

M E M O R A N D U M

TO: Advisory Committee on Child Support Guidelines and Enforcement

FROM: Judge Terry Moore, Alabama Court of Civil Appeals

RE: Proposed Changes to Rule 32, Ala. R. Jud. Admin.

DATE: May 10, 2020

I. Current Rule

Rule 32, Ala. R. Jud. Adm. requires the parties to furnish to the court child-support forms to be used in determining child support in most cases. The court is to make the forms part of its record. However, the rule does not state when the parties have to provide the forms and how the court is to make the forms part of the record.

Rule 32 allows for modification of child-support orders, but does not prescribe the procedure for modification, requiring a separate civil action as under pre-guidelines law.

Rule 32 does not address the allocation of child support to multiple children or the effect on the award of one or more child becoming emancipated or otherwise ineligible for child support.

## II. CS Forms

I propose that Rule 32(E), Ala. R. Jud. Admin., be amended to require the parties to file the child-support forms no later than 30 days after their first appearance in the case and to require that the forms be updated periodically to keep the information current and accurate. I propose that the court shall be required to attach the forms as an appendix to its judgment. This procedure should avoid the recurrent problem confronted by the Alabama Court of Civil Appeals when it cannot discern how child support was computed because either the parties did not submit the forms or the court did not include the forms in the record. See, e.g., Farquhar v. Farquhar, 190 So. 3d 524 (Ala. Civ. App. 2015).

## III. Modification Procedure

A child-support order may be modified upon proof of "a material change in circumstances that is substantial and continuing since the last order of child support". Rule 32(A)(3)(b), Ala. R. Jud. Admin. In order to obtain a modification, the moving party must file an action, along with a filing fee. The current filing fee "for cases filed in the domestic relations docket of the circuit court seeking to modify ... an existing domestic relations court order" is \$248. Ala. Code 1975 § 12-19-71(a)(7). After the filing of

an action, generally a hearing will be held, and a judgment will be entered granting or denying the request for modification.

Filing a formal action can present a hardship for parties, financially and otherwise, and, in certain types of simple cases in which there was no deviation from the child-support guidelines in the original child-support order, I suggest that requiring a formal action to be filed is unnecessarily burdensome.

A. Situation 1: One of multiple children becomes emancipated

The first situation in which a more simplified and informal procedure would be beneficial is a case in which a child-support order is entered for the benefit of multiple children and one or more of those children subsequently becomes emancipated or otherwise ineligible for child support. The schedule for basic child-support obligations contained in the Appendix to Rule 32 sets forth the amount of child support allocable to each child, but the child-support guidelines do not specifically require the courts to allocate child support, allowing for lump-sum, or "in globo," awards of child support.<sup>1</sup>

"Our caselaw provides that, when the judgment does not specify the amount of child support allocated to each child,

'events such as a child's reaching the age of majority or a child's marriage do not automatically modify a child support judgment.'" Langstaff v. Langstaff, 166 So. 3d 128, 132 (Ala. Civ. App. 2014) (quoting State ex rel. Dep't of Human Res. v. Curran, 716 So. 2d 1196, 1199 (Ala. Civ. App. 1997)). Therefore, a noncustodial parent may not unilaterally reduce the amount of child support he or she pays after the emancipation of one of multiple children; instead, the noncustodial parent must file a petition for a modification of the child-support obligation. Id. In many, if not most, cases, this leads to the inequitable result that the obligor becomes obligated to pay child support for an ineligible child. On the other hand, allowing unilateral reduction would likely lead to the worse problem that the obligor would miscalculate the reduction leading to a shortfall in support for the remaining children that could only be rectified by court action.

The difficulties with the current state of the child-support guidelines was evinced in Rhodes v. Rhodes, [2180928, May 1, 2020] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Civ. App. 2020). In Rhodes, the Alabama Court of Civil Appeals affirmed a judgment to the extent that it found a noncustodial parent in contempt for unilaterally reducing his child-support payments by one-

half following the oldest of his multiple children reaching the age of majority despite the father having made efforts, albeit insufficient, to obtain a modification of child support. I dissented to the court's decision on that point, reasoning, in part:

"[T]o the average layperson exercising common sense, it would seem that when one of two children reaches the age of majority so as to no longer be eligible for child support, child support should be reduced by one-half the court-ordered amount to cover the remaining minor child. The father clearly, although mistakenly, understood that to be the case and acted accordingly, even while simultaneously attempting, albeit unsuccessfully, to file a request for a modification of his child-support obligation to obtain judicial approval of his actions."

\_\_\_ So. 3d. at \_\_\_ (Moore, J., dissenting).

#### B. Situation 2 - 10% variation

Another situation in which a simplified, informal procedure could be applied is where "the difference between the existing child-support order and the amount determined by application of the[] guidelines varies more than ten percent (10%)." I note that, pursuant to Alabama's child-support guidelines, where there was no deviation from the child-support guidelines in the original child-support order, there exists "a rebuttable presumption that child support should be modified when the difference between the existing child-support order and the amount determined by application

of the[] guidelines varies more than ten percent (10%).” In Alabama, “[t]he basic child-support obligation [is] determined by using the schedule of basic child-support obligations” in the appendix to Rule 32 (“the schedule”). Rule 32(C)(1), Ala. R. Jud. Admin. Using the combined adjusted gross income of the parents and the number of children “for whom the parents share joint legal responsibility and for whom child support is being sought”, the basic child support obligation can be determined directly from the schedule.<sup>2</sup> In cases in which “the difference between the existing child-support order and the amount determined by application of the[] guidelines varies more than ten percent”, a more simplified and informal procedure option would be beneficial.

### C. Research

In seeking to determine an simplified and informal alternative to filing a formal modification action in the types of cases discussed previously, I have researched the child-support laws from other jurisdiction.

Initially, I note that several other jurisdictions provide that, in the case of a child-support order covering multiple children, the order should set out the amount by which the order will be reduced as each child attains the age of majority or is otherwise emancipated. These states

include Georgia<sup>3</sup>, Texas<sup>4</sup>, Utah,<sup>5</sup> Nebraska<sup>6</sup>, Kansas<sup>7</sup>, and Idaho<sup>8</sup>. This method is the simplest method, in that it allows the child-support order to be modified automatically, without any interaction between the parties or court intervention. The drawback with this method is that it does not take into account any changes in income that might have occurred between the time of the order and the time a child is emancipated.

Other states provide a method of informal review in certain cases. For instance, Oklahoma provides for an informal review and adjustment of any child-support order as often as annually upon request of one parent or as directed in the child-support order.<sup>9</sup> Okla. Stat. Ann. Tit. 43 § 118I(D). The California Legislature also ordered "the adopt[ion of] rules of court and forms for a simplified method to modify support orders...designed to be used by parents who are not represented by counsel." Cal. Fam. Code § 3680. Additionally, in Arizona, section 25-320(25), Ariz. Rev. Stat. Ann., provides, in part:

"If child support for more than one child was ordered under these guidelines and thereafter the duty to support one of the children stops, the order is not automatically reduced by that child's share. To obtain a modification to the child support order, a request must be made in writing to the court to recalculate the child support obligation pursuant to these guidelines. The procedure specified in Section 24 may be used for this purpose."

"Section 24, in turn, states that any modification must be made pursuant to A.R.S. §§ 25-327 and -503 or by using a simplified procedure." Guerra v. Bejarano, 133 P. 2d 752, 755 (Ariz. App. Div. 1 2006). The simplified procedure is permitted to be used, among other reasons, when "application of the guidelines results in an order that varies 15% or more from the existing amount".<sup>10</sup>

Finally, in Vermont, under certain circumstances, including where "[a] child support order ... varies more than ten percent from the amounts required to be paid under the support guideline", a motion to modify the child-support order must be filed with "an affidavit setting forth calculations demonstrating entitlement to modification and shall be served on other parties and filed with the court." Thereafter, "if the calculations demonstrate cause for modification, the magistrate shall enter an order modifying the support award in accordance with the calculations provided, unless within 15 days of service of, or receipt of, the request for modification, either party requests a hearing." Vt. Stat. Ann. Tit. 15 § 660.

#### D. Proposal

After considering the difficulties presented by the current guidelines and the rules in the foregoing states, I

propose that the guidelines be amended in the following ways:

(1) Establish a simplified procedure for modification of child support orders in the above situations.

Example, which is based on Arizona's law:

"If a party seeks modification of an order of child support entered in an action for divorce, legal separation, or annulment, on the ground that application of the child-support guidelines in Rule 32 of the Alabama Rules of Judicial Administration would result in an amount that varies 10% or more from the amount in the existing order of child support, or on the ground that one of multiple children covered by an order of child support has become ineligible for child support, the party may file a written request for modification along with a Form CS-42 based on the current incomes of the parties and a proposed order modifying child support, which documents shall be served on the other parties. If the requested modification is disputed, the opposing party must request in writing a hearing within 30 days of service, setting forth the basis of the dispute and attaching a Form CS-42 if disputing the Form CS-42 filed by the party requesting modification. If a hearing is requested, the court shall conduct the hearing after provide notice of the hearing no later than 10 days beforehand and no modification shall be made without the hearing. Upon proof of service and if no hearing is requested within the time allowed, the court will review the request and enter an appropriate order or set the matter for hearing. This procedure shall not constitute a new action and shall not require the payment of a filing fee."

(2) Require the courts to allocate child support and to establish the effect of each child's becoming emancipated or otherwise ineligible.

Example, which is based on Nebraska's Rule of Court 4-208:

"If the court orders child support for more than

one child, the order of child support shall specify the amount of child support due for each child, with the amount recalculated and reduced as the obligation to support terminates for each child, unless the parties agree otherwise. If the automatic reduction renders the amount of child support for the remaining children in noncompliance with the amount required by child-support guidelines established in Rule 32 of the Alabama Rules of Judicial Administration, the obligee parent may request modification of the order of child support in accordance with the simplified procedure established in \_\_\_\_\_. If the order fails to allocate child support to each child, the obligor may obtain modification of the order to obtain the allocation required herein without paying a further filing fee; otherwise the obligor may request modification of the order of child support as each child becomes ineligible for child support in accordance with the simplified procedure established in \_\_\_\_\_. Unless modified as provided herein, an order of child support that does not allocate child support to each child terminates when the youngest child reaches 19 years of age."

(3) If no change is made, require courts to notify the parties in any order of child support covering multiple children that the amount of the award shall not be affected by the emancipation or ineligibility of a child for support unless and until modified by the court. The order should explain that the parties have the right to seek recalculation of the award under the simplified, informal procedure or by filing a formal request for modification.<sup>11</sup>

Thank you for your consideration of my suggestions, and please contact me or my staff attorney, Amanda Cox, if you would like to discuss this subject further.

#### Endnotes

1.

The difference in what the basic child support obligation is for a child-support order for one child versus two, three,

four, five, or six children is not uniform for all combined adjusted gross income levels. For instance, under the schedule, using a combined adjusted gross income of \$850.00, the basic child support obligation is only one dollar more for 2 children than it is for a single child. However, with a combined adjusted gross income of \$20,000 the difference in the basic child support obligation involving one child verses two children is \$620.

2.

"The court may use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels or exceeds the uppermost levels of the schedule." Rule 32(C)(1), Ala. R. Jud. Admin.

3.

Ga. Code Ann. § 19-6-15(b)(12), provides:

"When there is more than one child for whom support is being determined, the court shall establish the amount of support and the duration of such support in accordance with subsection (e) of this Code section. When, within two years of a final order being entered, there is a likelihood that a child will become ineligible to receive support, the court may allow for the use of separate worksheets. Separate worksheets shall show the final child support amount to be paid for all such children and the adjusted amount of support to be paid as each child becomes ineligible to receive support during such two-year period. Such worksheets shall be attached to the final order. Such order shall contain findings as required by law. A final order entered pursuant to this paragraph shall not preclude a petition for modification.

4.

Section 154.127, Tex. Family Code Ann., provides:

"(a) A child support order for more than one child shall provide that, on the termination of support for a child, the level of support for the remaining child or children is in accordance with the child support guidelines.

"(b) A child support order is in compliance with

the requirement imposed by Subsection (a) if the order contains a provision that specifies:

"(1) the events, including a child reaching the age of 18 years or otherwise having the disabilities of minority removed, that have the effect of terminating the obligor's obligation to pay child support for that child; and

"(2) the reduced total amount that the obligor is required to pay each month after the occurrence of an event described by Subdivision (1)."

5.

Section 78B-12-219, Utah Code Ann., provides for an automatic adjustment of the child-support obligation upon emancipation of one of multiple children as follows:

"(1) When a child becomes 18 years of age or graduates from high school during the child's normal and expected year of graduation, whichever occurs later, or if the child dies, marries, becomes a member of the armed forces of the United States, or is emancipated in accordance with Title 78A, Chapter 6, Part 8, Emancipation, the base child support award is automatically adjusted to the base combined child support obligation for the remaining number of children due child support, shown in the table that was used to establish the most recent order, using the incomes of the parties as specified in that order or the worksheets, unless otherwise provided in the child support order.

"(2) The award may not be reduced by a per child amount derived from the base child support award originally ordered.

"(3) If the incomes of the parties are not specified in the most recent order or the worksheets, the information regarding the incomes is not consistent, or the order deviates from the guidelines, automatic adjustment of the order does not apply and the order will continue until modified

by the issuing tribunal. If the order is deviated and the parties subsequently obtain a judicial order that adjusts the support back to the date of the emancipation of the child, the Office of Recovery Services may not be required to repay any difference in the support collected during the interim."

6.

Section 4-208, Neb Ct. R., provides:

"If there is more than one child, the court's order should specify the amount of child support due for the children, with the amount recalculated and reduced as the obligation to support terminates for each child. The amount due for each possibility should be calculated separately from table 1.... The order should direct that child support continue only until each child reaches majority under Nebraska law, becomes emancipated, becomes self-supporting, marries, or dies, or until further order of the court."

7. The Kansas Supreme Court Administrative Order No. 307 (V) (B) (4), provides:

"Support Orders for Two or More Children. In child support orders, support amounts for two or more children, are stated as a total amount rather than on a per child basis. Absent judicial modification of the order, as each child emancipates as defined in K.S.A. 23-3001, et seq. and amendments thereto, or by court order, the total obligation will decrease proportionately based on the number of minor children at the time of the termination or emancipation.

"Parents may seek to modify child support orders and income withholding orders when the legal obligation to pay child support terminates for any child or any child is emancipated."

8.

The Idaho Child Support Guidelines provide:

"Section 12. Expression of Child Support. The court's judgment shall state the total monetary support for all children, the due date and the total monetary support due to the remaining children as each child is no longer entitled to support.

"Example: If there are three children initially, and later one child emancipates, the amount of support will not be reduced by one-third, but will reflect the appropriate amount from the schedule for two children, and later one child."

9. Okla. Stat. Ann. Tit. 43 § 118I(D), provides:

"1. When a child support order is entered or modified, the parents may agree or the district or administrative court may require a periodic exchange of information for an informal review and adjustment process.

"2. When an existing child support order does not contain a provision which requires an informal review and adjustment process, either parent may request the other parent to provide the information necessary for the informal review and adjustment process. Information shall be provided to the requesting parent within forty-five (45) days of the request.

"3. Requested information may include verification of income, proof and cost of medical insurance of the children, and current and projected child care costs. If shared parenting time has been awarded by the court, documentation of past and prospective overnight visits shall be exchanged.

"4. Exchange of requested information may occur once a year or less often, by regular mail.

"5. a. If the parents agree to a modification of a child support order, their agreement shall be in writing using standard modification forms and the child support computation form provided for in Section 120 of Title 43 of the Oklahoma Statutes.

"b. The standard modification forms and the standard child support computation form shall be submitted to the district or administrative court. Either court shall review the modification forms to confirm that the child support obligation complies with the child support guidelines or, if agreed to by the parties, the court may approve a deviation from the child support guidelines as provided in subsection B of Section 118H of this title. If the court approves the modification forms, they shall be filed with the court."

10.

The simplified procedure for requesting a modification is as follows:

"A copy of the request for modification of child support and the 'Parent's Worksheet for Child Support Amount,' including supporting documentation, showing that the proposed child support amount would vary 15% or more from the existing child support order shall be served on the other parent, or on both parents if filed by the state Title IV-D agency, pursuant to Rule 27, Arizona Rules of Family Law Procedure (ARFLP).

"If the requested modification is disputed, the parent receiving service must request a hearing within 20 days of service. If service is made outside the state, as provided in Rule 42, ARFLP, the parent receiving service must request a hearing within 30 days of service.

"A party requesting a hearing shall file a written request for hearing accompanied by a completed and sworn 'Parent's Worksheet for Child Support Amount.' Copies of the documents filed, together with the notice of hearing, shall be served on the other party and, if appropriate, the state Title IV-D agency by first class mail not less than ten judicial days prior to the hearing.

"Upon proof of service and if no hearing is requested within the time allowed, the court will

review the request and enter an appropriate order or set the matter for hearing."

"If any party requests a hearing within the time allowed, the court shall conduct such hearing. No order shall be modified without a hearing if one is requested."

Ariz. Rev. Stat. Ann. § 25-320(24).

11.

I note that the Pennsylvania child-support guidelines require an "emancipation inquiry and notice to [be sent] to the [child-support] obligee" "[w]ithin six months prior to the date a child who is the subject of a child support order reaches [the age of majority in that state]". I think that this requirement creates too much of an administrative burden on the courts. The notification in the original child support order I have proposed should be sufficient to place a parent on notice of the right to seek modification of the order upon the emancipation of one of multiple children.