

## **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 two (2) copies of a notice of appeal and an affidavit of service of copies of the notice of appeal on all necessary parties, including the Attorney for the Child, if any. 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 of the order you want to appeal, or thirty (30) days from the date on which you received a copy in court of the order you want to appeal or thirty-five (35) days from the date on which the clerk of the court mailed you a copy of the order you want to appeal, whichever date is earliest. Sample forms for a notice of appeal and affidavit of service are attached.

Once a notice of appeal has been filed and served, you must “perfect” your appeal within nine (9) months of the date of service of the notice of appeal, by filing one original and ten copies of a stipulated or settled record on appeal, in accordance with the rules of this Court and Article 55 of the Civil Practice Law and Rules, together with a \$315.00 filing fee, ten copies of a legal brief, and proof of service of two copies of the brief on each of the other parties to the appeal. If you cannot afford to pay the costs of the appeal or an attorney, you may apply for permission to appeal as a poor person and for assignment of counsel. Attached are sample forms to use for such a motion.

In order to apply for poor person relief and assignment of counsel, you must file **an original and one copy of each** of the following documents: (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 service was made 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; (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 1121 of the Family Court Act, an affidavit demonstrating merit to the appeal, pursuant to CPLR §1101. The notice of appeal and motion papers must be served by someone who is not a party to the appeal.

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