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Child Support Guidelines

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*** THIS DOCUMENT IS CURRENT THROUGH AMENDMENTS AND NEW RULES
RECEIVED THROUGH JANUARY 1, 2009 * * ALABAMA RULES OF JUDICIAL
ADMINISTRATION ARJA, R 32 (2009)**

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; and
- (e) 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" shall be the actual amount of the total insurance premium for family/dependent coverage, regardless of whether all children covered are in the same family.

(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) 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.

(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.

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 11-19-07, eff. 1-1-09; Amended 2-25-09, eff. 3-1-09).