MEETING OF THE ADVISORY COMMITTEE ON

CHILD SUPPORT GUIDELINES

AND ENFORCEMENT FOR THE STATE OF ALABAMA

FRIDAY, OCTOBER 13, 2023

10:00 a.m. CDT

LOCATION HELD:

Heflin-Torbert Judicial Building
Mezzanine
300 Dexter Avenue
Montgomery, Alabama 36104-3741

FINAL COPY

Member/Liaison Attending:

The Honorable Greg Cook,	**Associate Justice, Supreme Court of Alabama, Montgomery**
The Honorable Patricia Stephens,	**Circuit Judge, 10th Judicial Circuit, (Jefferson County)**
Professor Penny A. Davis,	**The University of Alabama School of Law, Tuscaloosa (Chair)**
Professor J. Brian Gray,	**Professor Emeritus of Statistics, Culverhouse College of Business, The University of Alabama, Tuscaloosa**
Jennifer M. Bush,	**Esquire, Attorney, Legal Division, Alabama Department of Human Resources, Montgomery**
Josh James,	**Esquire, Staff Attorney for the Honorable Christy Edwards, Judge, Alabama Court of Civil Appeals, Montgomery**
Katie Steinwinder,	**Esquire, Attorney, Montgomery**
Ms. Lathesia S. McClenney,	**Director, Child Support Enforcement Division, Alabama Department of Human Resources, Montgomery**
Ms. Shirlee Beach,	**Morgan County Department of Human Resources (Decatur)**
Emily Hawk Mills,	**Esquire, Attorney, Gadsden**
Laura Wells,	**Esquire, Attorney, Dothan**

Rhonda F. Wilson,	**Esquire, Attorney, Jefferson County Department of Human Resources (Bessemer Division)**

Other Persons Attending:

Stephanie Blackburn,	**Esquire, Staff Attorney, Supreme Court Clerk's Office, Montgomery**
Bob Maddox,	**Esquire, Staff Attorney, Legal Division, The Alabama Administrative Office of Courts, Montgomery**
Dr. Jane Venohr,	**Center for Policy Research, Denver, CO, (VIA ZOOM)**
Ms. Lisa Clark,	**Program Manager, Policy and Procedures, Child Support Enforcement Division, Alabama Department of Human Resources, Montgomery**
Ms. Vernecia Howell,	**Program Specialist, Child Support Enforcement Division, Alabama Department of Human Resources, Montgomery**
Abigail W. White,	**Clerk, The Honorable Greg Cook, Associate Justice, Supreme Court of Alabama**
Haleigh Chambliss,	**Clerk, The Honorable Greg Cook, Associate Justice, Supreme Court of Alabama**

Ms. Beverly Slack, Court Reporter

* * * * *

MR. MADDOX: I'm about to start the Zoom with Dr. Venohr. She's joining us. I don't think she has a presentation, per se, but we'd like for her to still join the meeting in case questions come up.

PROFESSOR DAVIS: So, just a reminder to start the recording when you start the Zoom. So, I'll let you go ahead and do that.

At this point, if any of you remember Beverly Slack has been with us before. So, Beverly, if you want to raise your hand for everybody.

And, she will be attempting to take down every word that we say and it will greatly assist her if you remind her who you are as you begin to speak.

We have -- I asked ahead of time and we have our name placards, but they're a little difficult like this one, as an example, to read. And, Rhonda's would be difficult, maybe, to read. And, of course, the public, they don't have the

placards, though.

COURT REPORTER: I have their names, yes.

PROFESSOR DAVIS: But, you have their names. Okay, so, if anyone else comes in, we'll get their names as well. So, we're going to go ahead and start. I guess, we'll start with Bob and let everybody kind of go around and introduce themselves.

We don't meet -- we're not meeting as often now as we did for awhile. So, it's good to identify each other and kind of what your relationship is to the Committee if you have a special relationship.

MR. MADDOX: Good morning Bob Maddox with the AOC Legal Division. I'm the AOC Liaison for the Committee.

MS. BLACKBURN: I'm Stephanie Blackburn. I work in the Clerk's Office here at the Supreme Court and I'm a Liaison for the Committee.

MS. MCCLENNEY: Lathesia McClenney. I'm Director of the Child Support Enforcement Division with the Alabama Department of Human Resources.

PROFESSOR GRAY: Good morning, I'm Brian Gray. I'm a Professor of Emeritus at the University of Alabama.

MS. WILSON: Rhonda Wilson. I'm the DHR Attorney for Bessemer Division in Jefferson County.

MS. STEINWINDER: Katie Steinwinder. I'm in private practice here in Montgomery.

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

MS. BUSH: I am Jennifer Bush. I'm with DHR Legal here in Montgomery.

MS. BEACH: I'm Shirlee Beach. I represent the Alabama Child Support Association.

HONORABLE COOK: I'm Greg Cook. I'm a Justice here at the Supreme Court.

MR. JAMES: I'm Joshua James, Court of Civil Appeals.

MS. MILLS: I'm Emily Mills. I'm an attorney in private practice and I represent DHR on child support.

MS. WELLS: I'm Laura Wells. I am a private practice attorney in Dothan.

PROFESSOR DAVIS: Thank you. And, if our public members, we have -- Justice Cook, do you want to introduce your law clerks or do you want them to introduce themselves?

HONORABLE COOK: Introduce yourselves.

MS. WHITE: I'm Abigail White, law clerk for Justice Cook.

MS. CHAMBLISS: And, I'm Haleigh Chambliss, law clerk for Justice Cook.

HONORABLE COOK: Brand new admittees to the Bar. They just passed the Bar.

(Applause around table.)

MR. MADDOX: That deserves an applause. A big accomplishment.

PROFESSOR DAVIS: Either one of you all can go first.

MS. CLARK: Child Support Policy Program Manager, Lisa Clark.

MS. HOWELL: Vernecia Howell, Program Specialist, Child Support Policy for Alabama DHR.

PROFESSOR DAVIS: Now, I usually ask at this time, but I'll ask, again. Do any of the four of you have any comments that you wish to

make at the end?

(Negative responses from public.)

PROFESSOR DAVIS: Again, I'll revisit that question in case someone has a question that comes up.

All right, well, I think Dr. Venohr has joined us, maybe. Would you like to say hello to everybody?

(Dr. Venohr present via Zoom at approximately 10:12 a.m. CDT.)

DR. VENOHR: Hello, I'm the economist that helps the Committee. So, I don't think there's economic issues today.

PROFESSOR DAVIS: Yes, hopefully not. I don't know if Bob told you, but you are now on a very large screen, so we can see you very well.

MR. MADDOX: It's a theater screen, Jane. You're in the movies now.

PROFESSOR DAVIS: You're a movie star to us, anyway. You've always been a star and we appreciate all your help.

At this point, I want to ask Stephanie or Bob, did y'all get any written comments from

the public at this time?

MS. BLACKBURN: I did not.

MR. MADDOX: No, ma'am.

PROFESSOR DAVIS: I have not, either. Do we have a quorum?

MS. BLACKBURN: We do not have a quorum as of yet.

PROFESSOR DAVIS: Yet, okay. So, if at some point, we do get a quorum, at appropriate times, kind of break in and we'll note that for the record.

I don't know that we'll necessarily be voting on -- we may or may not vote on things today. That's good to know. And, this particular Committee has to give notice to the public. We always welcome their input.

So, Bob, can you tell us about your media distribution?

MR. MADDOX: Yes, notice of the meeting was distributed via e-mail to the media outlets around the State on September 11th.

PROFESSOR DAVIS: September 11th, okay. Our next order of business is approval of the

transcripts. So, does anyone have any suggestions or changes, deletions or anything on the transcript?

(No responses around table.)

PROFESSOR DAVIS: Again, I appreciate the hard work that you all do. So, do I hear a motion from the Committee members that they be approved as drafted?

MS. STEINWINDER: I move to approve, Katie Steinwinder.

PROFESSOR DAVIS: And, do I hear a second?

MS. WELLS: Second.

PROFESSOR DAVIS: Okay, a motion and a second. All in favor, please say, "Aye".

(Affirmative responses around table.)

PROFESSOR DAVIS: Any opposed?

(No responses around table.)

PROFESSOR DAVIS: All right, well, our agenda, I think, is going to be fairly condensed today, unlike a lot of our Committee meetings. The first issue that we wanted to kind of bring to the attention of the Committee during the last

regular session, the legislature passed a fairly extensive provision of the notary law.

And, so, Bob brought to our attention that maybe we ought to look and review the CS Forms. And, so, I want to turn it over to Bob to discuss that form.

MR. MADDOX: Thank you, Penny. In the 2023 Legislative session, one of the acts which passed amended several sections of the notary public part of the Code of Alabama.

On the last page, I didn't include the entire Act, but just Page 4, which I think is just relevant for this discussion this morning. It's in subsection (b), Lines 104 to 109, "The form and content of any notarial act on an instrument to be recorded in the public records, including the court system, shall include an oath, acknowledgment, and signature of each party to the document, or his or her mark, and the signature of the notary public and their seal of office by either ink stamp or embossed impression."

Because of this requirement, we've had to laboriously, I'll say that, just go through all

of our court forms to ensure that we've had the proper language in them.

At first, we thought we would have to have the notary public, if they're done that way. If the notary public notarizes any court form, we thought we would have to attach -- have them attach an acknowledgment form, we call it.

The Alabama Probate Judge's Association and the Alabama Law Institute in Tuscaloosa were tasked with providing a training program for the notaries public as a result of this law. There are several criminal penalties attached to this law. So, they wanted to ensure notaries, especially new ones, were aware of the law changes.

So, they did a Powerpoint Presentation and gave some examples of acknowledgments. One for an individual and one for an entity, like an agent of a corporation, for example, and one remotely. Now, they're authorized to notarize remotely, if they can see the person and can attest to them and all that.

So, we thought with our court forms that

had notary public on them, which includes this one, we would have to have the notary attach one of these acknowledgment forms that comply with the law.

Well, that obviously has caused a lot of questions, especially practically, for our Circuit Clerk's offices because we did think Judges, Circuit Clerks and other officers authorized to administer oaths, who can also verify documents, in addition to notaries. You don't have to be a notary if you're an officer authorized to administer oaths, like Judges and Circuit Clerks.

We were told by the Probate Judges Association and the Alabama Law Institute, they did not have to attach those acknowledgment forms. They could just stick with the current language, "Sworn to and subscribed before me, this date." Like it says on this proposed language on the third page, which is on the current CS-41, by the way, but I just added it to this third page.

So, we had a Circuit Clerk raise an issue saying that's really going to be a problem if we're going to have -- for example, you've got

a Protection from Abuse Petitioner who needs an Ex Parte Protection Order quickly, you're going to make them go find a notary and have to attach the acknowledgment form, you're going to have to give them the extra forms and it's just going to be a lot of paper.

So, I went back to that group who developed a Powerpoint and we had a Zoom meeting with the Circuit Clerk included. And, it was decided after further research by that group that this language in subsection (b) is sufficient when it says on oath, as long as it says, "Sworn to," that's technically an oath, so you don't have to say the word oath and the acknowledgment like it was before. And I think they've actually taken that out of the notary that I heard yesterday. They had taken the word oath out of their acknowledgment language.

So, the bottom line is they said, basically, "Sworn to and subscribed before me this date," is sufficient for this purpose, which was great for us because we can kind of go back to the old form language. We don't have to have all that

extra knowledge language attached to the forms.

So, I drafted kind of some extra language. This was actually taken from the Protection from Abuse Petition. I thought this was legally sufficient language in addition to what's on the CS-41 now, if we can fit it on there, which basically says, "Before me, the undersigned authority, personally appeared."

Let's say I'm the affiant, Bob Maddox, who is known to me, or presented an identification card to me and who being duly sworn, deposes and says that he or she has read the foregoing Child-Support Obligation Income Statement Affidavit and the facts are true and correct and understands that intentional falsification of the information presented in this Child Support Obligation Income Statement Affidavit may subject him or her to the penalties of perjury, which, I think it's perjury third degree, if you swear falsely. That would be charged here.

And, then the affiant would print and sign his or her name. And, then, either the notary public or the officer authorized to

administer oaths would verify it.

So, I proposed this language. The reason we are presenting it to this Committee is because CS-41 and I think, 42 and 43 are actually appended to Rule 32 and are referenced in Rule 32 itself.

Therefore, I think this Committee would need to approve any, just like we did the CS-42, for example, any changes to that to go to the Supreme Court for ultimate approval to change this Form before we put it on E-Forms and other sites. That's what I'm bringing before the Committee.

PROFESSOR DAVIS: Thank you, Bob, for bringing that to our attention. Sometimes, these bills that get passed, they have substantially more consequences that maybe they thought at the time that they were being passed. I don't know if that's true in this case or not, but, certainly, when you start changing all the oaths and the legal documents that we are accustomed to, to start touching all those that have that potential for a lot of changes that need to be made.

But, we don't have a quorum, so we can't

really vote on anything right now, but I think it would be appropriate, maybe, since we have Court liaisons just to bring it to the attention of the Supreme Court. Really, all we would do is advise the Court.

So, if y'all are okay, then, I would suggest what we do is since Bob has done this work, maybe, go ahead and submit, he can submit what he's presented to the Committee with a comment that the Committee could not vote on that quorum, but we wanted to just bring it to the attention of the Court.

And, then y'all can make the CS-41 changes, language, this language or whatever you all decide to do. I suspect it will be a change that it will be consistent with other Court-related documents.

HONORABLE COOK: Yes, I was unaware of that amendment, but what I would suggest is because everybody is being hit with that cold is that you e-mail it to the whole Committee, give them a 10-day or a two week period to provide any comments to you.

PROFESSOR DAVIS: Right.

HONORABLE COOK: And, then, unless there are any objections, I would then submit it with that note to the Court.

PROFESSOR DAVIS: With any comments to be submitted, too.

HONORABLE COOK: What I've found so far is when we make these kind of changes, we rely heavily on our Reporter of Decisions.

PROFESSOR DAVIS: Right.

HONORABLE COOK: Who words this for us. And, so they -- it's possible they might change some of the wording, one word here or one word there.

Like, for instance, the use of the Child-Support Obligation Income Statement/Affidavit, we use that phraseology twice in this.

PROFESSOR DAVIS: Right.

HONORABLE COOK: Maybe that --

PROFESSOR DAVIS: They would reword it.

HONORABLE COOK: They might reword it to -- they'll use it once, or they might reword it to

say the foregoing document or I don't know how Shawn would do it.

PROFESSOR DAVIS: Right.

HONORABLE COOK: This -- on his initial presentation, it looks good to me, but I would want to hear what Shawn had to say. And, I would want to hear if anybody else in the Committee had any input. And, I think that's a good plan.

PROFESSOR DAVIS: Okay, we'll do that.

MR. MADDOX: I will say, I forgot to add or type below the signature or notary public, et cetera. We need another paren notary public and my commission expires on this date.

PROFESSOR DAVIS: Yes.

MR. MADDOX: I forgot to add that. They will have to affix their seal, too, as a notary, per the law.

PROFESSOR DAVIS: Right. So, I think what will be happening is a lot of this tinkering will be happening on other documents, too, and I'm sure they'll want some type of consistency throughout.

HONORABLE COOK: Right. That's why

we've got a Reporter.

PROFESSOR DAVIS: Right, exactly.

HONORABLE COOK: That's what they do. They make sure the wording is consistent.

PROFESSOR DAVIS: Yes, and aren't we grateful for those folks.

HONORABLE COOK: I am very grateful.

PROFESSOR DAVIS: So, okay, we'll do that and Bob, if you'll make a note and we'll send out your information and we'll get Committee comments for a couple of weeks.

MR. MADDOX: Sure.

PROFESSOR DAVIS: Depending on what responses we receive, then we can send that up to the Court. I guess, Stephanie, and then we'll have the hierarchy of things. We'll either -- we'll talk to Stephanie and she'll let us know the hierarchy and the way we send things up.

Does anybody have -- Emily?

MS. MILLS: Can we try to get it on one page, if possible? Like, if we even have to rearrange the top of it a little bit.

MR. MADDOX: We will.

MS. MILLS: Thank you.

MR. MADDOX: We have a good typesetter. She's been remarkable with these other forms, believe me. It may be small, but we'll try to fit.

PROFESSOR DAVIS: That's a good point. It matters. Is there any other comments from the Committee before we -- I'm not trying to rush you, but Stephanie --

MS. BLACKBURN: I just wanted to say that we now have a quorum.

PROFESSOR DAVIS: We do. Thank you. You've become very important if you make a quorum.

HONORABLE STEPHENS: Sorry, I'm late. I did let Bob know I was going to be late this morning.

MR. MADDOX: Yes, she did.

PROFESSOR DAVIS: Thank you, we appreciate that. And, I'm happy to report that Emily did not cause the accident. She seems to be the impetus for not causing them, but getting caught up in an accident to get here.

MS. MILLS: Caught up in an accident.

PROFESSOR DAVIS: So, I was pleased when she got here early.

All right, any other comments relating to the notary issues? To the public, I know you all deal with forms, too. Do you all have any comments about the notary issue?

MS. HOWELL: No.

MS. CLARK: No.

PROFESSOR DAVIS: Judge Stephens, just to bring you up to date real quickly. We were looking at the Legislature passed a new notary law. And, so it's going to entail some language changes on the CS-41, as well as other documents.

So, Bob will be sending out or Stephanie will send out to the Committee some of the information we've gotten here and then they will gather responses and send it to the Court, in one direction or the other.

MS. WILSON: This is Rhonda Wilson and I have one question.

PROFESSOR DAVIS: Yes, ma'am.

MS. WILSON: The notaries, also, require a default application. So, I wondered did that

extend, also, to the default forms?

MR. MADDOX: If it's any court form, yes.

PROFESSOR DAVIS: I think it -- I think it does. I don't think there's --

MR. MADDOX: Well, we're working on them. It's a lot of them.

PROFESSOR DAVIS: I've brought the Act, but I don't recall any exceptions to that general rule. Any -- a good question. Are there any other comments or questions relating to that?

(No responses around the table.)

PROFESSOR DAVIS: Okay. Well, the next agenda item is we had a Subcommittee that has been working on a request that came in from a Judge for us to look at how we can handle support when we have multiple children involved.

And, particularly, when one is likely to age out within a short amount of time and issue an order. And, so, Judge Sherman is a chair of that Subcommittee and he had planned to attend, but the good news for the family is his son has an opportunity to go to a couple of colleges --

MR. MADDOX: A baseball scholarship.

PROFESSOR DAVIS: A D-1 baseball scholarship, a couple of different colleges and they're going to universities and going to look at those. So, it's a wonderful family event for them to be able to attend. So, he sent his apologies, but as usual, he's been hard at work, the Subcommittee has. And, Katie has agreed to kind of let us know what's going on, as well as the information you have here.

MS. STEINWINDER: Okay, Penny, back in August, we had a conference call with Judge Moore from the Court of Civil Appeals and we had several Circuit Clerks on the call. And, we talked about his input on his thoughts and what we had developed so far.

And, I'll back up a little and give you some background. In the heart of COVID, I think, Judge Moore sent a note to the Committee and he had an issue that he wanted us to look at.

And, that was this issue. We had multiple children at the time of the, the entry of the child support order. If it's -- there's a

likelihood that one or more of those children will be aging out, then he thought it proper to have some language that we would enter and there's a may/shall issue, but that multiple orders would be entered at the time of the entry of that child support order. So that if anticipated, you would have a CS-42 that reflected time of the entry of the order and a CS-42 that reflected if it was one year later that one was going to age out with the CS-42 with the obligation to become for the obligor and there could be multiple ones, if you had children that were stair step in ages.

And, so, that got sidelined a little bit. We worked a little on that during COVID and then we had bigger fish to fry, maybe.

PROFESSOR DAVIS: Yes, we had the deadline, the Federal Court deadline with the Schedules. So, we dropped that and full steam ahead on the Schedules as we're required to do and now we circle back.

MS. STEINWINDER: So, now, we've come back to that topic and so on the call Judge Sherman set up, we had already presented the

Committee some language. And, we had based it, I would say, he had based it on a Georgia statute with some revisions and taken into account some comments from the Committee and the Subcommittee.

So, Judge Moore gave us his input in that conference call that took place in August and he had some suggestions and I'm just going to -- I sort of just bulleted them in my notes.

PROFESSOR DAVIS: For the Committee members, also, for the public, you'll see two memorandums in your material that's right behind the big document that we've already voted on.

And, one is they -- they're both dated the same date, but one is when the Committee met and that's the one we're going to be talking about, the last Committee, Subcommittee meeting.

MS. STEINWINDER: I think there's some members of the Committee here today who have voiced some concerns about a prospective modification. And, I never know if I'm saying this correctly, but Ex Parte Hovater is how I've always said it, if anybody knows that I'm wrong, tell me now, but you all are probably familiar

with that line of cases that talks about a prospective modification and that you have to know -- you have to base the modification on what's in the child's best interest and I may be going down a slippery slope.

PROFESSOR DAVIS: No, that's okay.

MS. STEINWINDER: That was voiced and registered by some Committee members. And, so, we did talk about that with Judge Moore and his opinion was and it's in this memo, that the Supreme Court had the authority because we know they had the authority to do -- to carve out that exception.

He believed that while those concerns may be well founded, that that's not something that can't be overcomed by the Supreme Court carving out an exception. So, he did talk back through a good bit.

He also felt that where our -- what we had put together had suggested that a court, a trial court may order child support using separate Worksheets at that time. He believed it should be mandatory and so he's saying that it should be a

shall, instead of a may.

And, we had proposed as a Committee that we consider a two-year period. So, if you had a final child support intervening order being entered, but you had children who would be prospectively aging out within a two-year period of that order, that was what we had talked about. And, he suggested, Judge Moore suggested that we look at a three to five year period. And, so, that's something else that has been suggested for our consideration.

Next, we talked about overpayment and that I think it's been talked about a good bit in the Subcommittee meetings, but if there's an overpayment that arises in the form of a potential credit, Judge Moore encouraged the Subcommittee to consider a Committee Comment to cure this issue.

And, his concern is that we need to make sure that the needs of a child, on-going needs of a child are met before making a decision about an overpayment. Bob, is that your understanding?

MR. MADDOX: Correct.

MS. STEINWINDER: And, he believes we

can achieve that through a Committee Comment. I know there's been some spirited debate, I think about the overpayment credit issue. So, we did discuss that. That was another issue.

The Circuit Clerks on the call talked about the practical impact of this and what that would mean, how you would take care of the IWOs. Laura, were you on that call?

MS. WELLS: I was not. I did not get to participate in that call.

MS. STEINWINDER: Okay. Is anybody present today who was on the call? Bob, were you?

MR. MADDOX: I was.

PROFESSOR DAVIS: Emily, I think she was.

MS. BEACH: I was on the call.

MS. STEINWINDER: Okay, and we talked about the entries of the IWOs. And, I may need you ladies, if you all recall how we addressed the IWO issue, those Clerks talked about practically what we need to do.

Emily, I'm going to put you on the spot. What is your recollection of the Clerks' position?

MS. MILLS: I think they -- I don't really recall, but I think there was some concerns about, I think the Clerks handled it differently how they processed those complaints.

MS. STEINWINDER: County-by-county, right?

MS. MILLS: County-by-county.

MS. STEINWINDER: That was the heart of it, I think.

MS. MILLS: Instead of trying to figure out how to logistically kind of get everybody the same process, whether they held it to a certain date and then sent it to the Judge or sent it to the Judge and it was to be held to a certain date. I think, if I remember correctly, the way the Clerks internally processed the documents are different.

MS. STEINWINDER: And, I think, maybe, the cure that we suggested for that or I didn't suggest it, that some wise person suggested, was that we could have some training for the Circuit Clerks and their staffs and to figure out whether we could come up with a uniform way of doing it.

I know different counties do it different ways and so that's going to be something we've got to figure out.

PROFESSOR DAVIS: But, I think, even, during our discussions before, the Judges that were -- Judge Williams was one of them. He's not here now, but it was a part of his discussion about when he got the information versus other Judges that got the information at a different time.

So, that's not a new discovery to us, but I don't think it's anything that's been quite been worked out, either.

MS. STEINWINDER: That's a fair statement and it's not quite been worked out, either. And, as written, if you'll go back to the way that Judge Sherman drafted our suggested language, it says that an amended withholding order shall be issued by the court, unless the obligee or the Department request a hearing within 20 days of service of the affidavit.

And, that, I think is where it came in, when Judges see it. And, Judge Stephens, I don't

know what Jefferson County does, but ...

HONORABLE STEPHENS: We usually get them right away from our Clerk's Office and then my staff will hold them and make sure it's past that 20 days.

MS. STEINWINDER: Do you see, the way it's written, do you see it working in your county? Is that a fair question?

MR. MADDOX: I think it would have been the same way, wouldn't it?

HONORABLE STEPHENS: Yes.

MR. MADDOX: It's basically tracked after the current procedure in the statute.

HONORABLE STEPHENS: Yes.

MR. MADDOX: So, I think it would work similarly in this situation, correct?

HONORABLE STEPHENS: It should.

MS. STEINWINDER: It should, okay. And, there's some language that would have the Trial Judge give a hearing on this issue, if it was requested within the 20 days, priority, and to render a decision as soon as administratively feasible, so that those issues don't linger and

there was the issue that we hit on a minute ago about a credit.

And, I don't know if that's something that anybody wants to talk about the issue of the credit and whether we need a Committee Comment. I don't know if that's something that anybody is ready to dig into at this point and that language that the trial court should take steps to make sure the child's on going needs are met before addressing the issue of the credit and that is a little new.

PROFESSOR DAVIS: It's new to us.

MS. STEINWINDER: Yes, ma'am.

PROFESSOR DAVIS: Maybe not to other jurisdictions, but, obviously, we all want the child to be taken care of. That's the request of all of this.

Why don't we do this, was there anything else that was kind of an overview?

MS. STEINWINDER: That's kind of the overview. Those were his, I think, his suggestions based on his review of the proposal.

PROFESSOR DAVIS: Okay. Why don't we

kind of walk through these and see if anyone has any comments on these particular issues? And, several of you indicated that you were there at the Subcommittee meeting when Judge Moore addressed it. So, you may think of something else that he said at the time or that someone else said at the time.

So, the first issue that Katie mentioned was the concept of prospective modification. It was kind of a divided Committee. Some that thought and I think, I'm not trying to put words in Justice Cook -- I think I recall him saying he felt like the Court had the authority to do that and I maintain that position, too. But, obviously, it's about a concern because it does go against the current case law.

So, does anybody have any comments? We've got some people that were not here at the other meeting to discuss that. So, we'll open up if anybody has anymore comments.

MR. JAMES: Bob, you made a reference a moment ago to the current procedure. Are you referencing the application for termination of the

income withholding order?

MR. MADDOX: Correct. It's statutory, currently. It was patterned after that statute, the Subcommittee work.

PROFESSOR DAVIS: And, I guess, in terms of us proceeding forward, if the majority of the Committee felt like we didn't have the authority. The Court did not have the authority. I think we just, after the end of it, we wouldn't pursue it.

So, with us continuing to pursue it, I think that would indicate that the majority of us, at least, think now that the Court because the innate nature of the Supreme Court does have the authority.

So, why don't we kind of do a straw vote, again, not that we're going to submit it to the Court or anything, but just to see if we feel like we have the -- the Supreme Court has the -- a jurisdictional authority that we can make a recommendation of this sort, whatever it winds up being.

So, everybody that thinks we should proceed along this line, then if you would, just

raise your right hand and those that think that we should not because of the lack of jurisdictional opportunity, raise your right hand, okay.

(Affirmative responses around table.)

PROFESSOR DAVIS: So, I think at this point, we're comfortable with that. I think that was a good discussion to have and I always welcome the different views. I guess, the next issue that Katie mentioned that was discussed, then was the issue of mandatory or discretionary, the way the Committee had landed before was to allow the Judges to have a discretion. And, obviously, Judge Moore's position, apparently, was he would prefer mandatory.

So, let's open that concept or the issue back up and see if anybody has persuaded more one way or the other or if we want additional discussion because different members are here today than before.

Oh, I'm sorry, go ahead.

HONORABLE STEPHENS: I'm leaning towards discretionary.

PROFESSOR DAVIS: Okay.

HONORABLE STEPHENS: And, the reason I'm leaning towards discretionary is, what if we have someone who has a horrible payment history. They have a large amount of arrears, already, so that when a child ages out, then it's not automatic that the IWO changes.

So, that then we have an opportunity of another time to give them credit towards the arrears.

PROFESSOR DAVIS: Okay.

HONORABLE STEPHENS: And, if you have someone that's had a perfect payment history, then you can go ahead and say it terminates in two years on this child.

PROFESSOR DAVIS: Okay, any other thoughts? Yes.

MR. JAMES: Joshua James. Okay, there's some symmetry to making it required because the entry of all other CS documents are required by the statute already and making that required across the board would make sense.

Now, working for the Court of Appeals, the discretionary things a lot of times don't make

it into the record. We need some of those things a lot of times whenever we are looking at the file, at the record on appeal.

And, I believe we are making sure that we have that available so that we on Appellate 2 and 3 can both know what we're looking at and not make certain presumptions under prevailing case law.

PROFESSOR DAVIS: Right.

MR. JAMES: That the trial court was correct in taking whatever action it took, then that appears to be some symmetry across the existing child support laws for that application.

PROFESSOR DAVIS: Yes, ma'am.

MS. MILLS: I kind of have mixed views because I think as far as one great thing about child support and the Child Support Guidelines, for the most part is like he said you have a consistent, everybody in this circumstance ends up with this outcome, but from a practical representing people, each case is different.

So, you could have someone who is going to get pay raises every year or somebody that's

going to retire or you know, the circumstances of a particular family can change in two years or two years from now, it may be exactly the same. And, the Judge can say that we expect, we have a teacher and a firefighter and their incomes will be the same in two years from now. And, it makes sense to enter that order, but in this scenario where you have somebody that has income up and down or their circumstances change or they have a Social Security case pending or it may be wise to have to come back and re-evaluate it in two years.

So, from a practitioner's standpoint, a Judge having the discretion for the circumstances of the case, from a legal scholar's standpoint, I like the consistency.

PROFESSOR DAVIS: Yes.

MS. MILLS: So, if that tells you, I don't really know, but I think both sides have good points.

PROFESSOR DAVIS: That tells me you're thinking deeply about it.

MS. STEINWINDER: I have an issue -- I just, if it's shall, does that become a reversible

error and if nobody, neither the Trial Judge nor the attorneys or a pro se party did that, is that then a reversible error if somebody catches it –

PROFESSOR DAVIS: Down the road.

MS. STEINWINDER: -- down the road in a timely fashion? I don't know, Joshua? How much impact does shall versus may have, I guess? What kind of implications?

MR. JAMES: I think in that application, we would have an argument that we don't have what we need to support the appeal. And, so that certainly could become an issue.

HONORABLE COOK: If it was raised timely.

MS. STEINWINDER: But, it's a reversible error not to include all of the documents that the court needs in order to determine how child support was arrived at. So, I guess, that would be the same theory.

MR. JAMES: And, cooperate under that symmetry theory.

MS. STEINWINDER: Right.

MR. JAMES: Then, I would expect that it

would be handled in the same way, if it were worded in the same way.

MS. BUSH: This is Jennifer Bush. I have a question. Could it be drafted so that it's mandatory that the Judge enter the staggered child support amounts, but they come back and at that point, the Judge then has a discretion to look at it after the two years, three years, whatever time period, to come back and look at it and say, "Okay, you have not paid appropriately and you have a large amount of arrears."

So, now, the decision that was entered two years ago was mandatory. I had to do that, but now looking at it, we -- you are not going to get that relief of having your income withholding order diminished, to address the concerns that probably will be out there when someone is not paying, a hybrid.

HONORABLE COOK: Isn't that always true? Can't you always come seek a modification, though?

MS. STEINWINDER: And, there is that language in that same paragraph. This is not to preclude a modification. It's always on the

table.

MR. JAMES: And, to that point, if we are modeling this after the application for the termination of income withholding order, you have to affirm through that application that there were no arrears.

MS. STEINWINDER: Uh-huh. (Affirmative response.)

MR. JAMES: So, I guess where I'm going is if there's concern about a change in income, at the time the application is made for the second child-support obligation to come forward, just as there's a response of time in an application to the termination of the IWO, the respondent could have that same prescribed time period in order to notify the court of a potential change in income or to notice the court of the potential arrearages that need to be addressed under the theory of the child being cared for presently that Judge Moore had described.

HONORABLE COOK: Do we think Trial Judges will do it if we make it discretionary?

HONORABLE STEPHENS: I would.

HONORABLE COOK: Now, if we had to --

HONORABLE STEPHENS: It makes life easier. It actually makes life easier than them having to come back say in two years or a year or in six months, sometimes.

So, I would absolutely enter the orders because it does make life easier.

MS. MILLS: And, I would suspect not any of my clients, but there are some cases the Judge does not want to see anytime soon, is having the ability to -- when somebody has a domestic case, there's a lot of drama and trauma, usually, that goes with that.

So, when the case is over, it's over and then people can heal, but we've got to turn right back around and go back to court, then you're reopening all those old wounds. So, I like the two-year window because it gives everybody time to breathe and recover from what they just came out of.

But, I think the Judges probably would like, there's some people, I know that Judges may like never to see, again, if possible, but not any

of my clients.

MS. WILSON: This is Rhonda Wilson. I have a question. Like discretionary, do we mean like the Judge is going to decide or is it based on the issue being raised by one of the parties and then the Judge making a decision about whether to do it. I just wanted a clarification about what does it mean by discretionary?

Because may, I mean, we know what shall means, but discretionary. Is discretion based on the parties bringing up the issue or --

PROFESSOR DAVIS: So, could the Judge on his own motion, particularly, having pro se parties, they're not going to know the law?

MS. WILSON: Right.

PROFESSOR DAVIS: Is that what you're --

MS. WILSON: Right, that's my question. That's what my question is.

HONORABLE STEPHENS: Now, this is Patricia Stephens. When I brought up it being discretionary, I was thinking in terms of the Judge looking at the ages of the children and then entering those orders based on that.

MS. WILSON: Okay.

HONORABLE STEPHENS: And, not the parties having to bring it up or the attorneys.

MS. WILSON: Okay. And, will we require the Judge to say anything about why they didn't choose to enter them or that just be --

MS. STEPHENS: That's another question.

MS. BLACKBURN: I haven't practiced in awhile, so forgive me if I'm talking out of turn, but could it be something like a CS-43 where you have to enter, you're either doing it or you're not doing it and why, the CS-43? You're either complying with the Guidelines or you're not and you can explain why if you're not.

MS. STEINWINDER: I'm just wondering, Bob, maybe this is a Bob question. Is it possible, can a CS-43 be amended to include that? I mean, could there be a check in the box added if we proposed it to the Supreme Court and if they liked it? I mean, is that --

MR. MADDOX: Sure.

MS. STEINWINDER: That might be the place --

MR. MADDOX: That's another form I think is appended to this Rule so this Committee could make recommendations on any changes to those forms.

MS. WELLS: So, are you saying you have to consider it, but you don't have to do it?

MS. PEEPLES: And, I guess, you can kind of explain why, though, there's a reason to why you did it?

HONORABLE STEPHENS: Or, do you basically want to have to explain you being a deadbeat in the past and we have to be careful with the language, also?

PROFESSOR DAVIS: I don't recall -- I'd have to go back and reread that. I don't recall if it required a Judge in writing to determine why they chose to exercise discretion or not.

HONORABLE STEPHENS: Well, it kind of goes to why I don't like the idea of having to explain why we don't do 50/50 custody.

PROFESSOR DAVIS: Right.

HONORABLE STEPHENS: Because in the future, a child may see that dad didn't get 50/50

because he was on drugs, DUIs. So, this is kind of like the same thing. In the future, a child may be able to look at this file and do you want them knowing that, well, mom didn't pay it, she should have and had huge arrears and the Judge having to explain that.

And, I think this discussion just got us nowhere.

PROFESSOR DAVIS: Well, no, I think what Judge Sherman had asked is since he could not attend, if Katie would present what the Subcommittee had found and then open it up for discussion so that the Subcommittee could then get feedback from what the whole Committee was thinking and then they are going to go back to the drawing board based on the comments that were received not only from Judge Moore, but the comments based on Judge Moore's comments.

So, I think, this is very helpful. It's -- if it was very easy, then the first draft would have passed and it would be out there and the Supreme Court would have rubber stamped it and it would be good. It's a difficult question, but

it's an important question because as Emily and Stephanie, too, we're talking about real people. And, they're all different in how it impacts on the families.

Any other comments regarding the -- that particular issue of may, shall, maybe you should, maybe you shouldn't, whatever, we wind up with.

(No responses around table.)

PROFESSOR DAVIS: Okay, and if you think of something later, then just certainly share that with any of the Subcommittee members and we -- and anybody that would like to -- who's not on the Subcommittee, we would certainly welcome your attendance to that, too.

The other issue is the -- and, we had some debate over the last few months about the length of time that you would have. It's a two -- I think we kind of set on the concept of maybe a two year window was a good timeframe.

Justice Moore is suggesting we revisit that and think about whether we would want to expand the timeframe from when the child, one or more of the children would age out to a three to

five year window. So, that if you have a child that is -- one child is 16 and the other one is younger and you may have to extend that window a little bit. So, let's open up that aspect for comments.

HONORABLE STEPHENS: My first thought is within five years, someone has come back for a modification, usually. So, my first thought is that five years is a little bit too much.

PROFESSOR DAVIS: Other thoughts?

MS. BEACH: I have a question and this is me not being --

HONORABLE STEPHENS: Three years --

MS. BEACH: -- not having the -- if this is in an order and prior to the two years or three years or five years, whatever is decided, something happens and one of the -- the oldest child dies. What, I guess, at that point, they would need to modify the order?

PROFESSOR DAVIS: Yes.

MS. BEACH: Rather than and that would probably be taken out at that time.

PROFESSOR DAVIS: All right, what -- the

problem that was brought to our attention is that sadly when something like that happens, you have an order that is calculated on three children.

MS. BEACH: Yes.

PROFESSOR DAVIS: And, whether it's the oldest or the youngest that dies, one of them dies, then it's not uncommon that ages or to be a little more positive, ages out.

MS. BEACH: Yes.

PROFESSOR DAVIS: But, in either instance, marries, there are different things that cause that. So, oftentimes, a member of the public will automatically assume that they can decrease their payment by either -- there's three kids by a third or whatever and that's, as we know, is not how the calculations were.

And, so they then wind up, oftentimes, accumulating an arrearage because they have decreased in that. Of course, it's also in our position to a court order and we certainly want to encourage the public to follow the court order. So, it was a lot of public policy reasons why we wanted to address that.

MS. BEACH: So, if they would need to file a modification, there wouldn't be the application of what, of that provision immediately because there is now a reason to?

PROFESSOR DAVIS: What, I think, a part of what Judge Moore was getting at was that if a Trial Judge has someone in front of them and because you know you've got two 14-year-old twins and you've got an 18-year-old, who will, in six months or whatever the timeframe is would no longer be eligible to receive the child support, do you want to force that family to have to come back?

MS. BEACH: Yes.

PROFESSOR DAVIS: And, it's costly to the family. It can be emotionally costly, as Emily points out. And, is not efficient use of court time, either. If you could go ahead in their mind or in his mind account for the fact that we know that in six months, nothing else is going to change, other than the age. That's the thought.

MS. STEINWINDER: Penny, I neglected,

I'm sorry. I neglected to point out one other issue.

PROFESSOR DAVIS: Okay, sure.

MS. STEINWINDER: I didn't want to miss that. There was some discussion, I think, both within the Committee and then on that Subcommittee, I guess, it was a Zoom. I guess, I could call it a conference call, a Zoom meeting about whether trial court has jurisdiction to do these things. That has been raised, I think, multiple times and Judge Moore indicated that he thought the court's -- the trial court could do so under their continuing enforcement jurisdiction.

PROFESSOR DAVIS: Yes.

MS. STEINWINDER: Because a couple of attorneys, maybe, private practitioners raised the issue if it's a final order, there is no jurisdiction. And, so, that was his response. So, that may be something we want to talk about, too.

PROFESSOR DAVIS: Okay. Does anybody have any comments?

HONORABLE STEPHENS: Should the Judge

simply put language in there, the court retains jurisdiction of this issue? Would that help?

MR. MADDOX: I think that would make it a non-final order. Isn't that what the caselaw said? If you reserve an issue, it's not the final issue, possibly?

HONORABLE COOK: The caselaw is a little mixed on reserving jurisdiction and reenforcing an order.

HONORABLE STEPHENS: Say that, again, I'm sorry.

HONORABLE COOK: If you're reserving jurisdiction to enforce an order, I think that's -- I think that's a final order.

MR. MADDOX: Okay.

HONORABLE COOK: If you're reserving jurisdiction to modify it, then maybe not.

MR. JAMES: And, it's common to reserve jurisdiction over QDRO issues and that doesn't create a finality of judgment issue. So, there is, would be some comparable or analogous caselaw that's already in effect that would not be problematic with that judgment.

MS. STEINWINDER: And, for right or wrong, we preserve the court's jurisdiction on issues of the sale of real property and QDRO and those sort of things. So, I guess, that's something I should make sure we're doing correctly, but maybe that is something to consider.

MR. JAMES: Okay.

PROFESSOR DAVIS: And, it could be that in the adoption statute that we just passed, the adoption code, we dealt with the finality issue. And, when there was a particular order entered, the statute specifically said that is a final order. When the Judge does so and so, it's a final order.

So, to the extent that it would be helpful. I guess, the language could be -- the Rule in this case, not a statute, but a Rule would say and that would be the final order.

MR. JAMES: Maybe.

PROFESSOR DAVIS: You all can decide by interpreting the Rule if that helped or hindered.

MR. JAMES: Well, if that reservation

become a jurisdictional issue and we don't want things to drop between the crack, I think it will make sense we get out of that to the CS-42 Form with the calculation that the court will retain jurisdiction or enforcement of that judgment order. And, we wouldn't have to worry about a specific reservation within the written judgment, itself.

MR. MADDOX: I think that's what Professor Davis was saying, if you put in the Rule or maybe a form, too, that would take care of it.

MS. BEACH: As far as this about the two years or five years, my only comment, of course, is that income has changed in cases that we deal with, at least, substantially, in the matter of five years. So, calculation done today in five years is probably not going to be representative of the income at the time. And, that result would be there would be a Petition for Modification, anyway, which I think is what they're trying to avoid is having modifications done anymore than they have to.

PROFESSOR DAVIS: So, this is the kind

of sense that I'm getting, that five years was too far. So, we chose -- well, temporarily, we chose about two years. So, is anybody interested in moving from the two years to say three years? Does that have any appeal to anybody or are people still pretty comfortable with the two years?

And, Dr. Venohr is on. So, I'm going to see if we can ask her. Do you know if any of the other States have done something comparable to this and what timeframes the other States have chosen?

DR. VENOHR: No, that's very much in question.

PROFESSOR DAVIS: Okay.

DR. VENOHR: Sorry.

PROFESSOR DAVIS: No, that's okay. I guess, that's something we could -- if the Subcommittee wants, they could ask you to check and see if there's any data, national data that looks to that. And, I guess, I'm not going to throw Brian under the bus because he was kind enough to drive me down, we've been together. I don't want to have to hitchhike the way back to

Tuscaloosa.

But, would there be data out there that would say and maybe this is also a Dr. Venohr question, that would say that, statistically, people, family income changes a lot from two to three years or is sustained, is fairly stagnant for two years, but by the time you get to four years, it's changed a lot. Does that kind of data --

PROFESSOR GRAY: I think that's an economist question.

PROFESSOR DAVIS: That's -- okay, because she's not driving me home, he is. So, maybe that's something you could look into.

DR. VENOHR: Yes, there isn't data on family, specifically. I mean, I guess, we could tease it out of some data -- on data sources, but there is data on workers. And, there's -- I mean, we could probably look at Alabama Department of Labor data, but it would be individuals.

And, you know what I mean, I think the biggest challenge is that this isn't Alabama-specific, but it's nationally, 55% of the workers

are on hourly wages. And, so hourly wage employees have an inconsistent work schedule, sometimes. They are not always 40 hours a week, especially, in the service sector, leisure and hospitality.

And, they're not always 52 hours a week, but whether that wage fluctuates enough to impact the order amount is another issue, but we can -- if it would be helpful, we could put together some statistics on that and try to, well, we would look at it from the individual worker and then also I'm just trying to think of some of the data sources on families, in general.

But, yeah, the data does suggest that income changes frequently. Whether it changes enough to affect the order, now, that I can't tell you off the top of my head. What is your -- Alabama's modification threshold is 15% for the Agency?

PROFESSOR DAVIS: It's 10%.

DR. VENOHR: I'm sorry.

PROFESSOR DAVIS: It's 10%.

DR. VENOHR: Yes, so that's a low

percentage.

PROFESSOR DAVIS: I think, maybe --

DR. VENOHR: I mean --

PROFESSOR DAVIS: We'll let the Subcommittee decide if they want to reach out to you, if we can, but my thinking is that a lot of times, if we send something to the Supreme Court, then sometimes their question to us might be, "Why did you choose the two years as opposed to three or five?"

And, I'd like to be able to present to them, well, we thought that sounded good as one answer, but five was too many, but I'd like to have some type of data if it is available or just to say, we attempted to get the data as to the sweet spot and it's just not out there. But, I think anything that we could find would help. I tend to think that five years is too long.

MS. BUSH: Yes. This is not economic, but from a DHR perspective, we have Federal regulations that require us to send out notices to our participants every three years, saying, you don't have to, but you may come in and have us

review your child support order to see if it qualifies for a modification, be it up or down. So, and, of course, our three year cycle would not be necessarily in line with the Court Order, but just know that we are on a 3 year.

So, if you chose four or you chose five, meanwhile, behind the scenes every three years, we're going to be sending notices out to people. And, so, we may be bringing it back to court more frequently than a five year because we're required to, at least, offer that opportunity to do that.

HONORABLE STEPHENS: And, I would think it's less likely that anyone would break that 10% threshold in that two to three year range.

DR. VENOHR: I'm sorry, I didn't hear that. Do you think that would be rare? I would agree with that it probably doesn't happen that often. I mean, you could use the modifications as a pro se because you know like I was pointing it out, the agency has to notify everybody of their right to review, every three years, it is. Did I hear that right?

MS. BEACH: Yes. Yes, ma'am.

DR. VENOHR: I think it's every three years, but you don't get a flood of modifications from that notification or request for modification.

PROFESSOR DAVIS: She's looking back to the people that actually do it.

MS. BUSH: Yes. I don't know if our computer keeps statistics on how many of those come back. We're required to send that notice out and then either party can contact us to do that administrative review and all we're doing is reviewing to see if it qualifies under Rule 32, if it's going to increase or decrease by 10%.

And, so if it does then we can move forward. If it doesn't, then it's ended at that point.

MR. JAMES: I have a question about that.

DR. VENOHR: Yes, and I think there is other issues because obviously parents that are getting the full child support, they don't want to rock the boat. Even if they know that, there's an increase in income. I think your intuition in

that two to three years is probably good.

And, I'm just trying to think of what labor market data are there that it just feels right as far as what I'm thinking of is income and significant changes in income, even though, I did mention that it fluctuates more, but it's got to fluctuate enough to make a 10% difference.

So, I think your intuition of two to three years versus five years is actually a good one. There's other data, major career changes, which would be more of the five year sort of mark, but somebody that is a low wage worker. Generally, they're going to, even though their income might not be sporadic throughout the year, it's probably not going to fluctuate that much from year-to-year within two to three years, if that makes sense. I'll stop there.

MR. JAMES: Judge, the three year notice requirement, is that just a DHR internal regulation or is that a statutory requirement?

MS. BUSH: No, sir. It's an internal, it's a regulation that is for DHR, only. IV-D agencies. So, that's not something that applies

to the general public. Only if you have a case with us.

PROFESSOR DAVIS: But, that's a national requirement.

MS. BUSH: Yes, it's a Federal requirement. So, all four --

MR. JAMES: All --

MS. BUSH: It's a Federal requirement. It's a Federal regulation. I don't have the regulation, the number right off the top of my head, but it's a Federal regulation that's going to apply to all IV-D agencies across the nation, that they do that administratively, just send that notice out.

MR. JAMES: But, if we're looking for a reason to explain to the Supreme Court why it is we selected a certain time period, citing into that one would be a real good reason.

HONORABLE COOK: It would be.

PROFESSOR DAVIS: Unless the economic data indicates that two years are more appropriate. I'm kind of like you, leaning toward, at least we have an answer to three years.

And, but, again we'll leave it up to the Subcommittee to decide if they want to ask Dr. Venohr to pursue that further.

And, then the issue of the over-payment and the credit and the idea that we need to meet the needs of the child. I don't think we've discussed that exactly in this context, but that there should be an overriding desire to make sure that child support meets the needs of the remaining children, which is what we're talking about, we've talked about in terms of credit versus not credit, depending on the caselaw. So, let's open that area up for discussion.

MS. BEACH: My understanding from Judge or what I got from it in the discussion in August was and he just didn't want to see the court enter an order saying that support was zero for a period of time until that overage was paid back, so to speak.

PROFESSOR DAVIS: Right.

MS. BEACH: I think that was my take on it is he wanted to avoid that and let it, if they were going to do it that way, just let it be a

smaller portion taken back from the support that was on going.

PROFESSOR DAVIS: Right. I think the times that we've talked about it is realistically if the custodial parent has gotten $600.00 and $200.00 of that was too much for that period of time and it's the same amount they've been getting.

And, pragmatically, that child may still be living at home, even though they're an adult going to school or whatever. They spent that money. And, so if they go to, from $600.00 to 0 for three or four months, then I certainly see where Judge Moore was coming from.

MR. JAMES: We're handling that the same way we handle an arrearage, which is your current support, plus an amount, in addition to that that chips away at that underlying obligation, flipping the coin and having that applicable for the parent who received the funds in error. There's some symmetry to that as well.

PROFESSOR DAVIS: But, I guess, the question, the difference is, my thought

perspective is if she's the paying parent and I'm the receiving parent, we're cutting this person a break because they're not having to pay as much which they may have children in their family, too. But, we're just saying you don't have to pay your full amount that you owe. You're just going to stagger it.

But, if I'm the recipient parent and all of a sudden I go from getting $600.00 to -- even if you dropped it down, it's already going to drop to $400.00 and then if you start getting credit, then it may drop down to $200.00. And, I've still got those other two kids that still have to be fed everyday. And, so I guess the symmetry that I see is you're trying to not affect that person's budget too severely.

So, you're giving them a staggered time. So, the symmetry here is you don't want to affect this person's budget. So, they'll get credit, eventually, but it won't be -- you'll have to be staggered to the fact that it doesn't so adversely affect the custodial parent's budget that that child's needs are not being met.

MR. JAMES: So, you don't run into a single month or months, consecutively, or the zero sum order.

PROFESSOR DAVIS: Right, right.

MS. BUSH: This is Jennifer Bush and I'm not willing to over-simplify this or overly penalize anyone, but would we consider just not having a credit issue, meaning it needs a modification, now? It's up to you to obviously file, get the obligor to file this with the court. And, if you do not do that for whatever reason, then that's just money that's been paid.

PROFESSOR DAVIS: Which is the way we're treating it now, case wise.

MS. BUSH: And, there is no credit. The motivation being the sooner you get in there and do this because you have a right to do it, then you will have that break in your income withholding order that you've already been given.

PROFESSOR DAVIS: I think, maybe, going along the lines you're talking about, if we do choose the route where all these orders will have the language in there that the Judge has

suggested, that you basically inform the parties when this person ages out, you have an obligation to come there if you want it.

So, they're put on notice. If they choose not to, then we can say that you don't get credit because you had notice and you knew that it would be treated as an additional money that you're paying for the benefit of your children. So, that is, I guess, one option.

Is that what you were talking about?

MS. BUSH: Yes, ma'am. Yes, ma'am. That's one option. I was just thinking as opposed to getting into a situation where someone waits two or three years and now there's a huge amount that's overpaid when they sat on their rights to then come back to court and have that stopped.

Again, I'm not -- I do have sympathy with people who are, who are -- pay more than they should and I don't want that to happen, but this is a mechanism --

PROFESSOR DAVIS: Right.

MS. BUSH: And, I would think that there needs to be some motivation or responsibility for

them to then go ahead and have it stopped as opposed to sitting on their rights for two or three years and not having it stopped.

PROFESSOR DAVIS: By putting that in the document that they get. They're, at least, it's an informed decision not to come forward, whereas, now, they just don't know. It's assumed, the average lay person would assume the parent that, well, assume Joe Joe reaches 19 is cut in half or cut in a third.

MS. BUSH: And, I can argue the opposite point because it may be that when this happens and they get these staggered amounts, you may tell that in court, but they may just still go back to the situation we've got now. They don't go back to court. They just think they can go ahead and cut it, according to the order that's already there. So, it's ...

MS. BEACH: I have a question. I don't know if we've talked about this, and it seems like maybe we have, but is there a reason that we chose to have this be an action filed by the defendant, rather than it being automatic, unless someone

objects?

PROFESSOR DAVIS: Well, I thought -- did you raise your hand?

MS. STEINWINDER: I just wanted to speak. I don't mean to interrupt, Shirlee.

MS. BEACH: No, no, you're good.

MS. STEINWINDER: I just wanted to speak to the issue on Page 4 and I'm looking at a June 16th memo. Does everyone have that or is that just --

MR. MADDOX: They should, yes.

MS. STEINWINDER: Okay, on Page 4.

MR. MADDOX: It's on the back of the October 13th.

MS. STEINWINDER: Okay, Paragraph (3), Jennifer, it talks about if the party has taken the action and they do file a required affidavit, but then it continues to come out, then there's a rebuttable presumption that the overpayment will be a credit.

MS. BUSH: So, that's the credit we're talking about.

` PROFESSOR DAVIS: That's the credit.

MS. BEACH: Thank you. Thank you. It's been awhile and thank you.

MS. STEINWINDER: I think that's what --

PROFESSOR DAVIS: Part of it was also that the practicality that the business that's taking out that may not be Johnny on the spot to cut it off. So, for two or three months, they keep cutting that check and the guy keeps saying, "Hey, don't cut that out. This is the new order." And, for some reason, they do it, anyway.

MS. BUSH: Thank you. That resolves my issue, my concern. So, yes, they would be entitled to that. That's some kind of credit.

MS. BEACH: And, I think the bad part comes in, like you said if it's years before they remember to do it or think to do it, then you're talking about a considerable amount of credit.

PROFESSOR DAVIS: This one says if you --

MS. BEACH: It says, "It's not."

PROFESSOR DAVIS: Okay. I think the way we fell and it has been awhile. So, we're reeducating ourselves. The way it fell is if you

didn't -- the burden was on the paying parent that if you didn't come forward, it would be treated as a gift.

If you set a procedure in here for a timeframe for people to do that. That was, I think, the direction the Committee was going.

MS. BEACH: I wasn't sure.

PROFESSOR DAVIS: No, no. We all -- it was just a matter of recollection.

MS. BEACH: I just thought that some of the things that we were discussing seemed that it would not be an issue if it were vice versa.

PROFESSOR DAVIS: Right.

MS. BEACH: Because the child is going to reach the age of majority, unless something else happens. There's no question about that.

PROFESSOR DAVIS: Right, yes.

MS. BEACH: So, I wasn't sure if we even discussed that.

PROFESSOR DAVIS: But, even so, if the person, the defendant acts like he or she needs to and for whatever reason the company doesn't adjust.

MS. BEACH: Oh, yes.

PROFESSOR DAVIS: Then, it could be that it's a substantial amount of money.

MS. BEACH: I'm sorry. I was going back to my -- I had gone back to what I had said before she brought that up.

PROFESSOR DAVIS: Oh.

MS. BEACH: I apologize.

MS. STEINWINDER: And, I think, Shirlee, I'm not sure if this is an answer to that, but if you look on Page 2, Paragraph (2) of that June 16th memo, it says --

MS. BEACH: Yes, yes.

MS. STEINWINDER: It says in those instances, when a court exercises its discretion under this subsection and an IWO is in place. So, I just want to make sure that we're on the same page and correct me if I'm wrong, but Paragraph (1) says that whether we go with may or shall, if there are multiple orders, they go into effect, automatically.

There's not some duty upon the obligor to make those orders go into effect, unless

there's an IWO, you have to have that and from Paragraph (2).

MS. BEACH: Right, okay.

MS. STEINWINDER: Is that everybody's read on this?

MR. JAMES: That was my read.

MS. STEINWINDER: Okay.

MR. JAMES: There was an additional obligation because the IWO takes an additional order to amend or terminate the existing IWO that you just can't do administratively without getting the Clerk's Office involved, without being a petitioner or movant.

MS. STEINWINDER: But, Paragraph (1) does not put the duty on the obligor.

MR. JAMES: Yes.

MS. STEINWINDER: I just wanted to make sure, Shirlee, if that helps.

MS. BEACH: So, it would be. So, it would be.

MS. STEINWINDER: It would be automatic if the multiple orders had been entered at the time of the entry of the child support order.

MS. BEACH: So, the support amount actually does change. It's whether or not the withholding order needs to be amended or, I guess, sent out the second withholding that's in the order. Gotcha.

MS. STEINWINDER: I don't think you even go to Paragraph (2). You don't have to go any farther than Paragraph (1), unless there's an IWO.

MS. BEACH: Okay.

MS. STEINWINDER: It's that --

MS. BEACH: That's great.

HONORABLE STEPHENS: And, my question is, will it be on the Clerk's Office or the Judge's Office to say this order needs to take effect at this time. I think that's going to be the issue. It has been the issue. Who is going to keep track of the time period in which to enter the new income withholding order?

And, previous discussion said the obligor is the person that should remember and keep time more so than say the Judge's Office or the clerk's office.

Now, what I'm thinking is if there was

something in the system that would alert the Clerk's Office that it's time to enter a new income withholding order, that there's another order that needs to be entered, then that would be fine, but where is that alert going to come from?

And, I'll say, as much as I love our clerk's office, I don't think my clerk's office will be the people that will say, "Hey, it's time to enter this new income withholding order." And, my folks would keep up with it if they had to, but I wouldn't want that to be another additional duty for them.

PROFESSOR DAVIS: And, you're talking about thousands of orders in some jurisdictions?

HONORABLE STEPHENS: Yes, yes.

MS. STEINWINDER: We didn't come up with an answer to that in the Subcommittee meeting, that Zoom call. The Circuit Clerks did talk about some training and education, but no real consensus was reached on that. And, that's a big practical issue.

HONORABLE STEPHENS: If there could be an alarm in the system, that would be great, but I

don't know we're at that point, yet.

MS. WELLS: I think they did talk about the automated system, that they would have to work with the folks who were in charge of that to see if there was a way to create something new. I don't recall exactly, but I don't think the system right now is designed for that, but that maybe that something could be implemented to create the alarm or the --

PROFESSOR DAVIS: Any other comments?

(No responses around the table.)

MR. MADDOX: We need to move on to the next issue.

PROFESSOR DAVIS: Our next issue is pertaining to what Jennifer has. I think she'll be right back and it relates to the non-parent calculation we had, but the issue brought to our attention is that you have -- we've used the relative example that the grandparent that has custody of the child and should that grandparent's income be considered.

And, I think we asked Dr. Venohr, but I can't remember. Jane, did we ask you if the other

States, how they dealt with the non-parent's income, like if the child is residing with the grandparent?

DR. VENOHR: Yes, you did and it was in one of the memorandums.

MR. MADDOX: Yes.

DR. VENOHR: And, usually, the way it's consistent with the memorandum that you proposed the worker did.

PROFESSOR DAVIS: Yes.

DR. VENOHR: So ...

PROFESSOR DAVIS: All right. Well, we have our Subcommittee chair back. We've decided to move on to the last agenda item.

MS. BUSH: Okay, all right. So, we are going to go over the Subcommittee's recommendations for non-parent custodian income and the calculation of child support.

At the last meeting, we met and reviewed the Subcommittee's recommendations and had a lot of discussion, a very good discussion on various topics.

One of those was, for example, do you

impute a deceased parent's income that may occur from like Social Security benefits or other death benefits and different decisions were made. And, that particular decision was, "No, do not do that." Also, discussions about whether deviation was still available.

And, so what you have before you that's dated October 13th is a version of the Subcommittee's recommendations that take into consideration everything that was discussed in all of your decisions.

So, would you like me to go through it line by line one more time and I'll do that? So, you have it in front of you. So, going through this, starting with "the Subcommittee proposes that an Advisory Committee on Child Support Guidelines and Enforcement recommend to the Supreme Court of Alabama..." That's subsection (7) and that is a placeholder.

So, it may be (7). We'll have to go back and look at that. It may be (8). It will be added to Rule 32 (c)to address the calculation of child support when a non-parent has custody of the

child.

So, here is the recommendation. "In those situations where neither parent has physical custody of one or more children, the income of the non-parent custodian(s) shall not be used to calculate support. Support shall be calculated by treating one parent as the plaintiff and the other parent as the defendant on the Child-Support Guidelines... "(Form CS-42) regardless of their actual party status in the case."

"The monthly gross income of each parent shall be their actual or imputed income." I'll stop right here and say because our purpose and our intent was if someone is entitled to or needs to have their income imputed as otherwise provided in the Rule, then that's what needs to happen. That was one overriding goal was that all of, most of or all of the other provisions of the Rule apply and this be calculated as closely as possible to that.

"Income shall not be imputed to a deceased parent. Work-related child care costs or health care coverage paid by a parent shall be

included on the Child-Support Guidelines Form... as provided for elsewhere in this rule."

And, I want to stop here and say I love the idea that there is a wordsmith at the Supreme Court Clerk's office who can go in there and make those determinations because we put that in there as provided for elsewhere in the Rule, but that may or may not be how it needs to be worded.

The "work-related child-care costs or health care coverage paid by a non-parent custodian shall be included on the Child-Support Guidelines... (Form CS-42) in the Combined column of lines 5 and 6..."

I'm going to stop right here and say your materials, I believe, do have the last page. A CS-42, so you can look and see what that would be. And, so, basically, what we're saying is you would place it in the combined column of line 5 and 6 as opposed to under a specific parent/plaintiff; parent/defendant because they don't have custody and we don't want them to get credit for that later on. "However, the parents' child support obligation shall not be adjusted as

provided for in lines 9 and 10 of the Child-Support Guidelines" (Form CS-42).

"Upon completion of the Child-Support Guidelines Form, (Form CS-42), each parent(s) shall pay to the non-parent custodian(s) the Recommended Child-Support Order designated for that parent on Line 13 of the Child-Support Guidelines." I'm going to stop here and say, so let's say you come down and you calculate everything and you've got both parents in front of you, then I'm going to pay, if I'm designated plaintiff, I'm going to pay that non-parent custodian my portion and Penny, the other parent, she's going to pay the non-parent custodian her portion, so that non-parent custodian will get the full amount.

"A party may receive credit for their support obligation for third-party payments paid for the children based on the support obligor's earnings record or other eligibility requirement." So, using the example of me and Penny, I'm getting Social Security and due to that, the child is also getting Social Security.

I would be entitled to credit just the same as I would any elsewhere in the Rule for that. "Nothing in this subsection precludes a court from deviating from the guidelines as provided in Subsection (A)(1) of this rule."

So, that's it, quickly gone through. Does anybody want to discuss any of that or have any issues or questions that maybe we haven't thought of?

MS. WILSON: I have one real quick. I wasn't available at the last one, so I'm not sure if it was addressed. Are we going to include the child-care expenses if the non -- if the non-parent guardian isn't working?

MS. BUSH: Okay, so -- okay. The non --

MS. BEACH: Basically, what she's asking is are we going to pay day care -- are we going to consider day care expenses if the person that's supposed to be taking care of the children doesn't work?

MS. BUSH: So, to me, that again goes back to how would it be treated if it was a parent? And, I'd have to go back and look at the

Rule to see how that's treated, but it would be treated exactly the same way.

MS. WILSON: Okay.

MS. BUSH: In fact, I'll go to the Committee Comments, but the one goal of this was to have the child support calculated as closely as possible using the same form --

MS. WILSON: Right.

MS. BUSH: -- so that we're not coming up with an entirely different process in the thought -- so, no, if it's not allowed elsewhere in the Rule, then, no.

MS. WILSON: Okay. Okay.

MS. BUSH: So, like credit. Credit is allowed elsewhere, imputed income is allowed elsewhere, then yes, that would apply.

MR. JAMES: Good question. I'm always concerned when people get to make financial decisions that other people have to pay for.

MS. BUSH: Yes, sir.

MR. JAMES: Would the DHR Guidelines limiting work-related day care expenses by counties be applicable for grandparents under this

application as well?

MS. BUSH: Yes, sir. Yes, sir, because it applies to Rule 32 and because that child-care -- because that child-care rate is used for every other case, it would be used in this case.

MR. JAMES: That being clear to that point somewhere within the notes with what we're doing would help practitioners and it certainly would help me.

MS. BUSH: Let me go through, I'm going to read the Committee Comments and let's see if that addresses your issue.

PROFESSOR DAVIS: Before we do that, let me ask -- let me pose a scenario that comes in my mind. If I'm a grandparent and I'm not working because I'm staying home to take care of my disabled husband, but I'm willing because there's no one else that will take care of my great-grandchild. And, I really need -- I've not been able to work because I can't work because I'm taking care of my husband. So, I have to take the child to day care because it's a young child.

And, I can manage at night, but I can't

manage all the time in the daytime. I don't know how often that scenario. I can, to me, I can sort of see that because I've taken care of somebody else's child and maybe we could consider treating that a little different.

MS. BEACH: That's a job.

MR. JAMES: Well, I would suggest that if we applied the application we do for parents now, which is the requirement to be work-related day care, that we could still address that issue through the notes that are already here with regarding to deviating from the Guidelines. Information about that additional expense could very well be sufficient for the trial court to say, "Yes, you're not -- this is not work-related day care. That's expense associated with the child that is absolutely necessary under the circumstances. The child support just went up $800.00 a month."

PROFESSOR DAVIS: Yes.

MS. BUSH: And, that's the reason we specifically put in here that the court could deviate, if it needs to deviate. We wanted to

make that clear that the court could deviate.

MR. JAMES: I think leaving that work-related day care, though, that would keep that clean across the board.

HONORABLE STEPHENS: Two questions.

PROFESSOR DAVIS: Yes.

HONORABLE STEPHENS: Two questions. How do you calculate if one parent is deceased? And, the other question is if one parent is in prison, do you impute minimum wage to that parent?

MS. BUSH: So, for deceased, then you would not impute any income at all and the living parent would be 100% responsible.

HONORABLE STEPHENS: Gotcha.

PROFESSOR DAVIS: That's the way it is, now.

MS. BUSH: That's the way it is. So, that's what would happen. Now, for an imprisoned person, if they had some -- there could be wealthy people imprisoned. So, if they had some income, then I certainly think that you could include that income.

I don't think that you would impute it

if they don't have the ability to earn. They're very restricted on what they can earn. So, imprisoned is addressed elsewhere in the Rule.

MR. MADDOX: Yes, we just passed that last year.

MS. BUSH: Yes, and so again, that provision would apply. If you're a millionaire with a trust fund and you're in prison. I've actually had a case, surprising where someone was imprisoned and they had a trust fund, then there would be some income there, but, if not, there wouldn't be.

PROFESSOR DAVIS: So, we'd have a $50.00 minimum that we use for now, that, I guess, we could factor that in. But, the sense that I'm getting and, I guess, when we let you read the comments, then we'd get to that.

MS. BUSH: I'd really --

PROFESSOR DAVIS: That, basically, what the Subcommittee is trying to do is to pattern this Rule to mimic the other way, the ways that all these other issues are treated with regard to other children, who are in the care of a parent,

supposedly a third party.

MS. BUSH: That is exactly correct because this is just one part of the Rule. And, so, we want this -- we want the Rule and the child support to be calculated as closely as possible as it would elsewhere.

PROFESSOR DAVIS: So, if we feel like there's a public policy reason for like the other example I gave, then the Subcommittee could specifically put a deviation for the third parties in there if they felt that -- if they felt like the current deviation wasn't sufficient. So, that you, I mean, right now you've got certain things that you can deviate from, but you could actually say, specifically, if the court -- if the child's being cared-for by a third party, then additional, the court could consider any additional factors relating to that family. I don't know how you word it, but kind of what you were alluding to earlier.

MS. BUSH: I mean -- yes.

MR. JAMES: That was necessary and additional expenses that need to be taken into

consideration.

MS. BUSH: And, you could put that in this Rule or you could put that in the deviation section of Rule 32, whichever you thought would be appropriate. Certainly, if you want to do that. If you want to address day care expenses when that non-parent custodian is not working.

That is a new issue that we have not discussed. So, yes, if we need to make changes to this.

MR. JAMES: Well, it's an issue and it's a high-dollar issue because I know in Montgomery, which is where I practice, when I was in private practice for 18 years, to get a good day care around here, it could be $1,100.00 to $1,200.00. I paid more for my day care than I did for my mortgage.

MS. BEACH: Uh-huh. (Affirmative response.)

MS. BUSH: Yes.

MR. JAMES: Now, DHR, obviously, has limited that to about $300.00 a month. Now, if a grandmom and granddad, I want my grandchild at the

absolutely best they can go to, but I don't necessarily -- I preface this by saying, I don't like people -- I don't like when decisions are made and someone else gets to pay for it.

And, send them to the best, maybe what grandmom and granddad would like to do, but mom and dad may not be capable of handling that. And, that's where the DHR limitations come in is to limit that exposure.

PROFESSOR DAVIS: So, you could say that the day care rates still apply, so that they don't necessarily choose because they don't like the -- I would say it's the father of the child they don't like, but they want to stick him with the $3,000.00 day care, if they could. So, they can't do that, but they -- but, the scenario where you do have the working grandmother that's trying to take care of a disabled veteran husband and at the same time that she is taking in a great grandchild because they're in drug rehab or whatever.

MR. JAMES: That's not work-related. That's something else that needs to be considered.

MS. BUSH: We absolutely can consider

that and then just determine where you want that to be. Do you want it to be in this particular part of the Rule or would you want it to be under deviation because we do have a whole section on deviation?

PROFESSOR DAVIS: I believe that you all could --

MR. JAMES: I think back to the deviation section would be the cleanest way of handling it. It doesn't fit squarely into work-related day care on any constructive definition. So, if we're not willing to change that definition, then we have to put in that different section or at least that's how I would logically follow it.

MS. BLACKBURN: Would this deviation be available for just parents?

PROFESSOR DAVIS: Well, I was thinking along the lines that it would -- if you say put as a deviation, that it would be when a third, it would be a deviation that only applied to when a third party is taking care of the child.

I think all or other deviations already

apply in all instances and no limitation, I guess. But, if we want -- if we feel like there's a compelling reason, maybe it's a matter of public policy to encourage family members to be willing to -- and, there's still going to be incurring additional expenses because they're not going to get all of this, anyway to, at least, mitigate their additional expenses by allowing them to do that.

MS. WELLS: I have a comment.

PROFESSOR DAVIS: Yes, ma'am.

MS. WELLS: Why are we going to make that available for grandparents or third parties and not make it available to a mom who has to stay home with her autistic kid and can't go to work? We're fixing to make a big mess out of this, if we're -- I'm just afraid we're about to go down a really slippery slope, like Katie said a few minutes ago.

So, if there is a deviation, I agree that it ought to go in the deviation portion, but, I mean, why not just -- I think this language of this Rule is fine and just say it's still subject

to every other Rule 32 provision for capping day care pursuant to the DHR rate. Everything else applies just exactly as it does.

PROFESSOR DAVIS: Well, I guess, the question that comes to my mind and I have to go back and re-read the deviation statute, which I haven't done lately. Is there and the example in there that I gave, would there be authority for the Judge to deviate because on a work-related issue because she's taking care of her spouse?

MS. WELLS: Is she getting paid to take care of her spouse?

PROFESSOR DAVIS: No.

MS. WELLS: So, that's not work-related.

PROFESSOR DAVIS: That's what I'm saying.

MS. WELLS: Yes.

PROFESSOR DAVIS: So, my scenario was thinking that it would be as a matter of public policy, a way to say to the grandparent, if you take on this responsibility, then -- but, you can't do it full-time because you can't physically, literally, take care of an infant 24

hours a day and nurture that child in the same way you need to while you're doing -- this man is in a wheelchair and whatever the scenario is, then we say, okay, so but you had this person over here that's actually their child and they can pay, then as a matter of public policy, should we allow them to have that additional financial resource from those parents?

It's just a -- it's a policy issue, in my mind, but if that is a policy that we want, then we need to figure out a way to put it in there? But, you also, you raised a good point.

Should -- is it a policy issue that we should do the same thing, if a parent's raising a child is handicapped, whatever?

MS. WELLS: In your scenario and maybe I'm just completely misunderstanding what you're saying, but in your scenario, are we saying grandma can't take care of grandpa and a baby without additional money for grandma?

PROFESSOR DAVIS: No, I'm saying that if I'm the grandmother and I know I can't physically take care of that child.

MS. WELLS: Yes.

PROFESSOR DAVIS: And, the child. So, I'm -- in order to send that child to day care --

MS. WELLS: Sure.

PROFESSOR DAVIS: -- I'm spending my money.

MS. WELLS: Yes, that's a day care cost.

PROFESSOR DAVIS: Right.

MS. WELLS: I thought you were saying paying the grandmother to stay at home with the baby.

PROFESSOR DAVIS: No, no.

MS. WELLS: So, yeah, there's a day care cost, absolutely.

PROFESSOR DAVIS: I'm just saying treat it as if it's work-related.

MS. WELLS: Sure.

PROFESSOR DAVIS: Cap it at the same amount that it would be --

MS. WELLS: Sure.

PROFESSOR DAVIS: It's just an example. I don't know what direction the Committee wants to go.

MS. WELLS: Yes, and that makes sense. I thought that you were saying that we were going to pay grandma to stay at home --

PROFESSOR DAVIS: No.

MS. WELLS: -- with the child because she's the caregiver for the husband, so that that would be her job. So, then parlay that into, well, she's working, so we're going to pay her to have this baby. So, go ahead, okay.

PROFESSOR DAVIS: No.

HONORABLE STEPHENS: Just a comment. I'm glad you thought about that, Penny, because just personally, I know of two people that know of 75-year-olds who are caregivers for grandchildren, great-grans and then for an adult at home. So, I'm just glad you thought about them.

PROFESSOR GRAY: One quick technical issue. So, the way you handle the non-parent contribution on Lines 5, 6 and 9 and 10, very good. I think that's the way to go. Especially, in 5 and 6 by just putting the amount there on the combined line.

The problem is doing it on paper, no

problem. Doing it in an Excel file is a problem.

PROFESSOR DAVIS: Well, I was going to ask, if when we get to that point, if we could get you to run some examples for us and you already did that in your brain, already.

PROFESSOR GRAY: Yes, it runs into a problem because you can't really put anything in that combined field. That's protected because what it's doing is it's adding across those two cells on Line 5 and the same thing on Line 6.

MS. WELLS: Okay.

PROFESSOR GRAY: I mean, that is the correct way to take care of it, but the Excel file won't do that right now. If I were unprotected and somebody wanted to put something in there, then don't reuse that sheet for something else because you just messed it up for the future.

MS. BEACH: Is there a way that Excel can be changed to correct that?

HONORABLE STEPHENS: If we put it in those --

MS. BEACH: -- or will Excel do that?

PROFESSOR GRAY: Well, I mean, one

option would be I unprotect those to combined cells and you put numbers out there. But, you're going to overwrite that sum formula, which is fine.

HONORABLE STEPHENS: Yes.

PROFESSOR GRAY: And, it will all calculate correctly, but then discard that copy of the file because you changed it.

HONORABLE STEPHENS: Right.

PROFESSOR GRAY: The next time you come in, you want to make sure you're using a clean, clean version.

MS. BEACH: If we put it in that section, will it not then take it back out -- how it -- those expenses have been removed?

MS. BUSH: So, Professor Gray, what I hear you saying is, you would have one Excel spreadsheet for non-parent custodians and it would be a different Excel spreadsheet?

PROFESSOR GRAY: Well, that's what I wanted to ask you guys, do you want to have two separate sheets?

MS. BUSH: We don't, but that's what I'm

hearing you say is that --

PROFESSOR DAVIS: That's a particular way to do it.

MS. BUSH: That's what I'm hearing you say. We don't want that, but -- okay.

PROFESSOR DAVIS: I think we just added Dr. Gray to that Subcommittee.

HONORABLE COOK: Well, I think this is a great idea. My question would be, how does this differ from what we're doing today?

PROFESSOR DAVIS: I think one of the -- the reason we ran down or running down this path is there's no consistency across the State as to how the Judges are handling that. And, so I was actually at a meeting and some of the Judges asked me if I would bring that up to this Committee so that we could get some consistency throughout the State and some direction for them because they sort of struggle. I think they have the overriding sense of trying to be equitable about things.

PROFESSOR GRAY: Yes.

PROFESSOR DAVIS: And, we have the

policy issues that we talked about earlier, but it's sort of being handled, depending on what circuit you're in.

PROFESSOR GRAY: Right.

MS. WELLS: Has there been a consensus about what to do, if we could only get service, say, on one parent or say only one parent shows up, are we just going to impute minimum wage to the other side? What are we doing about that?

MS. BUSH: And, that very well may occur. Maybe the parents live in different counties.

MS. WELLS: Yes, they're --

MS. BUSH: And, so, you can't get that party served.

MS. WELLS: Yes.

MS. BUSH: So, yes, if you have that information available, for example, maybe they're just gone. You don't know where they are. If you have that information available and can impute income and know, then, again that the Rule regarding imputed income would apply. I'm not looking at it right now, but, yeah, your

educational level, the opportunities, what were their last earnings? Where were they employed? If you know that information, you could do that.

Another scenario might be, you're in Jefferson County and Bob's in Madison and I have to go to court with you first. It may be that, I do you and one court order and then Bob is in a different court order and I think it would be up to the court at that point, if they know, for example, if Bob is second and I know what your numbers were, then I -- and I have those, could help me set Bob's support.

It's not a perfectly clean issue.

MS. WELLS: Yes.

MS. BUSH: I mean, you have people in different counties, but it will happen.

MS. WELLS: All right, yeah.

MS. BEACH: It happens now.

MS. WELLS: Yes.

MS. BEACH: It's already happening and I think that, hopefully, this will help it be a little bit more.

MS. WELLS: Well, what we see typically

happen is when there's only one parent, the Judge just says, "Well, they get all 100% and that ought not to be that way." But, then the Judge says, "Well, what do I put over here? How do I know what dad makes?"

MS. BEACH: Right.

MS. WELLS: "Do I just make up the numbers? So, what do I put? So, if I just don't include it, then mom gets all 100%."

So, there's not, I mean, I guess that would take, require some testimony from the grandparent or, I mean, it's completely speculative, but then I suppose the burden would then be on that parent to come in and show and I really only make $8.50 an hour and not $12.50 an hour. So ...

MS. BUSH: And, I think testimony is required now when you want to impute income because you do have to -- you have to look at all those different factors in Rule 32 and where that comes from, be it the parent that's there, the grandparent or whoever has that information, I think that's, you get that evidence. And, yes,

then it's up to that other parent, who is not there to have their income imputed, of course, again, it's going to be even more complicated by, okay, were they a party and they were served and they just didn't show up?

MS. WELLS: Just didn't come, right.

MS. BUSH: And, if their income is imputed and now I have an order.

MS. WELLS: Right.

MS. BUSH: At which point, they didn't really care or is there a situation where they're totally missing, totally in a different county, their income was imputed, but they're not under an obligation because the court doesn't have personal jurisdiction over them, so they don't really care.

MS. WELLS: Right.

MS. BUSH: And, that, I think you're going to get both those scenarios. But, going back to the deviation on the child care, I mean, the Subcommittee, we serve, obviously, on the Committee. So, whatever the Committee wants to have happen in this Rule when it comes to deviating for child care cost that are not work-

related, again, we can do it here in this portion of the Rule or we could carve out an exception that's just non-parent custodian related in the deviation section, just whatever you would like.

MR. MADDOX: It probably would be better in the deviation section, probably. It's where people go, the practitioners and Judges in the deviation criteria. Also, on the very first sentence, in those situations where neither parent has physical custody, what about legal custody or is this just physical custody?

MS. WELLS: I would think it would have to be physical, just like whoever the physical custodian, even if it was between mom and dad, if the physical custodian is the one that gets the support.

MR. MADDOX: We don't need to have the word, "legal," anywhere.

MS. BUSH: If it's just from a DHR perspective, there may be times when we have legal custody, but the non-parent custodian has physical custody.

MR. MADDOX: Right.

MS. BUSH: And, certainly, DHR is not -- we want that to go to that person. So, that is another reason, right, it was physical, as opposed to legal.

MR. MADDOX: And, the latest version of Rule 32, it already has a (7) under © so this would be (8) that we're adding.

MS. BUSH: Okay.

MR. MADDOX: Seven is the shared 50% physical custody adjustment.

MS. BUSH: Yes, and I think that's what's happened. It has changed as we -- as this has been developed over time. So, I will update that to (8) with the understanding that it may at some point become a (9) or a (10).

MR. MADDOX: Also, a couple of other quick questions I wanted to ask the group. I don't know if it was in that August Zoom meeting or something, but someone who raised the issue on the CS-42 calculator on Alacourt, I guess, that the number of children were being locked up. Does anyone remember that discussion?

MS. MILLS: That was me.

MR. MADDOX: Well, I asked and they said they couldn't find anything wrong. So, are you still having that issue?

MS. MILLS: Yes, actually, me and my assistant talked about it this morning, like, if you're trying to put in the numbers and the calculator works, but it works for the number of children actually tied to the file.

So, when a child ages out, you can't recalculate it for two children, you're calculating it -- the file originally started with three children.

MR. MADDOX: Okay.

MS. MILLS: That that becomes the problem.

MR. MADDOX: How about if I connect you with our IT person?

MS. MILLS: Sure.

MR. MADDOX: That might be better than have you all --

MS. MILLS: Yes. I'll be happy to because I was dealing with that this morning, so I do it by hand.

MS. BUSH: So, Bob, that calculation she's talking about, that's built into Alacourt. It's not the Excel spreadsheet that Professor Gray was talking about

MR. MADDOX: Alacourt is what I understand.

MS. MILLS: Yes. So, if you have a file and my assistant does this. I do it by hand, but say I have a case, I can go into that case and do the calculator within that case. And, so, if the case started out with three minor children, like the one I have today and two children have aged out, are we going to recalculate this or we can't recalculate? This still has three children tied.

So, normally, if you file it in the Alacourt case and then it immediately files into the Alacourt file from there.

MS. BUSH: The reason I ask, if there's a calculation in Alacourt, I didn't know if it may be more appropriate to address these issues that you brought up with your Excel spreadsheet. Of course, it will be the issue here, an Excel spreadsheet, but we also need to make sure

whatever is going on in Alacourt --

MR. MADDOX: Right.

MS. BUSH: -- is appropriate.

MR. MADDOX: Yes. Also, are attorneys still not able to see the CS-42 Forms and IWOs? I heard that somewhere along the line.

MS. STEINWINDER: We're not.

MS. BEACH: On this --

MR. MADDOX: You're not able to see them in private?

MS. MILLS: Yes, they're redacted. So, when you print them, it prints a bar across the income amounts.

MR. MADDOX: So, that needs to be --

MS. STEINWINDER: I can't see them at all.

MS. WELLS: Oh, okay.

MR. MADDOX: So, that needs to be changed.

MS. WELLS: Yes, just as an example, I tried to go to terminate one, but I was like I can't find the one, the current one that's in place. I knew it was a different employer, but

you can't even find it to terminate it. So, yeah.

MR. MADDOX: I think several years ago that was done because of the PII.

MS. STEINWINDER: Unt-uh. (Negative response.)

(Negative responses around table.)

MR. MADDOX: I think the State Bar issued something about PIIs and so I guess it's safer practice with our IT Division was to make all PII information in Alacourt private, so the public wouldn't be able to see it, but Jennifer and I've had this discussion. As long as Federal law allowed social security numbers and other information to be public in order to find people, that shouldn't be a problem, correct?

MS. BUSH: Do I think it's a problem, the social security numbers being on Alacourt?

MR. MADDOX: Right. I mean, for child-support purposes.

MS. BUSH: So, well -- so, the thing is, the Federal IWO does require the social security number.

MR. MADDOX: Correct.

MS. BUSH: But, I do think it needs to be redacted when it's on Alacourt.

MR. MADDOX: Okay.

MS. BUSH: I don't think it necessarily needs to be out there. It does need to be redacted, but there's still a Federal requirement it be there and that is to help make sure that I'm getting the -- I'm the employer, but I'm getting the right person.

PROFESSOR DAVIS: Right, John Smith.

MS. BUSH: That's right, John Smith.

MR. MADDOX: So, I guess, the compromise is to make sure the attorneys in the case, the actual case can still pull up the unredacted versions, but the public can't see them, those versions, correct? That would be the compromise.

MS. STEINWINDER: Yes, because as of this week, we can't see them.

MR. MADDOX: If that makes sense.

MS. STEINWINDER: I tried earlier this week.

MR. MADDOX: Well, I'll take this back to our IT staff.

PROFESSOR DAVIS: Well, while we're on that, does anybody else have anything that they want -- that you would like Bob to take back to the IT person?

MS. MILLS: Well, even if you just limited it, that the lawyers who had entered their appearance in the case.

MR. MADDOX: Correct, absolutely.

MS. MILLS: It's not just the general public.

MR. MADDOX: Correct.

MS. MILLS: Yes.

MS. BEACH: Can I go back to this form? I want to ask you a question. Now, I know we do not, I know that most everybody, I guess, everybody probably doesn't want to have to deal with another form, but this form works if it's being done manually.

Is there a way for those that are doing it electronically to just change your formula? It's not really a different form, but it is a different form, if you're doing it through Excel. So, that we could do, have the combined and it not

deducted out at the bottom.

Those are the two things I think that are different right about this from the normal one, is that correct?

PROFESSOR GRAY: Yes, the big difference is on Line 5 and 6, you're wanting to include what's being paid by the non-parent.

MS. BEACH: Right.

PROFESSOR GRAY: But, you don't want to put it in either the plaintiff or defendant column. So, the idea was just put it over there in the combined.

MS. BEACH: Yes, yes.

PROFESSOR GRAY: The problem with combined is it's saying right now, that field is supposed to be equal to the two to the left of it.

MS. BEACH: Okay.

PROFESSOR GRAY: Okay, now, if you're using it and you simply, if you could type over that field right now, I've got to protect it. I just don't want to mess up the sheet. If that was unprotected, you could type a number in there, which would erase that form, that summons, but

that's okay and it would work fine for that sheet.

MS. BEACH: Okay.

PROFESSOR GRAY: But, then you would have to remember, okay, toss this later, go back and get a clean copy because in your future one that does involve a non-parent, you want that formula to be there.

MS. BEACH: Right.

PROFESSOR GRAY: So, that's one simple way of getting around things. Another would be create a different form. Perhaps, we could add a third column there to between the defendant and combined it would be a non-parent. And, then list things there and then we could do all the calculations from that.

Another possibility would be to have and this would be to have some place where those two, one or two numbers could be entered. And, then I could fix that formula where it would say these two fields are blank, meaning that it's a non-parent.

If these two fields are blank, then pull from some other place and then you've entered the

two numbers for the non-parent.

MS. BEACH: Or, you can say that non-parents have to be done manually.

PROFESSOR GRAY: That's right. Absolutely.

MS. BEACH: That have to be done manually. We don't have anything --

PROFESSOR DAVIS: All right. Well, I think we have certainly explored all these topics very well. And, I think the Subcommittees have gotten quite a bit of information that we will be able to go back and I think it's been a very productive meeting.

It went a little longer than we anticipated, but the purpose of us being here was to deal with this and go see, I started to say Dr. Williams, Judge Williams and celebrate his accomplishments.

Before we do that, let me make sure that our public members still do not have any comments that they want to make.

(Negative responses from public members.)

PROFESSOR DAVIS: And, any further

comments from our Committee members?

(Negative responses around table.)

PROFESSOR DAVIS: Okay. Then, and I'm sure Brian will be happy to work with you all on that. We appreciate his expertise.

Dr. Venohr, we appreciate your joining us. And, the Subcommittee may or may not ask you to follow-up on the economics, but they'll be in touch with you.

All right. Well, if there's nothing else, then we are adjourned.

(Whereupon, the meeting of the Advisory Committee on Child Support Guidelines and Enforcement was concluded at approximately 12:00 p.m. CDT.)

CERTIFICATE OF REPORTER

COUNTY OF MONTGOMERY)
State OF ALABAMA)

I, Beverly G. Slack, a fully trained and certified, licensed and bonded court reporter, do hereby certify that I transcribed the statements in the foregoing cause, that I, by computer aided transcription, transcribed the statements and that the foregoing contains a true and accurate transcription of all portions of said statements on the dates herein indicated.

I certify that I am not related by either blood or marriage to any of the Committee members or other persons who were present in the meeting, that I have not acted as counsel to or for any of the Committee members or other persons who were present in the meeting, or am I otherwise interested in the outcome of the meeting.

I further certify that I have maintained the confidentiality of this process by not disclosing any information concerning this matter to any person under penalty of law; that I have prepared the transcript with the input and assistance from some of the Committee members and other persons who attended the meeting providing Statements.

/s/ BEVERLY G. SLACK
Beverly G. Slack
Court Reporter, Notary Public,
State at Large.
License #525,
License expire: 9-30-24
Date transcript certified: 10-13-23