

## Step 5: Answer Brief

- 1. Purpose:** This is your opportunity as the Appellee to counter the arguments made in the Appellant's Opening Brief.
- 2. Filing is Optional:** You do not have to file an Answer Brief. However, not filing may lower your chances of winning the appeal.
- 3. Deadline:** The Answer Brief must be filed within 35 days (5 weeks) after the Appellant files the Opening Brief.
- 4. Filings Fees:** There is a fee of \$148 to file an Answer Brief. You may include a check or money order payable to the Colorado Court of Appeals with your Answer Brief. You may also pay with exact change or by credit card if you file in-person. Or you may pay by credit card over the phone by calling 720-625-5154.
  - a. Waiving the Filing Fee:** If you are indigent and cannot afford the filing fee, file a [Motion to Waive the Filing Fee \(JDF 205\)](#) and a [Proposed Order \(JDF 206\)](#) in your District Court case. If the District Court issues an order waiving the filing fee, file a copy of the order in the Court of Appeals case.
- 5. Formatting:** Please adhere to writing on 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.
- 6. Filling out the Brief:** You may use the following [Answer Brief Outline](#).

### Case Caption (in the 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. Title the document "Answer Brief."

### Certificate of Compliance

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

### Body of the Form

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

- a. Table of Contents:** List the required sections of the Answer Brief, and on which page they appear. The required sections are: Table of Authorities, Issues

on Appeal, Statement of the Case, Argument Summary, Argument, Conclusion, and Response to Attorney Fee Request (if applicable).

- 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 Answer Brief. Include the page number(s) where these sources are referenced in your Brief.
- c. **Issues on Appeal:** These are the questions the Appellant would like the Court of Appeals to answer. An Issue on Appeal is a possible error that the District Court made in deciding the case. You may either list the Issues on Appeal as the Appellant listed them in the Opening Brief, or restate them in your own words. You may not add additional Issues on Appeal, however, unless you filed your own Notice of Appeal or a Notice of Cross-Appeal.

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 the 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?
- d. **Statement of the Case:** This section gives the Court of Appeals the facts and procedural history information that it needs to know in order to review the case. You may either state that you agree with the Opening Brief's Statement of the Case, or you may provide your own Statement.

If you write your own Statement of 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. Cite to those documents as follows:

- i. **Court File:** CF, p. \_\_\_\_\_. For example: CF, p. 51.
- ii. **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).

- iii. **Exhibits:** EX (event - Trial/Hearing/Motion), p. \_\_\_\_\_. For example: EX Trial, p. 7.
- iv. **Supplemental Records:** Add “Supp,” 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 that you are making in response to each Issue on Appeal. Don’t simply repeat your Statement of the Issues. This section is usually no longer than one page.
- f. **Argument:** Respond to each Issue on Appeal in order. Under a separate heading for each issue, include the following sub-sections:
  - i. **Response to Standard of Review:** State whether you agree with the Opening Brief’s proposed Standard of Review for the issue. If you disagree, state your own proposed Standard of Review and 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 of Standards of Review are:
    - 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:** The Appellant must have brought 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.

The Appellant should have cited to the location in the Record on Appeal where the issue was raised to the District Court and where the District Court ruled on the issue. If you do not believe the issue was preserved, state your arguments as to why it was not preserved here.

**iii. Discussion:** This is your opportunity to respond to the arguments made in the Opening Brief. You may 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.
- b. **Law:** Cite to the law that supports your argument that the District Court did not err as to the issue.
- c. **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.
- d. **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.
- e. **Apply Standard of Review:** Discuss how the Standard of Review has not been met. For example: “The District Court’s income finding is not clearly erroneous.”
- f. **Conclude:** State how the Court of Appeals should resolve the issue.

**iv. Repeat for Each Issue Raised:** You must include a “Response to 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. **Response to Attorney Fee Request:** If the Opening Brief contained a request for attorney fees on appeal, respond to the request by explaining why the Appellant should not be awarded attorney fees.

#### Certificate of Service

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

Answer Brief and how service was made (by mail or in-person). List the address you used for each party or attorney in the case.

7. **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 Answer Brief.
8. **Filing:** You must file your Answer 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** file a copy of the Answer Brief in the District Court.

9. **Legal Research:** In order to understand the law and be able to make persuasive arguments on the Appellant's 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>

10. **Sample Brief:** Please see the [sample Answer Brief for further help](#).

11. **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 7: Reply Brief (for the Appellant only) - Due within 21 days (3 weeks) after the Appellee's Answer Brief is filed.