

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH DEPARTMENT**

Matter of

**John Murtari,
Appellant, petitioner**
v.
**Adrienne Phillipson
Respondent**

NOTICE OF MOTION

Docket:

F-00446-09/09A

PLEASE TAKE NOTICE, that upon the annexed affidavit, the undersigned will move this Court at a term of the Appellate Division, 50 East Avenue, Suite 200, Rochester, NY 14604, on the 8th day of February, 2010, for an order granting:

Designation of "poor person" status .
Assignment of counsel to perfect the appeal
Restoration of Driver's license to the petitioner.

from an order of the Family Court as set forth in the accompanying Notice of Appeal (Exhibit A) and order (Exhibit B), and for such further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that this motion will be submitted without oral argument (see NYCRR 1000.13[a][6]). Answering affidavits, if any, must be filed with the Court on or before the Friday preceding the return date.

Dated: _____

John Murtari
34 Franklin St.
Lyons, NY 14489

TO: County Attorney Daniel Wyner, Court House, 26 Church St, Lyons, NY 14489
Ms. Maureen Walsh, Esq (attorney for Respondent), The Atrium, Suite 215, Two Clinton Square, Syracuse, NY 13202

EXHIBITS:

A – Affidavit of Service & Notice of Appeal	F – Magistrate's Order of Dismissal , May 2009
B – Order appealed from, dismissing objections , Nov 2009	G – Objections to Magistrate's Order , May 2009
C – Cost of Living Adjustment Order , Jan 2007	H – Magistrate's Findings of Fact , July 2009
D – Support Petition , Mar 2009	I – Two letters to Judge Sirkin
E – Summary financial statement , Mar 2009	

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**AFFIDAVIT IN SUPPORT OF
MOTION**

Docket: F-00446-09/09A

STATE OF NEW YORK)
COUNTY OF WAYNE) ss:

John Murtari, being duly sworn, deposes and says:

1. I am the Appellant and make this Motion requesting relief by an order:
 - * granting restoration of my driver's license,
 - * designation as a "poor person" for purposes of the appeal,
 - * and assignment of Counsel to perfect the appeal.

APPEAL HAS MERIT

2. I believe the appeal has merit and the undisputed facts in support are simple.

3. In March of 2009 I filed a Petition for [Support Modification \(Exhibit D\)](#) and there was an initial appearance with Support Magistrate Deborah Farber on May 4, 2009. The petition alleged several changes in circumstance since the original support order was issued in *November of 1998*. The appearance lasted 5-10 minutes and my petition was dismissed for "no cause of action." There were no witnesses sworn or testimony taken (contrary to the statements in the [Magistrate's Findings of Fact, Exhibit H \(page](#)

2).

4. Magistrate Farber said a [Cost of Living Adjustment \(COLA, Exhibit C\)](#) was issued in January of 2007 and she would only accept changes since that date. I'd never received the Order when it was issued. She asked me what had happened since January, 2007, and I told her business had declined and so had my income.

5. In her [Order of Dismissal \(Exhibit F, page 3\)](#) and "[Findings of Fact](#)" ([Exhibit H, page 2](#)) she states the same reason, "There is an Adjusted Order of Support date February 20, 2007 ... All of the changes of circumstances alleged in the petition occurred prior to the date of the Adjusted Order of Support."

6. The [COLA \(Exhibit C\)](#) para (5) on page 5 clearly states, "*The application of a COLA in no way limits, restricts, expands, or impairs the rights of any party to file for a modification of a child support order as otherwise provided by law.*"

7. I filed Objections (Exhibit G) within 30 days stating, among other reasons, that the [COLA order\(Exhibit C\)](#) wasn't a time bar to modification petitions. There was a long delay before a decision was made by a Family Court Judge.

8. [Judge Sirkin's Order \(Exhibit B\)](#), dated November 23rd, 2009, confirmed the [Magistrate's Order of Dismissal \(Exhibit F, page 3\)](#) for no cause of action.

9. [My Support Petition \(Exhibit D\)](#) and my [summary financial statement \(Exhibit E\)](#) allege reductions in income including the years 2007 & 2008, child relocation and increasing health issues for my elderly mother (both effecting job choices) resulting in months of hospice care and her eventual death.

10. I believe it was improper to uphold a dismissal for "no cause of action" which precluded taking testimony and a hearing of the facts and circumstances. Upholding

the dismissal indicates that even if everything alleged was proved true, no change to the old support order (Nov. 1998) would be warranted. I believe this to be in error.

RESTORATION OF DRIVER'S LICENSE

11. I request the Appellate Division issue an Order removing the “child support suspension” on my license.

12. Since 1998 I've lived in Lyons, the town where I grew up, in the home originally owned by my parents. It is a small, rural community with no mass transit.

13. My education (B.S. in Astronautical Engineering from the USAF Academy and a M.S. in Computer Science from Syracuse University) and skills are not called for in businesses within “walking” distance.

14. For many years I'd run a small Internet Business in Baldwinsville, NY (about 40 miles from Lyons). I'd been forced to drive (carefully) to keep the business going. Recent advances in police license plate scanning technology make it impossible for me to drive any longer. I stopped in November of 2009 after an arrest. This placed the business at risk.

15. After extended email communication with my former spouse. She agreed a potential settlement could be reached regarding all support issues via a lump sum payment off app. \$10,000. I talked to the Lyon's Bank and they told me a \$10,000 equity loan was possible on my home, value of app. \$40,000 – and it would have to be tied to a Court ordered settlement which cleared liens due to back support.

16. I completed [my Petition \(Exhibit D\)](#) to hopefully provide a basis for either a settlement or a better order and adjustment of over \$100,000 in arrears.

17. During the Court appearance where Magistrate Farber dismissed my Petition I

pleaded with her about getting my license restored. The transcript will show she left that up to opposing counsel (Ms. Walsh) who said, "No." In later conversation she told me they wanted \$10,000 just for a temporary license restoration.

18. I'm a former Air Force Pilot. Again, as my petition shows I've served my country, my community, and most of all my family. I love my son dearly and have no ill will toward my former spouse – *but this continued license suspension is a gross indignity*. It appears there is no desire for money any longer, just long term punishment.

19. During the approximate six month wait for a decision on my objections I wrote [two letters to Judge Sirkin \(Exhibit I\)](#) and further detailed my inability to fulfill basic obligations toward family and friends. In July I began closure of my business office and income producing operations ceased in October.

20. My son, Domenic, will turn 17 in February. He is a junior in high school. We will soon be free of any "orders" controlling the time and amount of our time together – to the great relief of us both! In the near future I will have much more flexibility in job opportunities.

21. Without a license, there is no meaningful income which if of no benefit to anyone. I may be able to contract some Internet based consulting work from home, but don't expect more than a subsistence level of income.

POOR PERSON STATUS

22. I apply to the Appellate Division for permission to appeal as a poor person and for an attorney to be assigned to represent me on appeal.

23. My present mailing address is: 34 Franklin St., Lyons, NY 14489

24. I had no attorney in the original support proceeding.

25. I have no dependents and I live alone. My son, Domenic (17) does live here with me during Christmas vacation, Spring break, and for six weeks in the summer.

26. The following is a summary of my financial status:

A. PRESENT INCOME (Figures reflect gross monthly income)

	Appellant/Respondent	Spouse
Employment income	None	None
Place of employment	Self employed (Software Workshop)	None
Length of employment	10 years	None
Unemployment benefits	None	None
Disability benefits	None	None
Pension benefits	None	None
Veterans and/or active service benefits	I get free healthcare at VA hospital.	None
Welfare or SSI benefits.	None	None
Alimony/maintenance received	None	None
Child support received	None	None
Rental income received	\$150.00 (business office space in home)	None
Other	None	None
Total	\$150.00	None

B. ASSETS

	Appellant/Respondent	Spouse
Savings, checking, trust	\$2,000.00 (cash)	None

accts		
Location of same	cash	None
Vehicles owned:	88 Dodge Caravan (300,000 miles)	None
value	\$300.00	None
amount owing	None	None
Real estate owned:	34 Franklin St. Lyons	None
description	Family Home	None
value	\$42,000.00 (support liens in excess of value)	None
amount owing	None	None
Total	\$2,000.00 (excluding home and car)	None

C. PRESENT OBLIGATIONS (Figures should reflect monthly payments made)

	Appellant/Respondent	Spouse
Rent/Mortgage payment	None	None
Alimony/Maintenance	None	None
Child Support Actually Paid	\$50.00	None
Medical	\$20.00	None
Credit Card Debt	\$50.00 (min payment)	None
Real Estate Taxes	\$140.00	None
House Insurance	\$20.00	None
Transportation	None. Car is currently garaged, no plates. Normally about \$160.00	None
Food	\$200.00	None
Domenic (my son)	\$150.00 (air fare to visit here, gifts, books, clothes)	None
Total	\$630.00	None

27. Obviously, I am in an unstable financial situation. While I can get some temporary relief by charging to credit cards I hope to see an improving financial situation with license restoration and the ability to do more work.

ASSIGNMENT OF COUNSEL

28. I believe this appeal has merit. I believe my [Support Petition \(Exhibit D\)](#) for modification of the original support order from 1998 has merit.

29. I cannot retain counsel for an appeal and having any hope of paying their bills given my current and expected financial situation.

SUMMARY

30. Justices, I've always acted in good faith trying to resolve this. My petition was an honest effort to fix a "train wreck" which hurts my former spouse, myself, and most of all, our son, Domenic. I can't even keep a bank account open right now. I'd like to get on stable footing so that I can move forward.

31. All the punitive measures and attempted seizures of assets have netted nothing in the last 10 years for two reasons: there are no hidden assets and I have acted in what I knew best to show support for Domenic and my elderly mother.

32. Hindsight has affirmed my choices. Domenic was only five when taken to the other side of the country by a bitter former spouse. The vast majority of these cases end in alienation of parent & child. Quite the contrary occurred here and Dom & I have kept a strong bond. He knows he has a parent who loves him very dearly.

33. I wish I could have had more money to spend on him (*including helping my former spouse*), but we always had the material things we needed. I grew up in very meager financial conditions, but with great love from both my parents. It was a great

blessing for me and I'm so pleased to have done the same for Dom.

34. During my first "violation" proceeding in 2000. I was assigned a very experienced Family Court lawyer. *When I expressed my frustration to him that to pay as specified would preclude me from seeing my son (who had already been relocated) – he told me, "John, just pay the money. You'll be able to see your son when he's 18."* What a tragic idea. Not really his fault, but one of the reasons I work to reform our Family Law system by first recognizing a foundation of Family Rights.

35. **Finally** – In my [support petition \(Exhibit D\)](#) I included two pages of photos to put a human face on our family. The Child Support Collection computers recently told me I owed \$104,000. Their application of the annual interest is accumulating at a greater rate than the original yearly support amount! I do not morally owe any such amount – *I believe the value of each of those two pages was approximately \$50,000 or maybe quite more. I'm quite sure our son would agree!*

John Murtari

Sworn to before me this _____ day of January, 2010

Notary Public

My commission expires: _____