

Step 2: Opening Brief

- 1. Purpose:** This is your opportunity to make your arguments for the appeal. You will explain what you believe the Industrial Claim Appeals Office (ICAO) did wrong. You will also tell the Court of Appeals what you want it to do to fix your case.
- 2. Deadlines:** The Opening Brief is due 14 days after the Record on Appeal is filed.
- 3. Record on Appeal:** The record is the set of documents showing what happened in your case before the agency. It includes rulings, filings and documentary evidence that were submitted, and any transcripts.

ICAO will send the record within 2-3 weeks from the start of the appeal. The Court of Appeals will send you a letter with a copy of the record and the date your Opening Brief is due. The record will be in PDF format on a CD.

- 4. Formatting:** Please use a 14-point font size, double line spacing, Bookman, Garamond, or Times New Roman font, and only print on one side of the page.
- 5. Writing your Brief:** You may use the following [Opening Brief Outline](#).

Case Caption (1st Page)

- Fill in the docket number used by ICAO.
- Enter your name as the Petitioner.
- Enter the names of the Respondents.
- Enter your name and contact information in the “Filing Party” box.
- Enter the “Court of Appeals Case Number.”

Certificate of Compliance

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

Body of the Form

- Issues on Appeal:** List the questions you want the Court of Appeals to answer. An Issue on Appeal is an error you believe the agency made in deciding your case. Remember, the Court of Appeals may alter the ICAO ruling only in

certain circumstances. Examples of common errors the Court of Appeals can act on include the following:

- i. **Clearly Wrong Factual Finding:** Did ICAO affirm (uphold) a factual finding that cannot be supported by the Record on Appeal?
- ii. **Wrong Use of a Law:** Did ICAO use the wrong law or incorrectly interpret the law?
- iii. **Other Legal Errors:** Did ICAO reach the wrong result based on the established facts?

Include the following sections for each Issue on Appeal you list:

b. Standard of Review:

- i. **What it Is:** The Standard of Review is a measuring tool. The Court of Appeals uses this tool to determine whether the agency made an error that it must reverse.
- ii. **What to Write:** State which Standard of Review the Court of Appeals should use to review this issue. Cite to the law that supports using that Standard. Different types of errors may have different Standards of Review.
- iii. **Examples:**
 - 1. **De Novo Review:** The Court of Appeals will decide the issue on its own, regardless of what the ICAO decided. This Standard is usually used for issues of law, such as interpreting a statute.
 - 2. **Clearly Erroneous Review:** This Standard is usually used for issues of fact. The Court of Appeals will accept what the ICAO affirmed (upheld) unless there is not relevant, believable, and trustworthy evidence to support the factual finding. The Court of Appeals will look at the whole record to see if there is substantial evidence to support the finding. For example, the issue

“Whether it was an error to find that Cinderella did not quit because of her working conditions?” would take the Clearly Erroneous Standard of Review.

3. **Abuse of Discretion:** The Court of Appeals will uphold what the ICAO decided, unless its decision was clearly unreasonable, arbitrary, or unfair. This Standard is usually used when there was more than one way for the agency to decide the issue. For example, the issue of

“Whether the ICAO erred in ruling that good cause was not shown for missing a hearing because of illness?”, would take the Abuse of Discretion Standard of Review.

c. **Preservation:**

- i. **What it Is:** You must have first argued your issue before the hearing officer (unemployment benefits) or administrative law judge (workers compensation). Then, you must have argued your issue again to the ICAO. Only then may you appeal that issue to the Court of Appeals. This is known as preserving the issue for appeal. If you did not bring the issue up before, then the Court of Appeals may not be able to consider the issue now.
- ii. **What to Write:** You will need to cite to the location in the Record on Appeal where you previously argued the issue to the hearing officer or administrative law judge, and the ICAO. You will also cite to where they both ruled on that issue.

- d. **Law:** Explain the law for this issue. Cite to the statutes, agency regulations, case law, or other laws that support your arguments as to how or why the agency erred (made a mistake). This will require you to do some research.

e. **Facts:**

- i. **What to Write:** Write a brief statement of the facts and procedural history of the case (what happened with the case in the agency proceedings). These are the facts that the Court of Appeals will need to know to review this issue.
- ii. **No New Facts:** The Court of Appeals may consider only the evidence that has already been submitted and appears in the Record on Appeal. Your hearing below was the one opportunity to provide that evidence.

iii. **Citations:** After each sentence that contains a fact from your case, include a citation to the Record on Appeal. Find the page on the CD where that fact can be found. Then after your statement with the fact, cite to the record as R. CF, p. ____.

iv. **Example:**

Cinderella started working for her stepmother on July 1, 2017. R. CF, p. 5. She was fired three months later for being barefoot. R. CF, p. 51. She testified at the hearing that she lost her shoe only the one time. R. CF, p. 79.

- f. **Discussion:** This is where you will apply the law to the facts of your case to reach your conclusion. You will also discuss why ICAO's conclusion on this issue was wrong. Finally, discuss how the Standard of Review for this issue has been met.
- g. **Conclusion:** State exactly what you want the Court to do with your case.
- h. **Repeat:** Repeat these sections (a-g above) for each Issue on Appeal you have.

Certificate of Service

Certify the date that you sent the Opening Brief and check how service was made (by mail or in person). Enter the addresses you used. Sign this page.

6. **Attachments:** The court may review only the documents that are a part of the certified record. Do **NOT** include any new documents with your Opening Brief.
7. **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 Opening Brief must be received by the Court of Appeals by the deadline.

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

8. **Service:** Unlike at the agency level, you must send a copy of the Opening Brief to each party's attorney or directly to the party if they do not have an attorney. You will send a copy to:

1. The Colorado Attorney General
2. The Industrial Claim Appeals Office
3. Each Respondent in the case.

9. Legal Research: You should do research to understand the law in order to make persuasive arguments.

- 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:

www.scholar.google.com

- c. Regulations: To read and search agency regulations online, visit:

www.sos.state.co.us/CCR

10. Sample Brief: Coming Soon.

11. Be Sure to Read: Colorado Appellate Rules (C.A.R.) 28, 31, and 32. Colorado Revised Statutes (C.R.S.) C.R.S. 8-74-107 (unemployment) and C.R.S. 8-43-308 (workers compensation). And Volume 7 of the Colorado Code of Regulations (CCR), [1101-2 \(unemployment\)](#) and [1101-3 \(workers compensation\)](#).

Appeal Steps:

- Step 1:** Notice of Appeal - Start of the appeal.
Step 2: **Opening Brief - Written arguments for the appeal.**
Step 3: Answer Brief - Written response to the appeal.
Step 4: Reply Brief - Written response to the Answer Brief.
Step 5: Opinion - The Court of Appeals' decision.

Next Steps After Filing:

Read the [Reply Brief instructions](#).

The Reply Brief is due 7 days after the Answer Brief is filed.