

PRACTICAL POINTERS FOR ATTORNEYS FOR CHILDREN ON APPEAL

- **You must consult with your client if the client is of sufficient age and maturity to assist with the appeal.** Please note the Rule of the Chief Judge § 7.2, “Function of the attorney for the child.” **If you do not consult with your client, you must submit an explanatory affirmation with your voucher.**
- **You MUST file a notice of appeal if you wish to argue for anything other than a complete affirmance of the order appealed from.** In other words, if the child wishes to have the order modified or reversed, you must file a notice of appeal, even if one or both of the parties have filed a notice of appeal. In this situation, you should file a notice of appeal, even if you plan to request the substitution of another AFC to represent the client on appeal.
- **If you do not wish to continue as AFC on the appeal,** submit a letter to the Assistant Director requesting substitution, and “cc” the other attorneys and any pro se party. Enclose the order appealed from, the notice(s) of appeal, your affirmation of service if you served a notice of appeal, and the decision, if any.
- **If the child is the appellant, you must order the transcripts as soon as possible by means of a minute order form.** Transcripts must be completed within **thirty days** from receipt of the request . Be mindful of the time limit and take appropriate action when necessary (see Family Court Act § 1121 [7]), including contacting the Administrative Court Reporter in the relevant Judicial District (see Appellate Division Fourth Department, “Family Court Appeals: Rules and Guidelines for Counsel at 10 [2007] [www.courts.state.ny.us/ad4]).
- **The AFC Program will not reimburse you for “printing” of briefs and records or for “filing and service” of briefs and records by a printing service.** The rules of the Appellate Division expressly allow records and briefs to be reproduced by “any . . . duplicating process that produces a clear black image” e.g., simple copying. “Binding” can be stapling (see 22 NYCRR §§ 1000.4 [a] [3] [ii]; [f] [2]). Filing and service can be effected by mailing with the U.S. Postal Service or by use of a delivery company such as FedEx. Notwithstanding the rules, however, if you use a printing service you will be charged many times the State rate per page and many times what a copy service would charge for substantially the same product. As for “filing and service” of a brief, it is usual for a printing service to charge \$100 or more in addition to a fee for delivery or mailing. Such expenses are unnecessary.
- **If the child is the appellant, you are expected to perfect the appeal as expeditiously as possible,** generally within 60 days of receipt of the transcript (see Family Court Act § 1121 [7]). **If the child is not the appellant, and the appellant fails to perfect timely, consider a motion to dismiss.**
- **If the child takes an appeal from an order in a custody matter, and neither**

parent has taken an appeal, please review the following cases: *Matter of McDermott v Bale*, 94 AD3d 1542 (4th Dept 2012); *Matter of Kessler v Fancher*, 112 AD3d 1323 (4th Dept 2013); *Matter of Lawrence v Lawrence*, 151 AD3d 1879 (4th Dept 2017).

- **Comply with all Appellate Division rules** (22 NYCRR 1000 *et seq.*) **and guidelines** (see www.courts.state.ny.us/ad4). If after consulting the rules and guidelines at the beginning of the appeal, you have questions about deadlines, the form of records and briefs, motion practice, or similar matters, please call the Clerk's Office (585-530-3100) and ask for guidance.
- If the appeal will not be perfected - in a case, for example, where the child appellant does not want to pursue the appeal, or has failed to communicate with you despite your repeated attempts such that the failure constitutes an abandonment of the appeal, or where the appeal has been rendered moot – **you must file the child's signed consent to withdraw the appeal or move to be relieved and to dismiss the appeal as moot or abandoned.** Please note the Appellate Division rules require attorneys to notify the Court **immediately** when there is a settlement of any issue or appeal, or if any issue or appeal has been rendered moot, and subject attorneys to the imposition of sanctions for noncompliance (22 NYCRR 1000.18 [c]).
- **Be aware of the Court's calendar and DO NOT allow an appeal to be mooted by your inaction.** For example, if the order appealed from will expire in August, do not wait until May to perfect. If necessary, after receipt of the scheduling order, you may want to consider a motion to expedite the appeal.
- Regardless whether your client is the appellant, **you are expected to file a brief** and advocate zealously and independently for your client's position. **Do not submit a letter "in lieu of brief."** **Such letters are not authorized by Appellate Division rules.** "Adopting" parts of another party's brief is rarely justified, and "joining" another party's brief is inconsistent with the absolute independence that representation of the child requires.
- **In general, you are expected to attend oral argument.** If you do not attend oral argument, as for example if the appellant's attorney has submitted and you believe attendance is unnecessary under the circumstances of the appeal, you will be expected to attach **an explanatory affirmation** to your voucher.