
16 think there could be some problems with
17 that. I think that when the amended wage
18 order goes out, you are ordering that
19 employer to withhold money now because
20 this is what's owed now.

21 So, you know, the alternative
22 would be to have, you know, a new
23 subparagraph that specifically -- rather

1 than deal with the IWO and the
2 responsibility of it in the Committee
3 Comments, you could have a new
4 subparagraph that essentially addresses
5 this specific issue and sets out some
6 Guidelines about who -- you know, whose
7 responsibility it is and specifically what
8 does happen if it's -- if there is an
9 overpayment, the amended order is not
10 affected prior to the obligation being
11 reduced and additional monies paid out.
12 What happens to it when we could take that
13 issue on. I don't know what the -- that's
14 a very vexing problem because there is a
15 lot of competing interest in that.

16 MR. JEFFRIES: Jim Jeffries again.

17 I guess the big difference here in
18 the gift scenario that I mentioned before
19 is that, like y'all mentioned a second
20 ago, there is already an order that the
21 child support be X at a future date.

22 So, it takes away somewhat the
23 issue of an obligee having to be upset

1 about having to give money back because it
2 wasn't theirs in the first place pursuant
3 to the court's order.

4 HON. SHERMAN: You could say -- I
5 probably should give this a lot more
6 thought before I voice this.

7 But you could say, in the
8 provision, it could state that the reduced
9 child support amount would become
10 effective, you know, pursuant to the court
11 order when that child ages out. But in
12 the event that there's an income
13 withholding order in place, it would
14 become effective when the obligor parent
15 files the amended order with the court,
16 and that eliminates any overpayment. Now,
17 I don't know if that's what you want to
18 do. But you would essentially -- that is
19 really putting the burden now on the
20 obligor parent. And if they sit on their
21 rights and they don't file the amended
22 wage order, then they are not due any
23 money back.

1 MR. JEFFRIES: My only point to
2 that would be that that still doesn't
3 address the -- after the obligor files --

4 HON. SHERMAN: That's correct.

5 MR. JEFFRIES: -- what if it takes
6 60 days for the employer to change --

7 HON. SHERMAN: That happens now,
8 right?

9 MR. JEFFRIES: It does.

10 HON. SHERMAN: You see it in
11 termination cases where a kid ages out or
12 you stop child support or a modification
13 of child support and we are amending a
14 previous wage order, that happens now and
15 we don't --

16 MR. JEFFRIES: Right.

17 HON. SHERMAN: We don't address
18 that. It just sort of sorts itself out
19 however it sorts itself out.

20 MS. BUSH: Jennifer Bush.

21 I just want to point out, our DHR
22 computer needs a date. We have got to
23 have a date. So, if it's some contingent,

1 you know, it becomes effective if and when
2 you file this document, there's so much
3 disconnect, we would never know when that
4 person filed that document.

5 HON. SHERMAN: That's why I should
6 have thought about it before I said it out
7 loud. Sorry.

8 HON. WILLIAMS: Judge Williams.

9 Just to add another layer onto
10 this that, I mean, if the obligor at some
11 proceeding that he filed where he is not
12 satisfied that he has been, you know, made
13 whole pursuant to a court order, then
14 maybe he shifts the burden to the obligee
15 to say, well, you knew pursuant to the
16 court order that the child support changed
17 to this and you were taking the money
18 anyway. But as it's been stated by Jim,
19 it could be perceived as a gift that you
20 didn't stop.

21 So, that's arguments on both sides
22 I think.

23 HON. SHERMAN: I thought this was

1 the simpler of the two proposals
2 apparently.

3 MR. JEFFRIES: We were pretty
4 quiet for a little while.

5 PROFESSOR DAVIS: Other issues
6 than what's been raised?

7 (No response).

8 PROFESSOR DAVIS: It seems to me
9 that maybe the -- rather than try to vote
10 on this that we probably need to think
11 through some of these issues.

12 Judge Sherman is the Chair of the
13 Committee. Do you remember offhand -- I
14 know if you're like me, you don't remember
15 who.

16 HON. SHERMAN: I can't keep them
17 straight who else is on it.

18 PROFESSOR DAVIS: Who else
19 remembers they are on that Committee?
20 Okay. So, we have a couple here.

21 Would anybody else like to serve?
22 Now that you have raised some issues, we
23 would like input from somebody else.

1 Anybody else may want to serve?

2 MS. BALDWIN: Jennifer, you are
3 not. You need to be.

4 MS. BUSH: I will be on the
5 Subcommittee.

6 PROFESSOR DAVIS: Okay. So,
7 Jennifer is. And Joan-Marie is
8 volunteering. Anybody else want to
9 volunteer?

10 HON. WILLIAMS: Katie was on it
11 two years ago.

12 MS. STEINWINDER: (Nodding in the
13 affirmative).

14 PROFESSOR DAVIS: Yes, Katie was
15 on it and Judge Williams is on it. And
16 Bob can go back to the minutes and figure
17 out if there were anybody else. So, your
18 silence doesn't mean you're off of it. It
19 just means like, if you are like me, you
20 can't remember what you were on.

21 MS. STEINWINDER: I think Amanda
22 was on it.

23 PROFESSOR DAVIS: I kind of think

1 she was.

2 HON. SHERMAN: She was the Chair.

3 PROFESSOR DAVIS: Melody, were you
4 on it?

5 MS. BALDWIN: Well, I didn't
6 remember that I was, but Bob did pull it
7 up. But honestly Jennifer is so familiar
8 with the interworkings of how the system
9 works, that I don't think I am as
10 effective on that as she is.

11 PROFESSOR DAVIS: Okay. All
12 right. So, we will leave it --

13 MS. BALDWIN: I would rather
14 substitute Jennifer.

15 PROFESSOR DAVIS: Okay. Well, we
16 welcome as many as to be the whole
17 Committee on the Subcommittee if they
18 wanted to. But that will give you kind of
19 an idea. I think that's a good working
20 group. But that does not mean that
21 someone who is not on the Subcommittee
22 cannot send suggestions to the
23 Subcommittee, because it's certainly

1 easier to draft the exact language in the
2 Subcommittee setting than here.

3 So, if everyone is okay, then we
4 will table this issue now until the next
5 time we meet in the future depending on
6 how much the Subcommittee feels like they
7 need. And I appreciate the thought
8 process that's gone into this discussion.
9 I think that is very helpful. It's the
10 balance of who has the burden of doing
11 that.

12 The next issue on our agenda is
13 going to have an update on research
14 issues, other issues. Jennifer, you are
15 on the agenda. I think you had talked and
16 sent material out, and Jane had also sent
17 some material out.

18 MS. BUSH: So, at the end of the
19 last Committee meeting, the question was
20 asked if there were any new topics for the
21 Committee to consider. And I mentioned
22 that, while participating in training
23 across the State for the May 1st changes

1 to Rule 32, several people had requested
2 guidance on how to treat a non-parent's
3 income when calculating child support, a
4 situation where -- and typically I am just
5 going to say grandmother. It would not
6 have to be a relative. It could be a
7 nonrelative.

8 But the question is: How do we
9 treat grandparent who has custody; how do
10 we treat their income when we are running
11 the Guidelines? And the different
12 scenarios are you can use the
13 grandparent's income in lieu -- I would
14 say -- of the missing parent, but this is
15 assuming you have got a case with one
16 parent, a grandparent, and the other
17 parent is not a party in the case before
18 the court. Wherever they may be, they are
19 not a party.

20 So, one option would be to use
21 that non-parent custodian's income in lieu
22 of the missing parent's income and just
23 run your Guidelines the way you normally

1 would.

2 Another thought would be, if you
3 knew or had any information about the
4 missing parent's income, you could
5 calculate child support on both parents,
6 the one present where you have their
7 income, and then impute income to the
8 missing parent and run Guidelines that
9 way.

10 And then a third scenario would be
11 you run Guidelines solely on the income of
12 the parent that's present, and they pay
13 100%. There is no split of percentage as
14 there would be.

15 So, those are the possible
16 scenarios. And as far as research, I
17 don't have any research on that. I
18 brought it up because it was mentioned to
19 me as a potential topic for the Committee
20 in the future.

21 PROFESSOR DAVIS: Okay. And,
22 Jane, are you still on? Jane?

23 DR. VENOHR: Yeah, I am. Sorry.

1 PROFESSOR DAVIS: Were you able to
2 hear Jennifer's comments?

3 DR. VENOHR: I heard the word
4 "research."

5 PROFESSOR DAVIS: That's the key.

6 MS. BUSH: I'll do a short
7 summary.

8 PROFESSOR DAVIS: Yeah, a real
9 short summary of the issue.

10 MS. BUSH: Just as a potential
11 topic for future Committee meetings how to
12 treat a non-parent's income when
13 calculating child support. The typical
14 scenario might be a grandparent. But do
15 you use that person's income in lieu of
16 the missing parent? Do you try to impute
17 income to the missing parent who is not a
18 party to the case? Or do you just use the
19 income of the parent who is a party to the
20 case and make that person 100% responsible
21 for child support to the nonrelative who
22 actually has custody, or the non-parent I
23 should say?

1 DR. VENOHR: Yeah. I mean, I
2 think the practices vary from State to
3 State. And I haven't seen them ever use
4 the grandparent's income. And there's
5 something I will tell you about in a
6 minute that might change that if I
7 misunderstood.

8 But in cases where there's two
9 parents and the child is living with a
10 grandparent, you know, and the truth is is
11 that, what I hear in the field is that
12 they usually can only get one parent in at
13 a time. And so, they usually use that
14 parent's income alone. So, it would be a
15 100%.

16 And then sometimes they will --
17 and this is where the practice varies that
18 I have seen that they might impute and
19 assume there's another parent out there
20 that has minimum wage. And what that has
21 the effect of is the parent that is at the
22 court, it brings that order down, you
23 know.

1 But, you know, that is an area of
2 research that we haven't -- I haven't ever
3 investigated the different practices. I
4 know it came up in Tennessee, and I talked
5 to a couple of States with it. But I just
6 want to make sure that that's what you are
7 talking about, not talking about
8 grandparent liability when there is a --
9 when the child to the grandparent has
10 children and that child is a minor and is
11 on TANF. You are not talking about that
12 scenario, right?

13 MS. BUSH: No, we are not talking
14 about the minor child scenario.

15 DR. VENOHR: Okay. Is where --

16 MS. BUSH: We are talking about --

17 DR. VENOHR: The first one. Yeah,
18 because we are doing some research right
19 now on the latter where there is a minor
20 child that is receiving TANF. And the
21 issue is whether the grandparents have to
22 pay for the grandchildren, but that's a
23 minor thing.

1 So, yeah. So, ignore my second
2 answer part of it. Did that make sense
3 when I said with the first part?

4 PROFESSOR DAVIS: Yes. There
5 is -- What you are saying there is some
6 data out there where other States have
7 dealt with the initial scenarios that
8 Jennifer had mentioned when a
9 grandparent --

10 DR. VENOHR: Right. And I
11 think -- I mean, I didn't hear -- and,
12 Jennifer, are you finding that you are
13 having information from both parents at
14 the time that the order is established?

15 MS. BUSH: I would think that
16 would be more unusual to have information
17 about the other missing -- the missing
18 parent's income. But that is a scenario
19 that comes across the State, and people
20 are requesting guidance on: Do they use
21 the grandparents' income, or do they just
22 use the income of the party that is in
23 front of them.

1 DR. VENOHR: No. I have never
2 seen them use the income of the
3 grandparents, you know. It's just --
4 yeah. I mean, they treat it more like
5 third-party care.

6 PROFESSOR DAVIS: Judge Williams
7 has a question.

8 HON. WILLIAMS: Yeah, Judge
9 Williams.

10 So, these questions initially came
11 up in a juvenile dependency context where
12 a child is deemed dependent, and it could
13 be a grandparent or it could be some other
14 third party. It could be --

15 DR. VENOHR: Right.

16 HON. WILLIAMS: -- an aunt or an
17 uncle. It would be a non-relative. And
18 the child is dependent and placed in their
19 custody based on the dependency and the
20 lack of ability of the parents to provide
21 or care for them. Oftentimes, it's one
22 parent that appears in court, usually the
23 mother, because a lot of times the father

1 is not known or it's an alleged father and
2 he is not there.

3 And so, the question has become,
4 well, how do we calculate child support?
5 Do we do it using that third party whether
6 it's a grandparent or some other third
7 party that has custody and that parent
8 that's before the court use their income
9 to calculate child support or do we just
10 strictly use that parent, that's present,
11 child support.

12 Now, in Alabama, if we don't have
13 a father who has been adjudicated as the
14 father and he is only alleged or presumed
15 to be the father, technically, we don't
16 have jurisdiction over him based on recent
17 law by our appellate courts. So, we can't
18 really even, in that case, impute any
19 income to that alleged father if he has
20 not been determined to be the father.

21 DR. VENOHR: That makes sense. Is
22 this a permanent plan? I mean, is the
23 child just -- is the permanent plan to

1 keep the grandparent, who has custody,
2 been transferred, or is it a child
3 protective service case where the
4 permanency plan might be family
5 reunification with the mother?

6 HON. WILLIAMS: So, in most
7 instances, it's a dependency determination
8 where the court has granted either DHR in
9 the case of CPS, Child Protective
10 Services, we granted them custody; or in a
11 case with third party, we granted them
12 temporary custody. And usually that is
13 the final order, and that's where we have
14 to consider the issue of child support
15 based on statute.

16 DR. VENOHR: So, there's no chance
17 that the child is going to go back with
18 the mother, you know, that --

19 HON. WILLIAMS: Unless the
20 court --

21 DR. VENOHR: -- because that's --

22 HON. WILLIAMS: Unless the court
23 modifies it on a separate and subsequent

1 petition.

2 DR. VENOHR: Yeah. I mean, I am
3 thinking about -- you know, I would
4 have to -- I am going to have to review my
5 notes. Because I was thinking of more
6 when it's just -- when the -- When the
7 permanency plan is still with the child
8 that it is not -- where there has not been
9 a change in custody, you know, that the
10 child is still a Child Protective Service
11 case. And that's where I am hesitant.
12 And the decision has been finalized, you
13 know, where the -- Am I making sense?

14 HON. WILLIAMS: Yes.

15 DR. VENOHR: And that, I am going
16 to have to, like, dig a little bit to see
17 if there is a difference. Because you are
18 really talking about when there's been a
19 decision that the child is going to stay
20 with grandma, that custody is really -- I
21 mean, it's permanent.

22 HON. WILLIAMS: For the most part.

23 PROFESSOR DAVIS: Yes.

1 HON. WILLIAMS: No, we don't call
2 it permanent until we TPR. But, yeah,
3 it's temporary.

4 DR. VENOHR: Oh, okay. Yeah.
5 That's right. That's a really -- I am
6 glad you brought TPR in, because that
7 would be the turning point.

8 Yeah. But, you know, I could see
9 where you would want to include
10 grandparents just to help reduce it
11 because of the ability to pay, you know,
12 90% of those that are removed from the
13 home is because of economic issues, not --
14 you know, the mother did not have enough
15 income to support the kid, you know,
16 eviction. You know, you know the cases.
17 You know what you are seeing more than
18 what I do.

19 PROFESSOR DAVIS: Well, do you
20 think you would be able to come up with a
21 memo that might give us some direction?

22 DR. VENOHR: Yeah. Yeah. Yeah.
23 I will come up with a memo and, yeah, and

1 just do a little bit of a scan to see some
2 of the options. Because it sounds like
3 that should be Alabama's consistency
4 across the State that you are concerned
5 about; is that right?

6 PROFESSOR DAVIS: Yes.

7 DR. VENOHR: In fairness, of
8 course.

9 PROFESSOR DAVIS: Sure. I think
10 that would give us an opportunity to at
11 least respond to the inquiries that we
12 have had even if we don't come up with the
13 change in the Rules. I would like to make
14 sure our Committee does respond to the
15 inquiries that we have.

16 Okay. Anybody else have any
17 questions or any comments that might help
18 direct Dr. Venohr's research in any way?

19 (No response).

20 PROFESSOR DAVIS: Jennifer, can
21 you think of anything else that you would
22 like for her to look at typically?

23 MS. BUSH: No.

1 PROFESSOR DAVIS: Okay. All
2 right. Thank you, Dr. Venohr.

3 Jennifer, anything else? I know
4 the other issue that comes to my mind was
5 that related to -- and we don't have a lot
6 of time before we offer the public the
7 opportunity -- was the opportunity to --

8 MS. BLACKBURN: I don't know what
9 to do.

10 (At which time, the Internet
11 connection with Dr. Venohr
12 was disconnected).

13 PROFESSOR DAVIS: Okay. All
14 right. We will not require Dr. Venohr at
15 this point for anything else.

16 Okay. The question that I think
17 we have talked about before is the -- I
18 think Dr. Venohr did perhaps have some
19 information.

20 The people that pay for childcare
21 are paying substantially less, and they
22 are getting credit for substantially less
23 than what they are paying. And I think we

1 had talked a little bit about that the
2 last time. And so, I guess in light of
3 the fact we have lost Dr. Venohr, maybe we
4 will just delay that unless you have
5 anything, Jennifer, to say about that.

6 MS. BUSH: The only thing I would
7 like to add is this is on DHR's public
8 website. You can get it in a link -- Bob
9 sent the link with his email to everybody,
10 and it is the 2021 Alabama Child Care
11 Market Rate Survey Final Report.

12 So, the question sometimes is:
13 How do we come up with those daycare
14 rates? And this is the full report if you
15 ever want to read it.

16 I do think that the issue people
17 bring up, people will say, well, I pay
18 more than what that daycare rate sets out.
19 But whether it's high, low, this is the
20 market rate survey. It's redone every two
21 years, and this is the 2021 version.

22 PROFESSOR DAVIS: I think it
23 comes -- the issue basically is the cap

1 that we apply.

2 MS. BUSH: Yes, ma'am.

3 PROFESSOR DAVIS: Okay. So, it
4 light of time and the IT issue we are
5 having, we will come back to that issue
6 maybe at maybe the next meeting.

7 So, if anybody has any thoughts
8 on -- or suggestions relating to the child
9 custody the way it was handled in the
10 Rule, if we want to continue to leave it
11 as it is or if you want to think about
12 having the Child Support Rule to reflect
13 more what the actual payments are by the
14 parties, then we will take that up, I
15 guess, at the next meeting or hear from
16 Jane.

17 So, would you reach out to Jane
18 and see if she has any additional
19 information she can share. I think that
20 would be helpful. And we will let
21 Jennifer be sort of contact person in our
22 Committee if anybody has any thoughts
23 about dealing with that particular issue.

1 All right. Any other comments or
2 questions from the Committee members about
3 future topics that we want to take up? We
4 obviously have several things that are
5 still pending we will look at at the next
6 meeting.

7 (No response).

8 PROFESSOR DAVIS: All right. At
9 this time, we turn our attention to the
10 comments from the public. I think I have
11 asked three of you before. Do you have
12 any comments at this point?

13 MR. SMITH: No.

14 PROFESSOR DAVIS: Scott, I think
15 you had a comment earlier that you would
16 like to make.

17 MR. JOHNSON: Thank you. Thank
18 you for letting me sit in. I've learned a
19 lot.

20 PROFESSOR DAVIS: Would you
21 identify.

22 MR. JOHNSON: Scott Johnson.

23 PROFESSOR DAVIS: And we usually

1 put where you are from.

2 MR. JOHNSON: From Montgomery,
3 Alabama.

4 PROFESSOR DAVIS: Okay. Thank
5 you.

6 MR. JOHNSON: And during the
7 discussion of the 14 days, the thought
8 occurred to me that a willfully
9 non-exercising shared-custody parent could
10 possibly have proof of 15 or 16 partial
11 days of custody. And could he come in
12 in -- If we create grounds for filing
13 under this part of the Rule, could he come
14 in and defeat a petition to modify under
15 this Rule by attaching that proof of 15 or
16 16 partial days because that -- grounds
17 for filing is not discretionary, is it?

18 HON. SHERMAN: The grounds for
19 filing -- I mean, anybody can file
20 anything at any time whether they have
21 reason to or not. So, nothing in the Rule
22 is going to change that.

23 However, the Rule as proposed and

1 passed today puts discretion in the trial
2 court whether to grant that modification
3 of child support based on the failure to
4 exercise.

5 So, if the parent that is alleged
6 to have not exercised that time, if I am
7 understanding your question or comment, is
8 contesting whether they did or they
9 didn't, that's what that trial is about,
10 and the court is going to have to make
11 that determination whether or not they did
12 or they didn't. So, whether I want to try
13 the case when I'm counting days or not, I
14 may put in the position of doing that at
15 some point under this Rule, if I'm
16 understanding your question.

17 MR. JOHNSON: That's pretty close.
18 But I am thinking of the initial
19 responsive pleading where he is moving to
20 dismiss, and he has got his documentation
21 attached. Does he defeat the petition?

22 HON. SHERMAN: Well, I mean, I
23 think that is a question of fact for the

1 court to determine.

2 HON. WILLIAMS: Yeah. I think
3 that would fall under the category if
4 there is sufficient cause. And if he is
5 say, well, I can point to half days during
6 his 14-or-more-day period that I did, you
7 know, that could be -- I mean, the court
8 can consider and weigh that.

9 MR. JOHNSON: And that's why your
10 comment about show cause made sense
11 because it could be more like a show
12 cause.

13 But my other question if -- Whose
14 duty is it to give notice to the parties?
15 Is this going to have to be in every final
16 judgment if it's uncontested? Is the duty
17 on the lawyers to put in the language that
18 warrants that shared-custody parents what
19 they face if they don't exercise their
20 visitation, or is there no notice?

21 HON. SHERMAN: I think the
22 notice --

23 MR. JOHNSON: Are they required

1 to --

2 HON. SHERMAN: I think the notice
3 is the law. I mean, I think that, you
4 know, we are imputed with knowledge with
5 what the law is. So, I think the Rule
6 itself is their notice.

7 Now, if I am representing -- If I
8 am a private practicing attorney
9 representing a party, then obviously I am
10 going to be giving them some advice about
11 that and educating my clients about it.
12 But there is no requirement that a court
13 or even the parties in their own
14 agreements put it.

15 Also, I don't think there's any
16 prohibition against attorneys in private
17 practice negotiating to include some
18 language in their agreements that
19 specify -- you know, that mention the Rule
20 to educate their clients. But I don't
21 think there's any additional burden on the
22 court as it's proposed right now that
23 would require them to do that.

1 PROFESSOR DAVIS: Yeah. I think
2 one thing perhaps it's a little more
3 helpful in this area is AOC does have on
4 its website the Rule. And so, the pro se
5 people, once they are directed to that
6 website, then it would include that
7 information. And if they read the Rule
8 and the Comments, then they will see that.
9 So, it would be available to them.

10 So, you know, they don't really
11 have to go and try to search out through
12 the Code of Alabama or to the
13 administrative rules to find it. It is
14 separated for them. So, I think it does
15 help the pro se people. And I suspect the
16 judges -- y'all deal with the pro se
17 people all the time and so Judge Palmer
18 has too, that the clerks are fairly
19 helpful in directing them to these sites
20 that are informational for them.

21 Anybody have any other comments?

22 Any other comments?

23 MR. JOHNSON: No. I am certainly

1 glad I was here. Thank you.

2 PROFESSOR DAVIS: Thank you. We
3 appreciate your coming.

4 And all of the transcripts are put
5 on the website. So, anybody that -- if
6 you can't come next time, and we welcome
7 you to all the meetings, then you can go
8 on the website and see the transcript than
9 listen to us.

10 Any other issues to be presented
11 at this time?

12 (No response).

13 PROFESSOR DAVIS: Does anybody
14 object to us leaving early?

15 HON. WILLIAMS: No.

16 PROFESSOR DAVIS: Well, then we
17 are adjourned. Thank you so much.

18
19 (Conclusion of the Advisory
20 Committee on Child Support
21 Guidelines and Enforcement
22 meeting at 12:07 P.M.)
23

1 REPORTER'S CERTIFICATE

2 STATE OF ALABAMA,

3 MONTGOMERY COUNTY,

4 I, Jeana S. Boggs, Certified Court Reporter and
 5 Commissioner for the State of Alabama at Large, do
 6 certify that I reported the proceedings in the
 7 matter of:

8 BEFORE THE STATE OF ALABAMA

9 ADVISORY COMMITTEE ON CHILD SUPPORT

10 GUIDELINES AND ENFORCEMENT

11 * * * * *

12 on Friday, November 4th, 2022, the foregoing 130
 13 computer-printed pages contain a true and correct
 14 transcript of the statements by the Committee
 15 members and other persons via Zoom.

16 I further certify that I am neither of
 17 relative, employee, attorney or counsel of any of
 18 the Committee members and other persons, nor am I a
 19 relative or employee of such Committee members and
 20 other persons, nor am I financially interested in
 21 the results thereof. All rates charged are usual
 22 and customary.

23 I further certify that I am duly licensed

1 by the Alabama Board of Court Reporting as a
2 Certified Court Reporter as evidenced by the ACCR
3 number following my name found below.

4 This 23rd day of December, in the year of
5 our Lord, 2022.

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15/Jeana S. Boggs
Jeana S. Boggs, CCR
ACCR NO. 7 Exp 9/30/23
Certified Court Reporter and
Notary Public
Commission expires: 8/9/2026

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