



PROFESSOR LEX

BY HARVEY I. HAUER AND MARK A. SNOVER
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Dear Professor Lex,

I have just recently been retained on a post-judgment matter. My client receives permanent alimony until either the death of the payee or payor, or upon the remarriage by my client pursuant to an income withholding order. Both parties are still alive and live in the same city, in Wayne County. My client has not remarried.

Now this is where it gets strange Professor Lex. The husband's last spousal support payment to my client was February 3, 2005; oddly enough my client is just now trying to recoup outstanding payments owing to her since that date. Since the husband has failed to pay his spousal support obligation, I filed a motion for an order to show cause for the husband's failure to pay his support obligation and requested that he be found in contempt of court.

I received a response from the husband's attorney with regards to my motion raising the defense of the Statute of Limitations. Does the Statute of Limitations apply to alimony payments?

Dear Practitioner,

Effective January 1, 1997, MCL 600.5809 was amended by P.A. 1996, No. 275. The amendment added subsection (4) to the statute that states:

For an action to enforce a support order that is enforceable under the support and parenting time enforcement act, Act No. 295 of the Public Acts of 1982, being sections 552.601 to 552.650 of the Michigan Compiled Laws, the period of limitations is 10 years from the date that the last support payment is due under the support order regardless of whether or not the last payment is made.

It is clear that your client will not be barred by the statute of limitations defense pursuant to MCL 600.5809 as your client was awarded permanent alimony, has not remarried, and she and her ex-husband are both alive.

A case that has dealt with this issue in the context of child support enforcement is *Wayne County Soc. Servs. Dir. V. Yates*,

261 Mich App 152, 681 NW2d 5 (2004), wherein the Court of Appeals stated in part from *Yeiter v Knights of St Casimir*, 461 Mich 493, 494; 607 NW2d 68 (2000):

...partial payments on a debt, "some of which were within the limitation period," constituted a renewal of the promise to pay the amount owed....when the plaintiff sued for the remainder, the defendant claimed that the statute of limitations barred recovery. In discussing the effect of partial payments on the statute of limitations issue, the Court cited *Miner v Lorman*,⁵⁶ Mich. 212, 216; 22 NW 265 (1885), for the proposition that such payment implies a renewal as of the date of the payment of the promise to pay. More specifically, the Court held:

partial payment restarts the running of the limitation period unless it is accompanied by a declaration or circumstance that rebuts the implication that the debtor by partial payment admits the full obligation. *Yeiter*, supra at 497.

Although *Yeiter* did not involve a child support arrearage, the holding is clear that any payment on a debt, whether before or after the running of the period of limitations, acts to extend the limitations period. The child support obligation in this case was a debt, and payments were made pursuant to the income withholdings.

Even though *Wayne County Soc. Servs. Dir.* dealt with a child support arrearage issue, MCL 600.5809 also applies to spousal support payments as well.

Hopefully the statute and case law will be of assistance to you.

Answer respectfully submitted by Harvey I. Hauer and Mark A. Snover.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to

provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

Please send questions for Professor Lex to Hhauer@hauer-snover.com. Include "Professor Lex" in the e-mails subject line.

About the Authors

Harvey I. Hauer, a principal of Hauer & Snover, practices exclusively family law. He is a fellow of the American Academy of Matrimonial Lawyers and a past president of its Michigan Chapter. Mr. Hauer is a former chairperson of the Family Law Sec-

tion of the State Bar of Michigan, the Family Law Committee of the Oakland County Bar Association, and the Michigan Supreme Court Domestic Relations Court Rules Committee. He is a co-author of the Michigan Family Law Seventh Edition chapter on Prenuptial Agreements. He has been selected to Best Lawyers in America, Super Lawyers, and Leading Lawyers.

Mark A. Snover is a principal in the Bingham Farms law firm of Hauer & Snover. He practices exclusively family law. He has served on the State Bar of Michigan Family Law Council. Mr. Snover has been selected by his peers as a Leading Lawyer and he is listed in Martindale Hubbell's Bar Register of Preeminent Lawyers. Mr. Snover is a frequent author in the family law arena.