



# Family Court Stay Application Toolkit

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PRACTICAL GUIDANCE FOR FAMILY DEFENSE ATTORNEYS  
ON FILING AN APPLICATION IN THE APPELLATE DIVISION  
FOR A STAY OF A FAMILY COURT ORDER



## Family Court Stay Application Toolkit

This Toolkit is intended to guide family defense attorneys through the experience of filing an application in the Appellate Division for a stay of a Family Court order. It includes:

- FAQs;
- relevant forms;
- specific procedures for each Department of the Appellate Division;
- writing tips; and
- two sample stay applications.

Stay applications can be a tremendously useful tool, particularly in cases where there is an application to remove your client's children from their home. Removing children from home, even temporarily, can have profound and lasting negative consequences, and the importance of maintaining family integrity even in the face of challenging circumstances cannot be overstated. Experts and studies on child development consistently highlight the trauma associated with such separations, regardless of the duration. Children who experience removal are more likely to face poorer outcomes during childhood and into adulthood, including higher rates of incarceration, poorer cognitive development, significant mental health issues, substance abuse, and difficulty forming healthy relationships. Additionally, the trauma of removal can weaken the bonds of the parent/child relationship and exacerbate existing problems within the family, making it more difficult for families to heal and thrive.<sup>1</sup> A stay application pending an underlying appeal is therefore a critical option on the menu of advocacy for your clients, as it can potentially stave off these harmful outcomes.

If you have additional questions about any of the procedures here, we highly recommend that you call the court where you are filing your stay application. They are generally helpful and will be happy to walk you through everything you need to do, and contact information for each is contained within this guide.

ILS's Statewide Appellate Support Center is also available to assist you with your stay application, or other trial and appellate issues! We can discuss strategy, review papers, and answer questions. Feel free to complete our consultation [intake form](#) or contact us at [SASC@ils.ny.gov](mailto:SASC@ils.ny.gov).

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<sup>1</sup> For more on this, see [Trauma Caused by Separation of Children from Parents: A Tool to Help Lawyers](https://www.americanbar.org/groups/litigation/about/committees/childrens-rights/trauma-child-parent-separation/), American Bar Association (2019), available at <https://www.americanbar.org/groups/litigation/about/committees/childrens-rights/trauma-child-parent-separation/>

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## Stay application FAQs

### **Q: What does a stay application do?**

A: A stay application preserves the status quo in the trial court while an appeal is pending. There are two types of stay applications: a **stay of the order on appeal** pending determination of the appeal; and a **stay of the proceedings** below pending determination of the appeal. The first type is more common; the movant is asking for the Family Court's order to be "paused" while it is being appealed. A common example of this is an order temporarily removing a child from the home issued under Family Court Act § 1027; the stay pauses the order so the child can remain in the home while the appeal is pending. The second type is typically used when there is a procedural order on appeal that will significantly affect the underlying proceedings; for example, an order permitting a particular witness to testify as an expert. A stay in this case would pause the trial from going forward while that order is being appealed.

### **Q: What cases are good candidates for stay applications?**

A: Any case where you are concerned about the progress of the Family Court case while an appeal is pending is a good candidate for a stay application. To be successful in getting a stay, you must show a likelihood of success on the appeal, as well as a likelihood of irreparable harm if the stay is not granted. Common situations where you might consider a stay include orders involving the placement of children; orders directing the incarceration of your client; and evidentiary or procedural rulings that are central to a contested hearing.

Note: While you may appeal intermediate (pre-disposition) orders as of right in Family Court Article 10 cases, for other appeals from intermediate orders you must seek permission to appeal from the Appellate Division. This process involves making a motion for permission to appeal in lieu of filing a Notice of Appeal, and the same time frames apply. Two resources with more information on that topic are located [here](#) and [here](#). Whether pursuing an appeal as of right or by permission, protecting your clients' right to appeal is a crucial component of your duties as assigned counsel (see NYS Indigent Legal Service Standards – Parental Representation in State Intervention Matters, [Standard R](#)).

### **Q: Why should I consider making a stay application?**

A: A stay pending appeal may be beneficial to your client's Family Court case for several reasons:

- Presenting your arguments to an Appellate Division judge gives you a new audience and a new way to achieve your client's goals.
- A stay of an interim order, especially an order removing a child from the home, can change the entire trajectory of the case for your client.

- Pursuing a stay application and, ultimately, an appeal sends a strong message to the Family Court judge and other parties. That message may encompass cases beyond your individual case if the case involves common practices!

**Q: How long will it take to get my decision?**

A: Decisions on interim relief are often issued quickly, sometimes the same day. If the application then goes to a full motions panel (group of judges) for a decision on the ultimate relief, that can take several more weeks.

**Q: How do I file a stay application?**

A: The procedure for filing a stay application will vary in each Appellate Division Department. In addition to the statewide Rules of the Appellate Division (22 NYCRR Part 1250), each Department has its own rules. Furthermore, there are various informal procedures that are not enumerated in the rules. This Guide attempts to set forth specific information pertinent to each Department in as much detail as possible, but these procedures are subject to change. It is recommended that you contact the Appellate Division if you need clarification or want to verify any information; the court staff is generally helpful and understanding that, because these applications are infrequent, applicants need more guidance.

**Q.: What do I need to include in my stay application?**

A.: The requirements are slightly different in each Department, but in general:

- ✓ All Departments require you to file a **Notice of Appeal** in Family Court (page 5) and serve it on all parties to commence the appeal within 30 days of the order you are appealing. If you are seeking to appeal a non-final order in a case that is not a Family Court Article 10 case, you must make a motion to the Appellate Division seeking permission to appeal that order, which is subject to the same time limit.
- ✓ All Departments require you to file the **Certificate of Continued Indigency** (page 6) to have counsel assigned to the appeal. How this document is filed will vary depending on Department.
- ✓ In the First, Second, and Third Departments, you must also file an **Informational Statement** (page 7) with the Certificate and related paperwork. This form is available on the Appellate Division websites.
- ✓ All Departments require you to include information in your stay application about **how and when you informed the other parties of your application and provided the papers to them.**



SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, FOURTH DEPARTMENT

\_\_\_\_\_  
MATTER OF \_\_\_\_\_ )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
(INSERT TITLE OF ACTION ABOVE) )  
\_\_\_\_\_ )

**AFFIDAVIT OF  
SERVICE BY MAIL  
OF NOTICE OF APPEAL**

# \_\_\_\_\_  
(Insert Family Court Docket Number)

STATE OF NEW YORK)  
COUNTY OF \_\_\_\_\_ ) ss.:

\_\_\_\_\_, being duly sworn, deposes and says that (s)he is not a party to this action, is over 18 years of age, and resides at \_\_\_\_\_.

That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, your deponent served the within **Notice of Appeal** by depositing a true copy thereof enclosed in a post-paid wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service within the United States, addressed to each of the following parties and/or their attorneys at the last known address set forth after each name:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(PRINT NAME BELOW SIGNATURE)

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC/COMMISSIONER OF DEEDS

My commission expires: \_\_\_\_\_





# Supreme Court of the State of New York

## Appellate Division:                      Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

<b>Case Title:</b> Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance	
- against -		Date Notice of Appeal Filed	
		For Appellate Division	
<b>Case Type</b>	<input type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<b>Filing Type</b>	
	<input type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278	<input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review	
<b>Nature of Suit:</b> Check up to three of the following categories which best reflect the nature of the case.			
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment
<input type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court:	County:
Dated:	Entered:
Judge (name in full):	Index No.:
Stage: <input type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input type="checkbox"/> No    If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury
Prior Unperfected Appeal and Related Case Information	
Are any appeals arising in the same action or proceeding currently pending in the court? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span> If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.	
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:	
Original Proceeding	
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	
Proceeding Transferred Pursuant to CPLR 7804(g)	
Court:	County:
Judge (name in full):	Order of Transfer Date:
CPLR 5704 Review of Ex Parte Order:	
Court:	County:
Judge (name in full):	Dated:
Description of Appeal, Proceeding or Application and Statement of Issues	
Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.	

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

**Party Information**

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

## Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type:       Retained     Assigned     Government     Pro Se     Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type:       Retained     Assigned     Government     Pro Se     Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type:       Retained     Assigned     Government     Pro Se     Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type:       Retained     Assigned     Government     Pro Se     Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type:       Retained     Assigned     Government     Pro Se     Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City:	State:	Zip:	Telephone No:
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E-mail Address:

Attorney Type:       Retained     Assigned     Government     Pro Se     Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

### First Department Guide:

1. File the required documents to begin the appeal (Notice of Appeal, Certificate of Continued Indigency, and Informational Statement) via the Family Court EDDS system.
2. Go into NYSCEF and initiate the appeal. The AD will give you a case number (if there is a delay of more than a couple of days, call the court (212-340-0422) and explain that you are filing an emergency application and you need a case number).
3. Serve the Notice of Case number on other parties by mail within seven days of receiving it.
4. File your emergency motion on NYSCEF with proof of service.
  - a. NOTE: There is a **First Department-specific form** called “SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICE AND/OR INTERIM RELIEF” that must be completed and included as the first page of your motion pdf. This [form](#) is available on the First Department website.
5. You will get an email from the court if the judge would like to conference the case. This will be via phone or Microsoft Teams. This is more likely to happen when the court is considering granting the application.
6. Most of the time, the judge will decide the application the day of the conference; the case will not go to a full motions panel.
7. There is usually no opportunity to submit responding papers. If you are responding to a stay application that you know is coming, you could begin preparing a written response to upload immediately after the movant submits theirs. (On the flip side, if you are the movant, you may want to avoid giving your adversary more than 24 hours’ notice to limit their opportunity to work on their response.)
8. If there is no conference, you will receive an email with the court’s decision, generally within a few days.
9. If the stay is granted, it may be conditioned upon perfecting the appeal for a particular term of the court, so be mindful of the associated deadlines.

#### Checklist:

- ✓ NOA with order appealed from
- ✓ Certificate of Continued Indigency
- ✓ Informational Statement
- ✓ Proof of service for all items
- ✓ OTSC with “AD1 summary statement” as page 1 (include information about informing other parties)

### Second Department Guide:

1. File the required documents to begin the appeal (Notice of Appeal, Certificate of Continued Indigency, and Informational Statement with proof of service) via the Family Court EDDS system.

Note: this may introduce delay because Family Court transmits the documents to the Second Department. One way to avoid this delay is to contact the Family Court clerk and ask for a stamped copy of the documents, which you can then provide to the Second Department directly.

2. Inform the other parties at least 24 hours before you plan to appear in person on the application that you plan to do so.
3. The stay application and related documents must be uploaded to the digital portal on the Second Department's website before you plan to appear in person to present them to the court.

Note: leave some extra time if you have never done this before, because you will first need to request permission to access the portal. You will only need to request permission the first time.

4. The Second Department requires in-person appearances "unless excused by the court." If you cannot appear in person, you should call the court (**718-722-6480**) and obtain permission to appear by phone.
5. At the appearance, you must bring a hard copy of your application (copies should be provided to the other parties in advance by email.) The appearance will be with a court attorney, never the judge. The court attorney will then present the case to the judge and will send an email later in the day to let you know whether interim relief was granted or denied, with the signed order attached.
6. The email will include instructions: typically, you must serve the signed order and papers on other parties via email within a day; you must then upload proof of service on the digital portal.
7. While a single judge will decide whether to grant interim relief, the stay application will then go to a panel of judges to decide the ultimate relief. The other parties will have the opportunity to respond in writing to the application before the panel decides. This typically happens within two to three weeks.

#### Checklist:

- ✓ NOA with order appealed from
- ✓ Certificate of Continued Indigency
- ✓ Informational Statement
- ✓ Proof of service for all items
- ✓ OTSC (include information about informing other parties)

### Third Department Guide:

1. File the required documents to begin the appeal (Notice of Appeal, Certificate of Continued Indigency, Informational Statement and proof of service) via the Family Court EDDS system.
2. Serve the proposed Order to Show Cause (OTSC) and supporting papers upon the other parties to the appeal or proceeding and prepare proof of service.
3. Call the Third Department Clerk's Office (**518-471-4779**) when you are ready to submit your papers.
4. If there is no open appeal in NYSCEF, upload the appeal documents (Notice of Appeal, etc.) via the Appellate Division, Third Department digital filing portal.
5. The Third Department will not provide you with the name of the Justice assigned to consider the OTSC. Procedures after this point will vary somewhat from Justice to Justice.
6. If you would like to argue the application (recommended!) you should include that request in your papers. If the assigned Justice would like to hear oral argument, chambers will contact you to schedule it. This is typically done by phone conference, but you may request an in-person appearance.
7. If the assigned Justice signs the OTSC, the other side will typically have the opportunity to submit responsive papers. The procedure for doing so will vary depending on the assigned Justice.
8. The decision may come in the form of an email or a phone call.
9. After the assigned Justice makes a ruling on interim relief, the application may or may not go to a motions panel for a ruling on the ultimate relief.
10. If an order is signed, file the original order and motion papers with the Third Department Clerk's Office.

#### Checklist:

- ✓ NOA with order appealed from
- ✓ Certificate of Continued Indigency
- ✓ Informational Statement
- ✓ Proof of service for all items
- ✓ OTSC (include information about informing other parties)

### Fourth Department Guide:

1. File the required documents to begin the appeal (Notice of Appeal, Certificate of Continued Indigency, and proof of service) via the Family Court EDDS system.
2. Serve the proposed Order to Show Cause (OTSC) and supporting papers upon the other parties to the appeal or proceeding and prepare proof of service.
3. Call the Fourth Department Clerk's Office (**585-530-3100**) when you are ready to submit your papers. They will direct you to email the papers, along with required exhibits (Notice of Appeal with proof of filing and service; order being appealed; and proof of email and mail service of OTSC) to a specified email address.
4. If there is no open appeal in NYSCEF, upload the appeal documents (Notice of Appeal, etc.) via the Appellate Division, Fourth Department digital filing portal on their website (note: it is not required that you do this before filing your order to show cause, but it may streamline the process of issuing a decision.)
5. The Fourth Department will not provide you with the name of the Justice assigned to consider the order to show cause. Procedures after this point will vary widely from Justice to Justice.
6. If the assigned Justice would like to hear oral argument on the motion, chambers will contact you to schedule it. This is typically done by phone conference.
7. The other side will typically have the opportunity to submit responsive papers. The procedure for doing so will vary depending on the assigned Justice.
8. The decision may come in the form of a letter or a phone call.
9. After the assigned Justice makes a ruling on interim relief, the application may or may not go to a motions panel for a ruling on the ultimate relief.
10. If an order is signed, file the original order and motion papers in the Fourth Department Clerk's Office.

#### Checklist:

- ✓ NOA with order appealed from
- ✓ Certificate of Continued Indigency
- ✓ Proof of service for all items
- ✓ OTSC (include information about informing other parties)



## Stay application writing tips

### A. Overview:

1. Bottom line: these papers are being read quickly. Statements and arguments should be tight, clear, and persuasive. Make your point in the first two paragraphs.
2. Know your audience: most of these judges have little-to-no experience in Family Court. Avoid jargon and abbreviations. Instead, consider how would you explain this case to your relative at Thanksgiving who only has a vague idea about what you do for work? What is most compelling about your request?
3. Consider attaching exhibits (“show, don’t tell”).

### B. Facts:

1. These are extremely significant at this stage especially, so think about presenting them in a persuasive way and using them to lay the groundwork for your argument.
2. Don’t include every court appearance on the case if it isn’t significant to your application. Focus on pertinent facts only.
3. Descriptive topic headings and subheadings are a useful roadmap, even in your facts section. For example: instead of “The 1028 hearing” how about “The 1028 hearing where the sole evidence of imminent risk was the caseworker’s hearsay testimony.” An effective heading references the legal standard and makes it clear what the issue is.

### C. Argument:

1. Refer to the legal standard for a stay and the legal standard governing the underlying application. But other than that, don’t worry about having a ton of legal authority; this is not your final appellate brief.
2. Make your strongest point first.
3. Try to anticipate your adversary’s arguments and address them proactively.

## Stay application templates

### **Please read before using these templates:**

1. There are two templates included here; an Order to Show Cause for a stay of the order being appealed (removal order); and an Order to Show Cause for a stay of the proceedings pending appeal (seeking to stay fact-finding based on erroneous expert witness ruling).
2. Both include facts by way of example and citations to the applicable law, so be sure to go through and remove and/or change sections that do not apply to your case! For example, the application for a stay of the order on appeal is regarding a removal order under Section 1027 of the Family Court Act, so remove references to that section if your stay application does not involve that issue.
3. You will see that we have divided the papers up with topic headings, but you should consider incorporating additional descriptive subheadings in both the facts and argument sections to make the organization easier to follow.
4. These applications are highly fact-specific, so be ready to marshal all helpful relevant facts. Again, we have provided some examples here, but they are not by any means exhaustive.
5. You will also see that the Affirmations refer to an accompanying Memorandum of Law. This is not required but can be useful if the law you are including is voluminous or complicated.

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: [REDACTED] DEPARTMENT**

=====  
In the Matter of  
**[Child(ren)'s Name(s)]**

Children Under the Age of Eighteen Years,  
Alleged to be Neglected by

**ORDER TO SHOW CAUSE  
(With Stay)**

**[Appellant(s) Name(s)],**  
[REDACTED]-Appellant,

\_\_\_\_\_ County  
Family Court File No.: [REDACTED]  
Docket No(s): [REDACTED]

-against-

**[Respondent(s) Name(s)],**  
[REDACTED]-Respondent.

=====  
Upon the annexed Affirmation of [NAME OF ATTORNEY, ESQ.], dated [Date], and the papers annexed thereto,

NOW, let the [PETITIONER-RESPONDENT], [AGENCY/ATTORNEY]; the [AFC]; and [ANY OTHER ATTORNEY], show cause, before this Court, at the Courthouse thereof, located at [REDACTED], New York, [REDACTED], on the [REDACTED]<sup>th</sup> day of 20\_\_\_\_ at 10:00 A.M., or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein, pursuant to the Family Court Act (FCA) Sections 1027 and 1114(b); and Civil Practice Law and Rules (CPLR) Sections 5519(c) and 5521(b), granting [Respondent]-Appellant] the following relief:

1. Staying the Order of the Family Court of [date], which granted the [Petitioner]'s application for a remand of the child[ren];
2. Ordering that the subject child[ren] be immediately released to the care of [Appellant] pending the disposition of the appeal; and
3. For such other, further, and different relief as this Court may deem just and proper.

***SUFFICIENT CAUSE APPEARING, THEREFORE IT IS HEREBY:***

**ORDERED**, that pending determination of this motion, the Order of the Family Court, dated (date), which granted [Petitioner]'s application for a remand of the subject child[ren], is

hereby stayed and the child[ren] are to be immediately released to [Appellant]'s care and custody pending the disposition of the appeal; and it is further

**ORDERED**, that service of a copy of this Order to Show Cause, together with a copy of the papers upon which it is based, upon counsel for [Petitioner], the Attorney for the Child[ren], and [any other attorney], via [email], on or before \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, shall be deemed good and sufficient service hereof.

**SIGNED**, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, New York.

**ENTER :**

\_\_\_\_\_  
**ASSOCIATE JUSTICE**  
**APPELLATE DIVISION**  
**\_\_\_\_\_ DEPARTMENT**

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: [REDACTED] DEPARTMENT**

=====  
In the Matter of  
**[Child(ren)'s Name(s)]**

Children Under the Age of Eighteen Years,  
Alleged to be Neglected by

**AFFIRMATION  
IN SUPPORT**

**[Appellant(s) Name(s)],**  
[REDACTED]-Appellant,

\_\_\_\_\_ County  
Family Court File No.: [REDACTED]  
Docket No(s): [REDACTED]

-against-

**[Respondent(s) Name(s)],**  
[REDACTED]-Respondent.

=====  
STATE OF NEW YORK     )  
  )     SS.:  
COUNTY OF [REDACTED]     )

**[NAME OF ATTORNEY, ESQ.]**, hereby affirms the following under penalty of perjury:

1. I am an Attorney duly licensed to practice law in the State of New York and am a member of **[insert name of ACP or Firm, if applicable]**, with offices located at **[REDACTED]**. I represent **Respondent**-Appellant, **[NAME OF APPELLANT]**, in the above-captioned matter and, as such, am fully familiar with the facts, circumstances, documents, and proceedings to the extent discussed herein.

2. I make this Affirmation in support of **[Name of Appellant]**'s application to stay the Family Court's order temporarily removing **[his/her/their]** child[ren], and to order that the subject child[ren] be immediately released to Appellant's care pending the disposition of the appeal, as well as any other relief that this Court finds just and appropriate. *Please see Family Court's Decision and Order, dated [date], attached hereto as EXHIBIT A.*

3. The Family Court erred in **[removing the subject child[ren] from [Appellant]'s care]**. **[Include a short summary of your argument]**; for example here, Family Court erred in finding that the children would be at imminent risk in their parent's care.].

4. The following statements are made on information and belief, based on the records and files of the Family Court and on **[include whatever else]**.

## **STATEMENT OF FACTS**

5. [Include your relevant facts and procedural history in this section, including: how and when the removal happened; what the evidence was at the hearing; and what the Family Court’s order stated, including future court dates].

## **APPELLANT’S REQUEST FOR A STAY OF THE FAMILY COURT ORDER**

6. In considering a motion for a stay pursuant to CPLR § 5519(c), the movant must show a likelihood of success on the merits of the appeal and that the failure to grant the stay will cause irreparable harm (*see Da Silva v Musso*, 76 NY2d 436, 443 n.4 [1990] [In a motion for a stay under CPLR § 5519[c], the reviewing court “may consider the merits of the appeal” and “is duty-bound to consider the relative hardships that would result from granting (or denying) a stay”]; *see also Family-Friendly Media, Inc. v Recorder Tel. Network*, 74 AD3d 738, 739 [2d Dep’t 2010] [“A party moving for a preliminary injunction must demonstrate by clear and convincing evidence (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors the movant’s position”] [internal quotation marks omitted]).

7. In this case, the Family Court’s order to remove [Appellant]’s child[ren] from [his/her/their] custody should immediately be stayed because the order was not based on a sound and substantial basis in the record and, thus, is likely to be reversed on appeal (*see Matter of Alan C.*, 85 AD2d 912, 914 [2d Dep’t 2011] [“the record as a whole fails to provide a sound and substantial basis” for the Family Court’s removal order]; *Matter of Jesse J.*, 64 AD3d 598 [2d Dep’t 2009]). [Include caselaw from your Department reversing removal based on lack of imminent risk.]

8. [Include applicable statutory and case law to your situation; for example, here: In analyzing a removal application under FCA § 1027, the Family Court must determine whether removal is necessary to avoid imminent risk to the child[ren]’s lives or health. There must be evidence that the harm or danger is “imminent,” which the Court of Appeals has defined as “near or impending, not merely possible” (*Nicholson v Scoppetta*, 3 NY3d 357, 369 [2004]).]

9. [Applicable law: In addition, the Family Court must consider whether the risk to the child[ren] can be mitigated by reasonable efforts to avoid removal, such as issuing a temporary

order of protection or providing services to the family. *Id.* at 378-79. The plain language of Family Court Act § 1027 and the legislative history supporting it “establish that a blanket presumption favoring removal was never intended. The court must do more than identify the existence of a risk of serious harm. Rather, a court must weigh, in the factual setting before it, whether the imminent risk to the child can be mitigated by reasonable efforts to avoid removal. It must balance that risk against the harm removal might bring, and it must determine factually which course is in the child’s best interests.” *Id.* at 378. Indeed, given the well-recognized fact that children experience emotional and psychological harm when they are removed from their parents, the Court of Appeals has emphasized this State’s law and public policy of keeping families together whenever possible (*see In re Marino S.*, 100 NY2d 361, 369 [2003]; Social Services Law § 384-b[1]).]

10. Here, the Family Court’s decision to remove [Appellant]’s child[ren] from [his/her/their] care and custody was not supported by a sound and substantial basis in the record. [Include a summary of your argument: why was there no imminent risk to the children? Were there efforts short of removal that could have kept the children safe: for example, court orders and CPS supervision?]

11. Moreover, a failure to grant a stay will cause irreparable harm to this family. [Include your relevant supporting facts here: for example, disruptions to school, housing, medical care, and mental health treatment; if the children are young or otherwise especially vulnerable to the trauma of removal; if they had been in your client’s care continuously prior to this time, and if they are in stranger foster care].

12. The balance of the equities also lies in Appellant’s favor [include any additional facts supporting this here; for example, lack of efforts to prevent the removal, lack of opportunity to be fully heard in Family Court.]

13. In sum, the Family Court should not have removed [Appellant]’s child[ren] from [his/her/their] care. [Include a summary of all three prongs of your argument.].

14. Accordingly, for all these reasons, [as well as those stated in the accompanying memorandum of law], this Court should grant [Appellant]’s application for a stay of the Family Court’s [removal] order, and the subject child[ren] should be immediately released to Appellant’s care and custody pending the disposition of the appeal.

I affirm this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, New York

\_\_\_\_\_  
*Attorney for Appellant*

[Signature block]



**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: [REDACTED] DEPARTMENT**

=====  
In the Matter of  
**[Child(ren)'s Name(s)]**

Children Under the Age of Eighteen Years,  
Alleged to be Neglected by

**ORDER TO SHOW CAUSE  
(With Stay)**

**[Appellant(s) Name(s)],**  
[REDACTED]-Appellant,

\_\_\_\_\_ County  
Family Court File No.: [REDACTED]  
Docket No(s): [REDACTED]

**[Respondent(s) Name(s)],**  
[REDACTED]-Respondent.

=====  
Upon the annexed Affirmation of [NAME OF ATTORNEY, ESQ.], dated [Date], and the papers annexed thereto,

NOW, let the [PETITIONER-RESPONDENT], [AGENCY/ATTORNEY]; the [AFC]; and [ANY OTHER ATTORNEY], show cause, before this Court, at the Courthouse thereof, located at [REDACTED], New York, [REDACTED], on the [REDACTED]<sup>th</sup> day of 20\_\_\_\_ at 10:00 A.M., or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein, pursuant to Family Court Act (“FCA”) Section 1114(c) and Civil Practice Law and Rules (“CPLR”) Sections 5519(c) and 5521(b), granting [Respondent-Appellant] the following relief:

1. Staying the [fact-finding hearing] in this case pending determination of this appeal; and
2. For such other, further, and different relief as this Court may deem just and proper.

***SUFFICIENT CAUSE APPEARING, THEREFORE IT IS HEREBY:***

**ORDERED**, that pending determination of this motion, the [fact-finding hearing] in [REDACTED] County Family Court (File No(s): [REDACTED], Docket No(s): [REDACTED]), is hereby stayed pending determination of this appeal; and it is further

**ORDERED**, that service of a copy of this Order to Show Cause, together with a copy of the papers upon which it is based, upon counsel for [Petitioner], the Attorney for the Child[ren],

and [any other attorney], via [email], on or before \_\_\_\_ day of \_\_\_\_\_ 20 \_\_, shall be deemed good and sufficient service hereof.

**SIGNED**, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_  
\_\_\_\_\_, New York.

**E N T E R :**

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**ASSOCIATE JUSTICE  
APPELLATE DIVISION  
\_\_\_\_\_ DEPARTMENT**



her an expert. Despite a dearth of evidence that Dr. X.'s purported expertise would aid the court in determining whether [Respondent's name] neglected the subject children, the court deemed her to be an expert in Parental Alienation Syndrome and permitted her to testify as such. Because this witness's testimony is central to the proof offered at fact-finding, the proceedings must be stayed pending a determination on the appeal of Family Court's order.]

4. The following statements are made on information and belief, based on the records and files of the Family Court and on [include whatever else].

### **STATEMENT OF FACTS**

5. [Include your relevant facts and procedural history in this section: for example here, when you served your discovery demand, when you obtained the expert's qualifications, what they are, how you objected to them, and responses from the court and other parties. Also include the other anticipated proof at trial to show that the trial cannot go forward without impacting your client's ability to present a defense.]

6. Appellant respectfully requests that this Court grant a stay of the Family Court's [fact-finding hearing] in this case, pending a decision on the underlying appeal.

### **APPELLANT'S REQUEST FOR A STAY OF THE FAMILY COURT PROCEEDINGS**

7. In considering a motion for a stay pursuant to CPLR § 5519(c), the movant must show a likelihood of success on the merits of the appeal and that the failure to grant the stay will cause irreparable harm (*see Da Silva v Musso*, 76 NY2d 436, 443 n.4 [1990] [In a motion for a stay under CPLR § 5519[c], the reviewing court "may consider the merits of the appeal" and "is duty-bound to consider the relative hardships that would result from granting (or denying) a stay"]; *see also Family-Friendly Media, Inc. v Recorder Tel. Network*, 74 AD3d 738, 739 [2d Dep't 2010] ["A party moving for a preliminary injunction must demonstrate by clear and convincing evidence (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors the movant's position"] [internal quotation marks omitted]).

8. In this case, [include your argument in support of a likelihood of ultimate success on the merits]. Therefore, the Family Court's [fact-finding hearing] should immediately be stayed because [redacted] was not based on a sound and substantial basis in the record

and, thus, is likely to be reversed on appeal. [Insert your relevant statutory and case law; for example here]: Before the testimony of an expert witness can be received in evidence, the party seeking to offer that evidence has the burden of demonstrating the qualifications that make the witness an expert (*Meiselman v Crown Heights Hospital, Inc.*, 285 NY 389, 34 NE2d 367 [1941]). But the agency failed to do so here, and Family Court erred in denying the motion to preclude her testimony. First, the validity of the doctor’s purported field of expertise has been strongly called into question in the field of psychology. Courts have thus curtailed testimony regarding it: for instance: in the criminal context, expert testimony about Parental Alienation Syndrome (PAS) has been deemed inadmissible (*see Matter of Montoya v Davis*, 156 AD3d 132, fn. 5 [3d Dept 2017]).

9. Second, even if the court were to find that PAS is a valid subject for expert testimony, the doctor’s claimed qualifications fall far short of what is required to deem her an expert. Specifically, the agency’s responding papers included an affidavit from the doctor indicating that she had participated in two full-day seminars on PAS. But her affidavit failed to include other information about professional experience in the field, including how frequently, if ever, she has made that diagnosis. Further, while she stated that she was aware of “controversy” regarding PAS as a diagnosis, she did not detail why she nevertheless recognized its validity (*see, e.g., Matter of R.M. Children*, 165 Misc 2d 441 [Fam.Ct Kings Co 1995]).]

10. Furthermore, failure to grant a stay of the Family Court’s [fact-finding hearing] will cause irreparable harm. [Include your relevant supporting facts; for example here, what the relevant proof is likely to be at trial, especially if other evidence against your client is lacking; and why this testimony plays a central role in the proof against your client and your ability to prepare a defense: do you need to hire your own expert? Will it impact other evidence you present?].

11. Moreover, [include your argument that a balancing of the equities favors the movant’s position; was there anything unfair here? For example, did you ask for a hearing and not get it?].

12. In sum, the Family Court should not have \_\_\_\_\_.  
[Include a summary of your argument.].

13. Accordingly, for all these reasons, [as well as those stated in the accompanying memorandum of law], this Court should grant [Appellant]’s application for a stay of the Family Court’s [fact-finding hearing] in this case, pending decision on the appeal.

I affirm this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, New York

\_\_\_\_\_  
*Attorney for Appellant*

[Signature block]

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*Last updated December 5, 2024*