

*Ala. R. Jud. Admin. Rule 32*

MICHIE'S ALABAMA RULES  
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\*\*\* State court rules are current with amendments received through August 15, 2010 \*\*\*  
\*\*\* Local federal district and bankruptcy court rules are current with amendments received  
through July 1, 2010 \*\*\*

## ALABAMA RULES OF JUDICIAL ADMINISTRATION

Ala. R. Jud. Admin. Rule 32 (2010)

Review Court Orders which may amend this Rule.

**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 **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 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, **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 **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.

**HISTORY:** (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 11-19-08, eff. 1-1-09; Amended 2-25-09, eff. 3-1-09.)

#### **NOTES: Editor's notes.**

The order dated Nov. 19, 2008, amending Rule 32, and adopting the related Comment, is effective January 1, 2009.

The order dated February 25, 2009, amending Rule 32(A)(4) and, Rule 32(B)(7) and adopting the related Comment, is effective March 1, 2009.

#### **Cross References.**

**Child** custody and **support**, generally, § 30-3-1 et seq.

#### **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 10 percent 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. § 302.5(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.

### NOTES TO DECISIONS

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#### ✚ **General comment.**

**Child support guidelines** are binding in all relevant actions and are presumed to be correct as to amount. *Pruitt v. Pruitt*, 669 So. 2d 931, 1995 Ala. Civ. App. LEXIS 596 (Civ. App. 1995).

Application of the **child support guidelines** is mandatory in **child-support** actions filed

after the effective date of this section. *Etheredge v. Etheredge*, 730 So. 2d 245, 1999 Ala. Civ. App. LEXIS 151 (Ala. Civ. App. 1999).

### **Constitutionality.**

Rule 32 of the Alabama Rules of Judicial Administration is not unconstitutional. These rules are procedural and are not to be interpreted so that they modify substantive law. *Loggins v. Houk*, 595 So. 2d 488, 1991 Ala. Civ. App. LEXIS 653 (Ala. Civ. App. 1991), cert. denied, 1992 Ala. LEXIS 354 (Ala. Mar. 20, 1992).

Supreme court held that Rule 32 A.R.J.A. does not violate § 6.11 of amendment 328, Title VI of the Alabama Constitution. *Elliott v. Williams*, 631 So. 2d 1020, 1993 Ala. Civ. App. LEXIS 389 (Ala. Civ. App. 1993).

### **Attorney fees.**

Award of an attorney fee in a domestic relations action is a matter within the discretion of the trial court, and it will not be reversed absent an abuse of that discretion. *Mitchell v. Kelley*, 628 So. 2d 807, 1993 Ala. Civ. App. LEXIS 368 (Ala. Civ. App. 1993).

There was no abuse of discretion in denying the wife attorney fees where the results of the litigation were in favor of the husband, and where it was clear from the record that the mother was capable of paying her attorney fee. *Sweeney v. Sweeney*, 640 So. 2d 956, 1994 Ala. Civ. App. LEXIS 265 (Ala. Civ. App. 1994).

An award of an attorney fee is discretionary with the trial court and will not be reversed on appeal except for an abuse of discretion. *Tucker v. Tucker*, 681 So. 2d 592, 1996 Ala. Civ. App. LEXIS 600 (Ala. Civ. App. 1996).

Trial court abused its discretion in requiring mother to pay \$200 toward father's attorney fees, given financial circumstances of parties -- where mother's monthly gross income was \$1,472 and father's was \$3,619 -- and given results of the litigation. *Bertram v. Doss*, 709 So. 2d 1274, 1998 Ala. Civ. App. LEXIS 93 (Civ. App. 1998).

### **Compliance.**

Where trial court ordered the mother to pay **child support** in the amount of \$250 per month, an amount substantially below the amount the father would have received had the trial court applied the **guidelines** of Rule 32, ARJA, the trial court erred and the **guidelines** should have been applied. *Bennett v. Brainard*, 623 So. 2d 340, 1993 Ala. Civ. App. LEXIS 173 (Civ. App. 1993).

Inherent in complying with Rule 32 is complying with subdivision (A)(ii), if the facts **support** such a determination, i.e., that application of the **guidelines**, stating the criteria, would be manifestly unjust or inequitable. Compliance with subsection (E), the filing of the forms, is mandatory even if the trial court found that application of the **guidelines** would be unjust or inequitable; otherwise, an appellate court may be unable to review that finding by the trial court. *Martin v. Martin*, 637 So. 2d 901, 1994 Ala. Civ. App. LEXIS 146 (Civ. App. 1994).

Henceforth, when the record does not reflect that Rule 32(E) was complied with and **child support** is made an issue on appeal, the policy of appellate court will be either to immediately remand jurisdiction of the case temporarily back to the trial court for compliance or to reverse the judgment and remand the case for further proceedings in compliance with

this Rule. *Martin v. Martin*, 637 So. 2d 901, 1994 Ala. Civ. App. LEXIS 146 (Civ. App. 1994).

It is well settled that a trial court's failure to apply the **guidelines** or to present findings of fact based upon evidence presented to the court as to why the **guidelines** were not followed requires reversal. *State ex rel. Nathan v. Nathan*, 680 So. 2d 339, 1996 Ala. Civ. App. LEXIS 490 (Civ. App. 1996).

Because the trial court did not follow the **guidelines** under this rule regarding the computation of the wife's gross income, the judgment was reversed and remanded for application of the **guidelines** or for the court to make written findings on the record showing why such application would be unjust. *Tucker v. Tucker*, 681 So. 2d 592, 1996 Ala. Civ. App. LEXIS 600 (Ala. Civ. App. 1996).

A trial court's failure to apply the **guidelines** or to present findings of fact based upon evidence presented to the court as to why the **guidelines** were not followed requires reversal. *Doll v. Doll*, 681 So. 2d 601, 1996 Ala. Civ. App. LEXIS 601 (Ala. Civ. App. 1996).

In this case the noncompliance with this rule amounted to harmless error because the trial court relied on accurate information in computing the amount of **child support**; however, the proper forms would have to be included in the record in the event of any future modification proceedings. *Paulson v. Paulson*, 682 So. 2d 1060, 1996 Ala. Civ. App. LEXIS 665 (Ala. Civ. App. 1996).

When the record on appeal did not contain a completed CS-42 form disclosing how the trial court arrived at a **child support** award, and absent evidence in the record clearly indicating that the award comported with the evidence regarding the parties' incomes, the appellate court had no choice but to reverse to allow the trial court to enter a judgment as required by the provisions of this rule, or to enter a judgment justifying deviation from the **guidelines**. *Dismukes v. Dorsey*, 686 So. 2d 298, 1996 Ala. Civ. App. LEXIS 820 (Ala. Civ. App. 1996).

Failure by trial court to apply **support guidelines** or to present written findings as to why **guidelines** were not appropriate requires reversal. *Williams v. Braddy*, 689 So. 2d 154, 1996 Ala. Civ. App. LEXIS 943 (Ala. Civ. App. 1996).

Where there were no **child support guideline** forms in record, and method by which trial court determined its award was unclear, case was remanded for entry of **child support** determination in compliance with this rule. *Nelson v. Landis*, 709 So. 2d 1299, 1998 Ala. Civ. App. LEXIS 132 (Ala. Civ. App. 1998).

Compliance with this rule is mandatory, even though a trial court finds that application of the **guidelines** would be unjust or inequitable. *Etheredge v. Etheredge*, 730 So. 2d 245, 1999 Ala. Civ. App. LEXIS 151 (Ala. Civ. App. 1999).

The word "shall" in subsection (E) mandates the filing of a standardized **Child Support Guidelines** Form and a **Child Support** Obligation Income Statement/Affidavit Form, except in stipulated cases, where the trial court may accept the filing of a **Child Support Guideline** Notice of Compliance Form. *Long v. Long*, 752 So. 2d 512, 1999 Ala. Civ. App. LEXIS 815 (Ala. Civ. App. 1999).

Where neither party submitted the forms required by subsection (E), neither party presented any evidence regarding their incomes, and there was no evidence in the record to **support** the husband's **child support** calculation or the trial court's award of **child support**, the court was unable to determine whether the award of **child support** was correct. *Wise v. Wise*, 751 So. 2d 29, 1999 Ala. Civ. App. LEXIS 776 (Ala. Civ. App. 1999).

Although the trial court correctly imputed \$70,000 per year in income to husband, it failed to

consider the costs of **child** care and health insurance, and it failed to determine the husband's portion of the total **child-support** obligation, as required by this rule. *Turner v. Turner*, 745 So. 2d 880, 1999 Ala. Civ. App. LEXIS 485 (Ala. Ct. App. 1999).

The trial court erred because in the case of "split custody" it did not calculate the **child support** amount in compliance with subsection (B)(9) of the **guidelines**. *Carr v. Howard*, 757 So. 2d 475, 2000 Ala. Civ. App. LEXIS 50 (Ala. Civ. App. 2000).

The Court of Appeals reversed the portion of the trial court's judgment regarding **child support** for failure to comply with this rule. Without the standardized **Child Support Guidelines** Form and the **Child Support** Obligation Income Statement/Affidavit Forms, the court could not determine how much **child support** the husband might be obligated to pay on behalf of his disabled son. *Abbett v. Treadwell*, 816 So. 2d 477, 2000 Ala. Civ. App. LEXIS 702 (Ala. Civ. App. 2000).

The trial court erred in calculating the husband's **child-support** obligation where the record did not contain all of the **child-support** calculation forms mandated by this section. *Moore v. Moore*, 795 So. 2d 736, 2001 Ala. Civ. App. LEXIS 124 (Civ. App. 2001).

The court's **child support** order was reversed where the record supported the father's contention that the forms required under Rule 32(E) were not filed. While the mother did file a CS-42 affidavit form, the father did not, and neither the parties nor the court filed a CS-41 **guidelines** form. *Gordon v. Gordon*, 804 So. 2d 241, 2001 Ala. Civ. App. LEXIS 238 (Ala. Civ. App. 2001).

Trial court's order obliging a father to pay all work-related day-care expenses was reversed, as this order was a modification of **child support**, the father did not file the required **child support guideline** forms, and the judgment did not specify whether the trial court intended to deviate from the **guidelines**. *M.S.H. v. C.A.H.*, 829 So. 2d 164, 2002 Ala. Civ. App. LEXIS 179 (Ala. Civ. App. 2002).

Trial court abused its discretion in failing to comply with Ala. R. Jud. Admin. 32, specifically, failing to include as part of the record a CS-42 **child-support guidelines** form, as such was mandatory and despite the inclusion of a CS-41 **child support** income affidavits from both the wife and the husband. *Morris v. Morris*, 883 So. 2d 1257, 2003 Ala. Civ. App. LEXIS 209 (Ala. Civ. App. 2003).

Where the record on appeal did not contain all the **child-support-guidelines** forms required pursuant to Ala. R. Jud. Admin. 32(E), and the trial court's basis for determining the father's **child-support** obligation was unclear, the trial court's **child support** order was reversed and the case was remanded. *Burleson v. Burleson*, 875 So. 2d 316, 2003 Ala. Civ. App. LEXIS 622 (Civ. App. 2003).

Where both a husband and wife filed a CS-42 **child support guidelines** form, but the husband's gross income differed on those forms, and neither the husband nor the wife filed a CS-41 **child support** obligation income statement/affidavit form, as required by Ala. R. Jud. Admin. 32, the appeals court reversed the judgment as to this issue and remanded the case for the trial court to secure CS-41 forms from the husband and the wife and for it to complete a CS-42 form in order to comply with the requirements set out in Rule 32(E). *Hallum v. Hallum*, 893 So. 2d 1192, 2004 Ala. Civ. App. LEXIS 436 (Ala. Civ. App. 2004).

#### Construction with other law.

Section 12-15-71(i) requires a trial court to order **child support** in conformity with Rule 32, ARJA, and this rule requires the court to order the parents to pay **child support** when the

parents have resources for **child support**. A trial court, therefore, must apply the **guidelines** set out in this rule when making **child support** determinations in cases where parents are currently unable to make **child support** payments. These **guidelines** require the trial court to consider the resources of the parents, not simply their incomes, in making a determination of **child support**. *St. Clair County Dep't of Human Resources v. B.A.S.*, 612 So. 2d 482, 1993 Ala. LEXIS 31 (1993).

Father should have been given a credit against his **child support** obligation for the Social Security payments received by the sons based on the father's disability, and is entitled to that credit for as long as the payments continue. *Brazeal v. Brazeal*, 756 So. 2d 889, 1999 Ala. Civ. App. LEXIS 901 (Ala. Civ. App. 1999).

The trial court committed reversible error in failing to hold a hearing on the father's Rule 59 motion where there was probable merit to his motion. His motion was based on the trial judge's failure to state why she deviated from the "**Child Support Guidelines**," set forth in this rule, without making a written finding explaining why application of the **guidelines** would be inequitable. *Blackburn v. Blackburn*, 794 So. 2d 1197, 2001 Ala. Civ. App. LEXIS 164 (Ala. Civ. App. 2001).

Trial court did not abuse discretion in the \$450-per-month alimony award since, under Ala. R. Jud. Admin. 32, gross income included income from bonuses, and, aside from underestimating his income, the husband also received a bonus of \$6,500, that he did not include in his income. *Reaves v. Reaves*, 883 So. 2d 693, 2003 Ala. Civ. App. LEXIS 950 (Civ. App. 2003).

#### Credits.

A noncustodial parent should receive full credit against his or her **child support** obligation for payments received by a **child** based on that parent's disability, and if the payment exceeds the amount required under the **child support guidelines**, there is no basis for an additional payment by the parent. *Brazeal v. Brazeal*, 756 So. 2d 889, 1999 Ala. Civ. App. LEXIS 901 (Ala. Civ. App. 1999).

#### Defenses.

Although it is the general rule that the doctrine of laches has no basis for application when dealing with past-due **child support** payments from a valid divorce decree, where, however, the court never fixed a **child support** obligation, no payments ever actually accrued. Therefore, the trial court did not err in applying laches to this particular fact situation. *Moffett v. Moffett*, 570 So. 2d 691, 1990 Ala. Civ. App. LEXIS 463 (Ala. Civ. App. 1990).

Where a husband filed a petition to modify his **child support** obligations under a divorce decree, the court properly found that his hands were unclean due to his "flagrantly contemptuous" course of conduct under the decree and properly denied his petition, where the court had entered two prior judgments finding the husband in contempt with an arrearage of over \$15,500. *Hilson v. Hilson*, 598 So. 2d 955, 1992 Ala. Civ. App. LEXIS 132 (Ala. Civ. App. 1992).

Defense of laches is not applicable to an action for non-payment of **child support**; such payments constitute final judgments from the date that they become due and, thus, are subject to a twenty-year statute of limitations. *Trimble v. Trimble*, 628 So. 2d 789, 1993 Ala. Civ. App. LEXIS 362 (Ala. Civ. App. 1993).

### **Dependency exemption.**

The trial court's award of the dependency exemption to the wife, who would owe taxes on her alimony income, was not an abuse of discretion although the husband paid 100% of the **child support** required by the **guidelines**, the mother did not work and earned no income, and the husband would owe more in taxes. *Wheeles v. Wheeles*, 770 So. 2d 635, 2000 Ala. Civ. App. LEXIS 335 (Ala. Civ. App. 2000).

Trial court erred in awarding tax-dependency exemption to the husband, where it awarded primary custody of the parties' **child** to the wife, as it was assumed that the custodial parent would take the income-tax exemption for the **child** in his or her custody. *Walls v. Walls*, 860 So. 2d 352, 2003 Ala. Civ. App. LEXIS 97 (Ala. Civ. App. 2003).

Where the trial court deviated from the **child-support guidelines** by allowing the husband, on alternating years, to take income-tax exemptions without stating its reasons in doing so, the deviation was reversed, and the case was remanded for the trial court to give its reasons. *Hallum v. Hallum*, 893 So. 2d 1192, 2004 Ala. Civ. App. LEXIS 436 (Ala. Civ. App. 2004).

### **Determining child support.**

The court did not abuse its discretion in deviating from the **child-support guidelines** to determine the father's obligation, but it may have erred in not allowing the proper deduction for health insurance provided by the father's wife. *Jackson v. Jackson*, 777 So. 2d 155, 2000 Ala. Civ. App. LEXIS 577 (Ala. Civ. App. 2000).

Where the evidence as to monthly **child-care** costs was undisputed, they should have been included in a trial court's computation of a **child support** award and added to the basic **child support** obligation as required by Ala. R. Jud. Admin. 32(B)(8). *Smith v. Smith*, 887 So. 2d 257, 2003 Ala. Civ. App. LEXIS 830 (Civ. App. 2003).

In Alabama, the general rule is that a trial court has no jurisdiction to require a parent to provide **support** for a **child** who has reached the age of majority; however, there are exceptions to the general rule: (1) where the noncustodial parent has agreed to provide **support** for the **child** past the age of majority; (2) where the adult **child** is so mentally or physically disabled that he cannot **support** himself or herself; (3) where an application for postminority **support** educational **support** is made before the **child** reaches the age of majority. *McKnight v. McKnight*, 888 So. 2d 1251, 2004 Ala. Civ. App. LEXIS 146 (Civ. App. 2004).

The trial court did not err in awarding a wife \$1,891 in monthly **child support** in a divorce action, as the award was in compliance with the **Child Support Guidelines** set forth in Ala. R. Jud. Admin. 32. *Webb v. Webb*, 950 So. 2d 322, 2006 Ala. Civ. App. LEXIS 502 (Civ. App. 2006).

In ordering that a wife pay **child support**, because the evidence showed that the wife's underemployment was not voluntary, the trial court exceeded its discretion in imputing full-time minimum-wage income to her, requiring remand. *Christy A. Jackson v. Joseph Jackson Iii*, 999 So. 2d 488, 2007 Ala. Civ. App. LEXIS 251 (Apr. 13, 2007).

As the combined incomes of a husband and wife exceeded the uppermost limit of the **child support guidelines**, the amount of **child support** the husband was required to pay had to rationally relate to the reasonable and necessary needs of the parties' **child**; the \$1,250 per month obligation imposed on the husband could not stand because, while the husband had not indicated an inability to pay that amount of **support**, there was no evidence in the record regarding the reasonable and necessary needs of the **child**. *Tyson v. Tyson*, -- So. 2d --,

2009 Ala. Civ. App. LEXIS 109 (Apr. 24, 2009).

#### --Child care costs.

Trial court erred by failing to include the undisputed **child** care costs in determining the father's **support** obligation. The **guideline** form in the record omitted **child** care costs, and that omission meant that the **support** order did not comply with paragraph (B)(8). However, because the father did not meet his burden of proof with regard to the requested modification, the prior **support** order (which clearly did include **child** care costs) was due to be reinstated. *Jones v. Jones*, 682 So. 2d 1387, 1996 Ala. Civ. App. LEXIS 701 (Ala. Civ. App. 1996).

When modifying Florida **child support** order, trial court was required to consider **child** care cost mother would have incurred had she continued to work for former employer, where court imputed an income equal to that following her move. *Vlahos v. Ware*, 690 So. 2d 407, 1997 Ala. Civ. App. LEXIS 121 (Ala. Civ. App. 1997).

The trial court did not abuse its discretion by imputing income to the stay-at-home mother, but it did err by adding work-related **child** care costs to the basic **child support** obligation because the unemployed mother had not "incurred" such costs. *Hoplamazian v. Hoplamazian*, 740 So. 2d 1100, 1999 Ala. Civ. App. LEXIS 195 (Ala. Civ. App. 1999).

The inclusion of daycare expenses for periodic daycare incurred for reasons other than employment or a job search is not permitted by the **guidelines**. *Ray v. Ray*, 782 So. 2d 797, 2000 Ala. Civ. App. LEXIS 685 (Civ. App. 2000).

#### --Discretion of court.

In a case in which a mother appealed a trial court's **child support** order and the award was either an incomplete application of Ala. R. Jud. Admin. 32 or an impermissible deviation from the **child-support guidelines** without compliance with Rule 32(A)(ii), the trial court was ordered to comply with Rule 32 by either properly calculating the amount of **child support** due from the father under the Rule 32 **child-support guidelines** based upon the evidence and permissible inferences that could be made therefrom, or making an express determination under Rule 32(A)(ii) that application of the **child-support guidelines** would be manifestly unjust or inequitable. *Powell v. Powell*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 490 (Sept. 18, 2009).

#### --Effect of employment.

Where there are young children, the court has the discretion to determine that the other parent should stay in the home rather than seeking employment outside the home. *Doyle v. Doyle*, 579 So. 2d 651, 1991 Ala. Civ. App. LEXIS 138 (Civ. App. 1991).

Where a wife appealed a determination that income would not be imputed to the husband under this section, the facts surrounding the husband's termination and his testimony that he was actively seeking employment supported the trial court's determination not to apply the mandate of this rule. *Winfrey v. Winfrey*, 602 So. 2d 904, 1992 Ala. Civ. App. LEXIS 350 (Ala. Civ. App. 1992).

For purposes of determining **child support**, self-employment income is includable as "gross income" under Rule 32(B). *A.R.J.A. Klupal v. Brannon*, 610 So. 2d 1167, 1992 Ala. Civ. App. LEXIS 216 (Civ. App. 1992), cert. denied, 1992 Ala. LEXIS 1629 (Ala. Dec. 18, 1992).

When earnings are from self-employment, "gross income" means gross business receipts minus ordinary and necessary business expenses. Thus, despite the fact that the "owner's draw" taken by the father in 1990 was \$27,000, the trial court could properly consider the net income of \$50,090 from the father's business when determining whether he had the ability to meet the needs of the **child** (and when calculating his **support** obligation under Rule 32). *Klapal v. Brannon*, 610 So. 2d 1167, 1992 Ala. Civ. App. LEXIS 216 (Civ. App. 1992), cert. denied, 1992 Ala. LEXIS 1629 (Ala. Dec. 18, 1992).

When considering the "ordinary and necessary expenses" of the father's business, the court could account for any benefits accruing to the father through his use of the accelerated depreciation method on his taxes. *Klapal v. Brannon*, 610 So. 2d 1167, 1992 Ala. Civ. App. LEXIS 216 (Civ. App. 1992), cert. denied, 1992 Ala. LEXIS 1629 (Ala. Dec. 18, 1992).

Where wife was unemployed, and court awarded custody of the children of the parties to husband, the trial court declined to award **child support** to the husband, finding that application of the **guidelines** in this Rule would be inequitable under the circumstances. *Daniels v. Daniels*, 626 So. 2d 645, 1993 Ala. Civ. App. LEXIS 237 (Civ. App. 1993).

In calculating **child support**, the trial court must consider the parents' gross income, unless it finds that one or both of the parents are voluntarily unemployed or underemployed. *J.T.H. v. W.R.H.*, 628 So. 2d 894, 1993 Ala. Civ. App. LEXIS 434 (Civ. App. 1993).

Father who was terminated from his job because of illegal drug use was held to be "voluntarily unemployed" for the purposes of this rule. *Cunningham v. Cunningham*, 641 So. 2d 807, 1994 Ala. Civ. App. LEXIS 72 (Ala. Civ. App. 1994), overruled in part, *T.L.D. v. C.G.*, 849 So. 2d 200, 2002 Ala. Civ. App. LEXIS 809 (Civ. App. 2002).

A wife who had not yet passed the state boards to work as a registered nurse was not voluntarily unemployed or underemployed under subsection (B)(5) of this rule, and, therefore, in determining the husband's **child support** obligations, the court erred by imputing an income to the wife based on an expectation that she would pass the state boards and gain employment as a registered nurse. *Gilchrist v. Gilchrist*, 660 So. 2d 1005, 1995 Ala. Civ. App. LEXIS 269 (Civ. App. 1995).

Under this rule, a corporation's gross income is the corporation's gross receipts minus ordinary and necessary expenses required to produce such income; there is no consideration for the overall debt of the corporation just as there is no consideration for the net value of the corporation. *Hubbard v. Hall*, 739 So. 2d 498, 1999 Ala. Civ. App. LEXIS 387 (Ala. Civ. App. 1999).

The trial court did not abuse its discretion when it considered the gross income of the father's closely-held corporation, some of which was reinvested in the business, in determining **child support**. *Hubbard v. Hall*, 739 So. 2d 498, 1999 Ala. Civ. App. LEXIS 387 (Ala. Civ. App. 1999).

Trial court did not err in considering the father's ability to earn income in determining **child support** amount he should pay as the evidence showed the father was voluntarily underemployed since his misconduct caused his termination from a second, part-time job. *Arnett v. Arnett*, 812 So. 2d 1246, 2001 Ala. Civ. App. LEXIS 560 (Ala. Civ. App. 2001).

In a divorce action, the trial court erred in reserving the issue of **child support** due to the wife's unemployment because the combined monthly gross income of the husband and wife exceeded \$10,000 per month; despite her unemployment, the wife had investment income of \$2,633 per month. *Ratliff v. Ratliff*, -- So. 2d --, 2008 Ala. Civ. App. LEXIS 553 (Aug. 29, 2008).

 --Generally.

Parent's ability to pay **child support** is a crucial factor to be considered in the determination of **child support**; where no such ability is found, it is improper to order a parent to pay **child support**. *Hannah v. Hannah*, 582 So. 2d 1125, 1991 Ala. Civ. App. LEXIS 284 (Civ. App. 1991).

A father has the right to offer evidence of expenses of the children of the second marriage, not as a deduction from gross income, but, rather, in an attempt to rebut the presumption that the amount of the award resulting from the application of the **guidelines** is the correct amount of **child support** to be awarded. *Loggins v. Houk*, 595 So. 2d 488, 1991 Ala. Civ. App. LEXIS 653 (Ala. Civ. App. 1991), cert. denied, 1992 Ala. LEXIS 354 (Ala. Mar. 20, 1992).

Party seeking credits against **support** must present proof as to the monetary amount of the credits sought. *Brewer v. Brewer*, 613 So. 2d 1292, 1992 Ala. Civ. App. LEXIS 555 (Ala. Civ. App. 1992), cert. denied, 1993 Ala. LEXIS 313 (Ala. Feb. 19, 1993).

Setting of the **support** by the court at \$0 because the **child** was in the care of the Department of Human Resources, and the Department would receive any **support** awarded under a certain amount rather than the **child** directly is not a valid or appropriate reason for such an award under either § 12-15-71(i) or this rule. *State Dep't of Human Resources v. J.B.*, 628 So. 2d 889, 1993 Ala. Civ. App. LEXIS 432 (Civ. App. 1993).

Parent's primary concern should be to honor and **support** his children, and his indebtedness is secondary when compared to his obligation to **support** his children. The legal and moral obligation to **support** one's offspring is not diminished by a parent's indebtedness. *Anonymous v. Anonymous*, 646 So. 2d 28, 1993 Ala. Civ. App. LEXIS 456 (Ala. Civ. App. 1993).

The award of **child support** must be rationally related to the reasonable and necessary needs of the **child**, taking into account the lifestyle to which the **child** was accustomed and the standard of living the **child** enjoyed before the divorce, and it must reasonably relate to the obligor's ability to pay for those needs. *Brasfield v. Brasfield*, 679 So. 2d 1091, 1996 Ala. Civ. App. LEXIS 116 (Ala. Civ. App. 1996).

When computing **support** on remand, the trial court was to take into consideration the father's medical expenses and insurance payments. *Self v. Self*, 685 So. 2d 732, 1996 Ala. Civ. App. LEXIS 737 (Ala. Civ. App. 1996), limited, *Lightel v. Myers*, 791 So. 2d 955, 2000 Ala. Civ. App. LEXIS 686 (Ala. Civ. App. 2000).

Medical expenses incurred before the petition for modification was filed were the mother's responsibility under the original decree, and could not be properly imposed on the father. *Jordan v. Jordan*, 688 So. 2d 839, 1997 Ala. Civ. App. LEXIS 10 (Ala. Civ. App. 1997).

The trial court has authority to order a father to maintain life insurance naming a **child** as the irrevocable beneficiary thereunder, even though the mother did not request such relief. *Jordan v. Jordan*, 688 So. 2d 839, 1997 Ala. Civ. App. LEXIS 10 (Ala. Civ. App. 1997).

The father's court-imposed obligation to pay the mortgage on the marital home, post-minority **support**, and health insurance were not to be taken into account in calculating the **child support** award. *Wiggins v. Wiggins*, 732 So. 2d 1024, 1999 Ala. Civ. App. LEXIS 201 (Ala. Civ. App. 1999).

To apply the two-part test for determining whether a disabled adult **child** is entitled to **support**, the court must (1) determine that the adult **child** is not capable of earning an income sufficient to provide for his or her reasonable living expenses, and (2) that the adult **child's** mental or physical disability is the cause of his or her inability to earn that income. Ex parte Cohen, 763 So. 2d 253, 1999 Ala. LEXIS 327 (Ala. 1999).

The trial court erred in crediting the noncustodial father with the amount of the **child's** Social Security death benefits. State ex rel. J.W. v. R.D.R., 766 So. 2d 854, 2000 Ala. Civ. App. LEXIS 231 (Ala. Civ. App. 2000).

Trial court's calculations of a husband's modified **child support** obligation were clearly erroneous under Ala. R. Jud. Admin. 32(C)(1) where the trial court incorrectly calculated the modified **child support** based on the parties having three children instead of only one **child** by incorrectly considering the husband's two children from a prior marriage. Grant v. Grant, 849 So. 2d 186, 2002 Ala. Civ. App. LEXIS 789 (Ala. Civ. App. 2002).

Because the trial court did not complete a **child support guidelines** form, as required by Ala. R. Jud. Admin. 32(E), and its **child-support** obligation did not correspond to either of the parties' forms, there was no basis to discern the trial court's **child-support** judgment; therefore, the case had to be remanded for further proceedings. Batain v. Batain, 912 So. 2d 283, 2005 Ala. Civ. App. LEXIS 256 (Civ. App. 2005).

When the combined monthly adjusted gross income of a **child's** parents exceeded \$10,000, a trial court had to use its discretion in determining a motion to increase the father's **child support** obligation, and the award had to relate to the reasonable and necessary needs of the **child** as well as the father's ability to pay; while it appeared that the father was able to pay the increased award, it did not appear that any evidence of the **child's** reasonable needs had been offered, and therefore, the order was reversed and the matter remanded. Morrisette v. NovaStar Home Mortg., Inc., 484 F. Supp. 2, 2007 U.S. Dist. LEXIS 29457 (S.D. Ala. 2007).

When the combined monthly adjusted gross income of a **child's** parents exceeded \$10,000, a trial court had to use its discretion in determining a motion to increase the father's **child support** obligation, and the award had to relate to the reasonable and necessary needs of the **child** as well as the father's ability to pay; while it appeared that the father was able to pay the increased award, it did not appear that any evidence of the **child's** reasonable needs had been offered, and therefore, the order was reversed and the matter remanded. Morgan v. Morgan, 964 So. 2d 24, 2007 Ala. Civ. App. LEXIS 205 (Civ. App. 2007).

Trial court did not err in the **child support** it awarded to the mother where the **child's** paternity had to be established; once it was determined, the trial court could, in its discretion, reject certain monthly expenses the mother indicated such as yard maintenance, maintenance of her vehicle, and household help in calculating **child support** because those amounts were not related to the reasonable and necessary needs of the **child**. T.L.H. v. R.A.R., -- So.2d --, 2007 Ala. Civ. App. LEXIS 310 (Civ. App. May 11, 2007).

#### --Health insurance premiums.

The former husband contends that the trial court erred by failing to correctly apply this rule in determining a reduction of **child support** in that the court did not deduct health insurance premiums from his gross income. However, at the time of the filing of this action, the **child support guidelines** were purely that -- **guidelines** -- and the court could deviate from them. Thornton v. Pressley, 567 So. 2d 337, 1990 Ala. Civ. App. LEXIS 178 (Civ. App. 1990).

The trial court properly included the minor **child's** medical insurance costs under subsection

(B)(7) of this rule in the father's **child support** obligation despite the fact that the **child** was covered by the wife's present husband's group medical insurance because the cost of covering the **child** was not the present husband's obligation. *Balfour v. Balfour*, 660 So. 2d 1015, 1995 Ala. Civ. App. LEXIS 288 (Civ. App. 1995).

Court in **child support** proceeding failed to comply with this rule where, in calculating basic **child support** obligation, court failed to use the actual cost of the health insurance premium that mother paid for family coverage. *Bertram v. Doss*, 709 So. 2d 1274, 1998 Ala. Civ. App. LEXIS 93 (Civ. App. 1998).

The trial court properly included the entire cost of health insurance in its **child support** calculation, where although one of the former wife's two children was not the biological or adopted **child** of the former husband, the **guidelines** require that the amount to be added to the basic **child support** obligation be the actual amount of the total insurance premium for family/dependent coverage. *Brown v. Brown*, 719 So. 2d 228, 1998 Ala. Civ. App. LEXIS 176 (Civ. App. 1998).

Where the cost of health insurance was factored into the calculation of the total **child support** obligation, when the trial court ordered father to pay \$400 per month in **child support** and \$212 per month for health insurance for the two children, the separate award of an amount for health insurance increased the father's **child support** obligation to \$612 per month. *Allegro v. State ex rel. Lett*, 747 So. 2d 913, 1999 Ala. Civ. App. LEXIS 737 (Ala. Civ. App. 1999).

Health-insurance coverage paid by a husband's employer was not includable in his gross income for the purposes of calculating **child support**, as there was no evidence that it was an "expense reimbursement or in-kind payment" to the husband. *Woods v. Woods*, 851 So. 2d 541, 2002 Ala. Civ. App. LEXIS 502 (Ala. Civ. App. 2002).

Even though a portion of a husband's health insurance premium for family/dependent coverage provided coverage for the husband's **child** from a prior marriage, the husband was entitled under Ala. R. Jud. Admin. 32(B)(7)(b) to consideration of the total premium in determining his **support** obligation. *Fell v. Fell*, 869 So. 2d 486, 2003 Ala. Civ. App. LEXIS 448 (Civ. App. 2003).

Husband properly credited the husband with the entire amount of the health insurance premium deducted from his paycheck each month in its calculation of his **child-support** obligation, where the court was provided with a CS-42 **child-support-guidelines** form; the fact that husband was included in the coverage did not affect the amount of the setoff. *Marshall v. Marshall*, 891 So. 2d 883, 2004 Ala. Civ. App. LEXIS 322 (Civ. App. 2004).

Father's **child-support** obligation should have been adjusted to reflect that he paid \$40 per month for health insurance for the parties' minor daughter, who was in the custody of the mother. *Tatum v. Carrell*, 897 So. 2d 313, 2004 Ala. Civ. App. LEXIS 623 (Ala. Civ. App. 2004).

Trial court abused its discretion in increasing a father's **child-support** obligation based on its inclusion of health-insurance premiums paid by the father and the mother's new husband, since only the father was required to provide such coverage. *Volovecky v. Hoffman*, 903 So. 2d 844, 2004 Ala. Civ. App. LEXIS 981 (Ala. Civ. App. Dec. 30, 2004).

Under Ala. R. Jud. Admin. 32(B)(7)(c), the health-insurance costs for the parties' children had to be apportioned according to their respective gross-income percentages, and then deducted from the obligor's share of the total **child-support** obligation. As the former husband was the only spouse who earned income, it would not have made a difference in his **child-support** obligation if the trial court had included an allowance for the children's health-

insurance costs in the **child-support** calculation. *Clements v. Clements*, 990 So. 2d 383, 2007 Ala. Civ. App. LEXIS 586 (Aug. 31, 2007).

Although a trial court properly found that a mother could not recover health-insurance premiums she paid when a father still had the parties' children covered under his second wife's health-insurance policy, the mother could recover the premiums she paid in the years after the father's insurance coverage was terminated; under Ala. R. Jud. Admin. 32(B)(7), the insurance premiums that the father was required to pay by a modification of the parties' divorce judgment was part of his overall **child-support** obligation. *Mills v. Dailey*, -- So. 2d --, 2008 Ala. Civ. App. LEXIS 421 (July 3, 2008).

As the trial court properly included the husband's monthly health-insurance premium in calculating the wife's monthly **child-support** obligation, the trial court erred in ordering the wife to pay an additional \$122 per month for one-half of the cost of the **child's** health insurance. *A.B. v. J.B.*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 613 (Dec. 18, 2009).

#### --Income.

Evidence sufficient for grant of only a 30% increase in **child support**, although father's income had increased \$2,400 in two years since divorce. *Young v. Young*, 351 So. 2d 611, 1977 Ala. Civ. App. LEXIS 773 (Ala. Civ. App. 1977).

Although there was evidence presented to the trial court that would **support** a finding that the husband could not maintain employment if he was required to stand on his feet, the record did not **support** a finding that he had no ability to earn whatsoever; the evidence indicated that the husband had no income, not an inability to earn. It is ability to earn, not actual income, which is considered in a modification proceeding. *State, Dep't of Human Resources ex rel. Haney v. Haney*, 568 So. 2d 1231, 1990 Ala. Civ. App. LEXIS 399 (Ala. Civ. App. 1990).

The evidence as to various rental income, dividend income, disability income, and retirement income, when added together, indicated that the trial court did not abuse its discretion in determining the amount of **child support** to be paid by the husband and that the amount granted was not disproportionate with the **Child Support Guidelines**. *Newsome v. Newsome*, 575 So. 2d 595, 1991 Ala. Civ. App. LEXIS 44 (Ala. Civ. App. 1991).

Findings of fact, based upon evidence presented, sufficiently rebutted the Rule 32 presumption that application of the **guidelines** would result in the correct amount of **child support**, where the trial court's orders specifically noted that the income of the parties was substantially the same, except that the husband's income was dependent on his diligence and the wife's income remains relatively fixed and where it also noted that each party is responsible for the care and custody of a minor **child** of the parties. *Peck v. Peck*, 581 So. 2d 1119, 1991 Ala. Civ. App. LEXIS 209 (Civ. App. 1991).

On appeal the court held that, under this rule, a trial court could not make a deduction from the father's gross monthly income or consider **support** for the father's other children born after the order setting **child support**, for the purpose of setting **child support** at an amount below the **child support guidelines**. *Low v. State ex rel. Waltman*, 602 So. 2d 435, 1992 Ala. Civ. App. LEXIS 338 (Ala. Civ. App. 1992).

When the obligor's income exceeds the uppermost figure on the **guidelines**, the trial court may use its discretion in determining the amount of **child support**. *Bridges v. Bridges*, 607 So. 2d 289, 1992 Ala. Civ. App. LEXIS 429 (Civ. App. 1992).

The trial court has the discretion to impute to the father an income of \$2,000 per month

and calculate the father's **child support** obligation at \$506 per month where the evidence showed that the father was capable of earning at a level significantly greater than that demonstrated by his current income of \$200 per week. *Lee v. Lee*, 608 So. 2d 1383, 1992 Ala. Civ. App. LEXIS 484 (Ala. Civ. App. 1992).

Where the non-custodial parent's income exceeds the uppermost figure on the **child support guideline** tables, the trial court may use its discretion in determining the level of **child support** due from him. *DeLaurentis v. DeLaurentis*, 628 So. 2d 650, 1993 Ala. Civ. App. LEXIS 276 (Civ. App. 1993).

Trial court was within its discretion in using the father's imputed income, rather than actual income, to determine his **child support** obligation. *Mitchell v. Kelley*, 628 So. 2d 807, 1993 Ala. Civ. App. LEXIS 368 (Ala. Civ. App. 1993).

Where the parents' combined projected gross monthly incomes surpasses the uppermost level of the **child support** schedule, the amount of **child support** to be awarded lies within the discretion of the trial court; such discretion is not unbridled, and the amount must relate to the reasonable and necessary needs of the **child**. *St. John v. St. John*, 628 So. 2d 883, 1993 Ala. Civ. App. LEXIS 425 (Ala. Civ. App. 1993).

Where the evidence reveals that the parent's income surpasses the **support** schedule, the trial court is accorded discretion to determine the appropriate amount of **child support**. *Boykin v. Boykin*, 628 So. 2d 949, 1993 Ala. Civ. App. LEXIS 491 (Civ. App. 1993).

Considering the definition of income in Rule 32, ARJA, together with prior holdings, father's "overtime" income held to fall within the definition of income for purposes of establishing his obligation of **support**, to the extent that such income is sufficiently substantial and continuing, and that it can be accurately determined. *State ex rel. Smith v. Smith*, 631 So. 2d 252, 1993 Ala. Civ. App. LEXIS 458 (Civ. App. 1993), cert. denied, 1994 Ala. LEXIS 183 (Ala. Jan. 21, 1994).

In calculating **child support** "other income" includes military allowances which significantly reduce a family's personal living expenses. *Barnes v. State ex rel. Cassady*, 636 So. 2d 425, 1994 Ala. Civ. App. LEXIS 22 (Civ. App. 1994).

Where wife's gross monthly income was approximately \$2,666, and the husband's gross monthly income was approximately \$16,000, and the parties' combined gross monthly income surpasses the uppermost level of the **child support** schedule found in Rule 32, ARJA, the amount of **child support** to be awarded lies within the trial court's discretion. The amount, however, must relate to the reasonable and necessary needs of the **child**. Award of \$900 did not constitute an abuse of discretion. *Garrett v. Garrett*, 637 So. 2d 1376, 1994 Ala. Civ. App. LEXIS 193 (Civ. App. 1994).

Cost of daycare that is provided free to employees at the mother's place of employment cannot be imputed for the purpose of calculating her income to determine the amount of **child support** she must pay when she does not have custody of the children. *Graham v. Graham*, 640 So. 2d 963, 1994 Ala. Civ. App. LEXIS 274 (Civ. App. 1994).

The trial court properly increased a mother's **child support** obligations due to an increase in her monthly income where the variance between the initial **child support** award and the amount determined by application of ARJA 32(A) was more than ten percent. *Scholl v. Parsons*, 655 So. 2d 1060, 1995 Ala. Civ. App. LEXIS 80 (Civ. App. 1995).

The entire gross income of a father who resided in Wisconsin and who had remarried was properly considered in the computation of **child support** pursuant to the Alabama **guidelines** despite the fact that one Wisconsin statute gave each spouse a present undivided

one-half interest in each item of marital property where another Wisconsin statute provided that an obligation that arose prior to a marriage may be satisfied from that part of marital property which would have been the property of that spouse but for the marriage. *Balfour v. Balfour*, 660 So. 2d 1015, 1995 Ala. Civ. App. LEXIS 288 (Civ. App. 1995).

"Income" can include payments into retirement plan on which taxes are deferred for **child support** purposes. *Ennis v. Venable*, 689 So. 2d 165, 1996 Ala. Civ. App. LEXIS 934 (Ala. Civ. App. 1996).

In computing the father's monthly gross income, the court should include the amount of the monthly Social Security disability payments that the children receive. *Harbison v. Harbison*, 688 So. 2d 876, 1997 Ala. Civ. App. LEXIS 119 (Ala. Civ. App. 1997).

Where father merely anticipated a decline in his income due to a decrease in available overtime and, apparently, due to his declining health, trial court did not abuse its discretion in using the income figure the father submitted to the court earlier in the proceedings, rather than attributing a lower income to the father based on the father's speculation that his income might decrease. *King v. King*, 693 So. 2d 512, 1997 Ala. Civ. App. LEXIS 257 (Civ. App. 1997).

The trial court erred in failing to consider the net income of the father's business in computing his income for purposes of determining his **child support** obligation. *Hall v. Hubbard*, 697 So. 2d 486, 1997 Ala. Civ. App. LEXIS 454 (Ala. Civ. App. 1997).

Although the father was reimbursed for business traveling expenses, the mother did not show that this reduced the father's living expenses; therefore, the trial court did not abuse its discretion in not including in the father's gross income the expenses incurred by the business. *Hall v. Hubbard*, 697 So. 2d 486, 1997 Ala. Civ. App. LEXIS 454 (Ala. Civ. App. 1997).

Trial court erred in failing to consider the net income of the husband's business in computing his gross income for purposes of determining **child support**. *Puckett v. Summerford*, 706 So. 2d 1257, 1997 Ala. Civ. App. LEXIS 929 (Ala. Civ. App. 1997).

This rule requires that salary amounts received through profit sharing be included in the determination of **child support** obligations. *Massey v. Massey*, 706 So. 2d 1272, 1997 Ala. Civ. App. LEXIS 959 (Civ. App. 1997).

Trial court's failure to follow the **guidelines** of this rule, and take into account all income sources, including bonuses, in determining the propriety of post-minority **support**, was reversible error. *Spillers v. Spillers*, 707 So. 2d 256, 1997 Ala. Civ. App. LEXIS 888 (Ala. Civ. App. 1997).

The husband's bonus of \$13,000, along with almost \$10,000 in interest, and some \$90,000 in capital gains income had to be included in the husband's monthly income for purposes of **child support**. *Bushnell v. Bushnell*, 713 So. 2d 962, 1997 Ala. Civ. App. LEXIS 662 (Civ. App. 1997), modified, 713 So. 2d 962, 1997 Ala. Civ. App. LEXIS 931 (Ala. Civ. App. 1997).

The rule requires the trial court, when computing **support** obligations, to consider all sources of income of the noncustodial parent; the trial court has no discretion in the matter. *Mitchell v. Mitchell*, 723 So. 2d 1267, 1998 Ala. Civ. App. LEXIS 686 (Ala. Civ. App. 1998).

In determining **child support**, the court erred in not considering the non-employment-related income of the noncustodial mother, which included benefits she received from the ownership of various businesses and a company car provided by one of those businesses. *Mitchell v. Mitchell*, 723 So. 2d 1267, 1998 Ala. Civ. App. LEXIS 686 (Ala. Civ. App. 1998).

The trial court was required to include the father's quarterly bonuses in calculating his **child support** obligation. *Stinson v. Stinson*, 729 So. 2d 864, 1998 Ala. Civ. App. LEXIS 640 (Ala. Civ. App. 1998).

When the record establishes that an obligor has additional income that he or she did not report on the **guidelines** form, but the appellate court is unable to determine the amount of that income, the appellate court may remand with directions that the trial court determine the amount. *Stinson v. Stinson*, 729 So. 2d 864, 1998 Ala. Civ. App. LEXIS 640 (Ala. Civ. App. 1998).

The evidence, although disputed, supported the trial court's finding that the father's monthly gross income was \$3,000. *Knight v. Knight*, 739 So. 2d 507, 1999 Ala. Civ. App. LEXIS 388 (Ala. Civ. App. 1999).

The term "**child-support** obligation," as it is used in this rule, does not encompass a **child-support** arrearage; therefore, the trial court improperly allowed the father a deduction for his past-due **child-support** payment for his oldest **child** when it was computing his "gross income" for purposes of determining his **child-support** obligation for his two other children. *State ex rel. Daw*, 786 So. 2d 1134, 2000 Ala. LEXIS 486 (2000).

The trial court did not err in failing to impute income to the father in the calculation of the father's **child-support** obligation pursuant to Ala. R. Jud. Admin. 32(B)(5), because the mother failed to present any evidence to the trial court regarding the father's income, and she did not argue to the trial court that it should have imputed income to the father. *Hollon v. Williamson*, 846 So. 2d 349, 2002 Ala. Civ. App. LEXIS 740 (Ala. Civ. App. 2002).

Although preexisting periodic alimony is specifically included as income under Ala. R. Jud. Admin. 32(B)(2)(a), alimony in gross is not. *Rimpf v. Campbell*, 853 So. 2d 957, 2002 Ala. Civ. App. LEXIS 834 (Ala. Civ. App. 2002).

Appellate court affirmed the trial court's determination in a **child support** modification proceeding that the father enjoyed the profits of his second wife's company despite his not being an owner on paper, and the trial court's decision to impute income to the father based on his prior earnings as reflected in the interrogatory answers and past tax returns. *Rimpf v. Campbell*, 853 So. 2d 957, 2002 Ala. Civ. App. LEXIS 834 (Ala. Civ. App. 2002).

Trial court erred when it calculated the amount of **child support** a husband was ordered to pay because it did not deduct the amount the husband was paying to **support** two children he had during a prior marriage when it determined the husband's gross income. *Hunt v. Garcia*, 865 So. 2d 1203, 2003 Ala. Civ. App. LEXIS 344 (Civ. App. 2003).

Where the father had the power to redirect wage payments, so as to cause them to be included in his paycheck, such amount had to be included as income for **child-support** purposes, and allowing a parent to exclude deferred income from calculations of **child support** income on which taxes were deferred had the potential of frustrating the legitimate purpose of the **support** orders allowing a supporting parent to lower the amount that would be subject to a **support** order. *Jones v. Jones*, 883 So. 2d 207, 2003 Ala. Civ. App. LEXIS 446 (Ala. Civ. App. 2003).

Where a trial court awarded **child support** in an amount based on the uppermost Ala. R. Jud. Admin. 32 **guideline** amount for two children, based on a finding that there was no evidence that the needs of the children exceeded or were less than the maximum **support** pursuant to the **guidelines**, even though the parents each had income greater than that provided on the **child support guidelines** scale, the award was reversed on appeal because the mother had, in fact, presented evidence of expenses associated with the children; hence, the matter was remanded to the trial court with instruction to consider the evidence and to

award an appropriate amount of **child support** based on its view of that evidence. TenEyck v. TenEyck, 885 So. 2d 146, 2003 Ala. Civ. App. LEXIS 761 (Civ. App. 2003).

Trial court erred in ordering a mother to pay **child support**, as she had no income and income could not be imputed based on her potential Social Security disability benefits, and pursuant to Ala. R. Jud. Admin. 32(B)(5), the trial court had to find either voluntary unemployment or voluntary underemployment to impute income to her, but failed to do so. Pardue v. Pardue, 917 So. 2d 857, 2005 Ala. Civ. App. LEXIS 355 (Civ. App. 2005).

Where the mother's wages were not increased or reduced due to health insurance coverage provided by the employer for the mother and **child**, the trial court erred in attributing to the mother's gross income for **child support** purposes of Ala. R. Jud. Admin. 32 the employer paid portion of her health insurance benefits. Jones v. Jones, -- So. 2d --, 2005 Ala. Civ. App. LEXIS 407 (June 22, 2005).

Recalculation of a former husband's **child support** obligation was required; while the trial court properly considered the net income of the three pizza franchises the husband operated, the trial court erred in failing to include the rental income from the former husband's home in Georgia as part of the **support** calculation. Hurley v. Hurley, -- So. 2d --, 2007 Ala. Civ. App. LEXIS 394 (June 15, 2007).

Father's **child-support** obligation was properly modified under Ala. R. Jud. Admin. 32 as the father's military-retirement pay could be considered in calculating his income since the father failed to show what amount of the military-retirement pay he received was due to a physical disability, and to adduce any evidence indicating that he was actually receiving veteran's disability benefits in lieu of military-retirement pay under 10 U.S.C.S. § 1408. Miller v. Miller, -- So. 2d --, 2008 Ala. Civ. App. LEXIS 570 (Sept. 5, 2008).

**Child support** award was proper as using a husband's federal income tax adjusted gross income, the implicit finding that the husband's income substantially exceeded the uppermost limit of the **child-support** schedule under Ala. R. Jud. Admin. 32(B)(3) was not clearly erroneous. Wright v. Wright, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 79 (Mar. 20, 2009).

#### --Overtime.

The trial court did not err by considering the father's overtime compensation in calculating **child support** where the evidence showed that he had had consistent overtime work and overtime compensation during his employment and his supervisor testified that he would be almost certain to have overtime compensation in the future and that at times the overtime compensation would be a significant addition to his regular compensation. Simmons v. Simmons, 781 So. 2d 236, 2000 Ala. Civ. App. LEXIS 606 (Ala. Civ. App. 2000).

The trial court properly required the father to pay 22% of any overtime received when he makes at least \$50 in one month. Conditioning an increase in his obligation on his receipt of at least \$50 in overtime compensation in a month reflects a correct recognition that the **Guidelines** are based on \$50 increments and that the basic **support** obligation was based on 22% of the father's base monthly pay. Simmons v. Simmons, 781 So. 2d 236, 2000 Ala. Civ. App. LEXIS 606 (Ala. Civ. App. 2000).

A mother's overtime pay should have been included in the calculation of the mother's gross income where the overtime received by her was certain and not speculative and she had admitted to receiving the same. Tatum v. Carrell, 897 So. 2d 313, 2004 Ala. Civ. App. LEXIS 623 (Ala. Civ. App. 2004).

### --Self-employment.

Although former husband indicated that he paid himself a salary from three pizza franchises that yielded \$9,833 in monthly income, a trial court properly determined that the husband was receiving \$6,800 per month from the franchises for purposes of calculating the husband's **child support** obligation; under Ala. R. Jud. Admin. 32(B)(3)(a), when a party's income was from self-employment, the relevant income was the net income for the business, not the party's income and the evidence indicated that the three franchises were operating a monthly loss of \$3,100. *Hurley v. Hurley*, -- So. 2d --, 2007 Ala. Civ. App. LEXIS 394 (June 15, 2007).

Although the evidence established that a father's solely owned business had earned only \$15,665 in net income in 2006 and had earned no income in 2007, the father's testimony indicated that he had used his company's business account to pay a portion of his monthly expenses totaling approximately \$7,400; thus a juvenile court did not err in imputing income in the amount of \$7,414 per month to the father. *D.C.S. v. L.B.*, -- So. 2d --, 2008 Ala. Civ. App. LEXIS 122 (Mar. 7, 2008).

### --Underemployment.

Finding that a parent is underemployed does not by itself warrant a deviation from the **child-support guidelines**; rather, it mandates application of the **guidelines** using the income the underemployed parent is capable of earning. To the extent that *Dorgan v. Dorgan*, 811 So. 2d 552, 2001 Ala. Civ. App. LEXIS 487, held to the contrary by indicating that a trial court's determination of a parent's underemployment requires a written finding that application of the **child-support guidelines** would be unjust or inappropriate, that holding is inconsistent with Ala. R.Jud. Admin. 32(B)(5), and *Dorgan* is overruled to that extent. *Herboso v. Herboso*, 881 So. 2d 454, 2003 Ala. Civ. App. LEXIS 359 (Ala. Civ. App. 2003).

Although noncustodial parent was trained as a teacher but worked as an accountant or bookkeeper, the parent's choice to forgo a larger paycheck did not mean that she was voluntarily underemployed. *Dunn v. Dunn*, 891 So. 2d 891, 2004 Ala. Civ. App. LEXIS 327 (Civ. App. 2004).

Trial court abused its discretion in imputing income to a father after erroneously determining he was underemployed where the mother offered no evidence of the father's ability to pay and the father established he was involuntarily unemployed in as much as he provided evidence that he had applied for up to 79 jobs and did not receive an offer from any. *Tatum v. Carrell*, 897 So. 2d 313, 2004 Ala. Civ. App. LEXIS 623 (Ala. Civ. App. 2004).

Father's appeal was dismissed as nonfinal because the trial court did not direct the entry of a judgment pursuant to Ala. R. Civ. P. 54(b) as to the visitation claim and, while the trial court raised the issue of **child support**, sua sponte, the trial court failed to impute income to the father and calculate **child support** after finding that he was underemployed, pursuant to Ala. R. Jud. Admin. 32(B)(5). *Tracy v. Tracy*, 939 So. 2d 48, 2006 Ala. Civ. App. LEXIS 162 (Civ. App. 2006).

In calculating **child support**, the trial court properly declined to impute income to the former wife because of evidence she could not find employment due to health reasons and unsuccessful job searches. *Clements v. Clements*, 990 So. 2d 383, 2007 Ala. Civ. App. LEXIS 586 (Aug. 31, 2007).

### --Voluntary unemployment

Evidence supported a finding that a father was voluntarily unemployed where the father testified that (1) he had a monthly income of \$2,500 from his work as a self-employed builder but that as of March 20, 2007, he had no income for the year; (2) he had monthly expenses of approximately \$7,400; (3) he had recently turned down a \$21,000 per year job; and (4) he spent his time studying for a test, visiting with his **child**, and watching television. *D.C.S. v. L.B.*, -- So. 2d --, 2008 Ala. Civ. App. LEXIS 122 (Mar. 7, 2008).

Trial court's finding that a wife was not voluntarily unemployed, and the failure to impute income to the wife under Ala. R. Jud. Admin. 32(B)(5) was proper as the wife was not employed outside the home during the majority of the parties' marriage, and since the separation, the wife had gone back to college and had attempted to rejoin the workforce, but had not found a job. *Combs v. Combs*, -- So. 2d --, 2008 Ala. Civ. App. LEXIS 548 (Aug. 29, 2008).

#### Deviation from guidelines.

Deviation from the **child support guidelines** is permissible, where, upon a finding of fact based on the evidence presented, the court determines that application of the **guidelines** would be manifestly unjust or inequitable. *Lewis v. Winslow*, 587 So. 2d 1006, 1991 Ala. Civ. App. LEXIS 560 (Civ. App. 1991).

It is clear that a trial court may chose not to use the **guidelines** only if it determines and documents in the record that application of the **guidelines** is unjust, and where reviewing court was unable to determine what calculation, if any, the trial court utilized in its determination of the **child support** award, whether the trial court considered the income of the mother in its award, whether the father's **child support** obligation was offset by his having custody of one of the two remaining minor children of the marriage, or whether the trial court considered the mandatory application of the **guidelines** in the Rule, the case was remanded. *Smith v. Smith*, 587 So. 2d 1217, 1991 Ala. Civ. App. LEXIS 552 (Ala. Civ. App. 1991).

A trial court is not obligated to follow the **child support guidelines** in a modification proceeding if it finds that there has not been a sufficient change in circumstances to justify a modification, or if the trial court enters a written finding on the record that application of the **guidelines** would be unjust or inappropriate. *Johnson v. Johnson*, 597 So. 2d 699, 1991 Ala. Civ. App. LEXIS 683 (Ala. Civ. App. 1991).

The trial court may, within its discretion, determine that the amount of **support** within the **guidelines** is inappropriate under the circumstances and order a different amount of **support**. *Butts v. Butts*, 600 So. 2d 1038, 1992 Ala. Civ. App. LEXIS 272 (Ala. Civ. App. 1992).

Trial court's deviation from the **guidelines** without supportive findings is error. *State ex rel. Walley v. Walley*, 601 So. 2d 1041, 1992 Ala. Civ. App. LEXIS 311 (Ala. Civ. App. 1992).

Trial court's findings of fact, explaining its deviation from the requirements of this rule, implicitly satisfied those requirements. *Knight v. Norris*, 607 So. 2d 274, 1992 Ala. Civ. App. LEXIS 410 (Ala. Civ. App. 1992).

Use of conclusory terms such as "unjust or inappropriate" will not **support** failure to assess **child support** according to the **guidelines** of this rule, unless supported by a finding of fact from the evidence. *Bebee v. Hargrove*, 607 So. 2d 1270, 1992 Ala. Civ. App. LEXIS 412 (Civ. App. 1992).

Where the trial court clearly stated that it considered the application of the **guidelines** and,

based upon the evidence presented found that application of the **Child Support Guidelines** would be manifestly unjust and inequitable in this cause, the order satisfied the requirements of this rule. *State Dep't of Human Resources v. Thomas*, 615 So. 2d 84, 1992 Ala. Civ. App. LEXIS 395 (Ala. Civ. App. 1992).

Where the trial court deviated from the **child support guidelines**, but made no written findings, the trial court failed to set an amount of **child support** in accordance with this rule and § 30-3-61. *State ex rel. Henson v. Richardson*, 621 So. 2d 989, 1992 Ala. Civ. App. LEXIS 359 (Civ. App. 1992), rev'd in part, 621 So. 2d 991, 1993 Ala. LEXIS 10 (1993).

When making **child support** decisions, the trial court must apply the **child support guidelines** or make a specific finding that the application of the **guidelines** would be manifestly unjust or inequitable. *Kelly v. Kelly*, 624 So. 2d 601, 1993 Ala. Civ. App. LEXIS 140 (Ala. Civ. App. 1993), cert. denied, 624 So. 2d 603, 1993 Ala. LEXIS 896 (Ala. 1993).

Trial court may deviate from application of the **child support guidelines** only where there is a fair, written agreement between the parties setting **child support**, or where the trial court finds that application of the **guidelines** would be manifestly unjust or inequitable. *Mitchell v. Kelley*, 628 So. 2d 807, 1993 Ala. Civ. App. LEXIS 368 (Ala. Civ. App. 1993).

In order for a court to deviate from the **guidelines**, there must be written findings of fact based upon evidence presented to the court to **support** such a deviation. *State Dep't of Human Resources v. J.B.*, 628 So. 2d 889, 1993 Ala. Civ. App. LEXIS 432 (Civ. App. 1993).

**Child support guidelines** of Rule 32, ARJA, are mandatory, and the trial court may deviate from them only where the parties have entered a fair, written agreement establishing a different amount of **support** and stating the reasons therefor, or upon a written finding on the record that the application of the **guidelines** would be manifestly unjust or inequitable. *State ex rel. Smith v. Smith*, 631 So. 2d 252, 1993 Ala. Civ. App. LEXIS 458 (Civ. App. 1993), cert. denied, 1994 Ala. LEXIS 183 (Ala. Jan. 21, 1994).

Parent's inability to pay **child support** is a proper basis for deviating from the **guidelines** of Rule 32, ARJA. *Hutchins v. Hutchins*, 637 So. 2d 1371, 1994 Ala. Civ. App. LEXIS 178 (Civ. App. 1994).

Subsection c(3) allows the trial court to make additional awards for the extraordinary medical, dental, and educational expenses; however, the language of this rule indicates that such an award is discretionary. *Davidson v. Davidson*, 643 So. 2d 1001, 1994 Ala. Civ. App. LEXIS 310 (Civ. App. 1994).

Parent's inability to pay **child support** is a proper basis for deviating from the **guidelines**. *State ex rel. Whitlock v. Bottoms*, 651 So. 2d 1, 1994 Ala. Civ. App. LEXIS 46 (Ala. Civ. App. 1994).

Court could properly consider evidence regarding financial obligations in determining that the application of the **guidelines** would be manifestly unjust or inequitable. *State ex rel. Whitlock v. Bottoms*, 651 So. 2d 1, 1994 Ala. Civ. App. LEXIS 46 (Ala. Civ. App. 1994).

A trial court's deviation from the **child support guidelines** under this rule was improper where it did not **support** its decision with findings of fact based upon the evidence before it, nor did it provide any reasoning for its decision to terminate the **child support** ordered after one year. *Hepburn v. Hepburn*, 659 So. 2d 653, 1995 Ala. Civ. App. LEXIS 197 (Civ. App. 1995).

A deviation from the **child support guidelines** established by this rule cannot stand without written finding on the record that the application of the **guidelines** would be manifestly

unjust or inequitable. *Schlick v. Schlick*, 678 So. 2d 1176, 1996 Ala. Civ. App. LEXIS 443 (Ala. Civ. App. 1996).

This rule allows the trial court to deviate from the **guidelines** to promote the best interests of the **child**, but requires that the court state the reasons justifying an additional award or the deviation from the **guidelines**. *DeMo v. DeMo*, 679 So. 2d 265, 1996 Ala. Civ. App. LEXIS 440 (Ala. Civ. App. 1996).

Deviation from **child support guidelines** requires trial court to present written findings as to why departure was proper. *State ex rel. Department of Human Resources v. Hogg*, 689 So. 2d 131, 1996 Ala. Civ. App. LEXIS 933 (Civ. App. 1996).

The trial court failed to follow the **child support guidelines** of this rule and made no findings of fact to justify a deviation from the **guidelines**. Therefore, the trial court must either enter an order that complies with these **guidelines**, or enter findings justifying its deviation from the **guidelines**. *Harbison v. Harbison*, 688 So. 2d 876, 1997 Ala. Civ. App. LEXIS 119 (Ala. Civ. App. 1997).

Where **child support guidelines** indicated that father should pay \$415.80 per month in current **support** for his 14-year-old daughter, and trial court's order that father pay \$50 per week in current **child support** stated only that amount was "a deviation from the **child support guidelines** due to the relative situation of the parties and the relationship between them," the trial court's order did not satisfy this rule. *State ex rel. Golden v. Golden*, 710 So. 2d 924, 1998 Ala. Civ. App. LEXIS 159 (Ala. Civ. App. 1998).

A trial court, upon a written finding that application of the **guidelines** would be unjust or inequitable, has the discretion to deviate from the **guidelines**; however, failure to follow the **guidelines**, or to present findings of fact indicating why the **guidelines** were not followed, is reversible error. *Hall v. Hall*, 717 So. 2d 416, 1998 Ala. Civ. App. LEXIS 399 (Ala. Civ. App. 1998).

The award of the dependency exemption to the noncustodial father was not an abuse of discretion, where the mother had no income, the father provided health insurance for the minor **child**, and the father incurred long distance telephone charges. *K.T.W.P. v. D.R.W.*, 721 So. 2d 699, 1998 Ala. Civ. App. LEXIS 434 (Ala. Civ. App. 1998).

Should the trial court on remand determine that application of the **guidelines** would be manifestly unjust or inequitable, and deviate from the **guidelines** in setting a **support** obligation, it must make the findings required by this rule. *Etheredge v. Etheredge*, 730 So. 2d 245, 1999 Ala. Civ. App. LEXIS 151 (Ala. Civ. App. 1999).

The trial court's failure to give reasons for allowing the husband/noncustodial parent to claim the income tax exemption, a deviation from the **child support guidelines** established by this rule, resulted in reversal. *Washington v. Washington*, 738 So. 2d 1283, 1999 Ala. Civ. App. LEXIS 478 (Ala. Civ. App. 1999).

The trial court's ruling that the father need not pay **child support** during the three months that he has physical custody of the children was a deviation from the **child support guidelines** and, although not found improper, required an explanation on remand. *Knight v. Knight*, 739 So. 2d 507, 1999 Ala. Civ. App. LEXIS 388 (Ala. Civ. App. 1999).

A judgment allowing a noncustodial parent to claim a **child's** income-tax exemption is a deviation from the **support guidelines** that requires an explanation which the trial court failed to provide. *Stone v. McLaughlin*, 752 So. 2d 522, 1999 Ala. Civ. App. LEXIS 808 (Ala. Civ. App. 1999).

Under the authority of this rule an additional award for extraordinary medical expenses in excess of the basic **child support** obligation was made because the court determined that such an award was in the best interest of the **child** and gave other reasons for making this award. *Ex parte Cohen*, 763 So. 2d 253, 1999 Ala. LEXIS 327 (Ala. 1999).

A noncustodial parent's **child support** obligation is determined by the application of these **Child Support Guidelines**; the application of the **guidelines** is mandatory, and any deviation must be accompanied by a written finding, supported by the evidence, that application of the **guidelines** would be unjust or inequitable. *Allegro v. State ex rel. Lett*, 747 So. 2d 913, 1999 Ala. Civ. App. LEXIS 737 (Ala. Civ. App. 1999).

The **child support** award was reversed where husband failed to file a standardized "**Child Support** Obligation Income Statement/Affidavit." *Dennis v. Dennis*, 777 So. 2d 712, 2000 Ala. Civ. App. LEXIS 211 (Ala. Civ. App. 2000).

The case was remanded where, although the trial court stated that its award of \$778 per month in **child support** was in compliance with this rule, the record, which contained CS-41 and CS-42 **child support** forms completed by the mother but did not contain those forms completed by the father, failed to indicate how the court calculated the amount. *Thomas v. Norman*, 766 So. 2d 857, 2000 Ala. Civ. App. LEXIS 228 (Ala. Civ. App. 2000).

The fact that the husband and wife had agreed to a lesser amount of **child support** was an insufficient reason, as a matter of law, to **support** a deviation from the **child-support guidelines** established by this section. *Stewart v. Stewart*, 771 So. 2d 484, 2000 Ala. Civ. App. LEXIS 311 (Ala. Civ. App. 2000).

The trial court committed reversible error in calculating the husband's **child-support** obligation by failing to include in the his monthly gross income all of the payments made by him out of his business account that had been used to pay for his personal expenses. *Mosley v. Mosley*, 770 So. 2d 638, 2000 Ala. Civ. App. LEXIS 339 (Ala. Civ. App. 2000).

The court reversed the lower court as to **child support** and directed that it complete a CS-42 form and that it either order the husband to pay \$635 per month as **child support** or explain its reason for ordering less **support** than would be required by the **guidelines**. *Cantrell v. Cantrell*, 773 So. 2d 487, 2000 Ala. Civ. App. LEXIS 444 (Civ. App. 2000).

Deviation from the **Child Support Guidelines** was not proper where the record did not contain the requisite CS-42 form. *Fowler v. Fowler*, 773 So. 2d 491, 2000 Ala. Civ. App. LEXIS 445 (Civ. App. 2000).

Trial court abused its discretion in deviating from the **child support guidelines**, where the father offered no evidence that he could not afford to make the full **child-support** payment; offered no evidence that the amount would substantially affect his ability to pay his living expenses or other legal obligations; and offered no evidence that the amount of **child support** required by the **guidelines** exceeded the needs of the children; thus, there was insufficient evidence that the application of the **guidelines** was manifestly unjust or inequitable. *Preda v. Preda*, 877 So. 2d 617, 2003 Ala. Civ. App. LEXIS 791 (Ala. Civ. App. 2003).

Juvenile court should have used the maternal grandparents' gross monthly income to calculate the monthly **child-support** amount due from the father where the maternal grandparents were the custodial parents and the parties' combined gross income was in excess of \$10,000 per month. *T.T.T. v. R.H.*, 999 So. 2d 544, 2008 Ala. Civ. App. LEXIS 396 (June 27, 2008).

Under Ala. R. Jud. Admin. 32(A)(1)(a), an award of joint physical custody of the parties'

**child** was a proper justification for the trial court's deviating from the **child-support guidelines**. *Shewbart v. Shewbart*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 89 (Mar. 27, 2009).

#### --Compliance.

Where the court could not determine how the trial court arrived at the mother's **support** obligation and the trial court failed to obtain completed and signed CS-41 and CS-42 **Child Support** forms, as required by this rule, that portion of the judgment was reversed. *M.P. v. S.J.*, 772 So. 2d 477, 2000 Ala. Civ. App. LEXIS 395 (Ala. Civ. App. 2000).

Word "shall" in Ala. R. Jud. Admin. 32(E) mandates the filing of a standardized **Child Support Guidelines** Form and a **Child Support** Obligation Income Statement/Affidavit Form, and compliance with Rule 32(E) is mandatory, even though the trial court may find that the application of the **guidelines** would be unjust or inequitable. When the court determines that application of the **guidelines** would be manifestly unjust or inequitable, and then deviates from the **guidelines** in setting a **support** obligation, the court must make the findings required by Rule 32(A)(ii). *Altobih v. Altobih*, 857 So. 2d 146, 2003 Ala. Civ. App. LEXIS 104 (Ala. Civ. App. 2003).

Trial court's **child support** award to the wife was reversed where the trial court did not follow the **child support guidelines** under Ala. R. Jud. Admin. 32, and failed to make a written finding that the application of those **guidelines** would be unjust. *Altobih v. Altobih*, 857 So. 2d 146, 2003 Ala. Civ. App. LEXIS 104 (Ala. Civ. App. 2003).

Trial court did not abuse its discretion in finding that the husband was voluntarily underemployed; however, the trial court erred by expressly disavowing application of the statutory **child support guidelines** and arbitrarily ordering the husband to pay an amount of **child support** per month based solely upon its finding that the husband was voluntarily underemployed. *Herboso v. Herboso*, 881 So. 2d 454, 2003 Ala. Civ. App. LEXIS 359 (Ala. Civ. App. 2003).

Trial court did not deviate from the Ala. R. Civ. P. 32(A) **guidelines** as a wife had no income, and had no responsibility for the **child-support** obligation; further, any deviation was explained as the wife was unemployed, had no income, and had not completed her education. *Combs v. Combs*, -- So. 2d --, 2008 Ala. Civ. App. LEXIS 548 (Aug. 29, 2008).

#### --Unwarranted.

Where a father did not contest his original classification as a "noncustodial" parent and did not appeal any aspect of a divorce judgment, he was barred from collaterally attacking his **child support** obligations; the trial court lacked authority to extrapolate a **child support** obligation from the split-custody portion of Ala. R. Jud. Admin. 32(B)(9) as the father desired. *Boatfield v. Clough*, 895 So. 2d 354, 2004 Ala. Civ. App. LEXIS 574 (Ala. Civ. App. 2004).

#### --Written findings.

Judgment as to the husband's **child-support** obligation was reversed where the trial court did not follow the Rule 32 **Child Support Guidelines** in calculating the husband's obligation, and it did not make a written finding that the application of those **guidelines** would be inequitable or unjust. *Robinson v. Robinson*, 795 So. 2d 729, 2001 Ala. Civ. App. LEXIS 99 (Civ. App. 2001).

Trial court had to make findings as required if it determined that application of the **guidelines** was manifestly unjust or inequitable, and then deviated from the **guidelines** in setting a **support** obligation. *Whitaker v. Whitaker*, 812 So. 2d 376, 2001 Ala. Civ. App. LEXIS 503 (Ala. Civ. App. 2001).

Record did not contain all the **child-support guideline** forms required pursuant to Ala. R. Jud. Admin. 32(E); because the trial court's basis for determining the father's **child-support** obligation was unclear from the record, the appellate court was unable to determine the manner in which the trial court determined the father's **child support** obligation. *Fomby v. Fomby*, 840 So. 2d 919, 2002 Ala. Civ. App. LEXIS 615 (Ala. Civ. App. 2002).

Trial court may deviate from the **child-support guidelines** in Ala. R. Jud. Admin. 32 in determining a **child-support** amount; however, any deviation is improper if it is not justified in writing. *Amaro v. Amaro*, 843 So. 2d 787, 2002 Ala. Civ. App. LEXIS 703 (Ala. Civ. App. 2002).

When a trial court determines that application of the **child support guidelines** in Ala. R. Jud. Admin. 32 would be manifestly unjust or inequitable, and then deviates from the **guidelines** in setting a **support** obligation, the court must make the findings required by Ala. R. Jud. Admin. 32(A)(ii). *Amaro v. Amaro*, 843 So. 2d 787, 2002 Ala. Civ. App. LEXIS 703 (Ala. Civ. App. 2002).

Appellate court has consistently held that the application of Ala. R. Jud. Admin. 32 is mandatory in **child support** actions filed on or after October 9, 1989; a trial court may deviate from the **child support guidelines** in determining a **child support** amount, but any deviation is improper if it is not justified in writing. *Altobih v. Altobih*, 857 So. 2d 146, 2003 Ala. Civ. App. LEXIS 104 (Ala. Civ. App. 2003).

Ala. R. Jud. Admin. 32(A)(ii) requires that the trial court state its reasons when it makes a determination that the application of the **child support guidelines** would be unjust. *Altobih v. Altobih*, 857 So. 2d 146, 2003 Ala. Civ. App. LEXIS 104 (Ala. Civ. App. 2003).

Where the trial court failed to comply with Ala. R. Jud. Admin. 32(A)(ii), which required a written finding on the record setting out the reasons for deviating from the **guidelines**, and because the order contained no explanation for not awarding the exemption to the custodial parent, that part of the order was erroneous, and the matter was remanded for further hearing. *Langley v. Langley*, 895 So. 2d 971, 2003 Ala. Civ. App. LEXIS 957 (Civ. App. 2003).

Where a trial court granted custody of one **child** to the father and the other **child** to the mother, it reversibly erred in failing to follow the Ala. R. Jud. Admin. 32 **guidelines** in calculating the mother's **child-support** obligation without making a finding as to whether application of the **guidelines** was unjust or inequitable. *M.W.W. v. B.W.*, 900 So. 2d 1230, 2004 Ala. Civ. App. LEXIS 700 (Civ. App. 2004).

Trial court erred in relation to **child support** in the parties' divorce, as the trial court failed to make the required findings under Ala. R. Jud. Admin. 32(A)(ii) as to the mother's income, and instead merely determined not to award the father **child support** based on the mother's "apparent" lack of income. *Parker v. Parker*, 946 So. 2d 480, 2006 Ala. Civ. App. LEXIS 354 (Civ. App. 2006).

#### **Discretion.**

Court did not abuse its discretion by failing to allocate a portion of the lump-sum **support**

payments to each **child**. Sutton v. Sutton, 359 So. 2d 392, 1978 Ala. Civ. App. LEXIS 786 (Ala. Civ. App. 1978).

Even when application of the **guidelines** is mandatory, the trial court has the discretion to determine whether or not a material change in the parties' circumstances has occurred. Klupal v. Brannon, 610 So. 2d 1167, 1992 Ala. Civ. App. LEXIS 216 (Civ. App. 1992), cert. denied, 1992 Ala. LEXIS 1629 (Ala. Dec. 18, 1992).

Award or denial of a credit against a **child support** arrearage is within the trial court's sound discretion, and its decision will not be reversed absent a showing of plain and palpable abuse. State Dep't of Human Resources v. Thomas, 615 So. 2d 84, 1992 Ala. Civ. App. LEXIS 395 (Ala. Civ. App. 1992).

Where the father's gross monthly income surpasses the uppermost level of the **child support** schedule, the amount of **child support** lies within the trial court's discretion; such discretion, however, is not unbridled, and it must relate to the reasonable and necessary needs of the **child**. Anonymous v. Anonymous, 617 So. 2d 694, 1993 Ala. Civ. App. LEXIS 6 (Civ. App. 1993).

Trial court's discretion regarding **child support** when the parent's income exceeds the uppermost level of the schedule found in Rule 32, ARJA, is not unbridled. The **support** ordered must relate to the reasonable and necessary needs of the children. Posey v. Posey, 634 So. 2d 571, 1994 Ala. Civ. App. LEXIS 17 (Civ. App. 1994).

Actions concerning **child support**, although guided by the mandatory application of this Rule, are still committed to the sound discretion of the trial court, and its decision on such matters will not be disturbed on appeal absent a finding that the trial court's award is a palpable abuse of its discretion. Hutchins v. Hutchins, 637 So. 2d 1371, 1994 Ala. Civ. App. LEXIS 178 (Civ. App. 1994); State ex rel. Whitlock v. Bottoms, 651 So. 2d 1, 1994 Ala. Civ. App. LEXIS 46 (Ala. Civ. App. 1994); Askew v. Askew, 628 So. 2d 679, 1993 Ala. Civ. App. LEXIS 292 (Civ. App. 1993).

Trial court held to be within its discretion in determining the monthly gross income of the parties and in correctly applying the **Child Support Guidelines**. Davidson v. Davidson, 643 So. 2d 1001, 1994 Ala. Civ. App. LEXIS 310 (Civ. App. 1994).

Appropriateness of allowing for business expenses pursuant to subdivision (B)(3)(ii) is a determination left to the discretion of the trial court. Wells v. McNeal, 646 So. 2d 59, 1994 Ala. Civ. App. LEXIS 366 (1994).

The trial court abused its discretion in failing to require the father to contribute more to the **support of his child**. Parham v. Parham, 647 So. 2d 775, 1994 Ala. Civ. App. LEXIS 465 (1994).

The gross income of noncustodial father having been established as exceeding the highest level of income provided under A.R.J.A., Rule 32, the trial court was entitled to use its discretion in determining the level of **child support** due the **child** from the father. B.R.L. v. State ex rel. K.H.S., 664 So. 2d 908, 1995 Ala. Civ. App. LEXIS 83 (Civ. App. 1995).

The trial court abused its discretion by ordering **child support** without first complying with the **support guidelines** contained in this rule. Self v. Self, 685 So. 2d 732, 1996 Ala. Civ. App. LEXIS 737 (Ala. Civ. App. 1996), limited, Lightel v. Myers, 791 So. 2d 955, 2000 Ala. Civ. App. LEXIS 686 (Ala. Civ. App. 2000).

Actions concerning **child support**, although guided by the mandatory application of this rule, remain within the discretion of the trial court. Jordan v. Jordan, 688 So. 2d 839, 1997 Ala.

Civ. App. LEXIS 10 (Ala. Civ. App. 1997).

A trial court did not abuse its discretion in a **child support** modification action when it found the custodial mother, who had worked as a clerk for \$100 per week three years prior to the hearing, to be voluntarily unemployed and imputed minimum wage income to her. *Romano v. Romano*, 703 So. 2d 374, 1997 Ala. Civ. App. LEXIS 81 (Ala. Civ. App. 1997).

To continue to require husband to make court-ordered monthly payments of \$2,313 out of a monthly average net income of \$2,685 was clearly unjust; trial court abused its discretion in disbelieving evidence relating to husband's income and access to funds to pay the amounts awarded. *Wilson v. Wilson*, 709 So. 2d 1264, 1998 Ala. Civ. App. LEXIS 96 (Ala. Civ. App. 1998), appeal dismissed, 736 So. 2d 633, 1999 Ala. Civ. App. LEXIS 341 (Ala. Civ. App. 1999).

Although this rule provides that when the parties' combined adjusted gross income is more than \$10,000, the amount of **child support** is left to the discretion of the court, the trial court abused its discretion in increasing the father's **child support** obligation to \$2,970 per month; there was no indication in the record that such award rationally related to the reasonable and necessary needs of the minor **child**. *D.D.S. v. L.A.W.*, 742 So. 2d 797, 1999 Ala. Civ. App. LEXIS 588 (Ala. Civ. App. 1999).

Application of the **child-support guidelines** was mandatory although it required the filing of a CS-41 and CS-42 form, it did not require the filing of a CS-43 form; trial court abused its discretion dismissing an action where it had the necessary documentation to either enforce the **child-support** obligation or set the case for a final hearing. *Cannon v. Cannon*, 812 So. 2d 373, 2001 Ala. Civ. App. LEXIS 504 (Ala. Civ. App. 2001).

Trial court did not abuse its discretion in establishing the husband's **child support** obligations following an ore tenus hearing. *Tompkins v. Tompkins*, 843 So. 2d 759, 2002 Ala. Civ. App. LEXIS 687 (Civ. App. 2002).

Where the parties' combined monthly gross income exceeds \$10,000 per month, **child support** cannot be calculated pursuant to the tables contained as an appendix to Ala. R. Jud. Admin. 32, so the establishment of a parent's **child-support** obligation is within the trial court's discretion in such situations, provided the amount of **support** relates to the reasonable and necessary needs of the children, as well as to the ability of the obligor to pay for those needs; moreover, the trial court may impute income to a parent that the trial court determines to be voluntarily unemployed or underemployed in order to arrive at the \$10,000 mark. *McKnight v. McKnight*, 888 So. 2d 1251, 2004 Ala. Civ. App. LEXIS 146 (Civ. App. 2004).

Trial court did not abuse its discretion in ordering a father to pay \$1223 per month in **child support** where the combined salaries of the parties, including the father's imputed income, produced a monthly income figure in excess of the \$10,000 top level of the **child support guidelines**. *Pate v. Guy*, 942 So. 2d 380, 2005 Ala. Civ. App. LEXIS 784 (Dec. 30, 2005).

#### Educational support.

**Where the child** reached majority status before the complaint for divorce was filed and, consequently, before application for post-minority educational **support** could have been made, the trial court erred in making such an award. *Hooker v. Hooker*, 593 So. 2d 1023, 1991 Ala. Civ. App. LEXIS 656 (Civ. App. 1991).

Allowance for college expenses beyond the age of majority is predicated upon the trial court considering all relevant factors that shall appear reasonable and necessary, including

primarily the financial resources of the parents and the **child and the child's** commitment to, and aptitude for, the requested education. *Hooker v. Hooker*, 593 So. 2d 1023, 1991 Ala. Civ. App. LEXIS 656 (Civ. App. 1991).

Award of educational **support** is in error where there was no legal evidence as to the actual cost of books, tuition, and board. *Hooker v. Hooker*, 593 So. 2d 1023, 1991 Ala. Civ. App. LEXIS 656 (Civ. App. 1991).

Husband was not paying the daughter's post-minority educational expenses pursuant to the agreement of the parties as embodied in the divorce. Thus, the trial court did not abuse its discretion in denying the husband a credit. The agreement provision attached the word "reasonable" to the amount that the father was to provide his daughter for living expenses. No "reasonableness" requirement was attached to the tuition expense. Thus, although tuition to a private college might be more expensive than tuition to a public university, the provision was not so limited or qualified, and, unless modified, the father was bound by the provision. *Simpkins v. Simpkins*, 595 So. 2d 493, 1991 Ala. Civ. App. LEXIS 687 (Ala. Civ. App. 1991).

Court can limit the financial contribution of a parent for post-minority educational **support** to the cost of the educational institution that the **child** would have attended but for the divorce, but the court is not empowered to select the educational institution that the **child** must attend in order to receive the educational **support** from a parent. *State ex rel. Brown v. Brown*, 622 So. 2d 376, 1993 Ala. Civ. App. LEXIS 86 (Civ. App. 1993).

In cases involving post-minority **support** for college education where the **child** is already attending college, the decision rendered by the trial court will be retroactive to the time of the filing of the request. *State ex rel. Brown v. Brown*, 622 So. 2d 376, 1993 Ala. Civ. App. LEXIS 86 (Civ. App. 1993); *Stanford v. Stanford*, 628 So. 2d 701, 1993 Ala. Civ. App. LEXIS 305 (Ala. Civ. App. 1993).

**Child support** for a **child's** college education is a matter within the trial court's discretion, and this court will reverse only upon a showing that the trial court abused that discretion or that the judgment is plainly and palpably wrong. *Hines v. Cunningham*, 622 So. 2d 395, 1993 Ala. Civ. App. LEXIS 110 (Civ. App. 1993).

In actions seeking post-minority **support** for college education expenses, the trial court shall consider all relevant factors, primarily, the financial resources of the parents and the **child, and the child's** commitment to and aptitude for a college education; the trial court may consider the **child's** relationship with the parents, and the standard of living the **child** would have enjoyed if the marriage had not been dissolved. *Stanford v. Stanford*, 628 So. 2d 701, 1993 Ala. Civ. App. LEXIS 305 (Ala. Civ. App. 1993).

Post-minority **support** for college expenses should be based on the demonstrated ability of a parent to earn, rather than his or her actual earning. *Stanford v. Stanford*, 628 So. 2d 701, 1993 Ala. Civ. App. LEXIS 305 (Ala. Civ. App. 1993).

In actions seeking post-minority **support** for college education expenses, the trial court must determine if the non-custodial parent has sufficient estate, earning capacity, or income to provide financial assistance without undue hardship to himself. *Stanford v. Stanford*, 628 So. 2d 701, 1993 Ala. Civ. App. LEXIS 305 (Ala. Civ. App. 1993).

Where the trial court failed to place sufficient restrictions on the number of college years or courses for which the father would be responsible for paying or aiding in the payment, failed to make findings to determine the expenditures, including room and board, that will be necessary for the son to attend college, and failed to make a determination of whether these expenditures will result in undue hardship to the father, an award for post-minority educational **support** will not be upheld. *Meador v. Meador*, 628 So. 2d 907, 1993 Ala. Civ.

App. LEXIS 445 (Ala. Civ. App. 1993).

Petitions for post-minority educational **support** must be made before the **child** reaches the age of majority. *Lolley v. Yarborough*, 643 So. 2d 1009, 1994 Ala. Civ. App. LEXIS 304 (Civ. App. 1994).

The trial court's order requiring the former wife to pay 50% of the children's private school tuition in addition to her regular **child support** payment was reversed and remanded, where the court failed to state its reasons for requiring the mother to pay these extraordinary educational expenses. *McConnell v. McConnell*, 718 So. 2d 78, 1998 Ala. Civ. App. LEXIS 519 (Ala. Civ. App. 1998).

While the modification of the husband's **child support** obligation, based on the application of the **Child Support Guidelines**, was affirmed, the trial court's denial of post-secondary educational expenses based on the rationale that the minor had not yet reached the age of majority was reversed so the trial court could reserve the issue for future consideration. *Akridge v. Akridge*, 738 So. 2d 1277, 1999 Ala. Civ. App. LEXIS 475 (Ala. Civ. App. 1999).

The trial court did not err in ordering father to pay commuting expenses associated with **child's** college education but should have placed appropriate time restrictions on the father's post-minority **support** obligation. *Hill v. Hill*, 739 So. 2d 501, 1999 Ala. Civ. App. LEXIS 383 (Ala. Civ. App. 1999).

Trial court must set reasonable limitations on the parent's postminority-**support** obligation; these limitations include (1) limiting the **support** to a reasonable time period, (2) requiring the **child** to maintain at least a "C" average, and (3) requiring the **child** to be enrolled as a full-time student. *McKnight v. McKnight*, 888 So. 2d 1251, 2004 Ala. Civ. App. LEXIS 146 (Civ. App. 2004).

Order requiring a father to pay \$200 per month toward his son's college expenses was upheld on appeal where the father's **child support** obligation was reduced basically by that same amount and presented no greater financial hardship than what he had already been ordered to undertake as a result of a divorce between him and the son's mother. *Spears v. Spears*, 903 So. 2d 135, 2004 Ala. Civ. App. LEXIS 947 (Civ. App. 2004).

#### **Erroneous award.**

Trial court erred in directing father to contribute \$10,000.00 toward the purchase, maintenance, and insurance of a motor vehicle for minor **child**; to pay 40% of the costs of the minor **child's** college tuition, books, fees and housing; and to pay 40% of the minor **child's** "extraordinary high school expenses including but not limited to class rings, class pictures and class trips, in addition to other school activities." *Berryhill v. Reeves*, 705 So. 2d 505, 1997 Ala. Civ. App. LEXIS 865 (Ala. Civ. App. 1997).

Trial court's **child support** arrearage calculation which was based upon the figures stated in the wife's initial **child support** form for two children, was inconsistent with Ala. R. Jud. Admin. 32(b)(9) which addressed the calculation of **support** payments where each parent had primary physical custody of one or more minor children; the wife never had custody of both children. *Stonecipher v. Stonecipher*, 819 So. 2d 69, 2001 Ala. Civ. App. LEXIS 809 (Ala. Civ. App. 2001).

No evidence was presented to rebut the presumption created by the **guidelines**, and the trial court's final judgment failed to indicate that application of the **guidelines** would be manifestly unjust or inequitable; the final judgment also failed to include the language necessary to **support** an award under Ala. R. Jud. Admin. 32(C)(4). Therefore, requiring the

wife to pay one-half of the **child's** extracurricular expenses was unsupported by the record and was error. *A.B. v. J.B.*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 613 (Dec. 18, 2009).

### **Finality.**

Past due installments of **child support** are final judgments which may be collected as any other judgment; a trial court may not modify, release, or discharge the obligor of past due **support** once the obligation matures and becomes final under the original divorce judgment. *State ex rel. Brown v. Handley*, 628 So. 2d 726, 1993 Ala. Civ. App. LEXIS 321 (Ala. Civ. App. 1993).

**Child support** payments become final judgments on the date they are due and are immune from change; one may defend against an action for the collection of past due **child support** payments by showing payment or discharge. *State Dep't of Human Resources ex rel. Briley v. Dobbins*, 628 So. 2d 931, 1993 Ala. Civ. App. LEXIS 467 (Civ. App. 1993).

### **Form requirements.**

Word "shall" in subsection 32(E) mandates the filing of a standardized **Child Support Guidelines** Form and a **Child Support** Obligation Income Statement/Affidavit Form. In stipulated cases, however, the trial court may accept the filing of a **Child Support Guideline** Notice of Compliance Form. Further, stipulated cases, such as where the parties have agreed upon a **child support** amount in compliance with the **guidelines**, are the only exceptions to the requirement of filing a **child support guideline** form and income affidavit forms. *Martin v. Martin*, 637 So. 2d 901, 1994 Ala. Civ. App. LEXIS 146 (Civ. App. 1994).

Court order reducing father's **child support** obligation failed to comply with this rule, where parties had agreed to an amount for **support** but there was no evidence that **Guideline** Notice of Compliance Form had been filed or that court had used **guidelines** or income statements in approving the stipulated amount. *Gautney v. Raymond*, 709 So. 2d 1279, 1998 Ala. Civ. App. LEXIS 91 (Ala. Civ. App. 1998).

Portion of the judgment regarding the mother's current **child-support** obligation was reversed and the case remanded to correct the trial court's failure to file a completed and signed CS-42 **Child Support Guidelines** Form indicating the proper **support** obligation in compliance with this rule. *Ullrich v. Ullrich*, 736 So. 2d 639, 1999 Ala. Civ. App. LEXIS 340 (Ala. Civ. App. 1999).

Where the parties failed to comply with the requirements of this rule and did not file **support-guideline** forms and income-affidavit forms, the appellate court was unable to determine how the lower court arrived at a \$600 monthly **child support** award and remanded the case. *Horwitz v. Horwitz*, 739 So. 2d 1118, 1999 Ala. Civ. App. LEXIS 69 (Ala. Civ. App. 1999).

The trial court failed to obtain revised income affidavits from both parties and failed to file a revised CS-42 **child support** form to **support** the recalculation of **support**. *Stone v. McLaughlin*, 752 So. 2d 522, 1999 Ala. Civ. App. LEXIS 808 (Ala. Civ. App. 1999).

Court erred in awarding **child support** to mother pursuant to a dissolution action where the parties had not filed the proper forms, and the filing of the forms was necessary to proper review. *Okonkwo v. Okonkwo*, 827 So. 2d 131, 2002 Ala. Civ. App. LEXIS 77 (Ala. Civ. App. 2002).

A signature of the trial judge is optional, not necessary, on the CS-42 **child support**

calculation form; the plain language of Ala. R. Jud. Admin. 32 requires only that a CS-42 be incorporated into every **child-support** order of a trial court. *J.L. v. A.Y.*, 844 So. 2d 1221, 2002 Ala. Civ. App. LEXIS 693 (Ala. Civ. App. 2002).

Where the parties in a **child support** modification proceeding did not file the forms required by Ala. R. Jud. Admin. 32(E) and the trial court failed to file or incorporate a required form into its order modifying the husband's **child support** obligation, a remand was ordered for the trial court to secure the necessary forms from the parties and to complete the form which it should have completed. *Grant v. Grant*, 849 So. 2d 186, 2002 Ala. Civ. App. LEXIS 789 (Ala. Civ. App. 2002).

It was well settled that in an Alabama **child support** case where the parties agreed to or stipulated to an amount of **child support**, the trial court could accept the filing of a CS-43 **Child Support Guideline** Notice of Compliance form in lieu of an otherwise required CS-41 **Child Support** Obligation Income Statement/Affidavit form and a CS-42 **Child Support Guidelines** form. *Duke v. Duke*, 872 So. 2d 153, 2003 Ala. Civ. App. LEXIS 76 (Ala. Civ. App. 2003).

Reversible error occurred on a father's petition to modify **child support** as the trial court failed to file a CS-42 form ("**Child Support Guidelines**" form) or to incorporate one into its **child-support** judgment in violation of Ala. R. Jud. Admin. 32(E); therefore, the appellate court reversed the trial court's judgment and remanded the matter to the trial court to complete a properly calculated CS-42 form. *Bradford v. James*, 879 So. 2d 1184, 2003 Ala. Civ. App. LEXIS 307 (Ala. Civ. App. 2003).

Where the trial court ordered the father to pay **child support** to the mother but neither party submitted the **child support** forms mandated by Ala. R. Jud. Admin. 32(E), the appellate court could not review the award, because it was unable to determine how the trial court reached its determination. *Morris v. Padgett*, 890 So. 2d 157, 2004 Ala. Civ. App. LEXIS 244 (Ala. Civ. App. 2004).

Where the trial court did not award **child support**, and where the parties' respective incomes were clearly established in the record, the court did not need to complete a CS-42 form. *Dunn v. Dunn*, 891 So. 2d 891, 2004 Ala. Civ. App. LEXIS 327 (Civ. App. 2004).

Trial court's judgment modifying a father's **child support** obligation could not stand where, due to the trial court's failure to prepare and file a CS-42 **child-support** worksheet reflecting its **child support** calculations, the appellate court could not determine if the trial court had properly applied Ala. R. Jud. Admin. 32 in rendering its judgment. *Farnell v. Farnell*, -- So. 2d --, 2008 Ala. Civ. App. LEXIS 483 (Aug. 1, 2008).

#### **Income.**

Where the record supported a finding that the mother was not voluntarily unemployed or underemployed, the trial court was not required to impute income to her under Ala. R. Jud. Admin. 32(B)(5). *Gilliam v. Gilliam*, 876 So. 2d 1135, 2003 Ala. Civ. App. LEXIS 760 (Civ. App. 2003).

Where the record on appeal failed to contain a CS-41 income-statement/affidavit form or a CS-42 **child-support-guidelines** forms and there was no testimony regarding income, the appeals court was unable to ascertain how the trial court reached its **child-support** determination; the judgment was reversed as to the issue of **child support** and the case was remanded to determine income. *J.M. v. D.V.*, 877 So. 2d 623, 2003 Ala. Civ. App. LEXIS 790 (Civ. App. 2003).

Because husband's testimony concerning a possible decrease in differential pay, which he had received for several years, was speculative, it was an abuse of discretion for the trial court not to have included the differential pay as income under Ala. R. Jud. Admin. 32 in determining the husband's **child support** obligation; further, the trial court erred in calculating **child support** based on the schedule contained in Ala. R. Jud. Admin. 32 because the parties' combined monthly income exceeded the uppermost limit of the **child support** schedule contained in that rule. *Arnold v. Arnold*, -- So.2d --, 2007 Ala. Civ. App. LEXIS 479 (Civ. App. July 13, 2007).

As an award of periodic alimony to a former wife was intended for the sole purpose of her own **support**, the trial court properly refused to include it as "income" for the purpose of calculating **child support**. *Clements v. Clements*, 990 So. 2d 383, 2007 Ala. Civ. App. LEXIS 586 (Aug. 31, 2007).

As an award to a former wife of alimony in gross was a form of property division, the trial court properly refused to include it as "income" for the purpose of calculating **child support**. *Clements v. Clements*, 990 So. 2d 383, 2007 Ala. Civ. App. LEXIS 586 (Aug. 31, 2007).

In a dispute regarding **child** custody and **support**, it was not error to impute an hourly wage of \$13 to the unemployed mother, because the evidence supported the finding that, based on the mother's work history and experience, the mother could earn at least \$13 an hour within the county. *Pitts v. Priest*, 990 So. 2d 917, 2008 Ala. Civ. App. LEXIS 128 (Mar. 14, 2008).

Trial court's failure to require the parties to submit Form CS-41 income affidavits in determining **child support** under Ala. R. Jud. Admin. 32 did not require a reversal as the record otherwise established the parties' respective incomes, since a husband testified that his monthly income was between \$1,800 and \$2,000, and a wife testified that she had no income. *Combs v. Combs*, -- So. 2d --, 2008 Ala. Civ. App. LEXIS 548 (Aug. 29, 2008).

### "Infant".

The term "infant" under Alabama's **child support** statute encompasses disabled, incapacitated children beyond the age of majority. Therefore, the trial court had the inherent right to modify the original decree to provide for the welfare and maintenance of the divorced parties' adult invalid **child**. *Martin v. Martin*, 539 So. 2d 283, 1988 Ala. Civ. App. LEXIS 309 (Ala. Civ. App. 1988).

### Interest.

The trial court erred in waiving interest on any **child-support** arrearage owed by the employee; while judgments imposing **child-support** obligations may be modified upon a showing of a material change in circumstances, such modifications may operate only prospectively, i.e., from no earlier than the filing of a petition seeking modification of **child-support** obligations. *State ex rel. Pritchett v. Pritchett*, 771 So. 2d 1048, 2000 Ala. Civ. App. LEXIS 360 (Ala. Civ. App. 2000).

### Jurisdiction.

The fact that the parties lived in their marital relationship for three years in Alabama but left the state twelve years before the institution of the proceedings was not sufficient to confer in personam jurisdiction upon an Alabama court over the nonresident father under subdivision (a)(2)(H) of Rule 4.2 of the Alabama Rules of Civil Procedure and the fact that the children and the mother live in Alabama was not enough to confer in personam jurisdiction over the

nonresident father. *Minkoff v. Abrams*, 539 So. 2d 306, 1988 Ala. Civ. App. LEXIS 398 (Ala. Civ. App. 1988).

At the time the modification was sought, Alabama, as the forum state, was responsible for the welfare of the parties' two minor children: None of the parties involved remained in Utah (where the original **support** order was entered), and, although the husband was not a resident of Alabama, he availed himself of Alabama's jurisdiction when he initiated the proceedings here. Clearly, Alabama was the state with a legitimate continuing interest in this matter, and the trial court should have found that **child support** was to continue until the children attained the age of majority, i.e., 19 years, as set out by Alabama law. *Finney v. Eagly*, 568 So. 2d 816, 1990 Ala. Civ. App. LEXIS 371 (Civ. App. 1990).

The circuit court did not have jurisdiction to modify the **child support** obligation paid to appellant for the benefit of the parties' minor **child** by ordering the monthly payment reduced by one hundred dollars in order to repay personal loans to the father by the mother. If the mother owes a personal debt to the father as stated in the decree, there are means to collect it other than from funds due for **child support**. *Grimes v. Woolman*, 595 So. 2d 504, 1992 Ala. Civ. App. LEXIS 42 (Ala. Civ. App. 1992).

Trial court has jurisdiction to require parents to provide post-minority **support** for a college education when application is made for the **support** prior to the **child** attaining majority; the court is to consider all reasonable and necessary relevant factors, including primarily the financial resources of the parents and the **child and the child's** commitment to and aptitude for a college education, and may also consider the standard of living the **child** would have enjoyed if the divorce had not occurred and the **child's** relationship with his or her parents. *Baggett v. Foster*, 622 So. 2d 350, 1992 Ala. Civ. App. LEXIS 177 (Ala. Civ. App. 1992), cert. quashed, 1993 Ala. LEXIS 869 (Ala. June 11, 1993).

It is recommended that **child support** obligations be determined before a court considers spousal **support** or other obligations. Therefore, a trial court retains the authority, on remand, to adjust its alimony award if that court determines that a **child-support** award made in compliance with an appellate court's mandate, coupled with the trial court's previous award of alimony, will result in an undue hardship with respect to the party ordered to pay **child support**. *Herboso v. Herboso*, 881 So. 2d 454, 2003 Ala. Civ. App. LEXIS 359 (Ala. Civ. App. 2003).

#### Legislative intent.

The **child support guidelines** set out in the Alabama Rules of Judicial Administration were created to equitably determine the amount of **support** due a minor **child**. *Yarbrough v. Motley*, 579 So. 2d 684, 1991 Ala. Civ. App. LEXIS 185 (Ala. Civ. App. 1991).

#### Medical expenses.

The trial court's ordering the father to pay his daughter's noncovered medical and dental expenses at the same percentage as his **child-support** obligation was proper. *West v. Rambo*, 786 So. 2d 1138, 2000 Ala. Civ. App. LEXIS 771 (Civ. App. 2000).

#### Modification.

#### --Agreements.

Parents cannot by mutual agreement reduce a **child support** court order so as to deprive their children of the **support** to which they are entitled, and such an agreement between the mother and the father would be a nullity. *Thompson v. Wright*, 613 So. 2d 1289, 1992 Ala. Civ. App. LEXIS 550 (Ala. Civ. App. 1992).

Although the husband cannot alleviate his **child support** obligations by claiming that he and the wife entered into a mutual agreement, which the wife admitted, this agreement does indicate that the husband was not guilty of contemptuous behavior in failing to comply with the judgment of divorce. *Hollis v. State*, 618 So. 2d 1350, 1992 Ala. Civ. App. LEXIS 592 (Civ. App. 1992).

When the decree fixing the amount of **child support** is based on an agreement between the parties, the decree should not be modified except for clear and sufficient reasons, and after thorough consideration and investigation. *Pugh v. Birdwell*, 620 So. 2d 46, 1993 Ala. Civ. App. LEXIS 64 (Civ. App. 1993).

Although the trial court set out a detailed and well-reasoned method for the parties to adjust **child support** when the mother's income changes, agreements between the parties have no legal effect unless approved by the court; therefore, the trial court erred in ordering the parties to compute their own **child support** obligation without including in its order provision for court supervision and approval of the recomputation. *Smith v. Rials*, 622 So. 2d 374, 1993 Ala. Civ. App. LEXIS 88 (Ala. Civ. App. 1993).

Provision directing the husband to recompute his **child support** two times per year, based upon his gross income, and to begin paying the corrected amount -- such recomputation is to be binding on the parties if proper procedure is followed -- is not erroneous if it is understood that any modification must be approved by the court. *Jeffrey v. Jeffrey*, 628 So. 2d 783, 1993 Ala. Civ. App. LEXIS 353 (Civ. App. 1993).

Party has no right to unilaterally reduce **child support** payments without consent from the court. *Trimble v. Trimble*, 628 So. 2d 789, 1993 Ala. Civ. App. LEXIS 362 (Ala. Civ. App. 1993).

When the judgment establishing the **support** obligation is based on an agreement between the parties, the decree should not be modified except for clear and sufficient reasons and after thorough consideration and investigation. *Pendegraph v. Pendegraph*, 628 So. 2d 849, 1993 Ala. Civ. App. LEXIS 404 (Ala. Civ. App. 1993).

A trial court's order enforcing a **child support** modification agreement was reversed where the record did not indicate the trial court had reviewed the agreement, received a notice of compliance with the **child support guidelines** from the parties' attorneys, referenced those **guidelines**, or reviewed financial statements disclosing the financial status of the parties. *Godwin v. Godwin*, 809 So. 2d 833, 2001 Ala. Civ. App. LEXIS 488 (Ala. Civ. App. 2001).

Since there had been no change in the fact that at the time of the divorce the parties had entered into an agreement regarding the amount of **child support** and no appeal was taken from the divorce judgment by either party, the husband could not collaterally attack the divorce judgment by arguing that the Ala. R. Jud. Admin. 32 presumption was not adequately rebutted. There was no evidence to **support** the judgment of the trial court insofar as it increased the wife's **child-support** obligation. *Reeves v. Reeves*, 894 So. 2d 712, 2004 Ala. Civ. App. LEXIS 487 (Ala. Civ. App. 2004).

#### --Burden of proof.

Burden of proof on the issue of changed circumstances rests on the party seeking the

modification; the modification for changed circumstances is a matter strictly within the trial court's discretion. *Osborn v. Osborn*, 628 So. 2d 785, 1993 Ala. Civ. App. LEXIS 354 (Ala. Civ. App. 1993).

Party seeking the modification has the burden to show that a material change in circumstances has occurred that is substantial and continuing. *Pendegraph v. Pendegraph*, 628 So. 2d 849, 1993 Ala. Civ. App. LEXIS 404 (Ala. Civ. App. 1993).

Prior **child support** award may be modified only upon proof of changed circumstances since the last judgment, with the burden of proof resting on the party seeking the modification. *Rolen v. Pickering*, 628 So. 2d 850, 1993 Ala. Civ. App. LEXIS 405 (Ala. Civ. App. 1993).

Prior **child support** award may be modified only with proof of changed circumstances, and the burden of proof rests with the party seeking the modification. Of paramount consideration in determining the amount of **child support** is the needs of the children, taking into account the parent's ability to pay. If a change of circumstances is proven, this rule establishes a rebuttable presumption that the correct amount of **child support** results from the application of the **guidelines**. *Anonymous v. Anonymous*, 646 So. 2d 28, 1993 Ala. Civ. App. LEXIS 456 (Ala. Civ. App. 1993).

The husband "failed to show any material change in circumstances not anticipated by the parties' agreement which would justify a modification" where the agreement stated that **child support** should continue until the youngest daughter reached majority and his only basis for seeking modification was that the oldest daughter, who had reached the age of majority, had married; meanwhile, the husband's income had increased and the wife's had decreased and there was no evidence that the needs of the remaining minor **child** justified a decrease in **child support**. *Moore v. Moore*, 805 So. 2d 710, 2000 Ala. Civ. App. LEXIS 314 (Ala. Civ. App. 2000).

In denying the mother's claim for a modification of **child support**, the trial court did not incorporate into its judgment the Ala. R. Jud. Admin. 32 **child-support** forms. Thus, the appellate court could not determine how the trial court reached its determination that no modification of **child support** was warranted. *Hood v. Hood*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 548 (May 15, 2009).

#### --Change in circumstances.

In determining whether there has been a sufficient change in circumstances to warrant a modification of **child support**, a trial court may consider the remarriage of the parties, the parties' financial needs and abilities to respond to those needs, and a party's ability to earn as opposed to actual earnings. *Thompson v. Thompson*, 521 So. 2d 46, 1988 Ala. Civ. App. LEXIS 1 (Civ. App. 1988).

The **child support guidelines** in and of themselves did not constitute a material change in circumstances requiring modification of **support** award ordered at a time when the **guidelines** were not binding on the courts. *Barden v. Barden*, 560 So. 2d 1069, 1990 Ala. Civ. App. LEXIS 19 (Civ. App. 1990).

The most important factor in considering a modification of **child support** is whether the needs of the **child** have undergone a material change. *Jackson v. Presley*, 586 So. 2d 213, 1991 Ala. Civ. App. LEXIS 361 (Ala. Civ. App. 1991).

The fact that the **guidelines** were not used in the original decree but were applied in the modification hearing does not constitute a change of circumstances. *Browning v. Browning*, 626 So. 2d 649, 1993 Ala. Civ. App. LEXIS 238 (Ala. Civ. App. 1993).

Criteria for determining changed circumstances are the increased needs of the **child** and the ability of the parent to respond to those needs. *Sanders v. Gilliland*, 628 So. 2d 677, 1993 Ala. Civ. App. LEXIS 296 (Ala. Civ. App. 1993), cert. denied, 1993 Ala. LEXIS 1425 (Ala. Dec. 3, 1993).

Factors the trial court may consider include a party's ability to earn, as opposed to actual earnings, in deciding whether to terminate or reduce the amount of the award in modification proceedings. *Coleman v. Coleman*, 628 So. 2d 698, 1993 Ala. Civ. App. LEXIS 303 (Civ. App. 1993).

Prior award of **child support** may be modified only upon proof of changed circumstances; the criteria for determining changed circumstances is the need of the **child** and the ability of the parent to respond to that need. *Mitchell v. Kelley*, 628 So. 2d 807, 1993 Ala. Civ. App. LEXIS 368 (Ala. Civ. App. 1993).

While the most pertinent factor in determining a modification of **child support** is a material change in the needs, conditions, and circumstances of the children, the parent's ability to pay must also be taken into account. *Rolen v. Pickering*, 628 So. 2d 850, 1993 Ala. Civ. App. LEXIS 405 (Ala. Civ. App. 1993).

Exorbitant spending in itself is not sufficient to prove a substantial change in circumstances; instead, it is the increased needs of the **child** coupled with the parent's ability to pay. *Cassick v. Morgan*, 628 So. 2d 862, 1993 Ala. Civ. App. LEXIS 419 (Ala. Civ. App. 1993).

In order to increase an award of **child support**, the moving party must show a substantial and continuing material change of circumstances; showing a material change of circumstances in the needs of the children is the most pertinent factor in determining a modification of **child support**. *Osteen v. Osteen*, 628 So. 2d 944, 1993 Ala. Civ. App. LEXIS 475 (Ala. Civ. App. 1993).

A prior **child support** order may be modified under subsection (A)(2)(i) of this rule, only upon a showing of a material change in circumstances that is substantial and continuing, and the burden is on the party seeking the modification. *Griggs v. Griggs*, 638 So. 2d 916, 1994 Ala. Civ. App. LEXIS 214 (Ala. Civ. App. 1994).

Provisions of any judgment of **child support** shall be modified only upon a showing of a material change in circumstances since the entry of the last judgment that is substantial and continuing. *Sweeney v. Sweeney*, 640 So. 2d 956, 1994 Ala. Civ. App. LEXIS 265 (Ala. Civ. App. 1994).

Most pertinent factor in determining a modification of **child support** is a material change in the needs, conditions, and circumstances of the children. *Sweeney v. Sweeney*, 640 So. 2d 956, 1994 Ala. Civ. App. LEXIS 265 (Ala. Civ. App. 1994).

Prior **child support** award may be modified only on proof of changed circumstances, and the burden of proof rests on the party seeking the modification; the modification of **child support** for changed circumstances is a matter strictly within the trial court's discretion. *Cunningham v. Cunningham*, 641 So. 2d 807, 1994 Ala. Civ. App. LEXIS 72 (Ala. Civ. App. 1994), overruled in part, *T.L.D. v. C.G.*, 849 So. 2d 200, 2002 Ala. Civ. App. LEXIS 809 (Civ. App. 2002).

Provisions of any judgment of **child support** shall be modified only upon a showing of a material change of circumstances since the entry of the last judgment that is substantial and continuing; the modification of **child support** will not be disturbed on appeal unless there is an abuse of discretion. *Stevens v. Stevens*, 641 So. 2d 825, 1994 Ala. Civ. App. LEXIS 293

(Civ. App. 1994).

Exorbitant spending in itself is not sufficient to prove a substantial and continuing change in circumstances; instead, it is the increased needs of the **child** coupled with the parent's ability to pay. Where the record did not indicate that the minor **child's** needs or expenses had increased since the entry of the last judgment, where the mother failed to present evidence of a material change in the minor **child's** needs that is substantial and continuing, since the entry of the last judgment, the court concluded that the trial court's modification of **child support** was unsupported by the evidence and, consequently, constituted an abuse of discretion. Therefore, the trial court's judgment, which included the award of a \$3,500 attorney fee to the wife, was reversed and annulled, and the cause remanded. *Makar v. Makar*, 643 So. 2d 1378, 1994 Ala. Civ. App. LEXIS 270 (Civ. App. 1994).

Where father asserted that the increase in his **child support** obligation was made in error because the modification was less than 10%, thus creating a rebuttable presumption that there was no material change in circumstances, the father cited no authority to **support** his position, and the court found it unnecessary to address it. *Little v. Little*, 680 So. 2d 308, 1996 Ala. Civ. App. LEXIS 451 (Ala. Civ. App. 1996).

A 10% variance between an existing **child support** obligation and the amount that would be derived from application of the **guidelines** creates a rebuttable presumption that the obligor has experienced a material change in circumstances but is not required to show a material change in circumstances to **support** modification of the **child support** obligation; thus, a parent is entitled to have his petition for modification considered - supported by all relevant evidence - without showing a 10% variance. *Wilson v. Wilson*, 702 So. 2d 477, 1997 Ala. Civ. App. LEXIS 669 (Ala. Civ. App. 1997).

Ala. R. Jud. Admin. 32(A)(3)(b) established a rebuttable presumption that an existing **child-support** award should be modified when the difference between the existing **child support** award and the amount determined by application of the **guidelines** varied more than 10 percent, unless the variation was due to the fact that the existing **child support** award resulted from a rebuttal of the **guidelines** and there had been no change in the circumstances that resulted in the rebuttal of the **guidelines**. *Duke v. Duke*, 872 So. 2d 153, 2003 Ala. Civ. App. LEXIS 76 (Ala. Civ. App. 2003).

When divorcing parents agreed the father would pay an amount of **child support** greater than that required by the **child support guidelines**, and he acknowledged that this obligation was more than the **guidelines** amount, and it was assumed in the best interests of the children, the father's subsequent petition to reduce **child support** had to show a change in the circumstances resulting in the parties' original rebuttal of the presumed **child support** amount. *Duke v. Duke*, 872 So. 2d 153, 2003 Ala. Civ. App. LEXIS 76 (Ala. Civ. App. 2003).

Where the former husband's income had substantially decreased, and the former wife's income had increased, since the entry of the original **child support** schedule under Ala. R. Jud. Admin. 32, the trial court did not err in reducing the former husband's **child support** obligation from \$2,500 per month to \$1,500; although the former husband still had the ability to make the original **child support** payments despite a decrease in income, the former wife's income had increased substantially since the original **child support** award was issued. *Grimsley v. Grimsley*, 887 So. 2d 910, 2004 Ala. Civ. App. LEXIS 6 (Ala. Civ. App. 2004).

Given the rebuttable presumption that an existing **child support** obligation was to be modified when the difference between the existing obligation and that indicated by the **guidelines** in Ala. R. Jud. Admin. 32 was greater than 10 percent, and given the evidence presented by the father in an effort to rebut that presumption, the appellate court could not

say that the trial court erred by modifying the father's **child support** obligation as the modified **child support** award varied more than 10 percent from the previous award. *Scott v. State ex rel. Dix*, -- So. 2d --, 2007 Ala. Civ. App. LEXIS 201 (Mar. 16, 2007).

In a case in which a father appealed a trial court's **child-support** judgment, arguing that the evidence demonstrated that a material change in his income had occurred, the record did not indicate whether the trial court intended to impute income to the father pursuant to Ala. R. Jud. Admin. 32(B)(5) when it denied the father's claim seeking a **child-support** modification. The trial court made no reference to the **child-support guidelines**, and it did not appear that the trial court applied those **guidelines** in reaching its ruling. *H.J.T. v. State ex rel. M.S.M.*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 511 (Oct. 9, 2009).

#### --Foreign court.

Where the statutory requirements were met to give a trial court jurisdiction to modify a foreign state's **child support** order, the trial court was still required to, then, either apply the **child support guidelines** in Ala. R. Jud. Admin. 32 or enter written findings that the application of such **guidelines** would be unjust or inequitable. *Wall v. Borosky*, 850 So. 2d 351, 2002 Ala. Civ. App. LEXIS 704 (Civ. App. 2002), rehearing denied, -- So.2d --, 2002 Ala. Civ. App. LEXIS 1368 (Civ. App. Nov. 8, 2002).

#### --Hearing.

Where petition in present case alleged material change warranting 10% increase in **support**, the trial court clearly erred in dismissing, without a hearing, the petition requesting the modification of **child support**. *State ex rel. Solaiman v. Aviki*, 694 So. 2d 19, 1997 Ala. Civ. App. LEXIS 338 (Ala. Civ. App. 1997).

#### --Preexisting obligations.

Clearly, a deduction may not be made for children born or adopted after the initial award of **support** unless pursuant to another order of **support** when determining the amount of **child support** to be paid pursuant to the **guidelines**. However, this rule does not prohibit the consideration of the evidence of the increased expenses because of these children in determining whether "the application of the **guidelines** would be manifestly unjust or inequitable." The trial court has been given the authority to make this determination "based upon evidence presented to the court," and there is no limitation on the type of evidence that may be considered. *Loggins v. Houk*, 595 So. 2d 488, 1991 Ala. Civ. App. LEXIS 653 (Ala. Civ. App. 1991), cert. denied, 1992 Ala. LEXIS 354 (Ala. Mar. 20, 1992).

Clearly, once a trial court determines to apply the **Child Support Guidelines**, consideration of children born or adopted subsequent to the initial award of **support** is not allowed. *Dinkel v. Dinkel*, 598 So. 2d 918, 1991 Ala. Civ. App. LEXIS 685 (Ala. Civ. App. 1991), cert. denied, 1992 Ala. LEXIS 788 (Ala. May 29, 1992).

Claims of arrearage of ordered **child support** may be allowed off-set by credit for amounts expended by the obligated parent when such parent actually furnishes **support** for a **child** while in his custody or the custody of another. *Thompson v. Wright*, 613 So. 2d 1289, 1992 Ala. Civ. App. LEXIS 550 (Ala. Civ. App. 1992).

To allow a credit against an arrearage in **child support** is within the discretion of the trial court and will not be reversed absent a showing of plain and palpable abuse. *Thompson v. Wright*, 613 So. 2d 1289, 1992 Ala. Civ. App. LEXIS 550 (Ala. Civ. App. 1992).

Credit is to be given on an arrearage in alimony or **child support** for Social Security benefits received by one spouse or a **child** on the other spouse's Social Security account. *Brewer v. Brewer*, 613 So. 2d 1292, 1992 Ala. Civ. App. LEXIS 555 (Ala. Civ. App. 1992), cert. denied, 1993 Ala. LEXIS 313 (Ala. Feb. 19, 1993).

Party may not reduce **child support** payments if the **child support** order does not so provide, but a credit against claimed arrearage may be allowed if that party actually furnished **support** for the **child** while the **child** was in the party's custody. *State Dep't of Human Resources v. Thomas*, 615 So. 2d 84, 1992 Ala. Civ. App. LEXIS 395 (Ala. Civ. App. 1992).

Evidence regarding the obligations of remarriage are not prohibited from being considered in determining whether application of the **guidelines** would be manifestly unjust or inequitable; the primary responsibility of the parent, however, is to the obligations assumed with the earlier marriage. *Rolen v. Pickering*, 628 So. 2d 850, 1993 Ala. Civ. App. LEXIS 405 (Ala. Civ. App. 1993).

Under subsection (B)(6) of this rule, a father was not entitled to a monthly credit against his **child support** obligations for the expenses associated with supporting a **child** that was in the father's custody but that was born after the entry of the original order of **support**, where the record contained no evidence to indicate the expenses of supporting the younger **child** in the father's home and no evidence indicating that the father had sought **support from that child's** mother or that the **child's** mother could contribute to her **support**. *State ex rel. English v. Troisi*, 659 So. 2d 658, 1995 Ala. Civ. App. LEXIS 205 (Civ. App. 1995).

The court did not err in modifying father's **child support** obligation from \$400 to \$553.50 where the **Child Support Guidelines** indicated that he should pay that, where the difference amounted to a more than 10% increase, and where the father failed to rebut the presumption created under this rule that the trial court should have increased the **child-support** award. *Simmons v. Simmons*, 781 So. 2d 236, 2000 Ala. Civ. App. LEXIS 606 (Ala. Civ. App. 2000).

#### --Retroactive.

The trial court's retroactive modification of **child support** was prohibited by this rule. *Mackey v. Mackey*, 799 So. 2d 203, 2001 Ala. Civ. App. LEXIS 190 (Civ. App. 2001).

Trial court did not abuse its discretion not making the increase in a father's **child-support** obligation retroactive, as much of the delay in obtaining a ruling on the **child support** issue was due to the mother's filing of numerous motions. *Volovecky v. Hoffman*, 903 So. 2d 844, 2004 Ala. Civ. App. LEXIS 981 (Ala. Civ. App. Dec. 30, 2004).

Husband testified he provided the sole **support** for the **child** for the 19-month period preceding the divorce hearing; thus, the trial court was within its discretion in ordering the wife to pay retroactive **child support**. As it could not be determined how the trial court arrived at the \$5,000 **child-support**-arrearage amount and as there was no indication in the record that the trial court applied the appropriate **child-support guidelines** in calculating the arrearage, that aspect of the trial court's judgment was reversed. *A.B. v. J.B.*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 613 (Dec. 18, 2009).

#### --Unwarranted.

The criteria on which a modification of a prior **child support** order is based is not only the

parent's ability to pay, but also the needs of the **child**. Where it is undisputed that the father's income has increased since the parties' divorce but there is no evidence to suggest that the **child's** needs have increased, modification is inappropriate. *Cox v. Cox*, 591 So. 2d 90, 1991 Ala. Civ. App. LEXIS 650 (Ala. Civ. App. 1991).

Modification of a **support** order is not justified where there is nothing in the record indicating what the **child's** previous needs were and how they have changed except the mother's vague testimony that "everything has gone up." *Hernsmeier v. McCoy*, 591 So. 2d 508, 1991 Ala. Civ. App. LEXIS 431 (Ala. Civ. App. 1991), cert. denied, 1991 Ala. LEXIS 1264 (Ala. Dec. 6, 1991).

Trial court erred in terminating mother's **child support** obligation based on her deliberate choice to quit her employment, where she was earning \$26,000 annually, in order to pursue a law degree; court must determine mother's **child support** obligation based on her demonstrated ability to earn, rather than her deliberate choice to have no income. *Johnson v. Johnson*, 597 So. 2d 699, 1991 Ala. Civ. App. LEXIS 683 (Ala. Civ. App. 1991).

Testimony that the mother had gotten divorced from her second husband, and that she no longer had her second husband's income available to her, was insufficient to show a material change of circumstances that is substantial and continuing to justify modification of **child support** under (A)(2)(i). *McCormick v. McCormick*, 603 So. 2d 1110, 1992 Ala. Civ. App. LEXIS 408 (Ala. Civ. App. 1992).

Where the record was devoid of any evidence that the **child's** needs or expenses had increased or that the mother was unable to meet her share of these costs, the mother failed to prove that a continuing and substantial material change of circumstances occurred. Consequently, the trial court erred in modifying the **child support** payments based only on the increased income of the father. With the mother having failed to meet the requirements of Rule 32(A)(2)(i) (now Rule 32(A)(ii)(1)), A.R.J.A., the trial court was without authority to apply the **child support guidelines** to modify the **child support** payments in this case. *Dimoff v. Dimoff*, 606 So. 2d 159, 1992 Ala. Civ. App. LEXIS 285 (Civ. App. 1992), cert. denied, 1992 Ala. LEXIS 1304 (Ala. Oct. 23, 1992).

Although the father cited several cases for the proposition that substantial decline in income justifies modification, the trial court properly found that the father did not meet the burden of proof regarding a change of circumstance and, in particular, that he did not present admissible documentation or evidence regarding his assets and income from various sources. *Doyle v. Doyle*, 621 So. 2d 1330, 1993 Ala. Civ. App. LEXIS 94 (Ala. Civ. App. 1993).

While the grant or denial of a credit against a **child support** arrearage is within the sound discretion of the trial court, there is no authority for a court to credit the father with any **support** furnished for a **child** after the **child** reaches majority because the father has no legal obligation to furnish such **support**. *State ex rel. Brown v. Brown*, 622 So. 2d 376, 1993 Ala. Civ. App. LEXIS 86 (Civ. App. 1993).

Where there is no evidence that a **child** is so mentally or physically disabled as to be unable to **support** himself, the payment of **child support** may not be ordered past the age of majority. *Meador v. Meador*, 628 So. 2d 907, 1993 Ala. Civ. App. LEXIS 445 (Ala. Civ. App. 1993).

Record evidence held to not reflect a change in circumstances that is substantial and continuing so as to justify a modification of **child support** and a related application of the **guidelines** where, although the father testified at length concerning his medical conditions, lack of employment, and disability income, cross-examination revealed that the father was suffering from the same ailments and was incurring similar medical expenses when the matter of **child support** was last examined by the trial court. *Sullivan v. Sullivan*, 631 So.

2d 1028, 1993 Ala. Civ. App. LEXIS 501 (Civ. App. 1993).

The **child support guidelines** do not authorize the abatement of **child support** during periods of visitation that are not substantially in excess of those customarily approved or ordered by the court; if the court orders an abatement of **support** during a standard visitation period, such as a one-month summer visitation period, then the court has deviated from the **guidelines** and must state its reasons for the deviation. *Flanagan v. Flanagan*, 656 So. 2d 1228, 1995 Ala. Civ. App. LEXIS 151 (Civ. App. 1995).

A former wife's petition seeking an increase in a **child support** award that was determined outside of the **guidelines** of this rule required proof of changed circumstances rather than application of the rebuttable presumption of this rule that a **support** order should be modified when the difference between the original award and the amount determined by application of the **guidelines** varies by more than ten percent; the trial court found that there had been no material change in circumstances to warrant a modification of the former husband's **support** obligation. *Fox v. Fox*, 659 So. 2d 633, 1995 Ala. Civ. App. LEXIS 118 (Civ. App. 1995).

Mother testified that she was making \$2,000 to \$3,000 more per year than she made at the time of the divorce. This increase in the mother's income did not activate the "10% variance" provision of paragraph (A)(3)(b). *Jones v. Jones*, 682 So. 2d 1387, 1996 Ala. Civ. App. LEXIS 701 (Ala. Civ. App. 1996).

In a post-decree proceeding, the trial court properly declined to order the father to pay some of the costs of the children's private-school education because, to the extent that the mother challenged the original judgment of divorce, her argument is an impermissible collateral attack on that judgment; and to the extent she sought modification of the judgment, she failed to show a material, substantial, and continuing change of circumstances. *Volovecky v. Hoffman*, 903 So. 2d 844, 2004 Ala. Civ. App. LEXIS 981 (Ala. Civ. App. Dec. 30, 2004).

Because the most recent **child-support** judgment reflected that the father was not required to pay **child support** due to the parties' shared custody of the **child**, the juvenile court could not modify the judgment without complying with Ala. R. Jud. Admin. 32 by, inter alia, taking testimony on the parties' respective incomes. *J. M. v. C.M.*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 41 (Feb. 13, 2009).

Trial court's judgment on remand did not properly compute the father's **child-support** obligation according to Ala. R. Jud. Admin. 32. The financial data in the record showed that the trial court erred in concluding that the father earned only \$62,000 as the record showed that the trial court improperly deducted family insurance premiums from his income and improperly failed to impute as income the mortgage payments that the father's company made on the residence occupied by the father. *Brown v. Brown*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 71 (Mar. 6, 2009).

#### --Warranted.

Evidence sufficient to **support** court's determination of change of circumstance, warranting modification of **child support**. See *Pittman v. Pittman*, 598 So. 2d 993, 1992 Ala. Civ. App. LEXIS 173 (Ala. Civ. App. 1992).

Under this rule the trial court did not err, as a matter of law, in increasing **child support** from the amount set in the prior district court proceeding. *Heath v. Kelly*, 602 So. 2d 432, 1992 Ala. Civ. App. LEXIS 334 (Ala. Civ. App. 1992).

Where **child's** school lunches and snacks increased in cost, **child** wished to attend baton

lessons, but the mother was unable to afford them, there had been an increase in the **child's** living expenses from when the **child** was one year old, clothing for the **child** cost more, and transportation costs increased, modification of **child support** was warranted. *Palmer v. Palmer*, 603 So. 2d 1111, 1992 Ala. Civ. App. LEXIS 402 (Ala. Civ. App. 1992).

Where there was evidence of the increased needs of the **child**, as well as evidence demonstrating the ability of the father to respond to these needs, and because these factors are sufficient to prove a material change in circumstances, the court found no abuse of discretion in the trial court's increase of the father's **support** obligation by applying the **Child Support Guidelines**. *Klapal v. Brannon*, 610 So. 2d 1167, 1992 Ala. Civ. App. LEXIS 216 (Civ. App. 1992), cert. denied, 1992 Ala. LEXIS 1629 (Ala. Dec. 18, 1992).

Changes demonstrated by testimony of mother and father, where mother, through no fault of her own was no longer able to work as a nurse due to licensing problems and **child** had been diagnosed with "attention deficit disorder" and a learning disability requiring a special tutor, were sufficient to meet a showing of "a material change of circumstances that is substantial and continuing" required by Rule 32(A)(2)(i) (now Rule 32(A)(ii)(1)) of the Alabama Rules of Judicial Administration, and justified an increase in **child support** payments. *Yohn v. Yohn*, 619 So. 2d 925, 1993 Ala. Civ. App. LEXIS 60 (Civ. App. 1993).

Where at the time of trial the father was earning \$12 per hour, but his testimony indicated that he was not working consistent forty-hour weeks due to the unstable nature of the construction business, which often was attributable to unfavorable business climates or inclement weather, trial court did not abuse its discretion in its modification of the father's **child support** obligation. *Savell v. Morris*, 623 So. 2d 338, 1993 Ala. Civ. App. LEXIS 174 (Civ. App. 1993).

Trial court may modify **child support** even though the mother may be incidentally benefitted. *Sanders v. Gilliland*, 628 So. 2d 677, 1993 Ala. Civ. App. LEXIS 296 (Ala. Civ. App. 1993), cert. denied, 1993 Ala. LEXIS 1425 (Ala. Dec. 3, 1993).

A decrease in salary from \$76,191 per year to approximately \$11,667 to \$14,715 per year is a material change in circumstances justifying a modification of a **child support** order. *Gordy v. Glance*, 636 So. 2d 459, 1994 Ala. Civ. App. LEXIS 111 (Ala. Civ. App. 1994).

The father's increased income, the increased needs of the **child**, and the decreased purchasing power of an award made seven years previously are sufficient to constitute a material change in circumstances to **support** a modification in the father's **child support** obligation. *Campbell v. Tolbert*, 656 So. 2d 828, 1994 Ala. Civ. App. LEXIS 420 (Civ. App. 1994).

The trial court erred in denying the requested **child support** modification where the State asked only that the father no longer be ordered to pay for health insurance that did not benefit the **child** -- who had moved out of state -- and that his **child support** be refigured based on the fact that after the requested modification he would no longer be entitled to a credit for insurance premiums; because the cost of the insurance was deducted from the father's obligation, pursuant to this rule, and because the mother also had to pay for health insurance, the amount of **support** available for the **child** was doubly reduced. *State v. Owens*, 764 So. 2d 1274, 2000 Ala. Civ. App. LEXIS 151 (Ala. Civ. App. 2000).

Because the difference between the either of the father's proffered modified obligation amounts in a **child** modification proceeding where the father's income was disputed and the prior monthly obligation was more than 10 percent, the mother presented sufficient evidence to warrant a modification of the **child-support** award. *Rimpf v. Campbell*, 853 So. 2d 957, 2002 Ala. Civ. App. LEXIS 834 (Ala. Civ. App. 2002).

## Presumptions.

Subsection (A) establishes a rebuttable presumption that the correct amount of **child support** results from the application of the **guidelines**; in order to rebut the presumption, the party contesting the application of the **guidelines** must present evidence that the application would be manifestly unjust or inequitable. *Carter v. Carter*, 579 So. 2d 1373, 1991 Ala. Civ. App. LEXIS 181 (Ala. Civ. App. 1991).

If the trial court determines that the application of the **Child Support Guidelines** would be manifestly unjust or inequitable, a written finding to this effect, on the record, is sufficient to rebut the presumption that the **guidelines** rendered the correct amount of **child support**. *Stewart v. Kelley*, 587 So. 2d 384, 1991 Ala. Civ. App. LEXIS 473 (Civ. App. 1991).

Where although the father's income greatly increased, the mother had no income, and because there would not be a ten percent increase in the amount of **child support** due, there was a rebuttable presumption that there was not a material change in circumstances. *Thompson v. Hove*, 596 So. 2d 939, 1992 Ala. Civ. App. LEXIS 74 (Civ. App. 1992).

This rule creates a rebuttable presumption of correctness, the trial court should either apply the **guidelines** or, if setting an amount deviating from the **guidelines**, to make a written finding on the record that application of the **guidelines** would be unjust or inappropriate. *Harford v. Harford*, 608 So. 2d 1370, 1992 Ala. Civ. App. LEXIS 482 (Ala. Civ. App. 1992).

There is a rebuttable presumption that the application of the **child support guidelines** will result in the correct amount of **child support** being awarded. Trial court's order awarding **child support** was reversed and remanded with instructions for the trial court either to enter a written finding on the record that the application of the **guidelines** would be unjust or inappropriate or to award an amount of **child support** commensurate with the **child support guidelines**. *Robinson v. Robinson*, 623 So. 2d 300, 1993 Ala. Civ. App. LEXIS 125 (Civ. App. 1993).

After an ore tenus proceeding, the trial court's judgment of arrearage is presumed correct and will not be set aside unless it is determined to be plainly and palpably wrong. *King v. State ex rel. Witt*, 628 So. 2d 830, 1993 Ala. Civ. App. LEXIS 386 (Ala. Civ. App. 1993).

Once a change in circumstances is proven, a rebuttable presumption is established that the correct amount of **child support** results from the application of the **guidelines**. *Griggs v. Griggs*, 638 So. 2d 916, 1994 Ala. Civ. App. LEXIS 214 (Ala. Civ. App. 1994); *Kellum v. Jones*, 591 So. 2d 891, 1991 Ala. Civ. App. LEXIS 684 (Ala. Civ. App. 1991); *Cherry v. Clark*, 595 So. 2d 909, 1992 Ala. Civ. App. LEXIS 60 (Ala. Civ. App. 1992).

Amount of **support** that would result from the application of the **guidelines** is presumed to be the correct amount of **child support**; this presumption may be rebutted if the trial court makes a finding of fact that, based upon the evidence presented, the application of the **guidelines** would be manifestly unjust or inequitable. *State ex rel. Whitlock v. Bottoms*, 651 So. 2d 1, 1994 Ala. Civ. App. LEXIS 46 (Ala. Civ. App. 1994).

The presumption of correctness accompanying an order applying a **child support guideline** prevails if the court of appeals determines that the trial court correctly determined that the father has an obligation to **support his child or that the support** obligation should be modified. *McCormack v. State ex rel. Baker*, 658 So. 2d 462, 1994 Ala. Civ. App. LEXIS 357 (Civ. App. 1994).

There is a rebuttable presumption that the application of the **guidelines** results in the proper amount of **support** for the children, i.e., the amount of the **guideline** award is rebuttably

presumed to be the children's needs. In this case, the mother sought an increase, based on the **guidelines**, and she presented evidence regarding the expenses of the children. The father presented nothing to rebut the evidence regarding the needs of the children that was presented to the court, nor to rebut the presumption that the application of the **guidelines** resulted in the appropriate amount for his **child support** obligation. It was error for the trial court to fail to apply the **guidelines** or to properly deviate from them. *State ex rel. O'Neal v. Jones*, 646 So. 2d 150, 1994 Ala. Civ. App. LEXIS 386 (1994).

This rule provides a rebuttable presumption that the amount of **child support** that results from the application of the **guidelines** is the correct amount of **support** to be awarded. *Self v. Self*, 685 So. 2d 732, 1996 Ala. Civ. App. LEXIS 737 (Ala. Civ. App. 1996), limited, *Lightel v. Myers*, 791 So. 2d 955, 2000 Ala. Civ. App. LEXIS 686 (Ala. Civ. App. 2000).

The rebuttable presumption established by this rule that the correct amount of **child support** is that determined by application of the **guidelines** may be rebutted by the trial court's finding that such amount is "manifestly unjust or inequitable"; but, a trial court's finding that a non-custodial father's income has decreased when the evidence does not **support** such finding is an abuse of discretion calling for a reversal of a **support** modification because not in accordance with this rule. *Romano v. Romano*, 703 So. 2d 374, 1997 Ala. Civ. App. LEXIS 81 (Ala. Civ. App. 1997).

If the combined income of parties to a **child support** action is within the amounts specified in the **child support** schedule appended to Ala. R. Jud. Admin. 32(A), there arises a rebuttable presumption that the amount of **child support** determined by application of the **child support guidelines** is the correct amount of **child support** to be awarded. *Altobih v. Altobih*, 857 So. 2d 146, 2003 Ala. Civ. App. LEXIS 104 (Ala. Civ. App. 2003).

#### **Reasons for deviation required.**

Where a trial court deviated from the **child support guidelines** in making a **child support** award and only stated the reasons for doing so without indicating how the actual figure of **support** was arrived at, such was not in compliance with Ala. R. Jud. Admin. 32(A)(ii) and required reversal; the part of the award directing that each party was to receive an income tax deduction for a **child**, although the father was awarded physical custody of both children, required remand for a statement of reasons where the trial court had not indicated that the award of both deductions to the father would have been "manifestly unjust or inequitable." *DeYoung v. DeYoung*, 853 So. 2d 967, 2002 Ala. Civ. App. LEXIS 838 (Ala. Civ. App. 2002).

The trial court erred when it entered a **child support** award and failed to make findings as to its deviation from the Uniform **Child Support Guidelines** and Ala. R. Jud. Admin. 32; the case was remanded to determine an appropriate **child-support** award or, in the alternative, to enter findings justifying the deviation from those **guidelines**. *Steed v. Steed*, 877 So. 2d 602, 2003 Ala. Civ. App. LEXIS 797 (Civ. App. 2003).

While the trial court's factual findings supported a determination that the employment income of the parties' autistic adult son was not sufficient to provide for his **support**, the trial court erred by not stating on the record the reasons it deviated from Ala. R. Jud. Admin. 32's **child-support guidelines** in determining the father's postminority **support** obligation. *Beverly v. Beverly*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 93 (Apr. 3, 2009).

#### **Required trial court findings.**

Appeals court reiterated that if a trial court deviated from the **child-support guidelines** in setting a **support** obligation, it had to make the findings required by Ala. R. Jud. Admin. 32

(A)(ii); appeals court determined **child support** where trial court did not complete a CS-42 **Child Support Guidelines** Form and make the findings required by Ala. R. Jud. Admin. 32 (A)(ii). *Etheredge v. Wheat*, 838 So. 2d 396, 2002 Ala. Civ. App. LEXIS 505 (Civ. App. 2002).

Trial judge's order, which was entered by the clerk after the trial judge left office, was valid under Ala. R. Civ. P. 58 and not void, because it was filed with the clerk prior to the expiration of the term of office. However, the trial court erred in failing to hold a hearing on a wife's motion under Ala. R. Civ. P. 59(e), because there was no **child support guidelines** form as required by Ala. R. Jud. Admin. 32. *Gilliam v. Gilliam*, -- So. 2d --, 2010 Ala. Civ. App. LEXIS 43 (Feb. 5, 2010).

#### --Unwarranted.

The trial court's deviation from the **Child Support Guidelines** awarding the mother an average of only \$285.71 per month as opposed to the \$992 to which she was entitled, although allowable because of the combined incomes of the parties, was extreme and unwarranted by the father's disapproval of the **child's** failure to work and attend school. The trial court's judgment for the minor's **support** for March through September 1999 burdened the mother, whose income was significantly less than the father's, with the vast majority of the cost of the **child's support** during those months. *Floyd v. Abercrombie*, 816 So. 2d 1051, 2001 Ala. Civ. App. LEXIS 222 (Civ. App. 2001).

#### Requirements.

The word "shall" in subsection (E) is mandatory and the forms required therein must be filed in any action in which **child support** is at issue. *Wise v. Wise*, 751 So. 2d 29, 1999 Ala. Civ. App. LEXIS 776 (Ala. Civ. App. 1999).

The trial court's determination of the father's **support** obligation of \$919.86 per month and a \$4,020 in **child-support** arrearage was not based on a consistent application of the requirements of this section where the record did not contain a CS-41 form for the father and where other evidence differed as to his actual pay. A "Notification of Personnel Action" form showed his adjusted basic pay to be \$48,161; a recent pay stub, submitted at the time of trial showed gross earnings to-date of \$28,843; and the CS-42 form listed his gross monthly income as \$7,352. *Wylie v. Wylie*, 794 So. 2d 1174, 2001 Ala. Civ. App. LEXIS 113 (Ala. Civ. App. 2001).

A thorough review of the record did not reveal how the trial court reached the husband's **child-support** obligation. The court had to reverse the decision of the trial court regarding the issue of **child support** and remand the case for the trial court to secure CS-41 forms from the husband and the wife and to complete a CS-42 form in order to comply with Ala. R. Jud. Admin. 32(E). *Russell v. Russell*, 844 So. 2d 1215, 2002 Ala. Civ. App. LEXIS 689 (Ala. Civ. App. 2002).

Where the appellate court was unable to determine how the trial court arrived at the amount of **child support**, as several required forms were not in the record, the matter was remanded. Application of the **child-support guidelines** was mandatory, under Ala. R. Jud. Admin. 32(E); and where the trial court found that the application of the **guidelines** would be unjust or inequitable, and deviated from those **guidelines** in setting a **support** obligation, the trial court had to make the findings required by Ala. R. Jud. Admin. 32(A)(ii). *Kirkland v. Kirkland*, 860 So. 2d 1283, 2003 Ala. Civ. App. LEXIS 260 (Ala. Civ. App. 2003).

#### Retroactive Support.

In an action which a mother filed against the father of her **child**, seeking **child support**, there was no evidence that the mother gave the father reason to believe the mother would not need **child support**, or that the father relied on any such representation, and the appellate court reversed a trial court's judgment ordering the father to only pay **child support** beginning the month after the court entered its order, and remanded the case with instructions that the trial court award retroactive **child support** in accordance with Ala. Code § 30-3-114, applying the **child support guidelines** contained in Ala. R. Jud. Admin. 32. *P.Y.W. v. G.U.W.*, 858 So. 2d 265, 2003 Ala. Civ. App. LEXIS 186 (Civ. App. 2003).

### **Review.**

Modification of **child support** is a matter strictly within the trial court's discretion and will not be disturbed upon appeal unless there is a clear abuse of discretion. *Brandt v. Riordan*, 547 So. 2d 569, 1989 Ala. Civ. App. LEXIS 204 (Civ. App. 1989).

When a trial court is presented ore tenus evidence of income, its judgment will be presumed correct and will not be disturbed on appeal, unless it is shown to be plainly and palpably wrong. *Doyle v. Doyle*, 579 So. 2d 651, 1991 Ala. Civ. App. LEXIS 138 (Civ. App. 1991).

Trial court, in its discretion, may grant a modification of **child support** upon a showing of a material change of circumstances; the trial court's decision to grant or deny such a modification will not be reversed on appeal unless it is so unsupported by the evidence as to be plainly and palpably wrong. *Anderson v. Anderson*, 590 So. 2d 310, 1991 Ala. Civ. App. LEXIS 609 (Ala. Civ. App. 1991).

The presumption that the application of these **guidelines** results in the correct award of **child support** may be rebutted by a written finding on the record that the application of the **guidelines** would be unjust or inappropriate. Where the trial court made no findings of fact and gave no reasons for its refusal to apply the **guidelines** remand is appropriate. *Kelly v. Kelly*, 599 So. 2d 49, 1992 Ala. Civ. App. LEXIS 178 (Ala. Civ. App. 1992).

Where the judgment made no reference to the **child support guidelines**, and did not set an amount according to the **guidelines**, nor did it enter a finding that their application would be "unjust or inappropriate"; the judgment must be reversed. *Wilhelm v. Wilhelm*, 601 So. 2d 1047, 1992 Ala. Civ. App. LEXIS 346 (Ala. Civ. App. 1992).

Where the record does not reflect how the **child support** payments were calculated by the trial court nor do they correspond with the **guidelines**, the reviewing court will remand for the trial court to determine **child support** payments in accordance with this rule. *Turberville v. Turberville*, 617 So. 2d 284, 1992 Ala. Civ. App. LEXIS 588 (Ala. Civ. App. 1992).

**Child support** order held to so far exceeds the reasonable needs of the **child** as to constitute an abuse of discretion and appears to be a punishment upon the father for his conduct during the marriage. *Anonymous v. Anonymous*, 617 So. 2d 694, 1993 Ala. Civ. App. LEXIS 6 (Civ. App. 1993).

Issues of **child support** and its modification are within the sound discretion of the trial court, and its judgment will be reversed only upon a showing of abuse of that discretion. *Pugh v. Birdwell*, 620 So. 2d 46, 1993 Ala. Civ. App. LEXIS 64 (Civ. App. 1993).

Modification of **child support** is a matter that rests within the sound discretion of the trial court, and its judgment will be reversed only on a showing of abuse of that discretion. *Smith v. Rials*, 622 So. 2d 374, 1993 Ala. Civ. App. LEXIS 88 (Ala. Civ. App. 1993).

Where wife contended on appeal that the **support** order was not in compliance with the **child support guidelines** of Rule 32, ARJA, and that the trial court failed to assess interest on the arrearage, upon review, it was shown that the **guideline** form in the record omitted inclusion of childcare costs, therefore the case was reversed and the cause was remanded to the trial court for a determination of the **support** obligation considering the cost of **child** care, and for clarification of the arrearage including interest. *McDavid v. McDavid*, 627 So. 2d 446, 1993 Ala. Civ. App. LEXIS 212 (Ala. Civ. App. 1993), cert. denied, 1993 Ala. LEXIS 1370 (Ala. Aug. 27, 1993).

Trial court's judgment regarding the modification of **child support** and periodic alimony, following the presentation of ore tenus evidence, is presumed correct and will not be reversed on appeal unless it is unsupported by the evidence or is plainly and palpably wrong. *Coleman v. Coleman*, 628 So. 2d 698, 1993 Ala. Civ. App. LEXIS 303 (Civ. App. 1993).

Where evidence is presented ore tenus, particularly in matters concerning **child support**, the trial court's judgment is presumed correct and will be reversed only upon a showing that the trial court abused its discretion or that its determination is plainly and palpably wrong. *Wilson v. Hall*, 628 So. 2d 728, 1993 Ala. Civ. App. LEXIS 329 (Ala. Civ. App. 1993).

Trial court's failure to apply the **guidelines** or to present findings of fact based upon evidence presented to the court as to why the **guidelines** were not followed requires reversal. *Simmons v. Ellis*, 628 So. 2d 804, 1993 Ala. Civ. App. LEXIS 372 (Ala. Civ. App. 1993).

Modification of **child support** rests within the sound discretion of the trial court and will not be disturbed on appeal unless plainly and palpably wrong. *King v. State ex rel. Witt*, 628 So. 2d 830, 1993 Ala. Civ. App. LEXIS 386 (Ala. Civ. App. 1993).

Determination of arrearage by the trial court will not be disturbed on appeal unless it is unsupported by the evidence and is plainly erroneous and manifestly unjust. *State Dep't of Human Resources ex rel. Briley v. Dobbins*, 628 So. 2d 931, 1993 Ala. Civ. App. LEXIS 467 (Civ. App. 1993).

Modification of **child support** will not be disturbed on appeal unless there is an abuse of discretion. *Sweeney v. Sweeney*, 640 So. 2d 956, 1994 Ala. Civ. App. LEXIS 265 (Ala. Civ. App. 1994).

If the trial court fails to apply the **child support guidelines** or to present findings of fact based upon the evidence before it indicating why the **guidelines** were not followed, the court of appeals will reverse. *Maye v. Maye*, 660 So. 2d 1325, 1995 Ala. Civ. App. LEXIS 257 (Civ. App. 1995), overruled, *Brown v. Brown*, 719 So. 2d 228, 1998 Ala. Civ. App. LEXIS 176 (Civ. App. 1998).

The trial court's decision based on the evidence presented in an ore tenus proceeding regarding the modification of **child support** pursuant to this rule is entitled to a presumption of correctness and will not be reversed absent evidence that the decision was plainly and palpably wrong. *Beavers v. Beavers*, 717 So. 2d 373, 1997 Ala. Civ. App. LEXIS 972 (Ala. Civ. App. 1997).

The trial court's determination of whether a parent is underemployed so as to warrant the imputation of income is a factual determination subject to the ore tenus rule, and will not be reversed absent a showing that the trial court abused its discretion. *Mann v. Mann*, 725 So. 2d 989, 1998 Ala. Civ. App. LEXIS 814 (Ala. Civ. App. 1998).

When this rule has not been complied with and **child support** is made an issue on appeal, the appellate court may reverse the judgment of the trial court and remand the case for

further proceedings. *Etheredge v. Etheredge*, 730 So. 2d 245, 1999 Ala. Civ. App. LEXIS 151 (Ala. Civ. App. 1999).

Matters related to **child support**, including modifications of a **child-support** order, rest soundly within a trial court's discretion and will not be disturbed on appeal absent a showing that the ruling is not supported by the evidence and thus is plainly and palpably wrong. *Tatum v. Carrell*, 897 So. 2d 313, 2004 Ala. Civ. App. LEXIS 623 (Ala. Civ. App. 2004).

Based on the record and on the absence of any contention by a father that the trial court actually miscalculated the amount of his **child-support** obligation, much less that the trial court made an error in this regard that inured to the father's detriment, no basis existed for reversing the trial court's judgment with respect to the amount of **child support** awarded for the benefit of the younger son. *Waddell v. Waddell*, 904 So. 2d 1275, 2004 Ala. Civ. App. LEXIS 726 (Civ. App. 2004).

Court of civil appeals could not address a mother's contention that a trial court erred in failing to impute a higher income to a father for the purposes of determining **child support** and alimony because she failed to supply the transcript of the trial; therefore, the court of civil appeals had to presume that the trial court had before it sufficient evidence to infer that the father was no longer capable of earning an income beyond the amount imputed to him, and, as a result, the court of civil appeals could say that the trial court exceeded its discretion in finding that the father had an earning capacity of only \$3,467 per month, and it could not conclude that the trial court's judgment was plainly and palpably wrong. *Stone v. Stone*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 350 (June 19, 2009).

In a divorce and **child support** proceeding in which the record contained none of the **child-support** forms required by Ala. R. Jud. Admin. 32(E), and the trial court's judgment did not incorporate a **child-support** form setting forth the manner in which the trial court reached its **child-support** determination, the appellate court could not affirm the **child-support** order. *Willis v. Willis*, -- So. 2d --, 2010 Ala. Civ. App. LEXIS 59 (Feb. 26, 2010).

#### **Waiver.**

Parents may not remove by agreement their future obligation to pay **child support**; the right to **child support** is inherent, and it cannot be waived even by agreement. *Hollis v. State*, 618 So. 2d 1350, 1992 Ala. Civ. App. LEXIS 592 (Civ. App. 1992).

#### **When applicable.**

Where a judgment was entered on September 29, 1987, and amended on October 2, 1987, it was not error for the trial court to consider the **guidelines** in this rule, the effective date of which was October 1, 1987, since the modification was pending as of October 1, 1987. *Snow v. Snow*, 531 So. 2d 921, 1988 Ala. Civ. App. LEXIS 197 (Civ. App. 1988).

This was promulgated for the purpose of helping courts arrive at more equitable awards of **child support** rather than mandating specific amounts to be awarded in each case. The enactment of the **guidelines** do not constitute a material change in circumstances justifying a change in **support** obligation for parents whose current **support** obligation is greater than what could be required under the **guidelines**. *Davis v. Davis*, 535 So. 2d 183, 1988 Ala. Civ. App. LEXIS 331 (Ala. Civ. App. 1988).

The Rule 32 **guidelines** became binding on the courts of this state on October 9, 1989. Although not mandatory with regard to actions filed prior to that date, the **guidelines** were to serve as guideposts to aid the trial court in its efforts to achieve a more equitable and

consistent result when awarding **child support** payments. In light of this mandate, trial court's reliance on the Rule 32 **child support guidelines** in a case filed prior to October 9, 1989 is not in error. *Marchman v. Marchman*, 571 So. 2d 1210, 1990 Ala. Civ. App. LEXIS 578 (Ala. Civ. App. 1990).

These **guidelines** have not been utilized to determine the **support** of children past the age of majority. *Yarbrough v. Motley*, 579 So. 2d 684, 1991 Ala. Civ. App. LEXIS 185 (Ala. Civ. App. 1991).

The application of the **guidelines** of this rule is no longer discretionary with the trial court; it is mandatory. *Ex parte Kiely*, 579 So. 2d 1366, 1991 Ala. Civ. App. LEXIS 177 (Civ. App. 1991).

Matters concerning **child support** and its subsequent modifications rest soundly within the trial court's discretion and actions concerning **child support**, which are filed on or after October 9, 1989, although guided by the mandatory application of this Rule, are still committed to the sound discretion of the trial court which may elect not to apply the mandatory **guidelines** by entering a written finding on the record that the application of the **guidelines** would be unjust or inappropriate. *Smith v. Smith*, 587 So. 2d 1217, 1991 Ala. Civ. App. LEXIS 552 (Ala. Civ. App. 1991); *Rudolph v. Rudolph*, 586 So. 2d 929, 1991 Ala. Civ. App. LEXIS 404 (Ala. Civ. App. 1991); *Doyle v. Doyle*, 579 So. 2d 651, 1991 Ala. Civ. App. LEXIS 138 (Civ. App. 1991).

The **child support guidelines** for a minor **child** are not applicable to the determination of an amount for providing or contributing to college expenses after the **child** reaches majority. *Brown v. Short*, 588 So. 2d 468, 1991 Ala. Civ. App. LEXIS 307 (Civ. App. 1991), cert. denied, 1991 Ala. LEXIS 1076 (Ala. Oct. 11, 1991).

It is mandatory in actions filed after October 9, 1989, that the **child support guidelines** be applied; however, the **guidelines** are optional in actions prior to that date. *Murphree v. Murphree*, 600 So. 2d 301, 1992 Ala. Civ. App. LEXIS 217 (Ala. Civ. App. 1992).

**Child support guidelines** are mandatory in all actions filed after October 9, 1989. *State ex rel. Walley v. Walley*, 601 So. 2d 1041, 1992 Ala. Civ. App. LEXIS 311 (Ala. Civ. App. 1992).

**Child support** actions filed on or after October 9, 1989, although guided by the application of this rule, still are committed to the trial court's sound discretion. *State Dep't of Human Resources v. Thomas*, 615 So. 2d 84, 1992 Ala. Civ. App. LEXIS 395 (Ala. Civ. App. 1992).

**Child support guidelines** for a minor **child** are not applicable to the determination of an amount for providing or contributing to college expenses after the **child** reaches majority. *Mitchell v. Kelley*, 628 So. 2d 807, 1993 Ala. Civ. App. LEXIS 368 (Ala. Civ. App. 1993); *Thrasher v. Wilburn*, 574 So. 2d 839, 1990 Ala. Civ. App. LEXIS 492 (Civ. App. 1990).

The **child support guidelines** are inapplicable when determining the amount a parent shall contribute toward the college expenses of a **child** after that **child** reaches majority. *Bahri v. Bahri*, 678 So. 2d 1179, 1996 Ala. Civ. App. LEXIS 442 (Ala. Civ. App. 1996).

**Child support guidelines** are applicable in the establishment or modification of **child support** for an adult dependent **child**. *DeMo v. DeMo*, 679 So. 2d 265, 1996 Ala. Civ. App. LEXIS 440 (Ala. Civ. App. 1996).

While the **guidelines** address the issue of split custody, the **guidelines** neither provide for, nor prohibit, a bifurcated order of **support per child**. The trial court did not commit reversible error when it bifurcated the award of **support per child**. *State ex rel. Nathan v. Nathan*, 680 So. 2d 339, 1996 Ala. Civ. App. LEXIS 490 (Civ. App. 1996).

Trial court was not required to make written findings as why **support guidelines** would be inappropriate where parents' combined income was beyond the scope of the **guidelines**. *Derie v. Derie*, 689 So. 2d 142, 1996 Ala. Civ. App. LEXIS 927 (Ala. Civ. App. 1996).

Where parties had no children and their divorce did not involve **child support**, it was improper for the trial court to use the **child support guidelines** set out in this rule to determine the amount of alimony the husband was required to pay. *Brewer v. Brewer*, 695 So. 2d 1, 1996 Ala. Civ. App. LEXIS 652 (Ala. Civ. App. 1996).

The trial court erred in using this rule to compute post-minority **support**. *Barnes v. Barnes*, 695 So. 2d 1204, 1997 Ala. Civ. App. LEXIS 395 (Ala. Civ. App. 1997).

Actions concerning **child support** are guided by mandatory application of this rule. *Hall v. Hubbard*, 697 So. 2d 486, 1997 Ala. Civ. App. LEXIS 454 (Ala. Civ. App. 1997).

The court rejected the appellant/father's contention that the trial court abused its discretion and violated this section in increasing the amount of the monthly payments he was ordered to pay toward the accumulated **child-support** arrearage. The **guidelines**, the fact that both children are emancipated, and the mother's failure to prove that the children's needs increased so as to justify an increase in his **child-support** obligation are all factors which relate to a modification of an existing **child-support** obligation; they are not relevant to an action seeking to enforce an arrearage. *Davenport v. Hood*, 814 So. 2d 268, 2000 Ala. Civ. App. LEXIS 671 (Civ. App. 2000), cert. quashed, 814 So. 2d 277, 2001 Ala. LEXIS 346 (2001).

The trial court erred in refusing to modify the father's **child-support** obligation where the oldest of the parties's two children had reached majority and married and where the parties's settlement agreement stated that he would pay "**child support** as specified according to the **Child Support Guidelines**" which **guidelines** specify a lower payment for one **child** than for two children. The father's failure to petition for a modification of his **child-support** obligation when the daughter reached the age of majority did not work as a waiver of his right to seek a modification. *Ex parte Moore*, 805 So. 2d 715, 2001 Ala. LEXIS 149 (Ala. 2001).

Because the trial court did not modify a father's **child support** obligation pursuant to Ala. R. Jud. Admin. 32(B)(9), but under the basic **child-support guidelines**, and Rule 32(B)(9) did not apply given that the father never had primary physical custody of his two children, modification of his **child support** obligation was upheld on appeal; moreover, because the father did not assert that the trial court incorrectly calculated his **child-support** obligation or that the trial court should have deviated from the **child-support guidelines** because of the substantial amount of time the children are in his physical custody, affirmance of the trial court's order was authorized. *Allen v. Allen*, 966 So. 2d 929, 2007 Ala. Civ. App. LEXIS 230 (Apr. 6, 2007).

Ala. R. Jud. Admin. 32(E), which requires the filing of standardized **Child Support Guidelines** forms and income statements, applies only in an action to establish or modify **child support** obligations, not in an action in which one party is simply seeking to enforce an already existing **child support** obligation. *Springer v. Damrich*, -- So. 2d --, 2008 Ala. Civ. App. LEXIS 130 (Mar. 14, 2008).

#### Illustrative cases.

The amount of an increase in **child support**, in line with this rule's **guidelines**, was not palpably wrong. *Pullen v. Pullen*, 537 So. 2d 941, 1988 Ala. Civ. App. LEXIS 356 (Ala. Civ.

App. 1988).

The trial court either failed to apply the **guidelines** or improperly deviated from them. *Abdel-Ghany v. Peppers*, 600 So. 2d 1017, 1992 Ala. Civ. App. LEXIS 188 (Civ. App. 1992).

In view of the totality of the awards in this case, that part of the trial court's order allowing the husband the option to make monthly payments of the lump sum award was reversed. *West v. West*, 600 So. 2d 1043, 1992 Ala. Civ. App. LEXIS 264 (Ala. Civ. App. 1992).

Trial court abused its discretion in failing to grant a petition to modify where there was more than sufficient evidence before the trial court to show a material change in circumstances that was substantial and continuing. *Sanders v. Gilliland*, 628 So. 2d 677, 1993 Ala. Civ. App. LEXIS 296 (Ala. Civ. App. 1993), cert. denied, 1993 Ala. LEXIS 1425 (Ala. Dec. 3, 1993).

In a petition for a modification of **child support** entered in the divorce decree to bring the **support** amounts into compliance with the **child support guidelines**, the trial court held a hearing on the wife's motion to modify **child support** and the testimony of the parties indicated that neither of them had a change in income since the divorce, however, the wife testified that she was allowed to purchase the husband's interest in the marital residence and now had to make house payments of \$327 per month; the trial court denied the wife's motion to modify because the wife, although now obligated to make house payments, had acquired a valuable asset. Additionally, the record reflected that the wife failed to present any evidence of any increased needs of the children since the judgment of divorce. *Guy v. Guy*, 630 So. 2d 465, 1993 Ala. Civ. App. LEXIS 413 (Ala. Civ. App. 1993), cert. denied, 1994 Ala. LEXIS 193 (Ala. Jan. 28, 1994).

The father's new family unit included three other children for which he was not allowed a deduction when calculating his obligation to the children of this case. The father's new family was inadequate justification for deviating from the **guidelines**, and the trial court's decision in that regard was error. *State ex rel. O'Neal v. Jones*, 646 So. 2d 150, 1994 Ala. Civ. App. LEXIS 386 (1994).

It was error for the trial court to use the **child support guidelines** under this rule to determine the amount that the father should provide toward the daughter's college expenses. *Finley v. Finley*, 648 So. 2d 588, 1994 Ala. Civ. App. LEXIS 486 (Civ. App. 1994).

On review, the record supported the trial court's determination to increase the father's **child support** obligation. The father's substantial income and the increased needs of the children was sufficient to constitute a material change in circumstances and to **support** a modification. There was no abuse of discretion in the amount of the increase. The parties' combined gross monthly incomes surpassed the upper level of the **guidelines**. The discretionary increase by the trial court correlated with the reasonable and necessary needs of the children. *Coleman v. Coleman*, 648 So. 2d 605, 1994 Ala. Civ. App. LEXIS 501 (1994).

Where a mother argued that the trial court should have deviated from the **guidelines** under this rule because she presented undisputed evidence regarding her inability to pay **child support**; the mother failed to disclose additional expenses associated with her other children, or whether she was receiving any **support** for those children. Likewise, she presented no evidence of the effect the father's assets had on the needs of the children. The trial court did not find that a deviation from the **guidelines** was warranted, and there was insufficient evidence to justify a deviation. *Allsup v. State ex rel. Salas*, 648 So. 2d 597, 1994 Ala. Civ. App. LEXIS 491 (1994).

Where it was abundantly clear from the record that the **child support** awarded was based solely on the husband's perceived ability to pay and did not rationally relate to the reasonable and necessary needs of the two minor children, this was contrary to established

case law; consequently, there was abuse of discretion on the part of the trial court. *Dyas v. Dyas*, 683 So. 2d 971, 1995 Ala. Civ. App. LEXIS 441 (Ala. Civ. App. 1995), *aff'd*, 683 So. 2d 974, 1996 Ala. LEXIS 120, 30 Ala. B. Rep. 2018 (Ala. 1996).

Where father had a considerable income and a number of assets by virtue of his medical practice, and where the Court of Civil Appeals properly remanded this case to the trial court with the instruction to consider the reasonable and necessary needs of the children, the suggestion by the Court of Civil Appeals that \$1,542 per month was the maximum that should be paid was improper. The amount of **child support** is within the discretion of the trial court, after it has considered both the reasonable and necessary needs of the children and the ability of father to pay for those needs. *Ex parte Dyas*, 683 So. 2d 974, 1996 Ala. LEXIS 120, 30 Ala. B. Rep. 2018 (Ala. 1996).

The father was entitled to credit for the **support** obligation for other children, and the court erred by failing to compute his **child support** obligation pursuant to subsection (B)(6). The department's argument that the father was not entitled to deduct **child support** he paid pursuant to the order of another court for other children was contrary to the clear language found in subsection (B)(6) pertaining to modification proceedings. *Kennamore v. State ex rel. Jinnette*, 686 So. 2d 295, 1996 Ala. Civ. App. LEXIS 823 (Ala. Civ. App. 1996).

Award of \$2,000 **child support** was excessive, since it was not rationally related to the needs of the particular **child**, but was based only on the husband's ability to pay. *Lester v. Lester*, 690 So. 2d 378, 1996 Ala. Civ. App. LEXIS 587 (Ala. Civ. App. 1996).

In light of the discretion accorded the trial judge, and in light of the evidence indicating that the mother was most recently employed at an annual salary of \$30,000, the trial court did not err in imputing this amount of income to the mother. *Mitchell v. Mitchell*, 723 So. 2d 1267, 1998 Ala. Civ. App. LEXIS 686 (Ala. Civ. App. 1998).

Retroactive reduction of the father's **child support** obligation to the date the older daughter reached majority was not unfair to the mother, who knew that the divorce judgment required the father to pay **support** only until the children were emancipated, and she should have been aware that she might have to repay any **support** she received after the father filed his petition to modify. *Stinson v. Stinson*, 729 So. 2d 864, 1998 Ala. Civ. App. LEXIS 640 (Ala. Civ. App. 1998).

There was no misapplication of subsection (B)(6) when the amount father had been ordered to pay on the arrearage in the **support** of another **child** was deducted from his income before computing current **child support**. *State ex rel. Daw*, 786 So. 2d 1134, 2000 Ala. LEXIS 486 (2000).

The case was remanded for the trial court to enter an order in compliance with this rule based on completed CS-42 income affidavits and on a CS-42 **Child Support Guidelines** form indicating the appropriate **support** amount. Although the trial court's judgment made specific findings regarding the parties' incomes and stated that it applied the Rule 32 **Child Support Guidelines** in ordering the father to pay \$826 per month in postminority **support** for the two disabled adult children, the appellate court was unable to determine how the trial court reached that figure. *Lightel v. Myers*, 791 So. 2d 955, 2000 Ala. Civ. App. LEXIS 686 (Ala. Civ. App. 2000).

A former custodial parent may institute a contempt action to enforce a judgment for past-due **child support** against a noncustodial parent even after the **child** has reached the age of majority or has become emancipated. Court-ordered **child-support** obligations arise from the noncustodial parent's duty to **support** his or her children and are, therefore, different in nature from ordinary judgments. Although a **child-support** judgment may be collected in the same manner as any other judgment, such a judgment may also be enforced through the

use of a contempt proceeding. *Davenport v. Hood*, 814 So. 2d 268, 2000 Ala. Civ. App. LEXIS 671 (Civ. App. 2000), cert. quashed, 814 So. 2d 277, 2001 Ala. LEXIS 346 (2001).

The case was remanded for the trial court to file a completed and signed CS-42 **Child Support Guidelines** Form indicating the proper **support** obligation and to include a statement in its order explaining its deviation from the **guidelines** in awarding the father the tax-dependency exemption in alternating years. *K.H.L. v. K.G.M.*, 782 So. 2d 804, 2000 Ala. Civ. App. LEXIS 690 (Civ. App. 2000).

Evidence supported the trial court's decision to impute income to the husband for the purpose of calculating his **child-support** obligation; its finding that "even with minimal investment" at a rate of approximately 4%, the husband could earn on his inheritance an income of approximately \$112,000 per year; and its deviation from the **Child Support Guidelines** in establishing the husband's **child-support** obligation where the parties' incomes exceeded the uppermost limits of the **child-support** schedule. *Roberts v. Roberts*, 802 So. 2d 230, 2001 Ala. Civ. App. LEXIS 196 (Civ. App. 2001).

There was not substantial evidence that a father's annual income was \$62,500 under Ala. R. Jud. Admin. 32(B) since: (1) in a loan application, the father estimated his annual income to be \$90,000; (2) he did not submit his business's financial statements; (3) his lifestyle and net worth had not materially decreased since he earned about \$120,000 a year; (4) he had a net worth of over \$900,000, and a monthly mortgage payment of about \$3,800; and (5) he spent a substantial amount on luxury automobiles and travel. *Brown v. Brown*, 960 So. 2d 712, 2006 Ala. Civ. App. LEXIS 763 (2006).

As a trial court awarded joint custody, not split custody, it did not err in failing to calculate **child support** pursuant to Ala. R. Jud. Admin. 32(B)(9). *Shewbart v. Shewbart*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 89 (Mar. 27, 2009).

Order for the mother to pay monthly **support** of \$750 following a modification of custody was supported by evidence that the **child** had extensive and expensive special academic and psychological needs that were not covered by the order requiring the mother to pay half of the **child's** unreimbursed medical expenses. *S.J.R. v. F.M.R.*, -- So. 2d --, 2009 Ala. Civ. App. LEXIS 417 (July 24, 2009).

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**HIERARCHY NOTES:**

Ala. R. Jud. Admin. Note

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