



RULES of JUDICIAL ADMINISTRATION

RULE 32.

CHILD SUPPORT GUIDELINES

Preface Relating to Scope. This rule, as amended effective October 4, 1993, shall apply to all new actions filed or proceedings instituted on or after October 4, 1993. Any actions or proceedings instituted before October 4, 1993, shall be governed by Rule 32 as it read before October 4, 1993.

(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 which 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) Such other facts or circumstances that the court finds contribute to the best interest of the child or children for whom 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 such 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 that indicates compliance with this rule or, in the event the child support guidelines have not been met, the reason for the deviation therefrom. The form, content, and numbering scheme of the Child Support Guidelines Notice of Compliance shall be prescribed by the administrative director of courts (ADC). (See Form CS-43 following this rule.)

(3) Modifications. The parties shall use the child support guidelines 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) 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.

(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 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.

(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, trusts, 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, Aid to Families with Dependent Children, 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 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 section (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 aren't 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, in its discretion, 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 support of other children shall be deducted from that parent's "gross income." If a parent is legally responsible for and is actually providing support for other children, but not pursuant to an order of 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 support, no deduction should be made for other children born or adopted after the initial award of support was entered, except for support paid pursuant to another order of support.

(7) Health Insurance Premiums.

(a) 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).

(b) 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.

(c) 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 (b) shall be deducted from the obligor's share of the total child support obligation, provided the obligor actually pays said premium. If the obligee is actually paying the premium, no further adjustment is necessary.

(d) If, at any time while a child support order providing for an insurance adjustment is in effect, such 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 therefore 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) enter such other order as it shall deem appropriate.

(8) Childcare Costs. Childcare 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." Childcare 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 Department of Human Resources. Before the Department of Human Resources implements any revision to the schedule of child care cost guidelines, it shall provide the ADC a copy of the revised schedule. The ADC shall, as soon as reasonably practicable thereafter, disseminate the revised schedule to all judges, all circuit, district, and

juvenile court clerks and registers, and the Family Law Section of the Alabama State Bar. The clerk or register shall maintain the current schedule in his/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, support shall be computed in the following manner:

(a) Compute the 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 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 support obligation from the greater. The parent who owes the greater obligation should be ordered to pay the difference in 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 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 and less preexisting periodic alimony actually paid by a parent to a former spouse. For combined gross income amounts falling between amounts shown in the schedule, the lower value shall be used if the combined gross income falls less than halfway between the amounts shown in the schedule. Where the combined 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 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 childcare 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 parents'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, may be rounded to the nearest dollar, and all percentages may 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 such awards or (ii) the court, upon reviewing the evidence, determines that such awards are in the best interest of the children and states its reasons for making such 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 and a Child Support Obligation Income Statement/Affidavit form 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. 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.

[Adopted effective October 1, 1987; amended effective October 9, 1989; October 4, 1993.]