

Step 4: Opening Brief

- 1. Purpose:** This is your opportunity to make written arguments for the appeal. You will explain what the District Court did wrong. You will also tell the Court of Appeals what you want it to do to fix your case.
- 2. Deadlines:** The Brief is due within 42 days (6 weeks) after the Record is certified.
- 3. Formatting:** Follow the formatting guidelines in [Colorado Appellate Rule \(C.A.R.\) 32](#), including:
 - 14-point font size.
 - Double line spacing.
 - Add page numbers.
 - Bookman, Garamond, or Times New Roman font.
 - Writing or Printing on only one side of the page.
 - Page margins - 1.5” at the top; 1” on the sides and at the bottom.
- 4. Writing Your Brief:** You may use the following [Opening Brief Outline](#).

Case Caption (1st Page)

- Fill in the trial court county and case number.
- Enter your name as the Defendant-Appellant.
- Enter your name and contact information in the “Filing Party Name” box.
- Enter the Court of Appeals case number.

Certificate of Compliance

State how many words or pages are in your Opening Brief.

- Typed - Your Brief may not contain more than 9,500 words.
- Written - Your Brief may not be more than 30 pages.

Body of the Form

Include the following sections in your Opening Brief:

- **Table of Contents:** List the required sections of the Opening Brief. Then include the page number where that section starts. The required sections are:
 - Table of Authorities

- Issues on Appeal
 - Statement of the Case
 - Argument Summary
 - Argument
 - Conclusion
- **Table of Authorities:** This section lists the law you referenced in your Brief. Include the page number(s) where that law is cited.
 - List court cases in alphabetical order.
 - List statutes and rules in numerical order.
 - **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:
 - **Wrong Use of a Law:** Did the District Court use the wrong law? Give the wrong law to the jury? Incorrectly interpret the law?
 - **Clearly Wrong Factual Finding:** Was there no support on the Record on Appeal for a finding of fact?
 - **Unreasonable Decision:** Did the District Court abuse its decision-making power?

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

- **Statement of the Case:** Write out the facts the Court will need to know to review your Issues. Include a citation to the Record on Appeal where each fact can be found. The Record will come on a CD that will contain PDF documents. Cite to these documents as follows:
 - **Court File:** CF, p. _____. For example: CF, p. 51.
 - **Transcript:** TR (date), p. _____ : (line 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,” and then use the appropriate citation from above.

- **Summary of the Argument:** Briefly state the key arguments for each Issue on Appeal. Don't simply repeat your Issue. This section is usually no longer than one page.
- **Argument:** Argue one issue at a time. For each issue, you will include three sections:

1. Standard of Review.
2. Preservation.
3. Discussion.

1. Standard of Review: State which Standard of Review the Court of Appeals should use. Cite to the law that supports using that Standard.

The Standard of Review is the measuring tool that the Court of Appeals uses. This tool determines whether the District Court made an error that must be reversed. Different types of errors may have different Standards of Review. Some examples include:

- **De Novo Review:** The Court of Appeals will decide the issue again.
~ This Standard is used for issues of law.
- **Clearly Erroneous Review:** The Court of Appeals will uphold the decision unless it was clearly wrong. The decision becomes clearly wrong if no facts in the Record support it.
~ This Standard is used for issues of fact.
- **Abuse of Discretion:** The Court will keep the decision unless it is an abuse of power. The District Court abuses its power when:
 - The District Court applies the law incorrectly.
 - The District Court considers a factor it could not.
 - The District Court did not consider a required factor.
 - The District Court relied on a clearly wrong fact.
 ~ This Standard is used when there was more than one way to decide the issue.

2. Preservation: You must have first brought your issue to the attention of the District Court by an objection or argument. Then you may argue that issue in the Court of Appeals. This is known as preserving the issue for appeal.

State whether or not you preserved the issue.

- 3. Discussion:** The Court of Appeals will only decide issues you thoroughly discuss. State your arguments on the issue. You will choose how the argument is organized and what sources to include. Here is one way to organize your argument.
- **Introduction:** Introduce the issue and state the error that the District Court made.
 - **Law:** Cite to the law that supports your argument.
 - **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.
 - **Apply Facts to Law:** Discuss why the Court must find in your favor when it applies the facts to the law.
 - **Apply Standard of Review:** Discuss how the Standard of Review has been met.
 - **Conclude:** State how the Court should resolve the issue.
- Repeat this process for each of your Issues on Appeal.
 - **Conclusion:** State exactly what you want the Court of Appeals to do with your case.

Certificate of Service

You must send a copy of your Opening Brief to the Attorney General.

- Enter the date you sent the copy.
 - Check if the copy was mailed, hand-delivered, or placed in the prison mailing system.
- 5. Attachments:** The court may only review documents in the Record on Appeal. Do **NOT** include any documents from your case file with your Opening Brief.
- 6. Filing:** File the Brief in the Court of Appeals. You may file in-person or by mail.
- **As an Inmate:** The document needs to be placed in the prison mailing system by the due date.
 - **Not an Inmate:** The Court must receive the document by the deadline.

The address for the Court of Appeals is:

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:** You must do research to find the right law and make persuasive arguments.

Access legal materials on the Colorado Legal Help Center website.

http://www.coloradolegalhelpcenter.us/legal_materials

- 8. 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 Transcripts - Packing list of documents.
Step 3: Record on Appeal - Case file, exhibits and transcripts.
Step 4: Opening Brief - Your written arguments.
Step 5: Answer Brief - Government's response.
Step 6: Reply Brief - Your reply to the government's response.
Step 7: Opinion - The Court of Appeals' decision.

Your Next Step

Read the [Step 6 - Reply Brief](#) instructions.