

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND**

FCA 413, NYS Constitution
Attn: **“OBJECTION CLERK”**

In the Matter of a Proceeding under Article 4 of the Family Court Act	DOCKET NO. F-01893-09 File #: 14360
Mother , SSN: XXX-XX-5692, Petitioner -against-	NOTICE OF MOTION TO VACATE ORDER OF SUPPORT
Father , SSN: XXX-XX-1789, Respondent	

2010 JUN 05 AM 11:18
RECEIVED ROCKLAND COUNTY
FAMILY COURT

I, the Respondent in the above-entitled proceeding, herewith move to vacate the order of support entered in said proceeding on April-19, 2010.

This Motion to be heard in the County Family Court located at 1 South Main Street, New City, NY 10956, on the 29th day of June, 2010, at 3 o'clock in the afternoon or as soon thereafter as counsel can be heard.

Annexed herewith is my sworn affidavit in support of this Motion to Vacate the Order of Support, wherein I state that:

A) Through lack of service of said order upon me, the court did not timely obtain personal jurisdiction over me; further, it lost jurisdiction by its constructive refusal to provide a copy of the order, as stated in §§ 1-5 of my Affidavit.

B) The Order is void as obtained by fraudulent concealment of my pleadings and evidence filed with the court, Examiner's "steering" of the hearing, acting a party's advocate, by her multiple misrepresentations of the law at the hearing and facts in "finding of facts," thus rendering a farce and mockery of Respondent's procedural and substantive due process rights to a full and fair hearing (§§6-8 of my Affidavit) and rendering a result absurd on its face.¹

Father

¹ Based on so contrived "order of support," \$1931 per month goes to Petitioner mother in guise of "Child Support" out of Respondent father's meager Social Security Retirement income, leaving the Respondent father \$641 a month to live on. Meanwhile the Petitioner mother has been and is fully employed as a personal banker at JP Morgan Chase Bank, while the 64-year-old father has been underemployed since 2001 with income below the federal poverty line and has been the primary care-taker for the Child.

**FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND**

In the Matter of a Proceeding under Article 4 of the Family Court Act	DOCKET NO. F-01893-09 File #: 14360
M [redacted], SSN: XXX-XX-5692, Petitioner -against-	AFFIDAVIT IN SUPPORT OF MOTION TO VACATE ORDER OF SUPPORT
F [redacted], SSN: XXX-XX-1789, Respondent	

APPLICANT RESPECTFULLY SHOWS TO THE COURT THAT:

1. He is the Respondent in the above-captioned case.
2. On the 19-April-2010 the Family Court entered a permanent order of support in the above-captioned proceeding.
3. Applicant was not served with said order by any means. Applicant made multiple attempts to obtain a copy of said order under the Freedom of Information Act by phoning in and filing RFI forms in-person with the Family Court on 26-April-2010 and 13-May-2010 (copy attached), which the Family Court personnel did not fulfill until 18-June-2010, or sixty (60) days later, only after Applicant's strenuous written objections. Combined with the Examiner's attempt to have a 03/04/2010 violation hearing on a non-existent order of support, presumably issued on February 9, 2002,¹ and numerous material misrepresentations, these delays present a pattern of making not-so-innocent and most likely deliberate procedural mistakes, which result in fraudulently putting the Respondent into a massive debt, collected through draconian expropriation of funds and punitive measures by CSC.
4. Applicant learned of said order only through diligently reviewing his Family Court File, in-person. It was only due to his diligence that Applicant was able to timely file his *preliminary objections* with the Family Court within statutory time limits of the date of entry. In said filing Applicant reserved his right to amend the filing due to lack of service which deprived him of the thirty day period for filing objections. Subsequently, on 06/11/2010, Applicant filed *amended Objections* with the transcripts attached thereto.
5. By reason of this motion and Objections filed 05/24/10 and 06/11/2010 I, the Applicant, respectfully request that said order of support be vacated. The Court lacks personal jurisdiction over me in all matters arising out of said "order" including enforcement thereof, because the court's utter lack of service followed by constructive refusal to provide a copy of the order, deprived me of the knowledge of said order and deprived me of my right to object to it.
6. Last but not least, said order is void due to fraudulent concealment of my pleadings filed with the court, Examiner's "steering" and deliberate misrepresentation of the law, rendering a farce and mockery of Respondent's procedural and substantive due process rights to a full and fair hearing: The support magistrate refused to consider and/or take judicial notice of: provisions of the judgment of divorce (2004); US Bureau of Labor Statistics (Unemployment in NY Metropolitan area the worst in the last 70 years;) media and trade publications articles and Congressional testimony on employability and loss of

¹ Transcript of the hearing on 03/04/2010. Page 3, Line 10 through Page 4, Line 14.

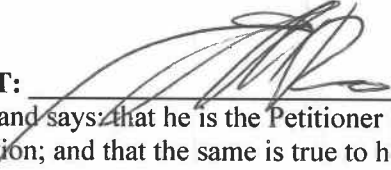
income in my fields of experience; of my 2009 income below the federal poverty line, my average income below the federal poverty line in the last 11 years; my retirement age (I am 64) which makes it difficult to find any employment, let alone employment in IT or finance, where age discrimination is rampant at age 36; my poor health and lack of medical help in the last 11 years; Petitioner's vexatious efforts and false complaints to my former employers, which she made to undermine my career and ability to find work, and her expressed determination to continue to do so; the Support Magistrate severely restricted my testimony to answering her leading questions: "**just testify to what I say you can testify to.**"² The support magistrate improvidently exercised discretion when she refused to accept my "**Application for Modification of Temporary Order of Support,**" and declined to admit supporting records into evidence on a pretext they "were not certified," while such records of government agencies and magazine / newspaper articles published on the Internet are "self-authenticated" and require no certification under NY and federal law. She falsely ascribed to me ownership of real estate, despite both parties' testimony to the contrary.

7. Said order, signed on 28-Feb-2010 and entered 19-April-2010 was effectively concealed from me until 18-June-2010 (for 110 days from signing, 60 days from the date of entry.) It imputed to me in perpetuity a one-off income I received for a limited time in the first 17 weeks of 2008, despite clear evidence that said income was a temporary contractual engagement, a once in a lifetime career event which could not be replicated. "A sufficient record is necessary as the imputation of income "will be rejected where the amount imputed was not supported by the record, or the imputation was an improvident exercise [*4] of discretion" (*Matter of Ambrose v Felice*, 45 AD3d 581, 582, 845 N.Y.S.2d 411). **Here, the Support Magistrate... did not specify the source from which such income might have been derived, and failed to give any reason for the imputation of income.**"³

8. Not a single "fact" in the "findings of fact" is true. In fact, the Order has no foundation in testimony, facts, or evidence. It even declares the divorced parties to be "still husband and wife." The "hearing" thus conducted, the "order" based on pure fiction, the lack of service, and constructive refusal by the Family Court to provide a copy of said order (finally provided after I filed complaints,) violated my substantive due process and procedural due process rights under the due process clause of the Fifth and Fourteenth Amendment of the US Constitution and Article I, Section 6 of the New York State Constitution. Said order is *ipso facto* void and the court has the duty and authority to set aside a void order.

9. No previous application has been made to any court or judge for the relief herein requested.

WHEREFORE, your Applicant asks that the relief requested be granted in accord with Section 413 of the Family Court Act and Article I, §6 of the New York State Constitution, and in accord to the due process clause of the Fifth and Fourteenth Amendments of the US Constitution.

DATED: 25-June-2010 **APPLICANT:**  [F]
Eric Ross, Applicant, being duly sworn, deposes and says: that he is the Petitioner in the within action; that he has read the contents of the foregoing motion; and that the same is true to his knowledge.

Sworn to before me,



ANNAMARIA PARISI
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ROCKLAND COUNTY
REG. #01PA6103501
MY COMM. EXP. DEC. 29, 2011

² Transcript of the Hearing on 11/07/09 Page 49, Lines 3-4.

³ *In the Matter of Graveness v Marchese*, 2008 N.Y. App. Div. LEXIS 10276,*;2008 NY Slip Op 10623;57 A.D.3d 992;870 N.Y.S.2d 444

6-29-10 @ 3:00 PM

REQUEST FOR INFORMATION

DATE: 26-Apr-2010
FU#: 14360
DOCKET #: F-01898-09/10A
JUDGE: Catherine Miklitch

RE: XvY

V

F

I, _____, AM THE
PRINT NAME
(CIRCLE ONE): PETITIONER RESPONDENT ATTORNEY OF RECORD

OTHER _____, REQUEST THE FOLLOWING:
SPECIFY

[] REVIEW FILE

COPIES OF RECORD (PETITIONS AND ORDERS ONLY)

LIST DOCUMENTS ORDER of Support

DATE OF DOCUMENTS Feb-28, 2010

{ OTHER } _____

[Signature]
SIGNATURE

MAILING ADDRESS Text removed

PHONE #: Text removed to protect identities

Orangeburg NY 10962

BASED ON THE NATURE OF YOUR REQUEST, THE INFORMATION MAY NOT BE AVAILABLE ON THE DATE REQUESTED

REV. 7/12/01

*support order dated 2/28/10.
put order dated 12/17/09
front desk. signed 2/28/10 in
AN*

RECEIVED KUSHLAND COUNTY
FAMILY COURT
2010 APR 26 PM 5:28

AFFIDAVIT OF SERVICE BY MAIL

State of New York, County of Rockland:

F being duly sworn, deposes and says: that I am the Applicant herein and served a copy of the following documents:

1. NOTICE OF MOTION TO VACATE THE ORDER OF SUPPORT
2. AFFIDAVIT IN SUPPORT OF MOTION TO VACATE

on: **M**

at: **M's address** Orangeburg, NY 10962

by mailing and depositing a true and correct copy of said document(s) in a mailbox located at the USPS Office in Orangeburg, NY on the following date:

Friday, June 25, 2010

I declare under penalty of perjury that the foregoing is true and correct.

DATED:

Signature of Applicant

Sworn to before me this day of, 25-June-2010

Notary Public



ANNAMARIA PARISI
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ROCKLAND COUNTY
REG. #01PA6103501
MY COMM. EXP. DEC. 29, 2011