

Step 5: Answer Brief

- 1. Purpose:** This is your opportunity as the Appellee to counter the arguments the Appellant made in the Opening Brief.
- 2. Optional** You do not have to file an Answer Brief. However, not filing may lower your chances of winning the appeal.
- 3. Deadline:** Due within 35 days (5 weeks) after the Opening Brief.
- 4. Filings Fees:** There is a filing fee of \$
 - By Mail - Include a check or money order payable to the Colorado Court of Appeals with your Answer Brief.
 - In Person - You may pay with exact change or by credit card.
 - Call 720-625-5154 to pay by credit card.

To Waive the Fee

If you are indigent and cannot afford the filing fee, file:

- [JDF 205 - Motion to Waive the Filing Fee](#), and
- [JDF 206 - Proposed Order](#).

File the forms into your District Court case. Then if granted, file a copy of the order into the Court of Appeals case.

- 5. Formatting:** Colorado Appellate Rule (C.A.R.) 32 format includes:
 - 14-point font size,
 - double line spacing,
 - Bookman, Garamond, or Times New Roman font, and

- printing on only one side of the page.

6. The Brief:

You may use JDF 1916 - Answer Brief Outline.

Case Caption (*Boxes on the 1st 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.

Certificate of Compliance

- State how many words are in your Answer Brief.
- Your brief may not be more than 9,500 words, or 18 pages if you hand write the document.

Body of the Form

a. Table of Contents

List the required sections of the 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 Reply Brief.

- Include the page number(s) where those 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, unless you filed your own Notice of Appeal or a Notice of Cross-Appeal.

Common Issues Include:

Clearly Wrong Factual Finding: Did the District Court determine a fact incorrectly because there is no support in the Record on Appeal for that fact?

Wrong Use of the Law: Did the District Court use the wrong law or incorrectly interpret the law?

Unreasonable Decision: Was the District Court's

decision so unreasonable or unfair that it was outside the bounds of what could have been decided under the circumstances?

d. Statement of the Case

This section gives the Court of Appeals the facts and procedural history of the case it needs to know 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, 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.

Citations:

Court File: CF, p. __. For example: CF, p. 51.

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).

Exhibits: EX (event - Trial/Hearing/Motion), p. ____.

- For example: EX Trial, p. 7.

Supplemental Records: Add "Supp,"

- 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.

For each issue, include:

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:

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.

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.

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.

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 with 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.

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 Method:

Introduction: Introduce the Issue.

Law: Cite to the law that supports your argument that the District Court did not err as to the issue.

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.

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.

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.”

Conclude: State how the Court of Appeals should resolve the issue.

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 Fees

If the Opening Brief contained a request for attorney fees, respond to that request by explaining why the Appellant should not be awarded attorney fees.

i. Copies Delivered

You must send a copy of the Reply Brief to each party's attorney or directly to a party who does not have an attorney.

- Certify the date that you sent the Reply Brief and check 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 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 14th Avenue

Denver, CO 80203

- Do not send a copy of the your brief to the District Court.

9. 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. Read

Colorado Appellate Rule (C.A.R.) 28, 31, and 32.

11. Next Step

You are done with the appeal.

The appellant will have one last opportunity to respond. Then in about 3-5 months, the court will mail its decision.