

## FAMILY COURT APPEALS - TIPS FROM A TO Z

- A. Poor Person/Assignment of Counsel Motions - must be filed with Appellate Division (**not** Family Court) and must include return date and **all** necessary papers (see -- and follow -- Family Court Appeals Guidelines).
- B. Note that there is no appeal from an order entered upon stipulation or consent.
- C. There is no appeal from a default order - **but** an appeal is **not** precluded where a party failed to appear but was represented by counsel (see, CPLR § 321 [a], § 5511; Family Ct Act § 1118; *Matter of Kwasi S.*, 221 AD2d 1029 [4th Dept 1997] **or** was precluded by the trial court from participating (*Matter of Dominique L. B. [Monique M.]*, 231 AD2d 948. An appeal **is** precluded where counsel does not participate or declines to participate in order to preserve the party's right to move to vacate the default upon a showing of a reasonable excuse for the nonappearance (*Matter of Amy Lee P.*, 245 AD2d 1136 [4th Dept 1997]; *Geraldine Rose W.*, 199 AD2d 313, *lv dismissed* 84 NY2d 967). **Note:** trial counsel **cannot** withdraw and permit entry of a default order without notice to his client (*Matter of Tierra C.*, 227 AD2d 994 [4<sup>th</sup> Dept 1996]).
- D. Remember that intermediate orders **can** be appealed in abuse and neglect cases (but not in *permanent* neglect cases).
- E. Don't let the appeal become moot - stays should be requested and/or objections filed and appeals taken from subsequent orders — such as those that continue a placement.
- F. Because the case may have had multiple docket numbers in Family Court, cross-reference dockets to ensure that you have obtained necessary transcripts and exhibits from all proceedings.
- G. Maintain lower court exhibits - Write letters to Family Court to ensure that exhibits are not destroyed, or returned to the parties.
- H. Timely request extensions of time - if there's a conditional extension order, the appeal will be dismissed if you don't perfect timely and you will have to move to vacate the dismissal — for which you may not get paid and for which you could be disciplined.

- I. Use proper case captions and numbers - all correspondence, records, and briefs should contain the case caption as it appears on the AD assignment order, including the Family Court docket numbers.
- J. If an appeal has an Appellate Division Docket Number, use it!
- K. Compile the record on appeal first - don't wait until the last minute; you should compile the "judgment roll" documents (order, notice of appeal, pleadings, exhibits, etc.) even before the transcripts are filed.
- L. Obtain the stipulation to the record early - don't wait until the last minute; give opposing parties a deadline to execute the stipulation and, if you don't have all signatures by the deadline, make a motion in Family Court to settle the record.
- M. The record must be bound on the left-hand side and must include a cover sheet bearing the title of the case and the names and addresses of all counsel, including the Law Guardian, if any - the form of an original record provided by Family Court is **not** in compliance with the Rules of the Fourth Department.
- N. The record must contain a table of contents - if not, it will be rejected.
- O. The record must be consecutively paginated - if not, it will be rejected.
- P. The stipulation to the record must be signed by all counsel (including the Law Guardian, if any), not just opposing counsel - if not, it will be rejected.
- Q. Include the ORIGINAL stipulation in the record - if you include a copy, instead of the original, the record will be rejected.
- R. Make sure that a copy of the notice of appeal is included in the record - a record without the notice of appeal will be rejected.
- S. Remember to include in your brief a one page statement pursuant to CPLR 5531.
- T. Be cognizant of the different burdens of proof applicable in different Family Court proceedings.
- U. Review hearsay issues - always a problem in Family Court.

- V. Don't forget the dispositional issues - they might provide fertile grounds for a remand, at least!
- W. Sealed transcript of *in camera* examination of a child - the transcript must be part of the record and should be listed in the table of contents to the record, even though it **cannot** be reproduced in the bound record or reviewed by counsel. Note in the record on the appropriate page that the transcript is being submitted "under separate cover". If Family Court declines a request to release the sealed transcripts to counsel to submit to the Appellate Division, advise the Appellate Division that the transcript exists and must be obtained from Family Court.
- X. Deliver exhibits to the Appellate Division - the exhibits are not automatically sent to the Appellate Division by Family Court; if the exhibits can not be reproduced in the bound record, arrangements must be made to deliver them under separate cover to the AD.
- Y. Serve all opposing parties (including the Law Guardian, if any) with copies of **both** your **record** (the stipulated and paginated **final** version) **and brief**.
- Z. File and serve records and briefs **before** the due date - don't wait until the last day; if there's a problem, you won't have time to correct it. If you miss a filing deadline, you run the risk that the appeal will be dismissed and you will have to make a motion to vacate the dismissal of the appeal, which can delay your case (and payment of your voucher) another 6-8 weeks.

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