

IN THE SUPREME COURT OF ALABAMA  
February 11, 2015

ORDER

IT IS ORDERED that Rule 32(A)(1) and Rule 32(B)(7)(e), Alabama Rules of Judicial Administration, be amended to read in accordance with Appendices A and B;

IT IS FURTHER ORDERED that the Comment to Amendments Effective April 1, 2015, be adopted to read in accordance with Appendix C;

IT IS FURTHER ORDERED that Form CS-41, Child-Support-Obligation Income Statement/Affidavit, be amended to read in accordance with Appendix D;

IT IS FURTHER ORDERED that these amendments and the adoption of the Comment are effective April 1, 2015;

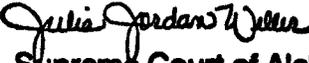
IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 32:

"Note from the reporter of decisions: The order amending Rule 32(A)(1) and Rule 32(B)(7)(e), effective April 1, 2015, and adopting the Comment to Amendments Effective April 1, 2015, is published in that volume of Alabama Reporter that contains Alabama cases from \_\_\_ So. 3d."

Stuart, Bolin, Parker, Shaw, Main, Wise, and Bryan, JJ., concur.

I, Julia Jordan Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 11<sup>th</sup> day of February, 2015

  
Clerk, Supreme Court of Alabama

## APPENDIX A

### Rule 32(A) (1), Alabama Rules of Judicial Administration

(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-case 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) 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.

APPENDIX B

Rule 32(B)(7)(e), Alabama Rules of Judicial Administration

(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.

## APPENDIX C

### 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 that 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.

State of Alabama  
Unified Judicial System

CHILD-SUPPORT-OBLIGATION  
INCOME STATEMENT/AFFIDAVIT

Case Number

Form CS-41 Rev. 4/15

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	\$ _____
Self-employment income	\$ _____
Other employment-related income	\$ _____
Other non-employment-related income	\$ _____
Total	\$ _____

4. I incur the following amount monthly for work-related child-care: \$ \_\_\_\_\_  
*(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 \$ \_\_\_\_\_ 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 \_\_\_\_\_.

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 \$ \_\_\_\_\_.

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]:  
\_\_\_\_\_ \$ \_\_\_\_\_  
*(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

**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.