

APPELLATE GUIDE FOR PARTIES

APPEALS FROM THE
COLORADO DISTRICT COURTS
except those juvenile proceedings held under
§19-1-309 (2) (b) & (c), C.R.S.

COLORADO COURT OF APPEALS

2 EAST 14TH AVENUE
DENVER, CO 80203

<http://www.courts.state.co.us/coa/coaindex>

This document is distributed as a public service and is not intended to be an authoritative reference. Parties to an appeal should always refer to the Colorado Appellate Rules (C.A.R.), the Colorado Revised Statutes (C.R.S.) or other authoritative sources, or consult with an attorney, whenever additional clarification is necessary.

Employees of the Colorado Court of Appeals, Colorado Supreme Court and the Colorado District & County Courts are not permitted to provide legal advice to any party.

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Appeals From the Colorado District Courts

- 1) **Notice of Appeal** (*Original plus 5 copies filed with the Court of Appeals, an advisory copy filed in the district court, and copies mailed to all parties to the case in the district court or their lawyers.*)
- A Must be filed in the Court of Appeals within 49 days after entry of judgment in the district court. **C.A.R. 4.¹**
 - B Original filed in the Court of Appeals. Advisory copy filed in the district court and mailed to each of the parties or counsel. **C.A.R. 3(a) and (i)**
 - C Filing fee due with Notice of Appeal. Filing fee will not be waived unless an *In Forma Pauperis* (IFP) order was issued in the district court. A copy should be attached to the Notice of Appeal.
 - D **Mandatory Contents of Notice of Appeal:**
See **C.A.R. 3 (d)** for additional specific contents.
 - 1) District Court Case Number
 - 2) Name of party(s) initiating the appeal, and complete addresses. If *pro se*, (representing yourself), give your full name, address and telephone number.
 - 3) Identify counsel for all other parties, including addresses.
 - 4) Original Signature
 - 5) Certificate of Service (*Your statement that a complete copy has been mailed to each of the parties, including the district court - list names, addresses and date mailed*)
 - 6) Attach a complete copy of the final order being appealed and include a brief description of the nature of the case, (not to exceed one page), the order being appealed, and the reason for the appeal of the order.

¹ C.A.R. is the abbreviation for the Colorado Appellate Rules – Found in the Colorado Revised Statutes, Volume 12, Chapter 32. C.R.S is the abbreviation for the Colorado Revised Statutes.
01/2012

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2) Notice of Cross-Appeal C.A.R. 3(h) and 12

A cross-appeal refers to an additional appeal filed by the other parties to the district court case after the original notice of appeal has already been filed.

- A Due within 14 days of the original Notice of Appeal OR 49 days from date of judgment in district court.
- B Filing fee due with Notice of Cross-Appeal. Filing fee will not be waived unless an *In Forma Pauperis* (IFP) order was issued in the district court. A copy should be attached to the Notice of Cross-Appeal.
- C Original filed in the Court of Appeals. Advisory copy filed in the district court and mailed to each of the parties or counsel. **C.A.R. 3(a) and (i)**

3) Appellee's Docket Fee Due at time of appellee's first filing and entry of appearance. C.A.R. 12

4) In Forma Pauperis (*exemption from paying certain fees due to indigence, or financial inability to pay*)

- A Motion filed in district court to proceed *in forma pauperis*
Motion must contain:
 - (1) Affidavit showing inability to pay fees or to give security.
A sample affidavit is included in [CJD 98-01](#)
 - (2) A belief that you are entitled to redress, and
 - (3) A statement of the issues you will present on appeal
- B If the district court:
 - (1) grants your IFP motion, you may proceed without further application to the appellate court and without payment of the filing fee; but you must provide a copy of the order to the appellate court.
 - (2) denies your IFP motion, you will be responsible for paying the filing fee. The district court shall state the reasons for denial in its order.

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- 5) **Record on Appeal** (All exhibits requested must be listed on the Designation of Record, which identifies specific portions of the district file that are relevant to the appeal) **C.A.R. 10**
- A Designation of Record is due 14 days after Notice of Appeal
- (1) Must be filed in the Court of Appeals and in district court.
 - (2) Designation of transcripts must include hearing/trial date and the name of the court reporter(s).
 - (3) Designation must specify all trial court documents, exhibits and transcripts to be included.
 - (4) The Designation of Record must be served on all named court reporters;
 - (a) Court reporters must provide an estimate of the total pages, cost and completion date within 14 days.
 - (b) Designating party shall pay the estimated cost to the reporter within 21 days.

Note: *An effective way to designate the record is to use the district court register of actions to identify those pleadings or transcripts to include in the record on appeal. The register of actions can be used by both the parties to ensure that all desired documents are listed in the filed Designation of Record document and ultimately included in the record.*

The parties should be aware of limitations on including exhibits in the record on appeal. Chief Justice Directive 85-09 prohibits inclusion of "dangerous instrumentalities" such as weapons and drugs. Also, oversized exhibits will not be sent unless requested by the appellate court.

If a party wants an oversized exhibit included in the record, the party should file a motion in the appellate court explaining why the exhibit is necessary. Typically, the Court of Appeals will defer arrangements for viewing oversized exhibits to the panel of judges assigned to decide the merits of the appeal.

- B Record on appeal is due within 91 days after filing the Notice of Appeal **C.A.R. 11(a)**
- (1) It's the appellant's responsibility to ensure timely filing
 - (2) The Court of Appeals will issue a notice of filing record including a briefing schedule.
 - (3) Motions for Extensions of time to file the record;
 - (a) must be filed by appellant on or before due date,
 - (b) must demonstrate good cause, and
 - (c) must include a supporting affidavit from the court reporter or district court clerk.
 - (d) See Section 6 below for additional requirements pertaining to motions.

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6) Motions

Note: Before filing a motion, consider whether the specific relief or action requested should be sought first in the district court. Certain types of motions (request for IFP status, transcripts at state expense, etc.) must be filed in the district court.

- A Formatting requirements are listed in **C.A.R. 32**
- B According to **C.A.R. 27** an original plus 5 copies must be filed in the Court of Appeals. However, as a court practice, the Court of Appeals does not require any additional copies.
 - (1) The policy described in #1 above does not apply to the Supreme Court.
 - (2) Motions for extension of time must demonstrate good cause **C.A.R. 26(b)**
 - (3) The court may or may not be defer ruling on a motion to allow a response from other parties. **C.A.R. 27(a) & (b)**
 - (4) All motions must be signed and include a proper certificate of service.

7) Briefs (A briefing schedule, detailing when opening briefs are due, will be sent to all parties after the record has been filed in the Court of Appeals.)

- A Original copy of the brief is required. As a court practice, 5 copies are not required.
- B Contents of brief: See **C.A.R. 28(a)**
 - (1) Table of contents with page references,
 - (2) Table of cases, statutes & authorities with page references,
 - (3) Statement of issues,
 - (4) Statement of the case,
 - (5) Legal arguments, preceded by a summary of the arguments, and
 - (6) Conclusion.

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7) **Briefs** ... *continued*

C Briefing schedule and page limits: [C.A.R. 28](#)

<u>TYPE</u>	<u>SIZE LIMIT</u>	<u>DUE DATE</u>
Opening Brief	30 pages or 9,500 words	42 days after record is filed
Answer Brief	30 pages or 9,500 words	35 days after opening brief is served
Reply Brief	18 pages or 5,700 words	21 days after answer brief is served

Refer to [C.A.R. 28\(h\)](#) for briefing schedule for cases involving cross-appeals.

- D Verify that all referenced attachments are included.
- E Formatting requirements are listed in [C.A.R. 32](#)
- F Must include original signature and certificate of service

8) **Oral Argument**

- A May be requested in a separate motion within 14 days of filing reply brief, or reply brief due date if none is filed, [C.A.R. 34\(b\)\(2\)](#). The court may deny oral argument.
- B Request to reschedule oral argument must be made within 7 days of the date a notice of setting is issued.

9) **Decision in Appeal**

- A Issuance of Opinion or Dismissal is the entry of judgment.
- B Optional Petition for Rehearing may be filed within 14 days from date of judgment [C.A.R. 40\(a\)](#)
 - 1) List judges on cover page [C.A.R. 40\(b\)](#)
 - 2) Maximum six (6) pages [C.A.R. 40\(b\)](#)

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10) Petition for Writ of Certiorari

Per **C.A.R. 52(b)(3)**, petition must be filed with the Clerk of Supreme Court within 28 days of:

- A Date Petition for rehearing was denied in Court of Appeals, if one was filed,
or
- B Expiration of the due date to file a petition for rehearing,
 - 1) Original plus 10 copies **C.A.R. 51(a)**
 - 2) Limited to 12 pages in length

GLOSSARY OF TERMS:

- Appellant:** The party who takes an appeal from district court to the Court of Appeals; the party filing the appeal.
- Appellee:** The parties in a cause against whom an appeal is taken.
- Brief:** A document summarizing the basis for the argument of the parties to an appeal. The opening brief is filed by the appellant and lists the legal basis for the appeal; an optional answer brief may be filed by the appellee(s). An optional reply brief may be filed by appellant in response to the answer brief. Only the opening brief is mandatory for the appeal to proceed.
- C.A.R.:** Abbreviation for the Colorado Appellate Rules. The rules outline the procedures for filing, reviewing and resolving appellate cases. The rules are published in the Colorado Revised Statutes, Volume 12, Chapter 32 and can be found in most public libraries or on the Internet at: <http://www.courts.state.co.us/supct/rules/rulesindex.htm>
- C.R.S.:** Abbreviation for the Colorado Revised Statutes or the state laws. Published volumes can be found in most public libraries or on the Internet at: <http://www.courts.state.co.us/supct/rules/rulesindex.htm>

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<i>Certiorari:</i>	A petition for the Supreme Court to review and 'certify' the record of the Court of Appeals, or the District Court in certain circumstances. The Supreme Court has discretionary authority to either grant or deny a Petition for writ of <i>Certiorari</i> .
Chief Justice Directive:	Policy guidance and instructions, issued by the Chief Justice of the Supreme Court, controlling procedures used in the Colorado state courts. These directives can be found on the Internet at http://www.courts.state.co.us/supct/directives/supctdirectives.htm
<i>In Forma Pauperis:</i>	Describes permission given to a poor person to proceed in court without payment of fees.
Mandate:	An order issued upon the decision of an appellate court returning jurisdiction to the district court. The mandate may direct a specific action to be taken or disposition of a case by the lower court, in accordance with the appellate decision.
<i>Pro se</i>	Latin term: for oneself (representing self)
Service:	"Service of Process"; Delivering to or leaving with other parties to a case, a copy of documents filed with the court. The date of service is the date upon which the document is placed in the mail or hand delivered. Documents filed in a court proceeding must include a proper 'Certificate of Service'. If delivered by mail, this is sometimes referred to as a 'Certificate of Mailing.'