

QUESTION 8 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III
OR IN EXAMPLIFY ANSWER SCREEN 8

In early 2012, when their twin sons were eight, Oscar and Ellen Schmidt went through a divorce trial that included a custody dispute. At the conclusion of the trial, the Michigan circuit judge awarded sole legal and physical custody of the boys to Ellen. Oscar was granted "standard" parenting time of every other weekend, shared holidays, and five weeks (non-consecutively) in the summer. The court entered these awards "after full consideration of the appropriate factors in determining the boys' best interest." Judgment was entered in June 2012 after the court found that Ellen prevailed on all factors.

The judgment was not amended for six years and the boys did well under the previously ordered arrangement. With the boys now 14, Oscar has moved the court to change custody and reverse the prior awards by giving him what Ellen was previously awarded and giving Ellen the same parenting time that Oscar was given six years earlier. The grounds for his request are threefold. First, he believes the boys will express a preference to live with him now, in contrast to their expression to the judge before. Second, they are now older, involved more in school sports, and need their father more involved in their life. Third, Oscar has married a woman with two children about the boys' age providing for a better family life than provided by Ellen, who has remained single.

Ellen responds to Oscar's motion by arguing he is not even entitled to a hearing on his motion because he has not made the appropriate demonstration for the court to revisit its prior custody determination. She maintains the boys are "doing just fine" in their present situation and their custodial arrangement should not be upset.

Applying Michigan law, fully explain your answers to the following three questions:

1. What must a party seeking to modify a custody award demonstrate to obtain a hearing to revisit a prior custody determination?

2. Has Oscar made that demonstration?

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3. Would your answer be the same or different if Oscar were simply seeking additional parenting time?

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