

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

Family Division
Case No. 501971DR004137XXDIFD

In Re Marriage of
WILLIAM A. CABANA
Petitioner, Former Husband, *pro se*

and

SHARON ANN MAYO f/k/a
SHARON ANN CABANA
Respondent/Former Wife.

MOTION TO VACATE ALIMONY ARREARAGES

COMES NOW William A. Cabana, *pro se* with assistance of counsel, to submit his Motion To Vacate Alimony Arrearages, respectfully requesting that this court vacate the order requiring payment of alimony arrearages that exist in the form of a periodic contempt purge payment of \$250 per month (DE 308) or in the alternative to terminate any obligation to require any further payments. In support he offers:

1. Since the final judgment, there has been substantial, permanent, unanticipated and involuntary change in circumstances, requiring the vacating of an order to pay alimony arrearages. The changes in circumstance are as follows:
 - a. Former Husband, aged 71 years old is retired.
 - b. Former Husband is indigent and is not in good health and is currently being treated for vision problems, anxiety resulting from ongoing legal proceedings, ulcers, gastritis, diverticulitis, colon polyps, high cholesterol levels, and high blood pressure.
 - c. He is unable to make court ordered alimony arrearage payments and maintain a minimum standard of living.
 - d. Former Husband has been a ward of the Florida State Welfare system receiving Medicaid, food stamps and HUD housing assistance since July, 2002.
 - e. Former Husband was declared indigent on May 16, 2006, when the Honorable Judge Martin Colin granted Former Husband's Motion to Proceed Without Prepaying the 4th DCA appeal fees due to his indigent status. (DE 379)

- f. Former Husband's indigent status was ratified on August 28, 2006, when Magistrate Leonard Hanser denied a Former Wife's Motion For Contempt for not paying attorney's fees due to his indigent status. (DE 398)
- g. Due to a post dissolution reversal of financial status, former Husband now has a greater need of support to provide for basic necessities of life and former Wife has the greater ability to pay.
- h. Pursuant to case *Ford v. Ford*, 700 So.2d 191 (Fla.App. 4 Dist. 1997) and *Denby v. Department of Revenue*, 685 So.2d 982 (Fla.App. 5 Dist. 1997) it is proper to vacate alimony arrearages or to not require payment thereof upon motion to the court and based upon compelling circumstances. Items a. thru g. above meet the requirement of these cases. See Attached Memorandum Of Law In Support Of Former Husband's Motion To Vacate Alimony Arrearages

WHEREFORE WILLIAM A. CABANA prays that the Court take jurisdiction over this matter and enter the following order,

- a. To vacate the order of the court (DE 308) requiring a periodic contempt purge payment of \$250 per month on alimony arrearages or in the alternative to terminate any obligation to require any further payments subsequent to July, 2006;
- b. To eliminate and terminate any and all alimony arrearage payment requirements;
- c. Awarding Former Husband costs and fees in accordance with § 61.16 (1), Fla. Stat. (2005);
- d. To award any other relief that is equitable and/or proper.

Respectfully submitted,



Date: October 6, 2008

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Certificate of Service

I certify that a copy of this Motion To Vacate Alimony Arrearages was mailed to Sharon Ann Mayo, 220 Almeria Ave., West Palm Beach, FL 33405, this 6th day of October 2008



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