

Opening Brief

Appeal of a County Court Judge's Final Order in a County Civil or Small Claims Case

1. **Purpose:** This is your opportunity to write your arguments on appeal. You will discuss what the County Court did wrong, and inform the District Court what they should do to fix your case.
2. **Deadlines:** Your Opening Brief is due within 21 days after the record is certified.
3. **Formatting:** Please adhere to the formatting guidelines in Colorado Rules of Civil Procedure (C.R.C.P.) 10, and 121 § 1-15, 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.
4. **Writing your Brief:** You may use the general outline provided or create your own that complies with the Colorado Rules of Civil Procedure (C.R.C.P.).

Case Caption (in the boxes on the 1st Page)

Fill in the parties' names in the order they appeared in the County Court. The Appellant is the person who filed the appeal. The Appellee is the person responding to the appeal. Title the document "Opening Brief".

Certificate of Compliance

State how many words are in your Opening Brief. Your Brief may not contain more than 4,000 words, or more than 15 pages if you hand write the document.

Body of the Form

Include the following sections in your Opening Brief (Read C.R.C.P. 411 for more information):

- a. **Issues on Appeal:** List the questions you want the District Court to answer. These are the errors you believe the County Court made in deciding your case. Examples of common errors include the following:

- i. **Clearly Wrong Factual Finding:** Did the County Court determine a fact incorrectly because there is no support in the Record on Appeal for the fact?
 - ii. **Wrong Use of a Law:** Did the County Court use the wrong law or incorrectly interpret the law?
 - iii. **Unreasonable Decision:** Was the County 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?
- b. **Statement of the Case:** Write a brief statement of the facts and procedural history, which means what happened in the District Court, that the District Court will need to know in order to review your issues. Include a citation to the Record on Appeal where each fact can be found. The Record on Appeal contains PDF documents. Cite to these documents as follows:
 - i. **Court File:** R. CF, p. _____. For example: R. CF, p. 51.
 - ii. **Transcript:** R. Tr. (date), p. ____, line _____. For example: R. Tr. (July 1, 2015), p. 16, line 3.
 - iii. **Exhibits:** R. Ex. ____, p. _____. For example: R. Ex. 3, p. 7.
- c. **Argument:** Argue one issue at a time. Under a separate heading for each issue, include the following sub-sections:
 - i. **Standard of Review:** State which Standard of Review the District Court should use in reviewing the issue and cite to the law that supports using that Standard. The Standard of Review is the measuring tool that the District Court uses to determine whether the County Court made an error that must be reversed. Different types of errors may have different Standards of Review. Some examples include:
 - a. **De Novo Review:** The District Court will decide the issue on its own, regardless of what the County Court decided. This Standard is usually used for issues of law, such as interpreting a statute.

- b. **Clearly Erroneous Review:** The District Court will uphold what the County 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 District Court will uphold what the County 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 County Court to decide the issue such as deciding the amount in damages to award.
- ii. **Preservation:** You are required to have brought your issue to the attention of the County Court before you may argue that issue in the District Court. This is known as preserving the issue for appeal.

You will need to cite to the location in the Record on Appeal where you raised the issue to the County Court and where the County Court ruled on the issue.

- iii. **Discussion:** State your arguments on the issue. You will 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 and state the error that the County Court made.
 - b. **Law:** Cite to the law that supports your argument as to how and why the County Court erred.
 - c. **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.
 - d. **Apply Facts to Law:** Discuss why the District Court 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 been met.

- f. **Conclude:** State how the District Court should resolve the issue.
- iv. **Repeat for Each Issue Raised:** You should include a “Standard of Review,” “Preservation,” and “Discussion” section for each of your Issues on Appeal.
- d. **Conclusion:** State exactly what you want the District Court to do with your case.

Certificate of Service

You must send a copy of the Opening Brief to each party’s attorney or directly to a party who does not have an attorney. Certify the date that you sent the Opening Brief and how service was made (by mail or in-person). List the address you used for each party or attorney in the case.

- 5. **Attachments:** The court 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 Opening Brief.
- 6. **Filing:** You must file the Opening Brief in the District Court. You may file in-person or by mail. If you file by mail, be aware that the Brief must be received by the District Court by the deadline, regardless of when it was placed in the mail.

Do NOT file a copy of the Opening Brief with the County Court.

- 7. In order to understand the law and be able to make persuasive arguments on your 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:

www.scholar.google.com

- 8. **Be Sure to Read:** Colorado Rule of Civil Procedure (C.R.C.P.) 411.

Appeal Steps & Timelines:

- Step 1: Prepare for an appeal.
- Step 2: Notice of Appeal - Start of the appeal.
- Step 3: Designation of Record - Packing list of documents.
- Step 4: Record on Appeal - Case file, exhibits and transcripts.
- Step 5: Opening Brief - Written arguments for the appeal.**
- Step 6: Answer Brief - Written response to the appeal.
- Step 7: Order - The District Court's decision.