

MEMORANDUM

TO: The Honorable Julia Weller
Clerk, Supreme Court of Alabama

FROM: The Honorable Julie Palmer
Chairman, Advisory Committee on Child Support Guidelines
and Enforcement

DATE: May 15, 2017

RE: Proposed Amendments of Rule 32, Alabama Rules of Judicial
Administration, and Comment and Form CS-41

Attached are proposed amendments of Rule 32, Alabama Rules of Judicial Administration, and Comment thereto, pertaining to the child-support guidelines, and a proposed amendment of Form CS-41, Child-Support-Obligation Income Statement/Affidavit, which is appended to Rule 32, as approved by a majority of a quorum of the members in the Advisory Committee meeting held on May 12, 2017. (NOTE: Every member present voted in favor of the amendments, but Chief Justice Stuart abstains from voting).

The proposed amendment of Form CS-41 would only require the last three digits of the Social Security Number to be placed on the form. **I respectfully request that you place this proposed amendment of Form CS-41 on the Supreme Court Rules Conference agenda for later this month.**

Also, please consider placing the other proposed amendments on the next Supreme Court Rules Conference agenda which I understand is scheduled for August.

Also, please inform the Court that, after reviewing proposed changes to the Schedule of Basic Child-Support Obligations pursuant to Rule 32(G), at a meeting of the Committee held on December 1, 2016, a majority of a quorum of the Committee members decided not to amend the Schedule at this time.

I appreciate your assistance in this regard.

Enclosure

ARJA Rule 32
Rule 32. Child support guidelines.

Preface Relating to Scope. This rule, as amended effective January 1, 2009, shall apply to all new actions filed or proceedings instituted on or after January 1, 2009. Any actions or proceedings instituted before January 1, 2009 shall be governed by Rule 32 as it read before January 1, 2009.

(A) *Child-Support Guidelines Established.* Guidelines for child support are hereby established for use in any action to establish or modify child support, whether temporary or permanent. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the establishment or modification of child support, that the amount of the award that would result from the application of these guidelines is the correct amount of child support to be awarded. A written finding on the record indicating that the application of the guidelines would be unjust or inappropriate shall be sufficient to rebut the presumption if the finding is based upon:

(i) A fair, written agreement between the parties establishing a different amount and stating the reasons therefor; or

(ii) A determination by the court, based upon evidence presented in court and stating the reasons therefor, that application of the guidelines would be manifestly unjust or inequitable.

(1) REASONS FOR DEVIATING FROM THE GUIDELINES. Reasons for deviating from the guidelines may include, but are not limited to, the following:

(a) Shared physical custody or visitation rights providing for periods of physical custody or care of children by the obligor parent substantially in excess of those customarily approved or ordered by the court;

(b) Extraordinary costs of transportation for purposes of visitation borne substantially by one parent;

(c) Expenses of college education incurred prior to a child's reaching the age of majority;

(d) Assets of, or unearned income received by or on behalf of, a child or children;

(e) The assumption under the Schedule of Basic Child-Support Obligations that the custodial parent will claim the federal and state income-tax exemptions for the children in his or her custody will not be followed in the case;

(f) The actual child-care costs incurred on behalf of the children because of the employment or job search of either parent exceeds the costs allowed under subsection (B)(8) of this rule by twenty percent (20%) or more; and

(g) In an appropriate case, the court may consider the child-care costs associated with the training or education of a parent necessary to obtain a job or enhance earning potential, not to exceed a reasonable time as determined by the court, if the parent proves by a preponderance of the evidence that the job training, or education will benefit the child being supported; and

~~(g)~~ (h) Other facts or circumstances that the court finds contribute to the best interest of the child or children for whom child support is being determined.

The existence of one or more of the reasons enumerated in this section does not require the court to deviate from the guidelines, but the reason or reasons may be considered in deciding whether to deviate from the guidelines. The court may deviate from the guidelines even if no reason enumerated in this section exists, if evidence of other reasons justifying deviation is presented.

(2) STIPULATIONS. Stipulations presented to the court shall be reviewed by the court before approval. No hearing

shall be required; however, the court shall use the guidelines in reviewing the adequacy of child-support orders negotiated by the parties and shall review income statements that fully disclose the financial status of the parties. The court, however, may accept from the parties and/or their attorneys of record a Child-Support Guidelines Notice of Compliance (Form CS-43) that indicates compliance with this rule or, in the event the guidelines have not been followed, the reason for the deviation therefrom.

(3) MODIFICATIONS. The guidelines shall be used by the parties as the basis for periodic updates of child-support obligations.

(a) The provisions of any judgment respecting child support shall be modified only as to installments accruing after the filing of the petition for modification.

(b) A party seeking a modification of child support must plead and prove that there has occurred a material change in circumstances that is substantial and continuing since the last order of child support.

(c) There shall be a rebuttable presumption that child support should be modified when the difference between the existing child-support award and the amount determined by application of these guidelines varies more than ten percent (10%), unless the variation is due to the fact that the existing child-support award resulted from a rebuttal of the guidelines and there has been no change in the circumstances that resulted in the rebuttal of the guidelines.

(d) The existence of the guidelines or periodic changes to the guidelines in and of themselves do not constitute proof of a material change in circumstances that is substantial and continuing.

(e) A trial court has discretion and authority to modify a child-support obligation even when there is not a ten percent (10%) variation between the current obligation and the guidelines when a petitioner has proven a material change in circumstances that is

substantial and continuing. Likewise, a trial court has discretion to deny a modification even when the ten percent (10%) variation is present, based on a finding that the application of the guidelines in that case would be manifestly unjust or inequitable.

(4) HEALTH-CARE NEEDS. All orders establishing or modifying child support shall, at a minimum, provide for the children's health-care needs through health-insurance coverage, through cash medical support, or other means.

Normally, health insurance covering the children should be required if it is available to either parent through his or her employment or pursuant to any other group plan at a reasonable cost and is accessible to the children.

(B) *Definitions.*

(1) INCOME. For purposes of the guidelines established by this rule, "income" means actual gross income of a parent, if the parent is employed to full capacity, or the actual gross income the parent has the ability to earn if the parent is unemployed or underemployed.

(2) GROSS INCOME.

(a) "Gross income" includes income from any source, and includes, but is not limited to, salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment-insurance benefits, disability-insurance benefits, gifts, prizes, and preexisting periodic alimony.

(b) "Gross income" does not include child support received for other children or benefits received from means-tested public-assistance programs, including, but not limited to, Temporary Assistance for Needy Families, Supplemental Security Income, food stamps, and general assistance.

(3) SELF-EMPLOYMENT INCOME.

(a) For income from self-employment, rent, royalties, proprietorship of business, or joint ownership of partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce this income, as allowed by the Internal Revenue Service, with the exceptions noted in subsection (B)(3)(b).

(b) "Ordinary and necessary expenses" does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support.

(4) OTHER INCOME. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal-living expenses.

(5) UNEMPLOYMENT; UNDEREMPLOYMENT. If the court finds that either parent is voluntarily unemployed or underemployed, it shall estimate the income that parent would otherwise have and shall impute to that parent that income; the court shall calculate child support based on that parent's imputed income. In determining the amount of income to be imputed to a parent who is unemployed or underemployed, the court should determine the employment potential and probable earning level of that parent, based on that parent's recent work history, education, and occupational qualifications, and on the prevailing job opportunities and earning levels in the community. The court may take into account the presence of a young or physically or mentally disabled child necessitating the parent's need to stay in the home and therefore the inability to work.

(6) PREEXISTING CHILD-SUPPORT OBLIGATION. The amount of child support actually being paid by a parent pursuant to an order for child support of other children shall be deducted from that parent's "gross income." If a parent is legally responsible for and is actually providing child

support for other children, but not pursuant to an order of child support, a deduction for an "imputed preexisting child-support obligation" may be made from that parent's gross income. The imputed preexisting child-support obligation shall be that amount specified in the schedule of basic child-support obligations based on that parent's unadjusted gross income and the number of other children for whom that parent is legally responsible. "Other children" means children who are not the subject of the particular child-support determination being made. If the proceeding is one to modify an existing award of child support, no deduction should be made for other children born or adopted after the initial award of child support was entered, except for child support paid pursuant to another order of child support.

(7) HEALTH-INSURANCE COVERAGE/CASH MEDICAL SUPPORT.

(a) Medical support in the form of health-insurance coverage and/or cash medical support shall be ordered provided that health-insurance coverage is available to either parent at a reasonable cost and/or cash medical support is considered reasonable in cost. The health-insurance coverage must be "accessible" to the children, as that term is defined in subsection (c).

(b) Cash medical support may be ordered in addition to health-insurance coverage. Cash medical support does not have to be a stand-alone amount. Cash medical support for uninsured medical expenses can be allocated between the parents.

(c) Definitions.

(1) Cash Medical Support. Cash medical support is an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.

(2) Health Insurance. Health insurance includes the fee for service, health-maintenance organization, preferred provider organization, and

other types of coverage that is available to either parent, under which medical services could be provided to the dependent children.

(3) Reasonable Cost. Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed 10% of his or her gross income. For purposes of applying the 10% standard, the cost is the cost of adding the child or children to existing coverage or the difference between self-only and family coverage, whichever is greater.

(4) Accessible. Health-insurance coverage shall be deemed "accessible" if ordinary medical care is available to the children within a 100-mile radius of their residence.

(d) The actual cost of a premium to provide health-insurance benefits for the children shall be added to the "basic child-support obligation" and shall be divided between the parents in proportion to their adjusted gross income in the percentages indicated on the Child-Support Guidelines form (Form CS-42).

(e) The amount to be added to the "basic child-support obligation" and inserted in Line 6 ("Health-Insurance Costs") of the Child-Support Guidelines form (Form CS-42) shall be the pro rata portion of the medical-insurance premium attributable to the child or children who are the subject of the support order, which shall be calculated by dividing the total medical-insurance premium actually paid by, or on behalf of, the parent ordered to provide the coverage by the total number of persons (adult and/or children) covered and then multiplying the result by the number of children who are the subject of the support order.

(f) After the "total child-support obligation" is calculated and divided between the parents in proportion to their "monthly adjusted gross income," the amount added pursuant to subsection (e) shall be deducted from the obligor's share of the total child-

support obligation, provided the obligor actually pays the premium. If the obligee is actually paying the premium, no further adjustment is necessary.

(g) If, at any time while a child-support order providing for an insurance adjustment is in effect, the insurance coverage is allowed to lapse, is terminated, or otherwise no longer covers the children for whose benefit the order was issued, the court (i) may find the amount deducted from the obligor's child-support obligation therefor to be an arrearage in the obligor's total child-support obligation; (ii) may find the obligor liable for medical expenses that would otherwise have been covered under the insurance; and/or (iii) may enter such other order as it shall deem appropriate.

(8) CHILD-CARE COSTS. Child-care costs, incurred on behalf of the children because of employment or job search of either parent, shall be added to the "basic child-support obligation." Child-care costs shall not exceed the amount required to provide care from a licensed source for the children, based on a schedule of guidelines developed by the Alabama Department of Human Resources. Before the Alabama Department of Human Resources implements any revision to the schedule of child-care-cost guidelines, it shall provide the administrative director of courts ("the ADC") a copy of the revised schedule. The ADC shall, as soon as reasonably practicable thereafter, disseminate the revised schedule to all circuit and district court judges and clerks and the Family Law Section of the Alabama State Bar. The clerk shall maintain the current schedule in his or her office, shall make it available for review, and shall provide copies of it on request, at the customary cost for copies of documents.

(9) CREDIT FOR THIRD PARTY PAYMENT TO CHILD.

(i) Social Security Retirement, Survivor's, or Disability Insurance benefits, Veteran's benefits, Railroad Retirement or any other third party payments paid for the children based on the support obligor's earnings record or other eligibility requirement

attributable to the support obligor, shall be credited against that parent's support obligation, for so long as it is being received by the support payee, as follows:

(1) Determine the total child support obligation.

(2) Determine the monthly benefit amount that is attributable to the obligor and that the support recipient receives for the children and then subtract that amount from the total child support obligation.

(a) If the children's obligor-based benefit exceeds the total support amount, then no additional support amount should be ordered.

(b) If the children's obligor-based benefits are less than the obligor's total support amount, then the difference between the benefits received for the children and the total support amount becomes the ordered obligation.

(ii) The following payments to a child by a third party shall not be credited towards the support obligor's child support obligation:

(1) Payments which are not based on the support obligor's earnings record or other eligibility requirement attributable to the support obligor;

(2) Any payments due to the disability of the child;

(3) Any payment received in excess of the amount of child support owed to the child;

(4) Any payment received by the child shall not be credited against arrearages that accrued before the receipt of the obligor's benefits;

(5) Social Security Income benefits paid to the child;

(6) Adoption subsidy paid to adoptive parents of a special needs child pursuant to sections 26-10-20 et seq. of the Code of Alabama.

~~(9)~~ (10) SPLIT CUSTODY. In those situations where each parent has primary physical custody of one or more children, child support shall be computed in the following manner:

(a) Compute the child support the father would owe to the mother for the children in her custody as if they were the only children of the two parties; then

(b) Compute the child support the mother would owe to the father for the children in his custody as if they were the only children of the two parties; then

(c) Subtract the lesser child-support obligation from the greater. The parent who owes the greater obligation should be ordered to pay the difference in child support to the other parent, unless the court determines, pursuant to other provisions of this rule, that it should deviate from the guidelines.

(11) JOINT PHYSICAL CUSTODY. In those situations when the parents have been awarded joint physical custody of a child(ren), as defined below, child support shall be computed in the following manner:

(a) Compute the child support the plaintiff would owe to the defendant for the child(ren) pursuant to Rule 32, as if the child(ren) were placed in the defendant's sole physical custody; then,

(b) Compute the child support the defendant would owe to the plaintiff for the child(ren) pursuant to

Rule 32, as if the child(ren) were placed in the plaintiff's sole physical custody; then,

(c) Subtract the lesser child-support obligation from the greater; then,

(d) Multiply the difference by a fraction, the numerator of which is the number of nights of the year that the child(ren) will spend with the parent who owes the lesser obligation, according to the joint physical custody parenting plan schedule as ordered, and the denominator of which is 365 days.

The parent who owes the greater obligation should be ordered to pay the resulting amount in child support to the other parent, unless the court determines, pursuant to other provisions of this rule, it should deviate from the guidelines.

This section is rebuttably presumed to be the appropriate method of calculating child support if each parent has been awarded at least 40% overnight physical custody of the child(ren) subject to the child support order.

(C) *Determination of Recommended Child-SUPPORT OBLIGATION.*

(1) BASIC CHILD-SUPPORT OBLIGATION. The basic child-support obligation shall be determined by using the schedule of basic child-support obligations. The category entitled "combined adjusted gross income" in the schedule means the combined monthly adjusted gross incomes of both parents. "Adjusted gross income" means gross income less preexisting child-support obligations, less preexisting periodic alimony actually paid by a parent to a former spouse. For combined adjusted gross-income amounts falling between amounts shown in the schedule, the lower value shall be used if the combined adjusted gross income falls less than halfway between the amounts shown in the schedule. Where the combined adjusted gross income falls halfway or more than halfway between two amounts, the higher value shall be used. The category entitled "number of children due support" in the schedule means children for

whom the parents share joint legal responsibility and for whom child support is being sought. The court may use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels or exceeds the uppermost levels of the schedule.

(2) COMPUTATION OF CHILD SUPPORT. A total child-support obligation is determined by adding the basic child-support obligation, work-related child-care costs, and health-insurance costs. The total child-support obligation shall be divided between the parents in proportion to their adjusted gross incomes. The obligation of each parent is computed by multiplying the total child-support obligation by each parent's percentage share of their combined adjusted gross income. The custodial parent shall be presumed to spend his or her share directly on the child.

(3) ROUNDING. All dollar amounts used in child-support calculations under this rule, including the recommended child-support order, shall be rounded to the nearest dollar, and all percentages shall be rounded to the nearest one percent.

(4) ADDITIONAL AWARDS FOR CHILD SUPPORT. In addition to the recommended child-support order, the court may make additional awards for extraordinary medical, dental, and educational expenses if (i) the parties have in writing agreed to these awards or (ii) the court, upon reviewing the evidence, determines that these awards are in the best interest of the children and states its reasons for making these additional awards.

(D) *Schedule of Basic Child-Support Obligations.* A schedule of basic child-support obligations appears as an appendix to this Rule 32.

(E) *Standardized Child-Support Guidelines Form, Child-Support-Obligation Income Statement/Affidavit Form, and Child-Support Guidelines Notice of Compliance Form.* A standardized Child-Support Guidelines form (Form CS-42 as appended to this rule) and a Child-Support-Obligation Income Statement/Affidavit form (Form CS-41 as appended to this rule) shall be filed in each action to establish or modify child-support obligations and shall be of record and

shall be deemed to be incorporated by reference in the court's child-support order. In conformance to section (A)(2) of this rule, in stipulated cases the court may accept the filing of a Child-Support Guidelines Notice of Compliance form (Form CS-43 as appended to this rule). The form, content, and numbering schemes of the Child-Support Guidelines form, the Child-Support-Obligation Income Statement/Affidavit form, and the Child-Support Guidelines Notice of Compliance form shall be prescribed by the ADC.

(F) *Income Statements.* Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period or shall be supplemented with other documentation as the court directs. Intentional falsification of information presented on the Child-Support-Obligation Income Statement/Affidavit form shall be deemed contempt of court. Documentation of earnings used in preparing the Child-Support-Obligation Income Statement/Affidavit form shall be maintained by the parties and made available as directed by the court.

(G) *Review of Guidelines.* The Advisory Committee on Child-Support Guidelines and Enforcement (hereinafter "the Committee"), appointed by the Supreme Court, shall, at least once every four years, review the child-support guidelines and the schedule of basic child-support obligations to ensure that their application results in appropriate child-support determinations. Any recommendations concerning the child-support guidelines and/or the schedule of basic child support obligations shall be reduced to writing and sent by the chairman of the Committee to the clerk of the Supreme Court for review by the Supreme Court. Any proposed changes to the child-support guidelines and/or the schedule of basic child-support obligations that are approved by the Supreme Court shall be sent by the clerk of the Supreme Court to the ADC for distribution to the trial courts.

Credits

(Amended 9-28-87, eff. 10-1-87; Amended 8-29-89, eff. 10-9-89; Amended 8-24-93, eff. 10-4-93; Amended 11-19-2008, eff. 1-1-2009; Amended 2-25-2009, eff. 3-1-2009; Amended 2-11-2015, eff. 4-1-2015; Amended _____, eff. _____)

**COMMENT (AS AMENDED TO CONFORM TO AMENDMENTS EFFECTIVE
OCTOBER 4, 1993)**

Rule 32 establishes guidelines as a rebuttable presumption for the ordering of child support awards. These guidelines were adopted in response to requirements set forth in the Child Support Enforcement Amendments of 1984 (P.L. 98-378) and the Family Support Act of 1988 (P.L. 100-485). The guidelines will provide an adequate standard support for children, subject to the ability of their parents to pay, and will make awards more equitable by ensuring more consistent treatment of persons in similar circumstances.

These guidelines are based on the income shares model developed by the National Center for State Courts and are founded on the premise that children should not be penalized as a result of the dissolution of the family unit but should continue to receive the same level of support that would have been available to them had the family unit remained intact. Under the guidelines, attorneys for the plaintiff and defendant will be required to submit a Child Support Guidelines form and Child Support Obligation Income Statement/Affidavit form in each action to establish or modify child support. The Child Support Guidelines form will set forth the combined income available to the family unit, the basic child support obligation as determined from the Schedule of Basic Child Support Obligations (Appendix to Rule 32), and adjustments to the basic obligation for work-related child care expenses and health insurance premiums. A portion of the adjusted total child support obligation is then ascribed to each parent based on his/her percentage share of the combined family income. The Child Support Guidelines form sets forth the recommended child support obligation for the noncustodial parent, which includes an adjustment for the cost of the health insurance premium if such a premium is paid by the noncustodial parent. The guidelines assume that the custodial parent

will directly provide his/her proportionate share of support to the children. In addition to the recommended child support obligation, the court may make additional awards for extraordinary medical, dental, and educational expenses if the court finds such awards to be in the children's best interest or if the parents have agreed to such awards.

The Schedule of Basic Child Support Obligations was developed through research sponsored by the National Center for State Courts and is based on extensive economic research on the cost of supporting children at various income levels. This schedule is based on gross income and has been adjusted for Alabama's income distribution relative to the U. S. income distribution. It also incorporates the 1987 federal income tax provisions as well as the withholding schedule for Alabama state income tax.

Other assumptions incorporated in the Schedule of Basic Child Support Obligations include:

(1) Tax exemptions. The Schedule of Basic Child Support Obligations assumes that the custodial parent will take the federal and state income tax exemptions for the children in his or her custody;

(2) Health care costs. In respect to health care costs, the Schedule of Basic Child Support Obligations assumes unreimbursed medical costs of \$200 per family of four per year. These assumed costs include medical expenses not covered or reimbursed by health insurance or Medicaid or Medicare; and

(3) Visitation. The Schedule of Basic Child Support Obligations is premised on the assumption that the noncustodial parent will exercise customary visitation rights, including summer visitation. Any abatement of child support because of extraordinary visitation should be based on visitation in excess of customary visitation.

The schedule of basic child support obligations includes combined gross incomes ranging from \$550 to \$10,000 a month. Rule 32(C)(1) provides that the court may use its discretion in determining child support where the

combined adjusted gross income is below the lowermost levels or above the uppermost levels of the schedule. To further the consistency of awards, a court may wish to issue an order establishing minimum child support obligations for combined adjusted gross incomes of less than \$550. Where the combined adjusted gross income exceeds the uppermost limit of the schedule, the amount of child support should not be extrapolated from the figures given in the schedule, but should be left to the discretion of the court.

Rule 32(B)(8) provides an adjustment for work-related child care costs, provided such costs do not exceed those on the schedule of guidelines for licensed child care costs published by the Alabama Department of Human Resources (DHR). The rule requires that copies of the DHR schedule of guidelines for child care costs be available through the office of the clerk or register of each court where child support actions are filed. Copies of the schedule of guidelines for child care costs should also be available in the county offices of the Department of Human Resources.

The Alabama child support guidelines do not specifically address the problem of establishing a support order in joint legal custody situations. Such a situation may be considered by the court as a reason for deviating from the guidelines in appropriate situations, particularly if physical custody is jointly shared by the parents. Shared physical custody, regardless of "legal custodial arrangements," is an appropriate reason for deviation, Section (A)(1)(a). "Shared physical custody" refers to that situation where the physical placement is shared by the parents in such a manner as to assure the child frequent and continuing contact and time with both parents. Because of the infinite possibilities that exist in terms of time spent with each parent and other considerations associated with such custody, a determination of support is to be made on a case-by-case basis and is left to the sound discretion of the trial court, to be based on findings made at or after trial or upon a fair written agreement of the parties. When a shared physical custody situation results in a support award that deviates from the award that would result from application of the guidelines, the trial

court's order, or the written agreement of the parties, must specify and explain the reason for the deviation.

The guidelines also do not address the problem of subsequent children or families. While no deduction may be made for children born or adopted after an initial award of support, unless made pursuant to another order of support or as otherwise provided in this rule, a court may consider evidence of support provided by a party for after-born or adopted children offered in an attempt to rebut the guidelines' presumptions. See *Loggins v. Houk*, 595 So.2d 488 (Ala.Civ.App.1991).

The Schedule of Basic Child Support Obligations assumes that a family of four will have approximately \$200 in unreimbursed medical expenses each year. In providing for the payment of deductibles and/or other noncovered medical expenses by the parties, it should be assumed that those expenses are in excess of this amount. Courts and parties may wish to consider whether noncovered medical and/or dental expenses should be allocated in the same percentages as the health insurance premiums are allocated pursuant to this rule and as entered on the Child Support Guidelines form (Form CS-42).

When provisions for payment of a health insurance premium are made as provided in Rule 32, the court, or the parties drafting an agreement, should also consider requiring proof that the children have been enrolled in the health insurance plan and proof of the actual cost of dependent coverage. The court should, in its order of child support, require the parent providing dependent insurance coverage to submit annually proof of continued coverage to the other parent, the court, or the designated child support enforcement agency, and should further require provision of an identification card or other evidence of insurance sufficient for the children to be afforded benefits of such insurance coverage by service providers.

The Supreme Court's Advisory Committee on Child Support Guidelines and Enforcement, which assisted in drafting this rule, has recommended that child support obligations be determined before the court considers spousal support or other obligations.

COMMENT TO AMENDMENTS EFFECTIVE JANUARY 1, 2009

Rule 32 was amended effective January 1, 2009, to address certain issues and to make technical changes.

The first paragraph of this rule, entitled, "Preface Relating to Scope," provides that the amended rule is effective January 1, 2009, and will apply to all new actions filed or proceedings instituted on or after that date. Any actions or proceedings instituted before January 1, 2009, will be governed by Rule 32 as it read before that date.

Rule 32(A)(2), entitled "Stipulations," was amended to delete the last sentence, which is also found in Rule 32(E).

Rule 32(A)(3), entitled "Modifications," was amended by adding subsection (b), which emphasizes that under current Alabama caselaw a party seeking a modification of child support must plead and prove that a material change in circumstances has occurred since the entry of the last order of child support that is substantial and continuing.

Former subsection (b) of Rule 32(A)(3) was moved to subsection (c). Subsections (d) and (e) were added to Rule 32(A)(3). Subsection (d) clarifies that the mere existence of the guidelines or any periodic changes to the guidelines, including these latest changes, do not, in and of themselves, constitute proof of a material change in circumstances that is substantial and continuing to warrant the filing of a modification of child support. Subsection (e) restates that a trial court may modify a child-support obligation even when there is not a 10percent variation between the current obligation and the guidelines when a petitioner has proven a material change in circumstances that is substantial and continuing, or it may deny a modification even when the 10 percent variation exists based on a finding that the application of the guidelines in that case would be manifestly unjust or inequitable.

In Rule 32(B)(2)(b), the definition of "Gross Income" was amended to change the term "Aid to Families with

Dependent Children," which is no longer used, to "Temporary Assistance for Needy Families."

The Supreme Court's Advisory Committee on Child-Support Guidelines and Enforcement considered the issue of allowing a deduction beyond what is provided in Rule 32(B)(6) for a parent paying child support if that parent has other children who are not the subject of the particular child-support determination being made. After many discussions, the Advisory Committee decided not to recommend an amendment to Rule 32(B)(6), which allows a parent paying child support to deduct from that parent's gross income the amount of child support actually being paid by the person pursuant to a child-support order for other children or an imputed amount if the parent is legally responsible for and is actually providing child support for other children not covered by a child-support order.

The Advisory Committee also decided not to recommend an amendment to the guidelines to address the issue of subsequent children or families. Although no deduction may be made for children born or adopted after an initial award of support unless the deduction is made pursuant to another order of support or as otherwise provided in this rule, a court may consider evidence of support provided by a party for after-born or adopted children offered in an attempt to rebut the presumptions in the guidelines. See *Loggins v. Houk*, 595 So.2d 488 (Ala.Civ.App.1991). A decision regarding an issue raised concerning subsequent children or families is to be made on a case-by-case basis and is left to the sound discretion of the trial court, to be based on findings made at or after trial or upon a fair written agreement of the parties. If a deduction for subsequent children or families results in a support award that deviates from the award that would result from application of the guidelines, the trial court's order, or the written agreement of the parties, must specify and explain the reason for the deviation.

In Rule 32(B)(8), the definition of "Child-Care Costs" was amended to delete reference to registers receiving copies of the Department of Human Resources' schedule of child-care-cost guidelines because there are no longer any registers.

Rule 32(G) was amended to provide that the Advisory Committee on Child-Support Guidelines and Enforcement appointed by the Supreme Court, instead of the administrative director of courts, shall, at least once every four years, review the child-support guidelines and the schedule of basic child-support obligations to ensure that their application results in appropriate child-support determinations. Language was also added to provide that any recommendations concerning the child-support guidelines and/or the schedule of basic child support obligations shall be reduced to writing and sent by the chairman of the Committee to the clerk of the Supreme Court for review by the Supreme Court. Any proposed changes to the child-support guidelines and/ or the schedule of basic child-support obligations that are approved by the Supreme Court shall be sent by the clerk of the Supreme Court to the administrative director of courts for distribution to the trial courts.

The original schedule of basic child-support obligations was developed through research sponsored by the National Center for State Courts. The revised schedule of basic child-support obligations was updated and is based on the latest extensive economic research on the cost of supporting children at various income levels. Specifically, the revised schedule of basic child-support obligations is based on estimates of child-rearing expenditures that were developed applying the Rothbarth methodology to 1998-2004 expenditures data and updated to 2007 price levels. The revised schedule of basic child-support obligations is also based on gross income and has been adjusted for Alabama's income distribution relative to the income distribution for the United States. It also incorporates the 2007 federal and State of Alabama personal income-tax withholding formulas.

Other assumptions incorporated in the revised schedule of basic child-support obligations include:

(1) TAX EXEMPTIONS. The schedule of basic child-support obligations assumes that the custodial parent will take the federal and state income-tax exemptions for the children in his or her custody;

(2) HEALTH-CARE COSTS. In respect to health-care costs, the schedule of basic child-support obligations assumes unreimbursed medical costs of \$250 per child per year. These assumed costs include medical expenses not covered or reimbursed by health insurance, Medicaid, or All Kids, or insurance from another public entity up to \$250 per child per year;

(3) VISITATION. The schedule of basic child-support obligations is premised on the assumption that the noncustodial parent will exercise customary visitation rights, including summer visitation. Any abatement of child support because of extraordinary visitation should be based on visitation in excess of customary visitation; and

(4) SELF-SUPPORT RESERVE. The schedule of basic child-support obligations incorporates a self support reserve of \$851 per month. It is based on the 2007 federal poverty guidelines for one person but is also realigned to consider Alabama incomes in the same manner as the revised schedule. The adjustment is incorporated into the schedule for combined gross incomes below: \$1,100 for one child; \$1,350 for two children; \$1,550 for three children; \$1,700 for four children; \$1,900 for five children; and \$2,100 for six children. The evidence on child-rearing expenditures indicates a higher amount is expended on children below these income levels than what is shown in the schedule of basic child-support obligations.

The entire revised schedule of basic child-support obligations includes combined gross incomes ranging from \$0 to \$20,000 a month. Rule 32(C)(1) provides that the court may use its discretion in determining child support when the combined adjusted gross income is below the lowermost levels or above the uppermost levels of the schedule. To further the consistency of awards, a court may wish to issue an order establishing minimum child support obligations for combined adjusted gross incomes of less than \$800. When the combined adjusted gross income exceeds the uppermost limit of the schedule, the amount of child support should not be extrapolated from the figures given in the schedule, but should be left to the discretion of the court.

The revised schedule of basic child-support obligations assumes that each child will have \$250 in unreimbursed medical expenses each year up to \$750 for three children per year and \$75 per each additional child thereafter. This includes ordinary medical expenditures such as over-the-counter medicines, Band-Aids, and co-pays for well visits. In providing for the payment of deductibles and/or other noncovered medical expenses by the parties, it should be assumed that those expenses are in excess of this amount.

COMMENT TO AMENDMENTS EFFECTIVE MARCH 1, 2009

Rule 32(A)(4), "Health-Care Needs," was amended to state that health-insurance coverage may be provided through cash medical support and that the coverage must be accessible to the children. These provisions are required in state child-support guidelines pursuant to federal medical-support regulations. See 45 C.F.R. § 302.56(c)(3).

The title to Rule 32(B)(7) was changed from "Health-Insurance Premiums" to "Health-Insurance Coverage/ Cash Medical Support" to more accurately describe the rule once the new provisions have been added.

Subsection (a) was added to ensure that the State's child-support guidelines are in compliance with 45 C.F.R. § 302.56(c)(3). The provisions that the health insurance be available to a parent at reasonable cost and that coverage be accessible to the children were included pursuant to 45 C.F.R. § 303.31(b)(1).

Subsection (b) was added to provide that cash medical support may be ordered in addition to health-insurance coverage, that cash medical support does not have to be a stand-alone amount, and that cash medical support can be allocated between the parents for responsibility for uninsured medical expenses.

Subsection (c) was added to define certain terms. The definition of "cash medical support" tracks the language of 45 C.F.R. § 303.31(a)(1). The definition of "health insurance" tracks the language of 45 C.F.R. § 303.31(a)

(2). The definition of "reasonable cost" tracks the language of 45 C.F.R. § 303.31(a)(3). The Supreme Court's Advisory Committee on Child-Support Guidelines and Enforcement voted to provide that cash medical support or the cost of private health insurance is considered reasonable if the cost to the parent responsible for providing medical support does not exceed 10% of his or her gross income. For purposes of applying the 10% standard, the cost is the greater of the cost of adding the child to existing coverage or the difference between self-only and family coverage. A definition of "accessible" was added to comply with 45 C.F.R. § 303.31(b)(1). The federal government allows states to define "accessible." The Advisory Committee chose to define this term as health-insurance coverage for ordinary medical care to children available to the children within a 100-mile radius of their residence.

Former subsection (a) was renumbered as subsection (d).

Former subsections (b), (c), and (d) were renumbered subsections (e), (f), and (g), respectively. Only technical changes were made to these subsections.

COMMENT TO AMENDMENTS EFFECTIVE APRIL 1, 2015

Rule 32 was amended effective April 1, 2015, to add two additional specific reasons for the court to deviate from the child-support guidelines and to provide a more equitable manner of treating the inclusion of health insurance premiums in the calculation of child support.

A new subsection (A)(1)(e) was added to specifically permit the court to deviate from the guidelines if the custodial parent is not claiming the federal and state income-tax exemptions for the child or children, as is assumed under the Schedule of Basic Child-Support Obligations.

Subsection (A)(1)(f) was added to specifically permit the court to deviate from the guidelines in the instances in which the actual child-care costs exceed the costs allowed under subsection (B)(8) of the rule by at least 20 percent (20%). This addition will allow the court to

consider all the factors surrounding the child-care arrangements in each individual case, including the acceleration in child-care costs. Also, this change furthers the policy of encouraging both parents to seek and maintain employment to help support their child.

Former subsection (A)(1)(e) was redesignated as subsection (A)(1)(g) in light of the additions of the two new subsections.

Subsection (B)(7)(e) was amended to provide a more equitable determination of the actual cost of the health insurance premiums for a child in the calculation of child support. The former rule required the inclusion of the actual amount of the total insurance premium for family/dependent coverage, regardless of which children were included under that coverage. That method of calculation was based on outdated modes of dependent health-insurance coverage and had the potential to lead to inequitable results, as demonstrated in *Hein v. Fuller*, 93 So.3d 961 (Ala.Civ.App.2012). The inclusion of the pro rata portion of the medical-insurance premium attributable to a child who is the subject of the support order will more fairly represent the true cost of medical coverage for the child. The addition of the language allows the court to base the calculations on the premium paid "by, or on behalf of, the parent" reflects the existing practice of stepparents' providing medical insurance for their stepchildren under their dependent-coverage policies and fosters the goal of promoting health coverage for children.

COMMENT TO AMENDMENTS EFFECTIVE

The addition of subdivision (g) to subsection (A)(1), for consideration by the court, in deviating from the guidelines reflects the policy of encouraging parents to be self-supporting and to develop the necessary skill set to support their children. This provision is similar to Section 19-6-15(a)(24), Ga.Code.Ann., Georgia's child-support guidelines statute.

Former subdivision (g) of subsection (A)(1) became new subdivision (h).

A new subdivision (9) of subsection (B) was added to allow the obligor to receive credit for certain third party payments made directly to the payee. Subsection (B)(9)(i) is based on Section 3.07 [Social Security Benefit Credit] of the State of Michigan child support guidelines with the addition of credit for payments from other third parties such as Railroad Retirement benefits.

Subsection (B)(9)(i) is consistent with current Alabama case law. In *Goldman v. Goldman*, 197 So.3d 487 (Ala.Civ.App.2015), the Alabama Court of Civil Appeals held that the former husband's veteran's disability benefits were to be considered as income for purpose of calculating his child-support obligation. A noncustodial parent cannot be required to pay child support when social security payments received by child based on parent's disability exceeds guideline amounts. *Self v. Self*, 685 So.2d 732 (Ala.Civ.App.1996). The obligor is also entitled to a credit against his obligation when a child receives benefits based on the obligor's retirement benefits. *Adams v. Adams*, 107 So.3d 194 (Ala.Civ.App.2012). Notwithstanding, if the third party payment to the child is stopped for any reason, the child support owed by the payee remains the amount of the existing child support order. For example, if a child is receiving a third party payment from Social Security which terminates when the child reaches the age of 18, the obligation of the obligor to pay the court-ordered child support will remain in effect until the child reaches the age of majority.

The exclusions for credit enumerated in subsection (B)(9)(ii) reflect current Alabama law. Alabama has consistently held that credit is not allowed for a benefit that a child receives based on the work history of someone other than the obligor. *Hebert v. Stephenson*, 574 So.2d 835 (Ala.Civ.App.1990). See also the court's comments regarding child support credit based on the child's own disability. See, *Hebert* at 837. The exclusion of credit for SSI benefits in subsection (B)(9)(ii)(4) is consistent with current law. *Brazeal v. Brazeal*, 756 So.2d 889 (Ala.Civ.App.1999). Also, the exclusion of credit for Social Security Income benefits in subsection (B)(9)(ii)(5) is consistent with *Lightel v. Myers*, 791 So.2d 955

(Ala.Civ.App.2000), holding that a parent should not get credit for the SSI benefits payable to the child as a "supplement to income" for the child based on the child's disability, as was clarified by the court in Adams v. Adams, 107 So.3d 194 (Ala. Civ. App. 2012), which held that credit could be given to a parent whose child received Social Security retirement benefits based on the parent's works history and, thus, is a "substitute income source". Likewise, the exclusion of credit for adoption subsidy pay in subsection (B)(9)(ii)(6) is consistent with current law because the adoption subsidy is not a "substitute for an income source," but rather is supplemental to the adoptive parents' income. W.R. v. C.R., 75 So.3d 159 (Ala.Civ.App.2011).

Former subdivision (9) of subsection (B) became new subdivision (10).

A new subdivision (11) of subsection (B) also was added. Prior to the adoption of this provision, the Alabama child support guidelines did not specifically address the issue of establishing a support order when joint physical custody was ordered. Instead, the guidelines provided that when joint custody was ordered by the court, the joint custody award could be considered by the court as a reason for deviating from the guidelines in appropriate situations. The adoption of this provision will provide trial courts with a specific and uniform manner of calculating child support when joint physical custody has been awarded. An example of how support would be calculated in a joint physical custody situation is attached as an Appendix to this Rule.

CHILD-SUPPORT-OBLIGATION
INCOME STATEMENT/AFFIDAVIT

Case Number

IN THE _____ COURT OF _____ COUNTY, ALABAMA
(Circuit or District) (Name of County)

Plaintiff _____ v. Defendant _____

AFFIDAVIT

I, _____, being duly sworn upon my oath, state as follows :
(Name of Affiant)

1. I am the Plaintiff Defendant Other (please specify): _____ in the above matter.
My Social Security number is: _____

2. I am currently employed. My employer's name and address are:

not currently employed.

My last employer's name and address are: _____

Last position title: _____

Average monthly salary in the last year of employment: \$ _____

3. My monthly gross income includes:

(For example of income that must be included, see back of this form. If income varies by month, enter the estimated average monthly gross income.)

Employment income	\$ 6,000.00
Self-employment income	\$ _____
Other employment-related income	\$ _____
Other non-employment-related income	\$ _____
Total	\$ 6,000.00

4. I incur the following amount monthly for work-related child-care: \$ 150.00
(if none, write "None")

5. The child(ren) of the parties is/are

not covered by health insurance from me and/or my employer.

covered by health insurance, and (1) I pay \$ 600.00 each month, or that amount is paid on my behalf each month by my _____, for the family policy coverage under which the child(ren) is/are covered; and (2) the total number of persons covered under that policy is 4 _____.

The pro rata portion of the medical insurance premium attributable to the child or children who are the subject of the support order (which shall be calculated by dividing the total medical insurance premium actually paid by, or on behalf of, the parent ordered to provide the coverage by the total number of persons (adult and/or children) covered and then multiplying the result by the number of children who are the subject of the support order) is the sum of \$ 300.00 _____.

6. I pay the following total amount for child support alimony in [a] prior case(s) as follows:

[List case number(s) and county(ies) and state(s) here]:
_____ \$ None
(if none, write "None")

I understand that I will be required to maintain all income documentation used in preparing this Income Statement/Affidavit (including my most recent income-tax return) and that such documentation shall be made available as directed by the court. I also understand that any intentional falsification of the information presented in this Income Statement/Affidavit may subject me to the penalties of perjury.

Affiant

Sworn to and subscribed before me this _____ day of _____, _____

Notary/Clerk

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EXAMPLES OF INCOME THAT MUST BE INCLUDED IN YOUR GROSS MONTHLY INCOME

1. Employment Income – shall include, but not be limited to, salary, wages, bonuses, commissions, severance pay, worker's compensation, pension income, unemployment insurance, disability insurance, and Social Security benefits.
2. Self-Employment Income – shall include, but not be limited to, income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation. "Gross income" means gross receipts minus ordinary and necessary expenses required to produce this income.
3. Other Employment-Related Income – shall include, but not be limited to, the average monthly value of any expense reimbursements or in-kind payments received in the course of employment that are significant and reduce personal living expenses, such as a furnished automobile, a clothing allowance, and a housing allowance.
4. Other Non-Employment-Related Income – shall include, but not be limited to, dividends, interest, annuities, capital gains, gifts, prizes, and pre-existing periodic alimony.

RULE 32, ALABAMA RULES OF JUDICIAL ADMINISTRATION, PROVIDES THE FOLLOWING DEFINITIONS:

Income. For purposes of the guidelines specified in this Rule, "income" means the actual gross income of a parent, if the parent is employed to full capacity, or if the parent is unemployed or underemployed, then it means the actual gross income the parent has the ability to earn.

Gross Income.

"Gross income" includes income from any source, and includes, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment-insurance benefits, disability-insurance benefits, gifts, prizes, and preexisting periodic alimony.

"Gross income" does not include child support received for other children or benefits received from means-tested public-assistance programs, including, but not limited to, Temporary Assistance for Needy Families, Supplemental Security Income, food stamps, and general assistance.

Self-employment Income.

For income from self-employment, rent, royalties, proprietorship of business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income, as allowed by the Internal Revenue Service, with the exceptions noted in Rule 32 (B)(3)(b).

Under those exceptions, "ordinary and necessary expenses" does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support.

Other Income. Expense reimbursements or in-kind payments received by a parent in the course of employment of self-employment or operation of a business shall be counted as income if they are significant and reduce personal living expenses.

