

**FAMILY COURT APPEALS**  
**RULES AND GUIDELINES FOR ASSIGNED COUNSEL**

**FAMILY COURT APPEALS - GUIDELINES FOR  
ASSIGNED COUNSEL**

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## FAMILY COURT APPEALS: RULES AND GUIDELINES FOR COUNSEL

### I. DUTIES OF TRIAL COUNSEL

#### A. Notice of Right to Appeal

Counsel, whether retained or assigned, in the following **must** advise an aggrieved party **in writing** of his/her **right** to appeal:

Article 3 - Juvenile Delinquency;  
Article 7 - Persons in Need of Supervision (PINS);  
Article 10 - Child Protective Proceedings;  
Article 6, Part 1 - Permanent Termination of Parental Rights  
(TPR) By Reason of Permanent Neglect;  
Social Services Law § 358-a - Surrender and Voluntary  
Placement of Children; and  
Social Services Law § 384-b - Judicial Termination of Parental  
Rights

Counsel in such proceedings must also advise the party of the applicable time limitations for taking an appeal; the manner of instituting an appeal and obtaining a transcript of the testimony; and the right to apply for leave to appeal as a poor person if the party is unable to pay the cost of an appeal.

In addition, counsel is required to explain the possible reasons upon which an appeal may be based and the nature and possible

consequences of the appellate process (Family Ct Act §1121 [2]; 22 NYCRR 1022.11a).

Failure to give the written notice as statutorily required may be considered evidence of professional misconduct or malpractice. Copies of a form Notice of Right to Appeal are available from the Appellate Division (or on the Fourth Department's website at [www.nycourts.gov/ad4/](http://www.nycourts.gov/ad4/)) and the Family Court Clerk's Office.

## **B. Notice of Appeal**

Counsel, whether retained or assigned, must ascertain whether the party wishes to appeal. If so, counsel **must** file and serve a notice of appeal no later than 30 days after the service by a party or the law guardian upon the appellant of any order from which the appeal is taken, 30 days from receipt of the order by the appellant in court, or 35 days from the mailing of the order to the appellant by the clerk of the court, whichever is earlier (Family Ct Act § 1113).

As part of the 2005 Permanency Legislation, which amended provisions of the Family Court Act and the Civil Practice Law & Rules, counsel **must file** with the Family Court Clerk an original and one copy of the notice of appeal, **together with proof of service** of copies of the notice of appeal upon all other parties (or their respective counsel) **and the Law Guardian, if any** (Family Ct Act §§ 1115, 1121 [3]).

The most significant changes to §1115 of the Family Court Act, as amended, are that the statute now

- specifically requires service of the notice of appeal on the Law Guardian; and
- specifically requires that an affidavit of service of the notice of appeal on all parties be filed with the Family Court Clerk; but
- no longer requires service of the notice of appeal on the County Attorney (separate from counsel for DSS).

**C. Application for Poor Person Relief and Assignment of Counsel**

The 2005 amendments to the Family Court Act and the CPLR simplified applications for poor person relief and assignment of counsel in most appeals.

**Eligibility** for poor person relief and assignment of counsel is now **presumed**, without the necessity of a formal motion, **upon** the filing by trial counsel of a **certification of continued indigency**, where the person seeking poor person relief and assignment of counsel on appeal was represented in Family Court by a legal aid society or legal services organization, by counsel working for or on

behalf of such society or organization, or by counsel assigned pursuant to Article 18-B of the County Law (*see* Family Ct Act §§ 1118, 1120, 1121, as amended).

**1. Making the application:** Where a party in an abuse or neglect, permanent neglect and termination of parental rights, adoption, or permanency proceedings wishes to appeal, it **shall be the duty** of the party's counsel, whether retained or assigned, where appropriate, to

**a)** apply for leave to appeal as a poor person;

**b)** file a certification of continued indigency and continued eligibility for appointment of counsel (or, where required, a motion for poor person relief and assignment of counsel); and

**c)** file such other documents as may be required by the appropriate appellate division (*see supra*)

**Note:** Counsel is **not** statutorily required to apply for poor person relief and assignment of counsel for a party in proceedings not enumerated in section 1121, but **may** be required to do so pursuant to local rules or guidelines.



**2. Necessary papers:** A party, or counsel for a party, applying for poor person relief and assignment of counsel must file with this Court **an original and one copy each of the following:**

a) an attorney certification of continued indigency

**or**

a notice of motion, with a specified return date; a supporting affidavit of indigency by the moving party; and proof of service of the motion papers on all parties, the Law Guardian, if any, and the County Attorney;

b) a copy of the notice of appeal with proof of filing;

c) proof, or admission, of service of the notice of appeal;

d) a copy of the order appealed from, showing the date the order was entered in the Family Court Clerk's Office;

e) a copy of the decision of the lower court, if any;

f) a copy of any prior order of this Court, and

g) if assignment of counsel and poor person relief are not authorized under Family Court Act §§ 262 and 1121, an affidavit of merit pursuant to CPLR 1101 (22 NYCRR 1000.13 [a] [5]).

**Motion papers that are incomplete or otherwise defective will be returned.**

**\*\*\* NOTE - All motions to the Court, not just poor person motions, must include an original and one copy of the above listed documents.**

- **AD Docket Number** If an Appellate Division Docket Number has been given to the appeal, that number **must** be noted on all subsequent motions, correspondence, records, and briefs. The Appellate Division Docket Number in Family Court appeals will always be preceded by the prefix CAF and will include the year and the number of the case (*e.g.* CAF 03-00702). Appellate Division Docket Numbers can usually be found in the upper left corner of an order of this Court.

- **Specified return date** Notices of motion **must** contain a specified return date. Contrary to trial practice, the return date can **not** be left blank for the Court to fill in. Motions for poor person relief and assignment of counsel may be made returnable on **Monday, or the first business day of the week, of any week**, on the requisite notice (22 NYCRR 1000.13 [a] [1]).

- **No oral argument** In addition, notices of motion should note that oral argument is not permitted on the motion and that answering affidavits, if any, must be **filed** with the Court (**actually received**) by the Friday preceding the return date.

- **Cross motions** - Cross motions must be made returnable on the same date as the original motion and **must be served** either **personally or by overnight delivery service** at least **four days** before the return date.

#### **D. Abandonment and Automatic Dismissal of Appeal**

Trial counsel should advise an appellant who does not wish to seek leave to appeal as a poor person and assignment of counsel, or whose motion for such relief is denied that, **if counsel is not assigned, the appeal must be perfected within nine months of the date of service of the notice of appeal or the appeal will be deemed abandoned and automatically dismissed** without order of the Court (22 NYCRR 1000.2 [b]; 1000.12 [b]).

A request to vacate such abandonment and dismissal must be made by formal motion, on notice to all necessary parties, within one year after the date the appeal was deemed abandoned and dismissed. The motion to vacate must be supported by an affidavit demonstrating (1) a reasonable excuse for the delay; (2) an intent to perfect the appeal within a reasonable time; and (3) sufficient facts to demonstrate a meritorious appeal (22 NYCRR 1000.13 [g]).

#### **II. ASSIGNMENT OF APPELLATE COUNSEL**

A certified copy of the Appellate Division order granting leave to appeal as a poor person and assigning counsel is mailed to assigned counsel, all interested parties, the County Attorney, the Family Court Clerk, and the administrative court reporter for the judicial district in which the order appealed was entered. The Appellate Division also

sends a copy of the letter of assignment to appellant to notify him or her of counsel's name and address.

Unless a specific deadline date is given, an assignment order directs that the appeal be perfected within 60 days of the date of filing of the transcripts with the Family Court Clerk.

Counsel may seek, in writing, an extension of this time period for good cause shown prior to the expiration of the due date (Family Ct Act §1121 [7]; (*see*, section III, D, *infra*).

### **III. DUTIES OF ASSIGNED APPELLATE COUNSEL**

#### **A. Contact Appellant**

Immediately following assignment, contact appellant and ask him or her to advise you of potential issues. If he or she cannot be reached at the address stated in the letter accompanying the order of assignment, you may be able to locate him or her by contacting trial counsel, appellant's family, the Department of Social Services, or other agencies.

If you are unable to contact appellant, despite documented good faith efforts to do so, consider making a motion to be relieved of your assignment and to dismiss the appeal as abandoned. A copy of

the motion papers must be served on appellant at his or her last known address.

**B. Contact Trial Counsel**

Immediately following assignment, contact trial counsel and ask trial counsel to advise you of potential issues.

**C. Check Status of any Stay Order:**

Immediately following assignment, ascertain whether a stay was granted by Family Court or the Appellate Division. If a stay was granted, check on the expiration date of the stay and any due date for perfection of the appeal. Make sure to diary those dates. File and serve a motion to extend the stay, if necessary.

**D. Obtain File Documents:**

Upon assignment, counsel should begin to compile all the documents that constitute the record on appeal, including but not limited to the petition and answer, motion papers, written decisions and orders, and exhibits. Most documents should be on file in the Family Court Clerk's Office. Assigned counsel should review the contents of that file as soon as practicable and may be required to produce a copy of this Court's assignment order to inspect or obtain those documents.

Documents not on file in the Family Court Clerk's Office may have to be obtained from trial counsel (*e.g.* exhibits).

This Court's order authorizes assigned counsel to obtain only those documents related to the specific judgment or order appealed, unless the parties stipulate in writing that additional documents are necessary and relevant to a determination of the judgment or order appealed.

#### **E. Obtain Transcripts**

**1. Written Request:** The Family Court Act states that within 10 days of the date of assignment counsel **must** request preparation of the transcript of the proceeding appealed from (Family Ct Act §1121 [6]), in writing, from the Family Court Clerk or Administrative Court Reporter, depending on the local practice. Because the Fourth Department sends a copy of the assignment order to both the Family Court Clerk and the administrative court reporter, some courts may not require a written request from counsel before directing preparation of the transcript. However, it is the responsibility of assigned counsel to ensure that **all** necessary transcripts are prepared in a timely manner.

Unless appellate counsel served as trial counsel, he or she should review the court file in the Family Court Clerk's office to ascertain the judgment roll (including any and all pleadings, orders,

etc.) and the dates of any court appearances for which transcripts should be prepared.

Pursuant to the 2005 Permanency Legislation, the stenographic transcript in those proceedings involving permanency or placement of children “**shall** be completed within thirty days” from receipt of the transcript request (Family Court Act § 1121 [7]).

**2. Filing Delays:** If the transcript is not timely filed, contact the administrative court reporter.

In the **Fifth Judicial District**, contact Ms. Christine Makai, Court Analyst, Onondaga County Courthouse, 401 Montgomery Street, Syracuse, NY 13202; (315) 671-4265.

In the **Seventh Judicial District**, contact Mr. Michael J. DeVito, Principal Management Analyst, Room 161, Hall of Justice, Rochester, NY 14614; (585) 428-5069.

In the **Eighth Judicial District**, contact Ms. Carolyn Vario, Principal Court Reporter, 25 Delaware Avenue, 5<sup>th</sup> Floor, Buffalo, NY 14202; (716) 845-2127.

**3. Missing Transcripts:** Immediately upon receipt of the transcripts of stenographic or audiotaped minutes, review the minutes to determine if there are any gaps in testimony or references

to appearance dates for which no transcripts have been filed. If there transcripts are missing, or if audiotapes can not be transcribed because the tapes are inaudible, consider making a motion for summary reversal. Such motion requires a showing that (1) the missing transcript is relevant and necessary to a determination of the appeal, and (2) cannot be otherwise reconstructed.

Motions to settle the transcript must be made within 15 days from the receipt of the transcript (CPLR 5525 [c] [1]).

**4. Transcript Copies:** Do not deliver any original copies of the transcript to appellant. Appellate counsel is not obligated to provide a free copy of the transcript to appellant.

**F. Perfect Appeal Timely \*\*\* Note: The 2005 Permanency Legislation includes amendments to various statutory provisions intended to expedite specific proceedings and appeals involving placement of children, including abuse or neglect, permanent neglect and termination of parental rights, adoption, or permanency proceedings.**

Counsel assigned by this Court to represent an indigent party on appeal from a Family Court order is expected to prepare and file the necessary record and briefs as expeditiously as possible.



**1. Due date:** Assigned counsel is required to perfect the appeal within **60 days** after receipt of the transcript of the proceeding appealed from or within any different time prescribed by CPLR 5530 or as otherwise specified by the Appellate Division (*see* Family Court Act § 1121 [7]).

**Note:** Absent unusual circumstances, the filing of transcripts in the Family Court Clerk’s Office is used as the “receipt” date for calculating due dates, rather than the date assigned counsel actually picks up or receives the transcript.

Generally, an assignment order will direct that the appeal be perfected within 60 days of the date of filing of the transcripts with the Family Court Clerk.

Specific deadlines, not related to the filing of transcripts, may be set forth in an assignment order in specific cases:

- (a) an appeal in which there has been a reassignment or substitution of assigned appellate counsel after the transcript was filed, in which case, new counsel will be given a due date of 60 days from the date of entry of the reassignment order;

(b) an appeal in which a prior motion to dismiss the appeal for failure to perfect timely was made by an opposing party and conditionally granted by the Court, unless the appeal is perfected by a date certain, in which case, the due date is the conditional dismissal date; or

(c) an appeal *de novo* upon the granting of a *coram nobis* motion, in which case the order will assign new counsel and direct that the appeal be perfected by a date certain.

If there is a specific due date set forth in the order of assignment, counsel must ascertain the basis for the due date (i.e. conditional stay; conditional order of dismissal) as counsel may need to immediately request an extension by means of a formal motion on notice to all parties.

**2. Extension of due date:** If, for good cause, an appeal cannot be perfected by the required due date, a request for an extension of the filing deadline **must** be made to this Court, in writing prior to the expiration of the due date, on notice to all parties, including the law guardian, if any, either by letter or, where required, by motion (*see* II, D, 4, *supra*, and Appendix, Rules Chart).

**3. Length of extension:** Extension requests will **not** be granted for longer than a 30 day period of time and will not be granted absent a sufficient showing of facts demonstrating a reasonable excuse for the delay in perfecting the appeal and an intent to perfect within a reasonable time, based upon documentation of the work already done on the appeal and the specific work yet to be completed.

**4. Application for extension:** \* \* \* Pursuant to new policies adopted in 2009 for assigned appeals, whenever an appeal is not perfected by the required due date, the Court may take one of the following actions:

- (1) grant the extension;
- (2) relieve counsel of his or her assignment; or
- (3) advise counsel that a formal extension motion is required.

Motion papers for an extension of time to perfect **must** comply with the rules of the Court (22 NYCRR 1000.13), including service on both appellant and all necessary parties, and **must** include a sufficient showing of facts demonstrating a reasonable excuse for the delay in perfecting the appeal and an intent to perfect within a reasonable time, based upon documentation of the work already done on the appeal and the specific work yet to be completed.

**a) A letter application** can be made if the due date sought to be extended was based solely on the date on which transcripts were filed and the application is made prior to the expiration of the due date, and the letter application

**i)** sets forth sufficient facts to demonstrate good cause for the delay and an intent to perfect within a reasonable time;

**ii)** is received by the Court prior to the original deadline date;

**iii)** includes the full caption of the case with the Appellate Division Docket Number;

**iv)** reflects the fact that copies of the letter have been sent to all interested parties (or their respective counsel), by listing the names of those individuals **with** their full mailing addresses, as if those set forth in a formal notice of motion; and

**v)** sets forth, with specificity, the work already done on the appeal and the specific work yet to be completed.

**b) A formal motion must be made if**

**i)** an opposing party or Law Guardian made a **motion to dismiss** the appeal for failure to perfect timely and the Court granted the motion to dismiss unless the appeal was perfected by a date certain (known as a conditional dismissal order);

or

**ii)** the Court has directed that any further application for an extension must be made by formal motion.

**Note:** Motion papers must comply with the rules of the Court (22 NYCRR 1000.13), including an original and one copy of the notice of motion with specified return date; supporting affidavit; and proof of service of the motion papers on all parties and the Law Guardian, if any.

**5. Conditional Extension and Dismissal** An extension of time to perfect an appeal will be granted only on condition that the appeal be perfected by a specified date, and in the event of failure to so perfect, the appeal will be **dismissed**.

- If an assigned counsel misses a conditional dismissal extension date, assigned counsel **must make a formal motion to vacate the dismissal and extend the time to perfect the appeal.**

The motion must include an affidavit showing:

- (1) a reasonable excuse for the failure to comply with a Court-ordered extension date;
- (2) an intent to perfect the appeal within a reasonable time; and
- (3) sufficient facts to demonstrate a meritorious appeal.

- The motion must be made within one year of the date of the dismissal (22 NYCRR 1000.13 [g]).

- **Failure by an assigned counsel to comply with a conditional extension order resulting in the dismissal of an appeal may result in counsel's removal from the list of attorneys eligible for assignment by the Court and/or disciplinary action.**

#### **G. Perfect the Appeal Properly**

Assigned appellate counsel “perfects” an appeal by filing the stipulated or settled record (just one record, not 10) and 10 copies of appellant's briefs with the Clerk of the Appellate Division, Fourth Department, together with a demand for exhibits, when necessary, with proof of service thereof; a copy of any and all prior orders entered by this Court (including an order of assignment; order

extending time to perfect the appeal; order granting a stay, etc.); and proof of service of one copy of the record and brief on each opposing party to the appeal, and the Law Guardian, if any (22 NYCRR 1000.3 [c] [2]).

## **1. Prepare Stipulated or Settled Record on Appeal:**

Assigned appellate counsel should begin preparing the stipulated or settled record on appeal immediately upon receipt of all transcripts. The attorneys or parties, and the Law Guardian, if any, must either sign a stipulation itemizing the documents, including exhibits, that constitute the record, or the Family Court judge, on motion, must sign an order itemizing those documents that constitute the record on appeal.

The **original** stipulation or Family Court order settling the record **must** be included in the record filed with the Court.

### **a) Contents of the Record**

The first step in preparing the record is gathering copies of all documents that constitute the record (*see*, CPLR 5526). Typically, these include:

- the CPLR 5531 statement
- date-stamped copy of the notice of appeal
- proof of service of the notice of appeal

- order appealed
- written decision, if any
- pleadings (petition and answer)
- trial transcript
- trial exhibits (which could be located in the Family Court Clerk's Office or in trial counsel's file), and
- the **original** stipulation of counsel or the Family Court order settling the record (original or certified copy)

On an appeal from a support order, the record will also include the order and determination of the hearing examiner and the written objections thereto, as well as a transcript of the support hearing.

Where there are audiotapes instead of stenographic minutes, the Family Court is required to send the audiotapes to a transcription service, certified by the Office of Court Administration, for transcription. Assigned counsel is **not** required to arrange, or to pay, for such transcription.

**b) Format of the record:**

Both the CPLR and Court rules require that

- the record be reproduced on 8 ½ by 11 inch paper;
- the record be consecutively paginated (although transcript pages will bear a page number set by the court reporter,



they must be re-numbered sequentially as part of the record);

- the record contain a table of contents indicating where in the record the various documents may be found;
- the record have a white cover labeled "Record on Appeal" with the correct caption of the proceeding (as set forth in the order appealed) and the name and address of the respective counsel or parties to the appeal; and,
- the record be bound on the left.

The form of the binding may be as simple as staples or spiral binding or as formal as adhesion binding done by a printing company.

**Note: The Court will not approve disbursements for professional printing (as opposed to professional binding) of a record or brief.**

You may **not** use three-ring binders and should not use staples or metal prongs that protrude (metal fasteners may be secured and covered with plastic tape).

You may use multiple volumes if the record is large, provided that each volume has a cover and is properly marked (i.e., Volume 1 of 3; Volume 2 of 3; Volume 3 of 3).

You may use two-sided copying for the record; however, the record **must** be legible and the type size may **not** be smaller than pica type (the standard font in most word processing programs is pica size or greater).

## **2. File Exhibits or Sealed Transcripts:**

Exhibits, or sealed transcripts of *in camera* interviews of children conducted by the Family Court judge, must be provided to the Appellate Division. If there are any problems in arranging for direct submission of the exhibits or sealed transcript by Family Court to the Appellate Division, assigned counsel must notify the Appellate Division of the problem, and provide the name of an individual in the Family Court Clerk's Office to contact to obtain the necessary documents.

In addition, the record on appeal should reference the exhibits or sealed transcripts, even if they are submitted under separate cover. The documents should be included in the table of contents. On the page referred to in the table of contents, appellate counsel should note the name of the document and that it is submitted under separate cover to the Court.

## **3. File and Serve Briefs:**

A copy of appellant's brief must be given or mailed to appellant on or before the date of filing with the Court, and copies served on each party, including the Law Guardian. Ten copies of the brief must be filed with the Court, with proof of service on all parties.

Briefs **must** be bound on the left and reproduced on 8 ½ by 11 inch paper. The briefs must be paginated and a table of contents and cover are required. The brief should be labeled as appellant's or respondent's brief and should bear the name and address of counsel.

The cover of the brief should indicate, in the upper right hand corner, whether the matter is to be **submitted or argued** and the amount of **time requested** for argument (up to 15 minutes on an appeal from an order; up to 30 minutes on appeal from a judgment). If no oral argument time is listed on the brief, the appeal is deemed submitted and counsel will not be permitted to argue.

Rule 1000.4 (f) (5) sets forth color requirements for the cover of briefs. Where the party has been granted permission to appeal as a poor person, the cover of the brief shall be white.

**\*\*\* NOTE: Compliance with the Rules is Required.**  
***The Clerk shall reject any record, appendix or brief that does not comply with these rules, is not legible or is otherwise unsuitable (22 NYCRR 1000.4 [h]).***

**4. Review Scheduling Orders:** Once the Clerk's office receives a complete filing by an appellant, a scheduling order is prepared. The order will specify the term of Court for which the matter has been scheduled and will fix the date of service and filing of respondent's briefs (22 NYCRR 1000.10 [a]).

- a party or his attorney shall notify the Clerk in writing within **15 days** of the date of mailing of the scheduling order of **unavailability** for **oral argument** on a specific date or dates during a term.
- a **respondent** on appeal must make a formal motion on notice to all parties and the law guardian to obtain an **extension** of time to file a responsive brief (letter requests will not be accepted).
- either party may move to **expedite** the appeal by filing a motion within 15 days after the date of mailing of the scheduling order. The motion must contain an affidavit setting forth the circumstances requiring that the appeal be expedited.
- not less than 20 days prior to commencement of a Court term, the Clerk will mail to all attorneys or parties a notice to appear for oral argument on a specified date during that term.

#### **H. Move to be Relieved As Counsel If There Is No Merit to the Appeal**

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If there are **no non-frivolous issues** that can be raised on appeal, assigned counsel may move, after conferring with appellant

and trial counsel, to be relieved of the assignment by means of a *Crawford* motion (see *People v Crawford*, 71 AD2d 38; *Matter of Elrheihem T.*, 163 AD2d 913; *Matter of Jordan S.*, 179 AD2d 1091).

Such motion must be made on notice to all necessary parties and upon the submission of an affidavit by counsel accompanied by a brief in which assigned counsel states all points that may arguably provide a basis for appeal, with references to the record and citation of legal authorities (see 22 NYCRR 1000.13 [q]). The motion and the brief should be served on appellant, at his or her last known address, at least **30 days** before the specified return date of the motion.

In addition to the motion papers and brief, counsel must also file with this Court the papers that would constitute the record on appeal, pursuant to 22 NYCRR 1000.3 (c) (2).

**Caveat:** While the Court does not wish to discourage the submission of *Crawford* briefs, appellate counsel has an obligation, to the appellant and to the Court, to study the record for all possible issues that might be “arguable”, even if not “winnable”, before determining that a *Crawford* brief is appropriate.

Diligent review of the record will (1) avoid any tendency by counsel to make his or her own determination as to the likelihood of success of a potential issue, rather than leaving such determination to the Court, and (2) result in preparation of a *Crawford* brief only when

clearly indicated (*see Matter of Elrheihem T.*, 163 AD2d 913, *supra*; *Matter of Josephryan G.*, 178 AD2d 962; *Matter of Bartholomay v Bartholomay*, 11AD3d 1046).

Rarely, if ever, should a *Crawford* motion and brief be filed on an appeal that involves an order entered after an evidentiary hearing.

**I. File and Serve Respondent's Brief**

\_\_\_\_\_ Respondent's brief must be filed and served within **30** days of the date of service of appellant's brief (22 NYCRR 1000.2 [d]), unless extended by the Court after the filing of a motion on notice to all parties and the Law Guardian, if any.

**J. File and Serve Reply Brief**

\_\_\_\_\_ Reply briefs, if necessary, must be filed and served within ten days of the date of service of respondent's briefs (22 NYCRR 1000.2 [e]). A request for an extension of time to file a late reply brief must be made by formal motion on notice to all parties and the Law Guardian, if any.

**IV. DUTIES OF APPELLATE COUNSEL UPON RECEIPT OF DECISION-ORDER:**

Upon receipt of the Court's order, counsel should notify appellant in writing of the Court's decision-order.

If the decision-order is **favorable** to appellant, counsel should serve the decision-order with notice of entry upon opposing parties, or their respective counsel, and the Law Guardian, if any.

If the decision-order is **adverse** to appellant, counsel should ascertain whether appellant wishes to pursue a further appeal to the Court of Appeals. If so, counsel **must** file a notice of appeal or make a motion for leave to appeal on behalf of appellant (*see* Family Ct Act §§ 1118; 1120 [e]).

**\*\*\* Note:** The Family Court Act has been amended to require that

[t]he appointment of counsel and granting of poor person relief by the appellate division shall continue for the purpose of filing a notice of appeal or motion for leave to appeal to the court of appeals.

(Family Ct Act § 1118).

The Family Court Act now also requires that

[t]he appointment of counsel by the appellate division shall continue for the purpose of filing a notice of appeal or motion for leave to appeal to the court of appeals. Counsel may be relieved of his or her representation upon application to the



court to which the appeal is taken for termination of the appointment by the court on its own motion or, in the case of a motion for leave to appeal to the court of appeals, upon application to the appellate division. Upon termination of the appointment of counsel for an indigent party the court shall promptly appoint another attorney.

(Family Ct Act § 1120 [a]).

### **Questions:**

If you have any questions concerning an assigned counsel Family Court appeal, you may contact Kim K. Taylor, Esq., Principal Appellate Court Attorney at (585) 530-3112 or [KKTaylor@courts.state.ny.us](mailto:KKTaylor@courts.state.ny.us). If you have any questions concerning motion practice on a Family Court appeal, you may contact Alan L. Ross, Esq., Principal Appellate Court Attorney, at (585) 530-3137 or [aross@courts.state.ny.us](mailto:aross@courts.state.ny.us). If you have any questions concerning the filing of a Family Court record or brief, you may call the Court at (585) 530-3100 and ask to speak to someone in the Court's calendar unit.

## APPENDIX

### RULES FOR REQUESTING AN EXTENSION OF TIME TO PERFECT AN APPEAL BY COUNSEL ASSIGNED BY THIS COURT

Type of Appeal	Request by Letter	Request by Motion
<ul style="list-style-type: none"> <li>• Family Court -</li> </ul>	<p>May be by letter if:</p> <ul style="list-style-type: none"> <li>• no conditional dismissal date was set by the Court on a motion to dismiss</li> </ul>	<p><b><u>Must</u></b> be by motion if:</p> <ul style="list-style-type: none"> <li>• a conditional dismissal date was set by the Court on a motion to dismiss</li> <li style="text-align: center;"><u>or</u></li> <li>• the Court has requested that any further application for an extension be by formal motion</li> </ul>
<ul style="list-style-type: none"> <li>• Judgment of Conviction</li> <li>• Rockefeller Resentence</li> <li>• CPL 440</li> <li>• Coram nobis</li> </ul>	<p>May be by letter if:</p> <ul style="list-style-type: none"> <li>• no conditional dismissal date was set by the Court on a motion to dismiss</li> </ul>	<p><b><u>Must</u></b> be by motion if:</p> <ul style="list-style-type: none"> <li>• a conditional dismissal date was set by the Court on a motion to dismiss</li> <li style="text-align: center;"><u>or</u></li> <li>• the Court has requested that any further application for an extension be by formal motion</li> </ul>
<ul style="list-style-type: none"> <li>• SORA</li> </ul>	<ul style="list-style-type: none"> <li>• Never by letter</li> </ul>	<ul style="list-style-type: none"> <li>• Motion always required</li> </ul>
<ul style="list-style-type: none"> <li>• Habeas corpus</li> </ul>	<ul style="list-style-type: none"> <li>• Never by letter</li> </ul>	<ul style="list-style-type: none"> <li>• Motion always required</li> </ul>

**NOTE:** All extension requests **MUST** be made **TIMELY**, prior to the expiration of the due date previously set by the Court.

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