

## File and Serve Support Modifications Before Termination of Spousal Support Obligation

**By Wendy S. Fay**

The court lacks authority to modify a support judgment if the motion for modification is not filed and served before termination of the support obligation.

ORS 107.135(1)(a) provides that the court may, at any time after a judgment of annulment or dissolution of marriage or of separation is granted, upon the motion of either party and after service of notice on the other party, set aside, alter, or modify any portion of the judgment that provides for spousal support.

Prior case law has interpreted the statute to require that a motion to modify must be filed before termination of the support obligation. Motions filed after termination were barred. *Wrench and Wrench*, 98 Or App 352 (1989), rev den, 308 Or 608 (1989) (holding that modification filed after the last payment was due was barred). *Harkins and Harkins*, 200 Or App 468 (2005), rev den, 340 Or 672 (2006) (holding that modification filed after prepayment of final support installment, but before the last payment due date, was barred).

A more recent Oregon Court of Appeals case held that a motion to modify support must be both filed and served prior to termination of the support obligation. *Stansell and Stansell*, 295 Or App 224 (2018).

In *Stansell*, husband was required to pay support through August 2016. Wife filed a motion to modify support on July 26, 2016. Husband made his final support payment on August 1, 2016. Husband was

served with the motion to modify on August 13, 2016. At trial, the court granted wife's motion to extend the term of support. Husband appealed, arguing that the trial court lacked authority to modify the judgment because his obligation terminated on August 1, when he made his final support payment, before he was served. Wife argued that under *Park and Park*, 43 Or App 367 (1979), she was only obligated to file the motion before termination, not serve it. The Court of Appeals disagreed with wife's interpretation of *Park*. The court clarified that filing before termination was a necessary, but not sufficient, condition for the motion to be timely. The Court of Appeals agreed with husband holding that a support obligation must exist at the time the motion is filed and served for the court to have authority to modify. Husband's support obligation terminated on August 1 when he made the final payment. Husband was not served until August 13. Therefore, at the time the motion was filed and served, no support obligation existed for the court to modify.

The court in *Stansell* did not reach the question of whether the court must rule on the motion to modify before the obligation terminates for the motion to be timely. *Id.* at 227 n 4.

Attorneys should be mindful of the above time bars. A motion to modify must be filed and served before the last payment due date and before the

support obligation has been paid in full. As the date of termination approaches, savvy obligors may pay off their support obligations early to preclude an obligee from seeking a modification. Further, the court in *Stansell* did not address whether the court must also rule on the motion before termination. An attorney representing the obligee who wishes to extend the duration of support should file a motion to modify as soon as the substantial change of circumstances is known.