

DECLARATION OF MARK J. MCBURNEY

I, Mark J. McBurney, declare as follows:

1. I have personal knowledge of the facts described in this declaration.

2. I am a citizen of the United States of America and a citizen of the State of Rhode Island.

3. I was a citizen of Virginia from 1987 to 2000. I lived abroad for much of that time because I worked for the State Department as a Foreign Service Officer. However, I retained citizenship and continued to pay Virginia taxes. I married Lore Ethel Mills in 1987 in Virginia. Our son, Cal Mills McBurney, was born in 1990 in Virginia.

4. In 2002, Ms. Mills and I divorced. Ms. Mills was awarded by court order full custody of Cal and I was ordered to pay her child support. Ms. Mills and Cal continued to reside in Virginia while I lived in New Zealand and then Australia because of my employment with the State Department. When my Australian Foreign Service tour ended in 2004, I resigned from the State Department but remained in Australia.

5. In March 2006, Ms. Mills and I mutually agreed that our son Cal would move to Australia to live with me. We did not go through the court system to alter legal custody of Cal or to alter the child support order. Instead we made a private agreement, both orally and in writing. That agreement stipulated that upon Cal's arrival in Australia, my child support obligations would cease and child support obligations on the part of my former wife would commence. At this time, Cal and I were living off of my savings.

6. Ms. Mills defaulted on our agreement. She did not send any support payments. On July 7, 2006, I filed an application for child support with the Division of Child Support Enforcement (DCSE) of the Virginia Department of Social Services. Because Ms. Mills and I did not go through a court to change custody or the child support order, Ms. Mills could not be liable for child support until a petition for child support was filed in court. I elected to have DCSE provide me legal assistance and file the petition on my behalf.

7. Thereafter, I believe DCSE mishandled my child support application. DCSE informed me on August 23, 2006 that my petition was "deemed filed" meaning that the clock had started on my former-wife's obligation to pay child support. However, this was not true. My case was dismissed from court at least

twice and possibly as many as four times because DCSE filed the petition in courts that lacked the proper jurisdiction. I was unable to participate in any of these hearings because DCSE failed to notify me of the hearing dates beforehand. Because I was unable to participate, I do not know exactly what happened in these hearings.

8. DCSE filed my child support petition in the proper court in April 2007. The hearing regarding my child support petition took place on June 1, 2007. This was the first hearing of which I had advanced notice and I was able to testify by phone. On July 2, 2007, the Fairfax County Circuit Court issued a judicial order finding that Ms. Mill's child support obligation started on April 1, 2007 with the filing of the child support petition.

9. As a result of DCSE's delay in filing my petition in the correct court, my former wife did not become liable for child support until nine months after I filed the application with DCSE and more than a year after I took physical custody of Cal.

10. Cal and I moved back to the United States in late 2007 and we settled in Rhode Island.

11. I wanted to find out more about DCSE's handling of my child support application, so I submitted a request to DCSE under Virginia's Freedom of Information Act (FOIA) by letter dated April 8, 2008. I mailed the request from my Rhode Island address. In the request I asked that DCSE produce any and all documents relating to me, Cal, my ex-wife, and my child support application. By letter dated April 11, 2008 DCSE denied this request stating, "You are not entitled to the information as you are not a Citizen of Commonwealth of Virginia."

12. Soon thereafter I consulted with various organizations in Richmond that specialize in Freedom of Information issues. I learned that Virginia selectively honors FOIA requests from non-citizens if the request is sent and postmarked from a Virginia address. Armed with this information, I sent a second request from an Alexandria, Virginia address by letter dated May 16, 2008. DCSE again denied my FOIA request by letter dated May 23, 2008. The letter stated, "our records indicate that you are not a citizen of the Commonwealth of Virginia. Therefore, you are not eligible to obtain information under the Virginia Freedom of Information Act."

13. The letter suggested that I make a document request under the Government Data Control and Disseminations Practices Act, which does not restrict access to records to citizens of

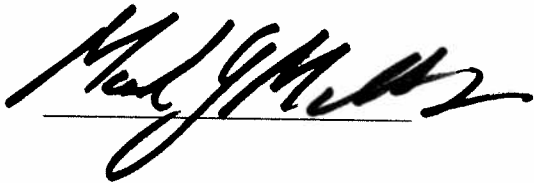
the Commonwealth. I made a request to DCSE pursuant to that act but I believe there are a number of documents responsive to my FOIA request that I did not receive, and I did not receive a list of the documents that DCSE withheld or an explanation of why they were withheld.

14. In addition, I have been in communication with DSCE representatives to try and ascertain precisely what happened to my application after I filed it with DSCE. The explanations that I have received from in telephone conversations and emails are vague and sometimes conflicting. Mrs. Smith, the district manager, told me this year that she could no longer take my calls and that going forward I would have to communicate with DCSE through DCSE's counterpart in Australia. However, Deputy Commissioner Young informed me that if I had any questions, I should deal with Mrs. Smith. I have been unable to get a satisfactory explanation from DSCE of why I must go through Australia agencies to communicate with Virginia's DCSE and we are currently at an impasse.

15. I wish to obtain these documents to find out more about the circumstances of DCSE's handling of my child support application. I want to uncover the exact circumstances that resulted in DCSE failing to file my petition in the correct court until nine months after I filed my application with DCSE.

I want to use this information to advocate for my interests and to see if there is any available avenue for me to get reimbursed for the nine month's worth of child support I have been denied.

16. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Mark J. McBurney", written over a horizontal line.

Mark J. McBurney

Executed this 20<sup>th</sup> day of Feb., 2009.