

RULE CHANGE 2014(13)

COLORADO APPELLATE RULES

Rule 3. Appeal as of Right – How Taken

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Rule 32. Form of Briefs and Appellate Documents

Rule 57. Briefs — In General

Rule 3. Appeal as of Right — How Taken

(a) Filing the Notice of Appeal in Appeals from Trial Courts. An appeal permitted by law from a trial court to the appellate court ~~must~~shall be taken by filing a notice of appeal with the clerk of the appellate court within the time allowed by C.A.R. 4. Upon the filing of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal and all procedures concerning the appeal unless otherwise specified by these rules. An advisory copy of the notice of appeal ~~must~~shall be served on the clerk of the trial court within the time for its filing in the appellate court. Failure of an appellant to take any step other than the timely filing of a notice of appeal in the appellate court does not affect the validity of the appeal, but is a ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal. Content of the notice of appeal ~~is~~shall not ~~be deemed~~jurisdictional.

~~Comment: This change requires the direct filing of the notice of appeal with the appellate court.~~

(b) Filing the Notice of Appeal or Petition for Review in Appeals from State Agencies. An appeal permitted by statute from a state agency directly to the ~~c~~Court of ~~a~~Appeals or appellate review from a district court ~~must~~shall be in the manner and within the time prescribed by the particular statute.

(c) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order of a trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(d) Contents of the Notice of Appeal in Civil Cases (Other Than District Court Review of Agency Actions and Appeals From State Agencies). The notice of appeal ~~must~~shall set forth:

(1) A caption that complies in form with C.A.R. 32;~~:- In the caption:~~

~~(A) The case title in compliance with C.A.R. 12(a);~~

~~(B) The trial court from which the appeal is taken;~~

~~(C) The trial court judge;~~

~~(D) The party or parties initiating the appeal; and~~

~~(E) The trial court case number.~~

(2) A brief description of the nature of the case including:

(A) A general statement of the nature of the controversy (not to exceed one page);

(B) The judgment, order or parts being appealed and a statement indicating the basis for the appellate court's jurisdiction;

(C) Whether the judgment or order resolved all issues pending before the trial court including attorneys' fees and costs;

(D) Whether the judgment was made final for purposes of appeal pursuant to C.R.C.P. 54(b);

(E) The date the judgment or order was entered (if there is a question of the date, set forth the details) and the date of mailing to counsel;

(F) Whether there were any extensions granted to file any motion(s) for post-trial relief, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended;

(G) The date any motion for post-trial relief was filed;

(H) The date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j); and

(I) Whether there were any extensions granted to file any notice(s) of appeal, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended;

(3) An advisory listing of the issues to be raised on appeal;

(4) Whether the transcript of any evidence taken before the trial court or any administrative agency is necessary to resolve the issues raised on appeal, ~~the name of the court reporter, and the approximate length of any transcript of testimony anticipated to be filed in this action;~~

~~(5) As to filings in the Court of Appeals only, state whether or not a preargument conference is requested;~~

(5) Whether the order on review was issued by a magistrate where consent was necessary. If the order on review was issued by a magistrate where consent was not necessary, whether a petition for review of the order was filed in the trial court and ruled on by a trial court judge pursuant to the Colorado Rules for Magistrates;

(6) The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers;

(7) An appendix containing a copy of the judgment or order being appealed, the findings of the court, if any, the motion for new trial, if any, and a copy of the trial court's order granting or denying leave to proceed in forma pauperis if appellant is filing without docket fee pursuant to C.A.R. 12(b); and

(8) A certificate of service, in compliance with C.A.R. 25 showing service of a copy of the notice of appeal (with attachments) on the trial court and all other parties to the action in the trial court.

~~**Comment:** This rule combines the notice of appeal, designation of parties, and preliminary statements into one document which requires certain jurisdictional information in lieu of a copy of the trial court's register of actions. It also requires the attachment of the order being appealed to the notice of appeal. The reason for requesting the length of the transcript is for the purposes of making determinations, at a later time, as to time limitations to be placed upon court reporters and for the severity of sanctions, if necessary. In 1984 this change rearranges items (5) through (8) in the list of contents of the notice of appeal in civil cases.~~

(e) Contents of Notice of Appeal from State Agencies (Other Than the Industrial Claim Appeals Office) Directly to the Court of Appeals. The ~~n~~Notice of ~~a~~Appeal ~~must~~shall ~~s~~Set ~~f~~Forth:

(1) A caption that complies in form with C.A.R. 32;~~;~~ ~~In the caption:~~

~~(A) The case title in compliance with C.A.R. 12(a);~~

~~(B) The agency from which the appeal is taken;~~

~~(C) The party or parties initiating the appeal; and~~

~~(D) The agency case number.~~

(2) A brief description of the nature of the case including:

(A) A general statement of the nature of the controversy (not to exceed one page);

(B) The order being appealed and a statement indicating the basis for the appellate court's jurisdiction;

(C) Whether the order resolved all issues pending before the agency;

(D) Whether the order is final for purposes of appeal; and

(E) The date of service of the final order entered in the action by the agency. The date of service of an order is the date on which a copy of the order is delivered in person, or, if service is by mail, the date of mailing;:-

(3) An advisory listing of the issues to be raised on appeal;

(4) Whether the transcript of any evidence taken before the administrative agency is necessary to resolve the issues raised on appeal, ~~and the approximate length of any transcript of testimony anticipated to be filed in this action;~~

(5) The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers;

(6) An appendix containing a copy of the order being appealed and the findings of the agency, if any; and

(7) A certificate of service in compliance with C.A.R. 25 showing service of a copy of the notice of appeal (with attachments) on the state agency and all other persons who have appeared as parties to the action before the agency, or as required by section 24-4-106(4), C.R.S. concerning rule-making appeals.

(f) Contents of Notice of Appeal from District Court Review of Agency Actions. The notice of appeal ~~must~~shall set forth:

(1) A caption that complies in form with C.A.R. 32;:- ~~In the caption:~~

~~(A) The case title in compliance with C.A.R. 12(a);~~

~~(B) The district court from which this appeal is taken;~~

~~(C) The district court judge;~~

~~(D) The agency from which the judicial review is sought;~~

~~(E) The party or parties initiating the appeal;~~

~~(F) The district court case number; and~~

~~(G) The agency case number.~~

(2) A brief description of the nature of the case including:

(A) A general statement of the nature of the controversy (not to exceed one page);

- (B) The decision or order being appealed and a statement indicating the basis for the appellate court's jurisdiction;
- (C) Whether the decision or order resolved all issues pending before the agency;
- (D) Whether the decision or order is final for purposes of appeal;
- (E) The date the decision or order was entered (if there is a question of the date, set forth the details) and the date of mailing to counsel;
- (F) Whether there were any extensions granted to file any motion(s) for post-trial relief, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended;
- (G) The date any motion for post-trial relief was filed;
- (H) The date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j);
- (I) The date the notice of intent to seek appellate review was filed with the district court pursuant to ~~(C.R.S. 24-4-106(9)), C.R.S.~~; and
- (J) Whether there were any extensions granted to file any notice(s) of appeal, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended;
- (3) An advisory listing of the issues to be raised on appeal;
- (4) Whether the transcript of any evidence taken before the administrative agency is necessary to resolve the issues raised on appeal, and the approximate length of any transcript of testimony anticipated to be filed in this action;
- (5) The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers;
- (6) An appendix containing a copy of the decision or order being appealed, the agency order and the findings of the agency, if any; and
- (7) A certificate of service in compliance with C.A.R. 25 showing service of a copy of the notice of appeal (with attachments) on the reviewing court, the agency and all other persons who have appeared as parties to the district court proceedings.
- (g) Contents of the Notice of Appeal in Criminal Cases.** The ~~n~~Notice of ~~a~~Appeal must~~shall~~ set~~f~~Forth:
- (1) A caption that complies in form with C.A.R. 32; ~~In the caption:~~

- ~~(A) The case title in compliance with C.A.R. 12(a);~~
- ~~(B) The district court from which the appeal is taken;~~
- ~~(C) The party or parties initiating the appeal;~~
- ~~(D) The trial court case number; and~~
- ~~(E) The trial court judge.~~

(2) A brief description of the nature of the case including:

- (A) A general statement of the nature of the case;
- (B) The charges upon which defendant was tried;
- (C) The charges for which defendant was convicted;
- (D) The date judgment of conviction or the order granting or denying a motion for postconviction relief was entered;
- (E) The date the sentence was imposed;
- (F) The sentence; and
- (G) A statement indicating the basis for the appellate court's jurisdiction;

(3) Whether an appeal bond was granted and, if so, the amount of the bond;

(4) An advisory listing of the issues to be raised on appeal;

(5) Whether any transcript of evidence taken at trial is necessary to resolve the issues on appeal; ~~whether such transcript will exceed twenty-five pages in length, and the name of the court reporter;~~

(6) The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers;

(7) An appendix containing a copy of the judgment or order being appealed, the mittimus, the findings of the court, if any, the motion for new trial, if any, and a copy of the trial court's order granting or denying leave to proceed in forma pauperis if appellant is filing without docket fee pursuant to C.A.R. 12(b); and

(8) A certificate of service in compliance with C.A.R. 25 showing service of a copy of the notice of appeal (with attachments) on the trial court and all other parties to the action in the trial court.

~~**Comment:** Combines the notice of appeal, designation of parties, and preliminary statement into one document. Requests certain jurisdictional information. Also, requires the attachment of a copy of the order being appealed to the notice of appeal. This rule also requires a notice of appeal in criminal cases and should include information about counsel for the parties as is now required in the notices for all other types of appeal.~~

Comment: In most criminal cases, the State of Colorado is represented by the Office of the Attorney General. See §24-31-101(1)(a), C.R.S.

(h) Contents of any Notice of Cross-Appeal. A notice of cross-appeal ~~must~~shall set forth the same information required for a notice of appeal and ~~must~~shall set forth the party initiating the cross-appeal and designate all cross-appellees.

~~(i) Number of Copies to be Filed. Five copies of the notice of appeal or cross-appeal shall be filed with the original.~~

Comment: Rule 3 combines the notice of appeal, designation of parties, and preliminary statement into one document, and requests certain jurisdictional information. The rule also requires the attachment of a copy of the order being appealed to the notice of appeal. It also requires a notice of appeal in criminal cases and should include information about counsel for the parties as is now required in the notices for all other types of appeal.

Rule 25. Filing and Service

(a) Filing. ~~Documents~~Papers required or permitted to be filed in the appellate court ~~must~~shall be filed with the clerk. Filing may be accomplished by e-filing pursuant to C.A.R. 30, by mail addressed to the clerk, or by hand delivery to the clerk's office. The date of filing of documents is the date they are received by the clerk regardless of method of filing. ~~but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that (1) briefs shall be deemed filed on the day of mailing if the most expeditious form of delivery by mail, excepting special delivery, is utilized; and (2) a paper filed by an inmate confined to an institution shall be deemed filed when filed in accordance with C.A.R. 25(b). If a motion requests relief which may be granted by a single judge or justice, the judge or justice may permit the motion to be filed with him or her, in which event the judge or justice shall note thereon the date of filing and shall thereafter transmit it to the clerk.~~

(b) Inmate Filings. Documents filed by an inmate confined to an institution will be deemed filed when filed in accordance with C.A.R. 25(b). ~~And~~Documents filed by an inmate confined in an institution ~~are~~is timely filed with the court if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule.

(c) Service of all ~~Documents~~ Papers-Required. Copies of all ~~documents~~ papers filed by any party and not required by these rules to be served by the clerk ~~must~~shall, at or before the time of filing, be served by a party or person acting for that party on all other parties to the appeal or review. Service on a party represented by counsel ~~must~~shall be made on counsel.

(d) **Manner of Service.** Service may be personal or by mail or E-Service. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. ~~Service by mail is complete on mailing.~~ E-Service is complete upon the time and date of transmission by the E-Service provider.

(e) **Proof of Service.** ~~Documents Papers~~ presented for filing ~~must shall~~ contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the ~~documents papers~~ filed. The clerk may permit ~~documents papers~~ to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

Rule 32. Form of Briefs and Appellate Documents

(a) **Standards for Non-Typewriter-Produced Briefs and Other Appellate**

~~Documents Papers.~~ Except for briefs and other appellate ~~documents papers~~ produced through the use of a typewriter, all briefs and appellate ~~documents papers~~ including those ~~e~~E-filed must comply with ~~the~~ following standards:

(1) The typeface ~~used for all text, including footnotes,~~ must be 14-point or larger, except that the caption may be in 12-point if necessary to fit on one page~~:-~~

(2) The typeface must be a plain, ~~R~~roman style ~~with serifs,~~ ~~although I~~italics or boldface may be used for emphasis~~; and~~.

(3) ~~If a b~~Briefs and ~~or~~ other appellate ~~documents paper is~~ subject to a word limit~~it~~ must include a certificate by the attorney~~;~~ or ~~by an~~unrepresented party~~;~~ that the ~~document paper~~ complies with the applicable word limit. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the ~~document paper~~. The certificate must state the number of words in the ~~document paper~~.

(b) **Standards for All Briefs and Other Appellate** ~~Documents Papers.~~ All briefs and other appellate ~~documents papers~~, including those produced through the use of a typewriter, must comply with the following standards~~:-~~:

(1) ~~The pages of all documents submitted to the court must be~~ ~~Only~~8 1/2 by 11 inch ~~format;~~ ~~paper shall be used.~~

(2) Text ~~must shall~~ be double-spaced, except that ~~the headings, footnotes, and~~ quotations more than two lines long may be indented and single-spaced~~;~~ ~~and headings and footnotes may be~~ ~~single spaced.~~

(3) Margins ~~must shall~~ be no less than 1 1/2 inches at the top and 1 inch at the left, right, and bottom, excluding page numbering, which ~~is shall be~~ required~~; and~~.

(4) Text ~~must~~shall appear only on the face side of each page.

(c) **Binding and Duplication for Non E-Filed Documents.** Briefs and other appellate ~~documents papers may~~ shall be produced by ~~any~~ duplicating or copying process ~~that~~which produces a clear black image on white paper. Carbon copies may not be submitted without permission of the court, except by parties allowed to proceed in forma pauperis. Consecutive sheets ~~must~~shall be ~~stapled together attached~~ at the top left margin.

(d) **Caption**~~Basic Document Information.~~ Each brief or other appellate document ~~must~~shall contain basic document information ~~in a case caption~~ on the first page of the document. The information in the ~~case~~ caption ~~must~~shall be arranged in the following order and ~~must~~shall be in the forms illustrated in subsection (1) or (2) below, ~~except that documents issued by the court or clerk of court should omit the attorney section as illustrated in subsection (1)(II) and (2)(II):~~

On the left side:

Court name and mailing address.

Name of lower court(s), lower court judge(s), and case number(s).

Names of parties.

Appellate court party designations

In the supreme court: Appellant(s) or Appellee(s) in cases in which the supreme court has original appellate jurisdiction; Petitioner(s) or Respondent(s) in original proceedings and certiorari proceedings.

In the court of appeals: Petitioner(s) or Respondent(s) in appeals filed pursuant to C.A.R. 3.1 and 3.4 (see Appendix to Chapter 32); Appellant(s) or Appellee(s) in all other appeals.

Name, address, ~~and~~ telephone number, e-mail address (if any), and fax number (if any) of attorney or pro se party filing the document. ~~Fax number and e-mail address are optional.~~

Attorney registration number.

Document title.

On the right side:

An area for “Court Use Only” that is at least 2 1/2 inches in width and 1 3/4 inches in length (located opposite the court information).

Case number.

(1) Illustration of Preferred Case Caption Format:

(I) Preferred Caption for documents initiated by a party:

<p>[Designation of <u>Name of Court in which proceeding is filed</u></p> <p>Court Address:</p>	
<p>[Name of Lower Court(s), Lower Court Judge(s), <u>and Case Number(s)</u></p> <p>and Case Number(s)]</p>	
<p><u>Party Designation for Initiating Party (e.g. Appellant or Petitioner)</u>Appellant(s):</p> <p><u>Name of Party</u></p> <p>[Substitute appropriate party designations & names]</p> <p><u>Party Designation for Responding Party (e.g. Appellee or Respondent)</u>Appellee(s):</p> <p><u>Name of Party</u></p>	<p>COURT USE ONLY</p>
<p>Attorney or Party Without Attorney: (Name & Address)</p> <p>Phone Number:</p> <p>FAX Number:</p> <p>E-mail:</p>	<p>Case Number:</p>

Atty. Reg. #:	
NAME OF DOCUMENT	

(II) Preferred Caption for documents issued by the court or clerk of court:

<p>[Designation of Court]</p> <p>-</p> <p>Court Address:</p> <p>-</p>	
<p>[Name of Lower Court(s), Lower Court Judge(s), and Case Number(s)]</p> <p>-</p>	
<p>Appellant(s):</p> <p>-</p> <p>[Substitute appropriate party designations & names]</p> <p>-</p>	COURT USE ONLY
<p>Appellee(s):</p> <p>-</p>	
<p>-</p> <p>NAME OF DOCUMENT</p>	

(2) Illustration of ~~Alternate~~ ~~Optional~~ Case Caption:

(1) ~~Optional~~ Caption for documents initiated by a party:

<p>[Designation <u>Name</u> of Court <u>in which proceeding is filed</u>]</p> <p>Court Address:</p>	
<p>[Name of Lower Court(s), Lower Court Judge(s), <u>and Case Number(s)</u>]</p> <p>and Case Number(s)]</p>	
<p><u>Party Designation for Initiating Party (e.g. Appellant or Petitioner)</u>Appellant(s):</p> <p><u>Name of Party</u></p> <p>[Substitute appropriate party designations & names]</p> <p><u>Party Designation for Responding Party (e.g. Appellee or Respondent)</u>Appellee(s):</p> <p><u>Name of Party</u></p>	<p>COURT USE ONLY</p>
<p>Attorney or Party Without Attorney: (Name & Address)</p>	<p>Case Number:</p>

Phone Number: FAX Number: E-mail: Atty. Reg. #:	
NAME OF DOCUMENT	

(II) Optional Caption for documents issued by the court or clerk of court:

{Designation of Court} - Court Address: -	
{Name of Lower Court(s), Lower Court Judge(s), and Case Number(s)} -	
Appellant(s): - {Substitute appropriate party designations & names} -	
Appellee(s):	COURT USE ONLY Case Number:

-	-
NAME OF DOCUMENT	

(e) **Improper Form of Briefs and Other DocumentsPapers.** In the event the clerk determines that a brief or other ~~document~~~~paper~~ does not comply with the Colorado Appellate Rules or is not sufficiently legible, the clerk ~~must~~~~shall~~ accept the document for filing but may require that a conforming document be filed.

(f) **Certificate of Compliance.** Each brief ~~must~~~~shall~~ include, on a separate page immediately behind the caption page, a certificate that the brief complies with all requirements of C.A.R. 28 and C.A.R. 32. Form 6 is a suggested form for a certificate of compliance, use of which ~~will~~~~shall~~ be regarded as meeting the requirements of C.A.R. 32(a)(3) and C.A.R. 32(f).

COMMENT

This rule conforms the appellate practice to the forms of case captions provided in C.R.C.P. 10 for all documents~~that are~~ filed in Colorado ~~appellate~~ courts,~~including both criminal and civil cases.~~ The purpose of the form captions is to provide a uniform and consistent format that enables practitioners, clerks, administrators, and judges to locate identifying information more efficiently.

The preferred case caption format for documents initiated by a party is found in subsection ~~(d)(1)(I).~~ ~~The preferred caption for documents issued by the court or clerk of court is found in subsection (e)(1)(II).~~ ~~Because some parties who cannot may have difficulty formatting their documents to include vertical lines and boxes may use the;~~ alternate case caption formats ~~are found~~ in subsections ~~(d)(2)(I) and (e)(2)(II).~~ However, the box format is the preferred and recommended format.

~~The boxes may be vertically elongated to accommodate additional party and attorney information if necessary. The “court use” and “case number” boxes, however, shall always be located in the upper right side of the caption.~~

~~Forms approved by the State Court Administrator's Office (designated “JDF” or “SCAO” on pre-printed or computer-generated forms), forms set forth in the Colorado Court Rules, volume 12, C.R.S. (including those pre-printed or computer-generated forms designated “CRCP” or “CPC”~~

~~and those contained in the appendices of volume 12, C.R.S.), and forms generated by the state's judicial electronic system, "ICON," shall conform to criteria established by the State Court Administrator's Office with the approval of the Colorado Supreme Court. This includes pre-printed and computer-generated forms. JDF and SCAO forms and a flexible form of caption which allows the entry of additional party and attorney information are available and can be downloaded from the Colorado courts web page at <http://www.courts.state.co.us/seao/Forms.htm>.~~

Rule 57. Briefs — In General

Briefs on the Merits. Briefs of the petitioner and the respondent on the merits must comply with the content and length requirements of C.A.R. 28 and the form and service requirements of ~~may be typewritten and in the form as permitted in~~ C.A.R. 32. Briefs must ~~and be~~ filed within the time prescribed ~~as provided~~ in C.A.R. 31; except that in workers' compensation cases the petitioner ~~shall~~ must serve and file the petitioner's opening brief within 14 ~~ten~~ days and the respondent ~~shall~~ must file the respondent's brief within 7 ~~five~~ days after service of the petitioner's brief, and no other brief ~~shall~~ will be permitted. ~~The rule concerning the content and length of briefs shall be the same as in C.A.R. 28.~~ Incorporation by reference of briefs previously filed in the lower court is prohibited.

Amended and Adopted by the Court, En Banc, October 17, 2014, effective immediately.

By the Court:

Allison H. Eid
Justice, Colorado Supreme Court