

EXAMINERS' ANALYSIS OF QUESTION NO. 15

1. Non-modifiability Argument: Under Michigan law, this argument has no merit. MCL 552.28 states in pertinent part that:

On petition of either party, after a judgment for alimony or other allowance for either party or a child, . . . the court may revise and alter the judgment, respecting the amount or payment of the alimony or allowance . . .

Accordingly, either party has a statutory right to seek modification of a spousal support award made by the court after trial.

While authority exists to foreclose the modification of spousal support by stipulation, see *Staple v Staple*, 241 Mich App 562 (2000), this principle does not apply after a contested trial. *Koy v Koy*, 274 Mich App 653 (2007). See also *Rickner v Frederick*, 459 Mich 371 (1999).

2. Cohabitation: The applicable language pertaining to this argument concerns Donna's "remarriage" as a trigger to call for termination of spousal support. The facts as presented do not indicate Donna has remarried; just that she is "living with her boyfriend." The issue thus becomes whether living with or cohabitating can be equated with remarriage.

Michigan case authority answers that query in the negative. In *Kersten v Kersten*, 141 Mich App 182, 184 (1985), the court declined plaintiff's invitation to equate cohabitation with "marriage." *Id.* citing *Crouse v Crouse*, 140 Mich App 234 (1985). See also *Ianitelli v Ianitelli*, 199 Mich App 641, 644 (1993). While cohabitation may serve to provide a basis for demonstrating an improved financial situation, the court reiterated it may not be per se equated with remarriage.

3. Referee Must Hear Donna's Request First: Referees are empowered under Michigan law to hear many domestic matters. See MCL 552.507. However, modifications of spousal support are specifically exempted from the referee's powers.

MCL 552.507:

(2) A referee may do all of the following:

(a) Hear all motions in a domestic relations matter, *except motions pertaining to an increase or decrease in spouse support*, referred to the referee by the court.
(Emphasis added.)

Accordingly, Wallace's contention that the modification request must first go to a referee is without merit.