

## Step 4: Opening Brief

- 1. Purpose:** This is your opportunity as the Appellant to make your arguments. You will explain what the District Court did wrong and tell the Court of Appeals what you want it to do to fix your case.
- 2. Deadline:** Due within 42 days (6 weeks) after the Record on Appeal is certified.
- 3. Formatting:** Colorado Appellate Rule (C.A.R.) 32 format includes:
  - 14-point font size,
  - double line spacing,
  - Bookman, Garamond, or Times New Roman font, and
  - printing on only one side of the page.
- 4. The Brief:** You may use JDF 1915 - Opening Brief Outline.

### Case Caption (*Boxes on the 1<sup>st</sup> Page*)

- Fill in the parties' names in the order they appeared in the District Court.
- The Appellant is the person who filed the appeal.
- The Appellee is the person responding to the appeal.

### Certificate of Compliance

- State how many words are in your Answer Brief.
- Your brief may not be more than 9,500 words, or 18 pages if you hand write the document.

## Body of the Form

### a. Table of Contents

List the required sections of the brief, and on which page they appear. The required sections are:

- Table of Authorities,
- Issues on Appeal
- Statement of the Case
- Argument Summary
- Argument, and
- Conclusion.

### b. Table of Authorities

This section lists the court cases (in alphabetical order), statutes (in numerical order), and other sources that you reference in your Reply Brief.

- Include the page number(s) where those sources are referenced in your Brief.

### c. Issues on Appeal

These are the questions you want the Court of Appeals to answer.

- An Issue on Appeal is a possible error that the District Court made in deciding the case.
- You are not limited to the issues you listed in the Notice of Appeal.

**Common Issues Include:**

**Cleary Wrong Factual Finding:** Did the District Court determine a fact incorrectly because there is no support in the Record on Appeal for that fact?

**Wrong Use of the Law:** Did the District Court use the wrong law or incorrectly interpret the law?

**Unreasonable Decision:** Was the District Court’s decision so unreasonable or unfair that it was outside the bounds of what could have been decided under the circumstances?

**d. Statement of the Case**

This section gives the Court of Appeals the facts it needs to know to review the case.

Include a citation to the Record on Appeal where each fact can be found.

- The Record will be sent to you by the Court of Appeals on a CD that will contain PDF documents.
- The Court of Appeals can only consider a fact if it’s found somewhere in the record.

**Citations:**

**Court File:** CF, p. \_ . For example: CF, p. 51.

**Transcript:** TR (date), p. \_\_\_\_: (lines numbers)

\_\_\_\_\_.

- For example: TR (July 1, 2017), p. 16:3-15. (read as, page 16, lines 3 through 15).
- TR (July 1, 2017), pp. 7:3 - 8:5. (read as, page 7 line 3 through page 8 line 5).

**Exhibits:** EX (event - Trial/Hearing/Motion), p. \_\_\_\_.

- For example: EX Trial, p. 7.

**Supplemental Records:** Add “Supp,”

- Then use the appropriate citation from above.

You may read the full Court of Appeals citation policy [here](#).

#### e. Summary of the Argument

Briefly state the key arguments that you are making for each Issue on Appeal.

- Don’t simply repeat your Statement of the Issues.
- This section is usually no longer than one page.

#### f. Argument

Argue one issue at a time.

For each issue, include:

#### **Standard of Review**

Propose which Standard of Review the Court of Appeals should use to review that issue. Cite the law that supports using that Standard of Review.

- The Standard of Review is the measuring tool that the Court of Appeals uses to determine whether the District Court made an error that must be reversed.
- Different types of errors may have different Standards of Review.

**Some examples:**

**De novo review:** The Court of Appeals will decide the issue on its own, regardless of what the District Court decided.

- This standard is usually used for issues of law, such as interpreting a statute.

**Clearly Erroneous Review:** The Court of Appeals will uphold what the District Court decided unless the decision was clearly wrong based on the information available at the time it was made.

- This Standard is usually used for issues of fact such as determining a party's income for child support purposes.

**Abuse of Discretion:** The Court of Appeals will uphold what the District Court decided unless its decision was clearly unreasonable, arbitrary, or unfair.

- This Standard is usually used when there was more than one way for the District Court to decide the issue such as deciding what parenting time plan is in a child's best interests.

## Preservation

You must bring an issue to the attention of the District Court before the Court of Appeals will consider it on appeal. This is known as preserving the issue for appeal.

- Cite to the location in the Record on Appeal where the issue was raised with the District Court and where the District Court ruled on the issue.

## Discussion

State your arguments on the issue.

- If you do not thoroughly discuss an issue, the Court of Appeals will not address that issue in its decision.

You will choose how the argument is organized and what sources to include.

### **One Method:**

**Introduction:** Introduce the Issue.

**Law:** Cite to the law that supports your argument.

**Facts:** State the facts from the case that are relevant in resolving this issue. Cite to the Record on Appeal where those facts can be found.

**Apply the Facts to Law:** Discuss why the Court of Appeals must resolve the case in your favor when it applies the facts to the law you cited.

**Apply Standard of Review:** Discuss how the Standard of Review was met.

**Conclude:** State how the Court of Appeals should resolve the issue.

You must include a “Standard of Review,” “Preservation,” and “Discussion” section for each Issue on Appeal.

#### g. Conclusion

State exactly what you want the Court of Appeals to do with the case.

#### h. Copies Delivered

You must send a copy of the brief to each party’s attorney or directly to a party who does not have an attorney.

- Certify the date that you sent the brief and check how service was made (by mail or in-person).
- List the address you used for each party or attorney in the case.

**5. Attachments:** The Court of Appeals may only review documents that are a part of the certified Record on Appeal.

- Do **not** include any documents from your case file with your brief.

**6. Filing** You must file your brief in the Court of Appeals. You may file in-person or by mail.

- If you file by mail, be aware that post-marked dates do not count toward the filing deadline.

The address for the Court of Appeals is:

2 East 14<sup>th</sup> Avenue

Denver, CO 80203

- Do not send a copy of your brief to the District Court.

## 7. Research

In order to understand the law and be able to make persuasive arguments on the issues, you will have to do research.

a. **Statutes & Rules:** To read the Colorado statutes and rules online, visit: <http://www.lexisnexis.com/hottopics/colorado/>

b. **Case Law:** To read and search Colorado cases online, visit: <https://scholar.google.com>

## 8. Read

Colorado Appellate Rule (C.A.R.) 28, 31, and 32.

## 9. Next Step

The people opposing you in the appeal have 35 days to file an Answer Brief.

If they do, you have 21 days to file a Reply Brief.

If not, case case we be assigned to a three-judge panel. In 3-5 months, the court will mail its decision.