

Step 4: Opening Brief

1. **Purpose:** This is your opportunity as the Appellant to make your arguments on appeal in writing. 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. **Deadlines:** The Opening Brief is due within 42 days (6 weeks) after the Record on Appeal is certified.
3. **Formatting:** Please adhere to the formatting guidelines in Colorado Appellate Rule (C.A.R.) 32, including using a 14-point font size, double line spacing, Bookman, Garamond, or Times New Roman font, and printing on only one side of the page.
4. **Writing your Brief:** You may use the following [Opening Brief Outline](#):

Case Caption (Boxes on the 1st 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. Title the document "Opening Brief".

Certificate of Compliance

State how many words are in your Opening Brief. Your Brief may not contain more than 9,500 words, or more than 30 pages if you hand write the document.

Body of the Form

Include the following sections in your Opening Brief (Read C.A.R. 28 for more information):

- a. **Table of Contents:** List the required sections of the Opening 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

Opening Brief. Include the page number(s) where these sources are referenced in your Brief.

- c. **Issues on Appeal:** List the questions you want the Court of Appeals to answer. These are the errors you believe the District Court made in deciding your case. Examples of common errors include the following:
- i. **Clearly Wrong Factual Finding:** Did the District Court determine a fact incorrectly because there is no support in the Record on Appeal for the fact?
 - ii. **Wrong Use of a Law:** Did the District Court use the wrong law or incorrectly interpret the law?
 - iii. **Unreasonable Decision:** Was the District Court’s decision manifestly arbitrary, unreasonable, or unfair? Was the decision outside the bounds of possible reasonable decisions that it could have made under the circumstances?

You are not limited by the issues listed in your Notice of Appeal.

- d. **Statement of the Case:** Write a brief statement of the facts and procedural history, which means what happened in the District Court, that the Court of Appeals will need to know in order to review your issues. Include a citation to the Record on Appeal where each fact can be found. The Record on Appeal will be sent to you by the Court of Appeals on a CD that will contain PDF documents. Cite to these documents as follows:
- i. **Court File:** R. CF, p. _____. For example: R. CF, p. 51.
 - ii. **Transcript:** R. Tr. (date), p. ____, line _____. For example: R. Tr. (July 1, 2015), p. 16, line 3.
 - iii. **Exhibits:** R. Ex. ____, p. _____. For example: R. Ex. 3, p. 7.
 - iv. **Suppressed Items:** R. Supr., p. _____. For example: R. Supr., p. 15.
 - v. **Supplemental Records:** Add “Supp. R.” and 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 for each Issue on Appeal. Don't simply repeat your statement of the Issues on Appeal. This section is usually no longer than one page.
- f. **Argument:** Argue one issue at a time. Under a separate heading for each issue, include the following sub-sections:
 - i. **Standard of Review:** State which Standard of Review the Court of Appeals should use in reviewing the issue and cite to the law that supports using that Standard. 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 include:
 - a. **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.
 - b. **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.
 - c. **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.
 - ii. **Preservation:** You are required to have brought your issue to the attention of the District Court before you may argue that issue in the Court of Appeals. This is known as preserving the issue for appeal.

You will need to cite to the location in the Record on Appeal where you raised the issue to the District Court and where the District Court ruled on the issue.

- iii. **Discussion:** State your arguments on the issue. You will choose how the argument is organized and what sources to include. One way to organize your argument is as follows:
 - a. **Introduction:** Introduce the issue and state the error that the District Court made.
 - b. **Law:** Cite to the law that supports your argument as to how and why the District Court erred.
 - c. **Facts:** State the facts from your case that are relevant for resolving the issue. Cite to the Record on Appeal where those facts can be found.
 - d. **Apply 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.
 - e. **Apply Standard of Review:** Discuss how the Standard of Review has been met.
 - f. **Conclude:** State how the Court should resolve the issue.
- iv. **Repeat for Each Issue Raised:** You must include a “Standard of Review,” “Preservation,” and “Discussion” section for each of your Issues on Appeal.
- g. **Conclusion:** State exactly what you want the Court of Appeals to do with your case.

Certificate of Service

You must send a copy of the Opening Brief to each party’s attorney or directly to a party who does not have an attorney. Certify the date that you sent the Opening Brief and 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 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 Opening Brief.

- 6. Filing:** You must file the Opening Brief in the Court of Appeals. You may file in-person or by mail. If you file by mail, be aware that the Brief must be received by the Court of Appeals by the deadline, regardless of when it was placed in the mail.

Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203

Do NOT file a copy of the Opening Brief with the District Court.

- 7. Legal Research:** In order to understand the law and be able to make persuasive arguments on your issues, you will have to do research.

- a. Statutes & Rules: To read the Colorado statutes and rules online, visit:

<http://www.lexisnexis.com/hottopic/colorado/>

- b. Case Law: To read and search Colorado cases online, visit:

www.scholar.google.com

- 8. Sample Brief:** Please see the [sample Opening Brief](#) for further help.

- 9. Be Sure to Read:** Colorado Appellate Rules (C.A.R.) 28, 31, and 32.

Appeal Steps:

- Step 1:** Notice of Appeal - Start of the appeal.
Step 2: Designation of Record - Packing list of documents.
Step 3: Record on Appeal - Case file, exhibits and transcripts.
Step 4: Opening Brief - Written arguments for the appeal.
Step 5: Answer Brief - Written response to the appeal.
Step 6: Reply Brief - Written response to the Answer Brief.
Step 7: Opinion - The Court of Appeals' decision.

Next Step

Step 5: Answer Brief (for the Appellee only) - Due within 35 days (5 weeks) after the Appellant's Opening Brief is filed.