GENERAL INSTRUCTIONS FOR PRO SE PARTIES AND ATTORNEYS WISHING TO APPEAL TO ERIE COUNTY COURT FROM A CIVIL DECISION, JUDGMENT OR ORDERS OF CITY, TOWN OR VILLAGE COURTS WITHIN ERIE COUNTY

Please read the following before proceeding with your appeal:

The Court must not only be fair and impartial in determining the controversy between the parties to any proceeding, but must also avoid any appearance of impropriety or bias. Therefore, in order to maintain the appropriate level of compliance with the tenets of judicial ethics, please be advised that this Court cannot and will not provide legal advice and/or assistance to litigants on either side of a controversy. If you have any questions as to how to proceed, you should consult with the Eighth Judicial District Court Help Center or an attorney. The Help Center is located in the Supreme Court Law Library at 77 West Eagle Street and can be contacted at 845-1816 or CHC8JD@nycourts.gov. The Bar Association of Erie County provides a Lawyer Referral and Information Service which can be contacted at 852-3100. **Do NOT call, email or otherwise contact the Judge's Law Clerk or Secretary for advice or assistance in preparing your submissions to the Court**.

All statutory requirements pursuant to the Civil Practice Law and Rules, Uniform Rules of the New York State Trial Courts, UCCA, UCJA, and any other applicable statutes must be adhered to. Failure to perfect the appeal in a timely manner and no later than 9 months from the date of the filing of the Notice of Appeal will result in dismissal of the appeal either on the court's own motion or upon motion by any party to the appeal.

An Appeal is not a new trial. It is merely a review of the court proceedings held and the documents presented during the court proceedings in the local court. **No** new testimony and additional evidence will be accepted or admitted. In a Small Claim appeal, the standard review by the Court is to determine if "substantial justice" was done.

The County Court has the discretion to extend filing deadlines however any such request must be in writing, must indicate the reason for the extension, and the length of the extension.

During the pendency of the Appeal, unless the party has been granted poor person relief, if either party wishes to file a motion for additional relief, the motion fee of $45 payable to the Erie County Clerk along with the motion papers must first be presented to the Erie County Clerk. Thereafter, once paid,

the motion papers with the County Clerk paid stamp must be presented to the Chief Clerk's Office.

If you did not appear for the local court proceedings and a 'default judgment' was entered, you cannot appeal the default judgment. You must file a motion with the local court to vacate the default judgment (CPLR § 5015 and 5511). If the default judgment is not vacated, you have the option to appeal the decision of the Court on the motion.

Instructions for the Appellant (the party filing the Appeal).
NOTE, AT A MINIMUM, steps 1-3 should have been completed prior to receiving the letter that is included with these instructions.

1. Within 30 days of the date that the Civil Judgment was rendered, completely fill out the Notice of Appeal providing a current and complete address for both parties. Make sure to indicate which party is the Appellant (party filing the Appeal) and which party is the Appellee/Respondent. If either party was represented by an attorney, you must include the attorney's name, address and phone number.

2. Apply for an index number, in person, at Actions and Proceedings, Erie County Clerk's Office, 92 Franklin Street, 1st Floor, Buffalo, New York and simultaneously file the Notice of Appeal with County Clerk. There is no fee for the index number. You will also be required to complete a Request for Judicial Intervention. Be sure to list all addresses on page 2 of the RJI for the parties or attorneys in the action.

NOTE: The caption on the Notice of Appeal and the RJI must be the same caption that appeared in the lower court regardless of which party is appealing the lower court matter. If you were the defendant in the original titled action, you remain the defendant and also become the appellant (i.e. Defendant / Appellant) on the Notice of Appeal and RJI.

3. Serve the Notice of Appeal on the opposing party/parties or their attorney. Please note; **if the opposing party is represented by an attorney you must serve their attorney** and should address all correspondence to that party's attorney only.

PLEASE NOTE: Steps 4 and 5 must be completed within thirty (30) days from date that the lower court's judgment was served upon the appealing party.

4. File an additional copy of the Notice of Appeal with the court <u>from which</u> you are appealing, together with an affidavit that the other party/parties have been served. The County Court index number must be written on the face of the notice. **There is a fee to file the Notice of Appeal with the local court.**

5. If stenographic minutes were taken in the trial court or if the lower court proceedings were recorded, order the transcript(s) of the proceeding(s) from the stenographer or the lower court (fee required). **Once the Appellant has received the copy of the transcript, the Appellant must serve a copy on the Appellee <u>and</u> on the local court.**

6. You must attempt to "settle the transcript" with the opposing party or his attorney (*see CPLR § 5525 [1]*). If all parties are in agreement, the parties may sign written agreement (stipulation) that the transcript, together with any corrections that are proposed, are correct. File this agreement with the local court. If the parties are unable to agree on the proposed objections to the transcript, the appellant must petition the local court to settle the record (*see Uniform Justice Court Act and Uniform City Court Act § 1704 for applicable time limits*)

If the appellee does not respond to the request from the appellant with proposed objections to the transcript within the time limits pursuant to statute (*see CPLR § 5525 [1]*) the appellant may proceed without the need to "settle the transcript" as long as the appellant meets the requirements of *CPLR § 5525 [2, 3]*. (*also see Uniform Justice Court Act and Uniform City Court Act § 1704*)

NOTE: When the appeal is from an order deciding a motion or other proceeding in which no testimony was taken, the court clerk files the Record with the County Court within (10) days after the Notice of Appeal is filed. In such cases, there is no requirement that the record be settled.

7. **The Appellant must follow-up with the trial court to make sure that the lower court file is sent to County Court - Chief Clerk's Office, 25 Delaware Avenue, Ground Floor, Buffalo New York 14202.** The lower court file will contain the small claims application (if any), pleadings, motions, exhibits and transcripts (or judge/clerk notes) if they were filed with the lower court (as required in # 5 above). If exhibits were returned to you at the trial, you should inspect the record prepared by the trial court before it is submitted to County Court to assure that all exhibits admitted into evidence by the trial court are included.

8. Within twenty (20) days from when the record is settled, the Appellant must serve the other party with a <u>Brief</u>, <u>Record</u> and a <u>Notice of Argument</u>. **The Record must be bound separately from the Brief. All relevant documents should be reproduced and each page sequentially numbered.**

BRIEF: PLEASE NOTE THAT BRIEFS MUST BE TYPEWRITTEN. The brief should begin with an introductory statement of factual background underlying the lawsuit, and the Appellant's specific claims **as to the alleged errors in finding of facts or application of law.** Please note, **AN APPEAL IS NOT A NEW TRIAL - no additional testimony will be taken or new evidence admitted.**

The brief may not rely upon affidavits or other documents that are not part of the record on appeal from the trial court.

RECORD: The Record must contain the following documents: small claims application (if any), pleadings, motions, exhibits and transcripts (or judge/clerk notes) that the appellant is relying upon for the appeal.

File copies of the Brief, Record and Notice, together with an affidavit of service upon the opposing party(ies) and with the County Court - Chief Clerk's Office, 25 Delaware Avenue, Ground Floor, Buffalo New York 14202. If you wish to have oral argument or to submit the appeal to be decided on papers only, state this in the notice. However, please note that the Court may still require oral argument.

If the Appeal has not been so perfected, the appeal may be dismissed by the Court without further action or notice.

9. **Instruction for the Respondent/Appellee**: Once the Respondent has received a copy of the Appellant's brief, the Respondent must submit his/her written responding brief, as set forth in instruction #7 above, within thirty (30) days and serve the same upon the opposing party or opposing counsel.

If the Respondent is requesting oral argument, it must be stated in the responding brief. The Court will determine if oral argument is needed.

10. The Appellant will have an additional thirty (30) days to file a written Reply with the County Court and the opposing party or opposing counsel.

11. The court will then send a written notice to both parties setting forth the date, time and place for oral argument, if necessary. Even if you have stated that oral argument is not requested, the Court may still require oral argument.

PLEASE NOTE: AN APPEAL IS NOT A NEW TRIAL - no additional testimony will be taken nor new evidence admitted.

12. After argument or submission, a written decision will be issued by the County Court generally within sixty (60) days. (Updated 10/1/12)