



Appealing Family Court Orders

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What is an appeal?

An appeal is when you ask a higher court to **review** or look at, an **order**, or decision, made by the court you went to first.

You ask for a review if you think the first court made a mistake. Mistakes can be made about:



- How facts were used in a case. For example, the court did not understand the facts or considered some facts to be really important when they were not.
- The law. For example, the court did not understand the law or used the law in the wrong way.

The person who asks for the appeal is called the **appellant** (a-PELL-ant). The person who is on the other side of the appeal is called the **respondent** (re-SPON-dent).

Who can file an appeal?

In a Family Court case, a **petitioner** (pe-TI-shun-er) or a respondent can **file** (ask for) an appeal. A petitioner is the person who started the case in Family Court. Here, respondent refers to the person the original case was against. Petitioners or respondents may file an appeal after the judge makes a final decision that is not what they wanted. This is called an **adverse decision**. A final decision is made after the entire case is finished and there are no more court dates. In certain special cases, a person can appeal an adverse decision that is not final. This is discussed later in this guide.

Can I get a free lawyer for my appeal?

If you want to appeal your case, it is important to speak with your Family Court **attorney** (lawyer) first. He or she has to start the appeals process for you. If the court gave you a lawyer or if you had a lawyer from a legal services provider (such as Legal Aid Society) representing you in Family Court, that lawyer is required to help you start the appeal. He or she must tell the **Appellate** (a-PELL-it) **Division** that you were represented by an attorney who provides legal services to the poor. The Appellate Division is part of the Supreme Court. It is the court that will hear your appeal. It will also decide if you can get **poor person relief**. This means your income is low enough to get free legal services. If the court decides your income is low enough, it will assign you a different lawyer.

Can I get a free lawyer if I did not have one in Family Court?

If you argued your case **pro se** in Family Court, but want to be assigned a free lawyer for your appeal, you can apply for poor person relief. Pro se means without a lawyer. If you get poor person relief, you will get a free lawyer and a free copy of your transcripts. You will not have to pay the court any money for the appeal.

What are the grounds for an appeal?

You cannot appeal an order or decision just because you do not like it. You must have **grounds**, or legal reasons. The mistakes described in the first question of this guide are grounds. Also, you can only appeal if you **objected** to the same mistakes during the trial. Objected means let the judge know you had problems with something. This is called **preserving an issue for appeal**.

What court will listen to my appeal?

Most appeals of Family Court cases are heard by a part of the New York State Supreme Court called the Appellate Division. If your case was in the Bronx or Manhattan Family Court, the appeal will be handled at a court called the First Department. This court is located at 27 Madison Avenue, on the corner of 25th Street in Manhattan. If your Family Court case was in Brooklyn, Staten Island, or Queens, your appeal will be handled at a court called the Second Department. This court is located at 45 Monroe Place in Brooklyn.



What can happen with the appeal?

The Appellate Division may **reverse**, **remand**, **affirm**, and/or **modify** the decision of the Family Court, or parts of the decision.

- **Reverse** means the Appellate Division decides that the decision of the Family Court was wrong. When this happens, the Appellate Division **vacates** the decision of the Family Court. Vacates means to cancel.
- **Remand** is when the Appellate Division tells the Family Court to hear the case again.

- **Affirm** is when the Appellate Division says the Family Court made the right decision. This means the decision stays the same. Many times a decision is affirmed because the Appellate Division accepted the opinion of the Family Court judge that one witness was more credible, or believable, than another witness. The Appellate Division cannot make a decision about how credible a person was because they did not see that person **testify**. Testify means speak at the trial.

- **Modify** is when the Appellate Division changes part of the Family Court decision.

How do I start the appeals process?

1. The first step is to serve the respondent in the appeal with a **Notice of Appeal**. This is a document that tells the other person in the case that you are appealing. It must include:
 - Your name
 - The order you are asking the Appellate Division to review
 - The date of the order
 - The court that entered the judgment (made the order)
 - The name of the court that you are asking to review your case on appeal
2. You must bring two copies of the Notice of Appeal with **proof of service** to the Clerk of the Family Court that made the order. (Proof of service means you let the respondent know you are appealing. For more information on proof of service, see the LIFT guide “Serving Court Papers.”) The Clerk will give one of the copies to the Clerk of the Appellate Division. You should also give copies of the Notice of Appeal to any lawyers or law guardians who were involved in your Family Court case.

More on how to start the appeals process

3. If you are filing in the First Department, you must file a **CPLR 5531 Statement** with that Appellate Division along with the Notice of Appeal. If you are filing in the Second Department, you must file a **Request for Appellate Division Intervention**, or **RADI**, with that Appellate Division along with the Notice of Appeal. These forms have similar information and ask the Appellate Division to hear your case.

How much time do I have to file the Notice of Appeal?

If the final Family Court order was given to you in court, you must file the Notice of Appeal within 30 days. If the order was mailed to you by the court, you must file the Notice of Appeal within 35 days from the day it was mailed. You have the same time limits when you want permission to appeal a temporary order.



What do I do after I file my Notice of Appeal?

1. After you file your appeal, you must get a full record of your case, including the transcripts. You will have to pay for transcripts unless you got **poor person relief**. This was explained in the answer to the question about getting a free lawyer.
2. You must then **perfect the appeal**. For some people, this means prepare a full record of your case including a **brief**. A brief is a written legal argument that explains the reasons for your appeal. You file the brief with the Appellate Division. You must also serve the brief on the

respondent. The full record of your case may also include a transcript, the order you are appealing, exhibits (evidence) that were used during the hearing and are related to the decision being appealed, and any other orders or opinions written by the judge about your case. Others are able to appeal on the record and can ask the Family Court to send the file to the Appellate Division.

In the First Department (the Bronx and Manhattan), you have nine months from the day you file the Notice of Appeal to perfect it. In the Second Department (Brooklyn, Staten Island, and Queens), you usually have 60 days from the day you receive the transcripts.

What do I do if I am the respondent on an appeal?

If you are responding to an appeal, you usually have about a month from the day you get the brief from the appellant to file your brief. The court will tell you how long you have. After you file your brief, the appellant has about 10 days to file and serve a reply brief. Either the appellant or respondent can ask for oral argument. Oral argument is the chance to make your case to the judges of the Appellate Division in person. The Appellate Division can agree to oral argument or say no. Sometimes no one will ask for an oral argument. If there is no oral argument, the judges make their decision based on the briefs and the case record.

How can I put a Family Court order on hold?

Filing a Notice of Appeal does not stop a Family Court order.

If you want to put the order on hold, you must file an application for a stay. A stay is when the family court delays putting the order into effect for a short time.

How do I ask for a stay?

To ask for a stay, you must file an **application for a stay** with the Appellate Division. All of the people involved in the case must get copies of the application.



The application should explain the mistakes you think the Family Court judge made. Because you can only get a stay if there is an emergency, the justice on duty at the Appellate Division will hear your request right away. If the stay is granted, the appeal will be **given a preference**. This means it will be heard as soon as possible.

Staying a Child Abuse or Neglect Case

Sometimes a Family Court or the Appellate Division issues an order to return a child who had been placed in foster care. In those cases, the court will issue a temporary stay of the order until 5:00 pm of the next business day. This is to give the Administration for Children's Services (ACS) or the child's law guardian time to file for a longer stay, if they want to. The court will not issue this temporary stay if everyone involved in the case agrees that it is not needed. The Family Court or the Appellate Division may also issue a stay if it thinks it is necessary to prevent imminent risk, or immediate danger, to the life of the child.

Staying a Child Support Order

When you apply to stay a child support order, the Appellate Court's decision may be based on the kind of financial guarantee you can give that you will pay the money ordered by the Family Court. The Appellate Court can order the Family Court to hold the money in a special account, called an **escrow account**. It can also give the payments to the person named in the order.

Can I appeal a child support order?

Yes, but before you appeal a child support order, you must first file an objection asking a judge in Family Court to review the order made by the **support magistrate** (MAH-jis-trate). The support magistrate is the person who decides cases about child support. You can object to the decision of the support magistrate and say you want a judge to look at it. If the judge makes a decision on your objection that you do not agree with, you can file an appeal. For information on how to object to a child support order, please see the LIFT guide "How to File an Objection or a Rebuttal of a Child Support Order."



If a judge made a decision in my case when I was not in court, can I appeal the decision?

Not right away. When you do not come to court, a judge can make a **default judgment**. This is a decision against you because you were not in court. If you want to cancel a default judgment and reopen the case, you must first file a **motion to vacate a default judgment** in Family Court. If the Family Court says no to your motion, you can appeal the decision.

Can I appeal a temporary order?

Only if the temporary order comes in an abuse or neglect case. For any other temporary order, you must first file a motion with the Appellate Division asking for permission to appeal.

In abuse or neglect cases, you have the right to appeal a temporary order or a final order without asking permission from the Appellate Division. For example, if a judge decides that you have abused or neglected your child and issues an order that temporarily places your child in foster care, you are allowed to appeal that decision. Abuse and neglect cases are given a preference. This means that your case should be heard as soon as possible.

How do I appeal to the Court of Appeals?

Sometimes people who are not happy with the decision of the Appellate Division of the Supreme Court can go one step higher to the Court of Appeals. The Court of Appeals hears very few cases each year. You have to get permission from the Court of Appeals to appeal the case.

Where can I get more information about filing an appeal?



You can pick up a guide to the appeals process at the Appellate Division where you are filing your appeal.

The First and Second Departments and the Court of Appeals have websites. The Frequently Asked Questions (FAQ) sections of these websites may answer some of your questions. The First Department's website is: www.courts.state.ny.us/courts/ad1/index.shtml. The Second Department's website is: www.courts.state.ny.us/courts/ad2/index.shtml. The website for the Court of Appeals is: <http://www.nycourts.gov/ctapps/>.

Each borough has a **public access** law library. Public access means open to everyone. A librarian may be able to help you look up the laws that apply to your case, as well as other helpful information.

The addresses and phone numbers for these libraries are:

Bronx Supreme Court Law Library
851 Grand Concourse, Room 817
Bronx, NY 10451
(718) 590-3678

Kings County Supreme Court Law Library
360 Adams Street, 3rd Floor
Brooklyn, NY 11201
(347) 296-1144

NY County Public Access Law Library
80 Centre Street, Room 468
New York, NY 10013
(646) 386-3715

Queens Supreme Court Law Library
Queens County General Courthouse
88-11 Sutphin Blvd.
Jamaica, NY 11435
(718) 298-1206

Richmond County Supreme Court Building
18 Richmond Terrace
Staten Island, NY 10301
(718) 390-5291

NOTE: Before you appeal a Family Court decision, you MUST contact the clerk of the Appellate Division in your department and ask about their specific rules.

This document should not take the place of a consultation with a lawyer. LIFT encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.

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