

Proposed Committee Comments to
Amendment to Rule 32, Ala. R. Jud. Admin.

Committee Comments to the Amendment to Rule 32,
effective _____, 202_.

Rule 32 was amended effective ____, 202_, to provide a simplified procedure for the reduction of child support in those cases involving multiple children where one or more of those children will become ineligible to receive child support within three years of the entry of the child-support order. This amendment to Rule 32 is designed to promote judicial economy and to help parties avoid the unnecessary time and expense that would otherwise be required to modify child support where one or more children are emancipated or otherwise become ineligible for child support within a relatively short period of time (i.e. three years) after the order establishing child support is entered. It is intended to provide an express and limited exception to the general rule against a prospective modification. However, nothing in this amendment prohibits either party from pursuing a modification of child support based on a material change of circumstances as otherwise allowed under Rule 32.

Rule 32(A)(3) was amended to add subpart (g)(1) to provide trial courts the discretion, in those instances when one or more children will become ineligible to receive child support within three years of a child-support order being entered, to calculate child support on multiple worksheets and to order that the reduced child-support amount become effective when the older child(ren) become ineligible to receive child support without the necessity of additional court action.

Rule 32(A)(3) was amended to add subpart (g)(2) and (g)(3) to address those instances when a court exercises its discretion under this Subsection and an income-withholding order is in place for the payment of child

support. These subparts provide an administrative process (similar to that outlined in Alabama Code 30-3-62(i) for the termination of child support when all children are emancipated) to issue an amended income withholding order without the necessity of a formal hearing. It further provides that if a child support obligor follows this prescribed procedure and files the required affidavit at least 60 days prior to the event that triggers the change in child support (i.e. one or more of the children becoming ineligible for child support) and the higher child support continues to be withheld, and paid to the obligee the resulting overpayment will be presumed to be a credit against the obligor's child support obligation. This rebuttable presumption would not apply if the obligor did not follow the procedure outlined in subpart (g)(2) within the time prescribed therein, including providing proper notice to the obligee. Where such a credit results, the trial court should apply any resulting credit in a manner to "assure that the basic needs of the children are not sacrificed to secure the credit." *Wicker v. Hallman*, 245 So. 3d 627, 632 (Ala. Civ. App. 2017).

Rule 32(A)(3) was amended to add subpart (g)(4) to require trial courts to include certain prescribed language in their orders establishing child support involving multiple children. The prescribed language is intended to assist parties who are subject to those child support-orders to avoid the common problems of either inequitably continuing to pay child support for ineligible children or unilaterally reducing the child support which could lead to a shortfall in support for the remaining children.