

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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M/cb

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2008-08120

ORDER TO SHOW CAUSE

In the Matter of Marcus Gross, appellant,  
v Sharon Fleming, respondent.

(Docket No. F-03354-08)

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Appeal by Marcus Gross from an order of the Family Court, Dutchess County, dated July 29, 2008. By scheduling order dated September 16, 2008, the appellant was directed to file one of the following in the office of the clerk of the court, within 30 days after the date of the scheduling order:

- (1) an affidavit or affirmation stating that there were no minutes of the Family Court proceedings to be transcribed for the appeal; or
- (2) if there were such minutes, an affidavit or affirmation that the transcript was received, and indicating the date that it was received; or
- (3) if the transcript was not received, an affidavit or affirmation stating that it was ordered and paid for, the date thereof and the date by which the transcript was expected; or
- (4) if the appellant was indigent and could not afford to obtain the minutes or perfect the appeal, a motion in this court for leave to prosecute the appeal as a poor person and for the assignment of counsel, pursuant to the requirements of CPLR 1101; or
- (5) an affidavit or an affirmation withdrawing the appeal.

The appellant has failed to comply with the scheduling order. Pursuant to § 670.4(a)(5) of the rules of this court (22 NYCRR 670.4[a][5]), it is

ORDERED that the parties or their attorneys are directed to show cause before this court why an order should or should not be made and entered dismissing the appeal in the

October 30, 2008

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above-entitled proceeding for failure to comply with the scheduling order dated September 16, 2008, by each filing an affirmation or affidavit on that issue in the office of the Clerk of this court and serving one copy of the same on each other on or before November 19, 2008; and it is further,

ORDERED that the Clerk of this court, or his designee, is directed to serve a copy of this order to show cause upon the parties or their attorneys by regular mail.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, looping initial "J".

James Edward Pelzer  
Clerk of the Court