

In the Matter of a Proceeding under the FCA

FFU # _____

John Murtari Petitioner

Docket No. F -
Legacy No. F - 540-98

against [REDACTED]
Respondent

ONONDAGA COUNTY

**PETITION FOR MODIFICATION of an
ORDER OF SUPPORT**
Made by ANOTHER COURT / FAMILY COURT

TO THE FAMILY COURT:

The undersigned Petitioner respectfully shows that:

1. Petitioner's address is: (*)
Home: 34 Franklin St
House #/ Street
Lyons, NY 14489
City/ State/ ZIP

Respondent's address is:
[REDACTED]
[REDACTED]
[REDACTED]
County Phone No.

Mailing: SAME
PO Box/Street/City/State / Zip
Wayne 315-946-4752
County Phone No.

2. Petitioner is: _____ Mother
X Father
_____ Other:

Respondent is: X Mother
_____ Father
_____ Other:

3. The name, present address, date of birth, sex and social security number of each child affected by this proceeding are as follows (indicate if address(es) is confidential):

Name	Address - House #, Street, City, State, Zip (*)	Date of Birth	M/F	Social Security #
<u>Domenic Murtari</u>	<u>[REDACTED]</u>	<u>[REDACTED] / 93</u>	<u>M</u>	<u>[REDACTED]</u>

4. A Divorce/Judgment/Order dated March 26, 1997, was entered wherein John Murtari was found to be chargeable with the support of the above named children and / or _____ and directed to pay support in the amount of \$ 120.00 per week, bi-weekly, monthly and (state if you are to pay day care/ health insurance/etc 60%.)

ATTACH COPY OF ORDER

A true copy of the judgment order is attached and made a part of this Petition
DIVORCE - M-750-95 (OCT 96)
SUPPORT - F-540-98 (NOV 98)
RELOCATION - V-320-95 (DEC 98)

*Unless ordered confidential, pursuant to Family Court Act Sec 154-b, because of a risk that disclosure would place the health, safety or liberty of the Petition at risk. See forms GF-21 and 21a, available at www.nycourts.gov.

5. Under the terms of the judgment order, the Supreme Court Other Court [specify]: _____
has not retained exclusive jurisdiction to modify the judgment order

6. That since the entry of the above order there has been a change of circumstances, in that _____
See Attached.

7. That by reason of the above stated change of circumstances the order should be changed/modified as follows:
See Attached.

8. Petitioner failed to make an application for relief from said judgment or order directing payment prior to the accrual of
arrears for the following reason(s): See attached

9. Petitioner: Check statements that apply:

- _____ has applied for child support services with the local Department of Social Services,
- _____ now applies for child support enforcement services by filing this petition;
- _____ does not wish to make application for child support services;
- _____ is not eligible for child support enforcement services). [Petitioners seeking only spousal support are ineligible.]

10. Respondent had did not have a prior order of support that was payable through the Support Collection Unit.

11. DOMESTIC VIOLENCE INQUIRY

Do you request confidentiality pursuant to FCA S154-b? Yes _____ No You are: Payor Payee _____

If you are requesting that your address be kept confidential you MUST COMPLETE AND FILE proper Motion forms.

Was there an Order of Protection on behalf of PAYOR or PAYEE? Yes _____ No _____ Don't Know _____

12. No previous application has been made to any court or judge for the relief herein requested (except [specify]: _____
See attached.

WHEREFORE, Petitioner respectfully requests that the judgment order of the Supreme Court Other Court [specify]: _____, dated _____, be modified as set forth above and for such other relief as the Court may deem just and proper.

NOTE: (1) A COURT ORDER OF SUPPORT RESULTING FROM A PROCEEDING COMMENCED BY THIS APPLICATION (PETITION) SHALL BE ADJUSTED BY THE APPLICATION OF A COST OF LIVING ADJUSTMENT AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED, UPON THE REQUEST OF ANY PARTY TO THE ORDER OR PURSUANT TO PARAGRAPH (2) BELOW. SUCH COST OF LIVING ADJUSTMENT SHALL BE ON NOTICE TO BOTH PARTIES WHO, IF THEY OBJECT TO THE COST OF LIVING ADJUSTMENT, SHALL HAVE THE RIGHT TO BE HEARD BY THE COURT AND TO PRESENT EVIDENCE WHICH THE COURT WILL CONSIDER IN ADJUSTING THE CHILD SUPPORT ORDER IN ACCORDANCE WITH SECTION FOUR HUNDRED THIRTEEN OF THE FAMILY COURT ACT, KNOWN AS THE CHILD SUPPORT STANDARDS ACT.

(2) A PARTY SEEKING SUPPORT FOR ANY CHILD(REN) RECEIVING FAMILY ASSISTANCE SHALL HAVE A CHILD SUPPORT ORDER REVIEWED AND ADJUSTED AT THE DIRECTION OF THE SUPPORT COLLECTION UNIT NO EARLIER THAN TWENTY-FOUR MONTHS AFTER SUCH ORDER IS ISSUED, LAST MODIFIED OR LAST ADJUSTED BY THE SUPPORT COLLECTION UNIT, WITHOUT FURTHER APPLICATION BY ANY PARTY. ALL PARTIES WILL RECEIVE A COPY OF THE ADJUSTED ORDER.

(3) WHERE ANY PARTY FAILS TO PROVIDE, AND UPDATE UPON ANY CHANGE, THE SUPPORT COLLECTION UNIT WITH A CURRENT ADDRESS, AS REQUIRED BY SECTION FOUR HUNDRED FORTY-THREE OF THE FAMILY COURT ACT, TO WHICH AN ADJUSTED ORDER CAN BE SENT, THE SUPPORT OBLIGATION AMOUNT CONTAINED THEREIN SHALL BECOME DUE AND OWING ON THE DATE THE FIRST PAYMENT IS DUE UNDER THE TERMS OF THE ORDER OF SUPPORT WHICH WAS REVIEWED AND ADJUSTED OCCURRING ON OR AFTER THE EFFECTIVE DATE OF THE ADJUSTED ORDER, REGARDLESS OF WHETHER OR NOT THE PARTY HAS RECEIVED A COPY OF THE ADJUSTED ORDER.

John Murtari
Petitioner

Dated: MAR 16, 2009

John Murtari

Print or type name

Signature of Attorney, if any

Attorney's Name (Print or Type)

Attorney's Address and Telephone Number

PETITION for MODIFICATION of EXISTING SUPPORT ORDER

John Murtari v. Adrienne Phillipson

QUESTION 6 (continued) – That since the entry of the above order there has been a change of circumstance, in that:

No adjustment after relocation: In December of 1998 my former spouse (the respondent), was granted permission to relocate for education to California and to take our son, Domenic . He and I were very close and he was only 4 years old at the time. It was very difficult for him and I.

There was no support payments adjustment after the move was made. The attached spread sheet ([Exhibit 1](#)) shows a summary history of actual income & expenses.

Important to keep family contact: My former spouse didn't value the relationship between Dom and I. For the first two years I couldn't talk to him on the phone. Our only contact was during visits and he cherished that time very much. They lived in off-campus graduate apartments. There was no family/relatives in the area.

I was in a very uncomfortable position of how best to support my Son and caused large 'arrears' in Court ordered support payments. I know how much he values my contact and how much I valued my parents (some might have seen us as a 'poor' family). But no amount of money could replace our being together.

The Order gave me one monthly “weekend visit” with my son and I've exercised that as finances have allowed. Between renting a car, plane tickets, and renting a cabin for four days – it's about a thousand dollars a visit. I saw him about five times a year out there and also during three week long school vacations where we fly to/from New York (three sets of round-trip tickets). We were blessed with six weeks of summer vacation together.

My former spouse parents were very wealthy, but she had a difficult home life. My parent's home in Lyons (Grandma's house) was the only steady 'home' Dom knew through this childhood. I had much I wanted to pass on to him as he grew (he is now 15 years old and a fine young man). I've taken the time to attach **Exhibits 2 & 3** – photos which record some of the more recent moments:

Exhibit 2: Photos of my mother, Dom, and I taken both in California (when we would visit) and also at home (taken a month before she passed away). Every summer we host a “Murtari Family” picnic (the large group photo). Dom and I have learned wood craftsmanship from a cousin, Phil Paliotti, and Dom really enjoyed both model airplanes and rockets! He's learned home improvement and most of all, how to 'give back'.

For years I've done volunteer work for the Oxford Street homeless shelter in Syracuse. Dom and I would make ham & cheese sandwiches and bring them to the shelter.

[Exhibit 3: Dom loves animals](#) and we've always kept different pets. In the summer we've raised chickens and ducks. He had a strong interest in flying and we've enjoyed visiting the Air Force museum and the Smithsonian. We like air shows and I got to take a picture of him next to the T-37 jet I used to fly as an instructor!

I'm active as a lector and presider at the local Catholic church. Dom and I both enjoy brief visits to a local monastery near Elmira where they keep sheep. Brother Pierre is a true good shepherd with his baby lambs.

Difficult to change jobs: I started my business in 1995 (before any divorce) after having problems with two large companies because of their lax ethical conduct. I have a strong resume, had worked with friends in a small start-up, and knew I could be successful and also take care of my family obligations.

I've always put family first in my life. I gave up a flying career at great 'cost' to better look after my aging parents (I'm an only child). In 1998, my mother was already 82 years old, didn't speak English very well, and had increasing health issues. Lyons was an hour from Syracuse and taking her to appointments would require half a day off.

I never wanted to see her in a nursing home and during her final illness in 2005. I took care of her at home for three months with the aid of Hospice. I was happy she could spend happy times with Domenic during Christmas and she died in January of 2006.

Vacation was our only family time. Because of the Internet nature of my business it was possible for me to work at home, early mornings and late evenings – while Domenic was sleeping. During the days we were together and I never had to leave him with a sitter. I could check in with the office via phone. My absences certainly delayed business growth, but I had good people, and made sure they were well paid.

Most big companies only offer a few weeks of vacation and maintaining our strong relationship would have been impossible. These are choices many parents face. I have always worked hard my entire life. My son was not in 'physical' need of anything. My time would give him a loving and stable home environment.

I've never been accused of attempting to 'escape support' by intentionally reducing income as some type of 'revenge'. I bear no ill will toward my former spouse and wish I could do more. I know it has been difficult for her. I have made many good faith efforts at an attempt to resolve this between us, but they have been rebuffed. I am hopeful that perhaps this petition, which she is aware of, will help us settle this matter.

QUESTION 7 (continued) – That by reason of the above stated change of circumstances the order should be changed/modified as follows:

The initial divorce order, 1997, ([Exhibit 4](#)) set a support level based on \$40,000 of imputed income (return to an old job). The attached spread sheet ([Exhibit 1](#)) shows a summary history of actual income & expenses.

It would be beneficial to all if it was changed to reflect my actual income level during that time and credit be given for actual travel expenses. I have done everything I could to provide support for Domenic and my family – my actual expenses for him are probably 30-40% of my real income.

I own a 88 Dodge Caravan and live in Lyons, my hometown. I don't 'party' or have any luxury items. My weekdays and weekend are work either at the office or around the home – my 'pleasure' time and money is all associated with Domenic.

I'm not a 'deadbeat' and I strongly resent finding myself categorized as such. I am a former Air Force Officer and graduate of the Air Force Academy. I try to give back to the community as much as I can: volunteer work, local politics, and in my church.

Most of all I am a loving father to my son, Domenic, from which I was unjustly separated. I was blessed with a loving father and mother, we did NOT have much money, but I always had there love. I understand my moral responsibility to my child and am ready to fulfill it – it is not 'superseded' or relieved by an 'order'. During one contempt proceeding in Onondaga county *I had my assigned counsel tell me, "John, just pay the money – you'll see your son when he's 18."* Given our circumstances, and in good conscience, I could never act that way.

I've also become active in Family Law reform and starting a peaceful effort by parents, <http://www.AKidsRight.Org/> -- sometimes there have been arrests, and most charges have been dismissed, but there has also been jail time.

I'm 52 years old. I've been financially destroyed and nothing saved for retirement. I still have the opportunity to be financially successful, help my son and also my former spouse with the expenses she has incurred. I know this hasn't been easy on her either. All I ask for is a fair hearing and a chance to present the facts. The current situation helps no one.

QUESTION 8 (continued) – Petitioner failed to make an application for relief from said judgement or order directing payment to the accrual of arrears for the following reason(s):

A petition for modification was filed in the fall of 1998 ([Exhibit 5](#), docket number: F-540-98) and a hearing completed in November of 1998 (before the move to California was authorized). The request for modification was denied.

Three more attempts were made 1999, 2000, and 2001 – hearings were never held. They were denied as 'no cause of action'. In the last attempt I did have an attorney and he was told by the Hearing Examiner that until this person gets a different job – there will be no hearings for changes.

My former spouse brought two violation proceedings in 2000 (no attorney) and 2005 (last minute attorney), I was given the maximum sentence both times.

Since that time I had no extra money and knew I needed competent counsel to make another attempt. I have been working on preparing this effort since 2003. I've paid over \$1200 in different attorney fees, but nothing was ever submitted. I thought I might be able to arrange payments with legal counsel for representation here, but it was not possible.

QUESTION 12 (continued) – No previous application has been made to any court or judge for the relief herein requested , except:

As specified above in #8.

13 - Regarding proper venue in Wayne County

During our marriage we lived in Onondaga County and the Divorce (1996-1997) and the relocation trial in Family Court (1998) were held there. I have lived in Lyons since 1999.

When the 2005 support violation proceeding was filed in Onondaga County, I was able to get competent counsel after the action started (I didn't even appear in Syracuse because my mother was terminally ill at the time). He felt strongly that venue was improper, but because the action had begun, it was difficult to argue a change.

Near the end of the proceeding, Judge Hedges, who was the supervising Judge for Family Court told both parties that this was the last time this should be heard there, that there were plenty of Judges in Wayne County where I lived.

I have been trying to get some documentation from the attorney who handled the matter in Syracuse, but he has been very busy. His name is Mr. Charles Keller and his office phone is: 315-450-3888. I'm sure he would be happy to answer any questions.

14. Justification for temporary relief on license suspension.

In late November I was arrested in Lyons and jailed for driving with a suspended license. The license had been suspended for several years due to my failure to make prescribed support payments. The car is garaged at present and I haven't driven in three months. I am fortunate to have a solid employee at my office in Baldwinsville.

I have an excellent driving record, my last moving violation was a minor speeding ticket from about 10 years ago. I tried to get a 'restricted' license with DMV and was told I did not qualify because of the AUO (Aggravated Unlicensed Operation) ticket.

This is a rural community and I live on the edge of the village. I have no 'companion' or brothers or sisters. I can walk for basic necessities, but I certainly need to be able to drive to be able to care for my business, my home, my own health, and my son.

I know these proceedings can take time, but I sincerely ask that my license be restored while all this is pending. (Not in petition, [link to financial affidavit](#) to be presented at Court)