

TAKING AN APPEAL FROM A FAMILY COURT ORDER

In order to take an appeal as of right to the Appellate Division, Fourth Department, from an order of the Family Court, you must file with the Family Court Clerk the original of a notice of appeal and serve a copy of the notice of appeal on any adverse party and on the Attorney for the Child, if any. Two copies of the notice of appeal, together with proof of service, must also be filed with the Family Court Clerk. The notice of appeal must be filed and served no later than thirty (30) days after you were served by another party or the Attorney for the Child with the order you want to appeal, or thirty (30) days from the date on which you received the order in court or thirty-five (35) days from the date on which the clerk of the court mailed you the order, whichever date is earliest. See Family Court Act § 1113 as to the time within which an appeal must be taken.

Once a notice of appeal has been filed and served, you must "perfect" your appeal within six (6) months of the date of the notice of appeal, in accordance with the rules of this Court (see "Taking and Perfecting an Appeal"). If you cannot afford to pay the costs of the appeal or of an attorney, you may apply for permission to appeal as a poor person and for assignment of counsel.

In order to apply for poor person relief and assignment of counsel, you must file the following documents with the Clerk of the Appellate Division: (1) a notice of motion with a specified return date on which the motion is to be considered by the Court (any Monday, or the first business day of the week if Monday is a legal holiday, after the required notice period); (2) a sworn and notarized supporting affidavit; (3) proof of service of all motion papers on all necessary parties, including the Attorney for the Child, if any, and the County Attorney, at least 13 days prior to the return date if service was made by mail (8 days if served personally); (4) a date-stamped copy of the notice of appeal from Family Court; (5) proof or admission of service of the notice of appeal on all parties and the Attorney for the Child, if any; (6) a copy of the order appealed from (with a copy of any written decision); and, (7) if assignment of counsel is not authorized for an appeal from the particular order you want to appeal, under §§ 262 and 1120 of the Family Court Act, an affidavit demonstrating merit to the appeal pursuant to CPLR 1101 (a).

The Court cannot consider any motion until all necessary papers have been filed and served. You must submit the original motion papers to the Appellate Division, Fourth Department, 50 East Avenue, Suite 200, Rochester, New York 14604, for processing. Motion papers will be returned if they are incomplete or defective.