**CBA CIVIL APPEALS CLINIC – ORIENTING CLIENTS TO THE APPELLATE PROCESS**

Below, we’ve listed some general points you may want to discuss with your client regarding the appellate process.

1. **Where Does Jurisdiction Lie (if Anywhere)?**

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| **Court** | **Jurisdiction** | **Reference** |
| Colorado Court of Appeals | Generally, the COA has initial appellate jurisdiction over all final judgments[[1]](#footnote-1) entered by all district courts, the Probate Court of the City and County of Denver, and the Juvenile Court of the City and County of Denver. | C.R.S. §§ 13-4-102(1), 19-1-109(2) (COA reviews final orders, decrees, and judgments in dependency and neglect cases). |
| Colorado Court of Appeals | The COA has initial jurisdiction to review most state administrative agencies’ final orders. (This is not the case for most *local* agencies’ decisions.) | C.R.S. § 13-4-102(2) (Note: The appellate rules generally govern procedure in these cases. However, some deadlines depart from those articulated in the C.A.R.; please review the Administrative Procedure Act and any statutes particular to the agency that issued the final judgment.) |
| Colorado Supreme Court | Cert review: final judgments from the COA, final judgments from the district court (in appeals from county court cases). | C.R.S. § 13-4-108. |
| Colorado Supreme Court | Cert review: final judgments from the district court (issued on appeal from county court). | C.R.S. § 13-6-310(4). |

1. **What Can the Court Do?**

Appellate courts consider three things: (1) the nature of the error claimed on appeal; (2) the steps the appellant took in the lower court to preserve the claim of error; and (3) whether the claimed error prejudiced the appellant.

1. The Nature of the Error

Depending on the kind of error claimed, the court will apply one of the following standards of review. It is easier to get a decision overturned under certain standards than others, so this should inform the client’s decision(s) regarding which issue(s) to appeal.

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| **Nature of Error** | **Standard of Review** | **Reference** |
| Legal error | De novo. | *Dempsey v. People*, 117 P.3d 800, 807 (Colo. 2005). |
| Factual error | Clearly erroneous. The appellate court will not overturn the trial court’s factual findings if “competent evidence” supports those findings. | *People v. Kaiser*, 32 P.3d 480, 483 (Colo. 2001). |
| Error in exercising discretion (including errors in deciding whether to admit evidence, awards for attorney fees and costs, orders for sanctions) | Abuse of discretion.  “A trial court abuses its discretion if its decision is manifestly arbitrary, unreasonable, or unfair.” *Anderson v. Pursell*, 244 P.3d 1188, 1194 (Colo. 2010). The appellate court reviews the trial court’s decision only “to ensure that it was based on credible evidence and that it did not exceed the bounds of the rationally available choices.” *Churchill v. Univ. of Colo.,* 285 P.3d 986, 1008 (Colo. 2012). | *Bly v. Story*, 241 P.3d 529, 535 (Colo. 2010) (“W]e review a trial court ruling on the admissibility of evidence for an abuse of discretion.”); *Spring Creek Ranchers Ass’n, Inc. v. McNichols*, 165 P.3d 244, 256 (Colo. 2007) (reviewing attorney fees award for abuse of discretion); *Catholic Health Initiatives Colo. v. Earl Swensson Assocs., Inc.*, 403 P.3d 185, 187 (Colo. 2017) (reviewing sanctions imposed for discovery violations under abuse of discretion standard). |

1. Preservation: Legal Arguments and Evidentiary Objections

* *Legal arguments* not made in, or ruled on by, the trial court will not usually be considered on appeal. *Adams Reload Co., Inc v. Int’l Profit Assocs., Inc.*, 143 P.3d 1056, 1060 (Colo. App. 2005).
* *Evidentiary objections*: “In order to properly preserve an objection to evidence admitted at trial, a timely and specific objection must appear in the trial court record.” *Am. Family Mut. Ins. Co. v. DeWitt*, 218 P.3d 318, 325 (Colo. 2009).

1. Prejudice

For an appellate court to reverse a trial court’s decision, the error must have affected the complaining party’s “substantial rights.” *Poudre Valley Rural Elec. Ass’n v. Loveland*, 807 P.2d 547, 557 (Colo. 1991).

1. **Steps Involved in an Appeal.**

Court of Appeals (Civil Cases Other Than Review of State Agency Actions and Dependency and Neglect Cases)

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| **Step** | **Description** | **Deadline** | **Reference** |
| Notice of Appeal | See instructions: [Microsoft Word - 2. Notice of Appeal Instructions.docx (state.co.us)](https://www.courts.state.co.us/userfiles/file/Court_Probation/Court_Of_Appeals/Forms/2_%20Notice%20of%20Appeal%20Instructions.pdf) | 49 days after the date the judgment entered in the trial court; OR  Where the appellant timely filed a post-trial Rule 59 motion: The 49-day time to appeal tolls during the pendency of the Rule 59 motion. It resumes once the court rules on the motion or when the motion is deemed denied because the court has not ruled on it within 63 days, per C.R.C.P. 59(j).  File with the clerk of the COA and file an advisory copy in the trial court. | C.A.R. 3 (content requirements); C.A.R. 4 (timing requirements) |
| Docket Fee | To file an NOA, the appellant must pay a $223 docket fee or complete an application to proceed *in forma pauperis*. See a copy of that form here: [Microsoft Word - JDF205\_R05.21.2021.docx (state.co.us)](https://www.courts.state.co.us/Forms/PDF/JDF205.pdf)  An appellee must pay a docket fee of $148.00 or complete an application to proceed *in forma pauperis*. | Appellant: Pay upon filing the NOA.  Appellee: Pay upon filing an entry of appearance. | C.A.R. 12 |
| Cost Bond | The appellant must typically file a $250 cost bond, unless (s)he pays a supersedeas bond which includes costs, is exempt from paying costs under the law, or is not subject to paying costs. The district court may set the bond lower than $250. | Pay to the trial court upon filing the advisory NOA. | C.A.R. 7 |
| Staying Judgment in the Trial Court Pending Appeal | Ordinarily, a litigant seeking a stay must apply for such stay first to the trial court. Stays are conditioned upon the posting and approval of supersedes bonds. | Under C.R.C.P. 62(a), judgments in most cases are automatically stayed for 14 days but could be subject to execution any time after that period. (No automatic stay applies to judgments in receivership actions or judgments in actions for injunctions.) | C.R.C.P. 62; C.A.R. 8(a) |
| Designations of Transcripts | Parties must file a designation of any transcripts they want included in the record. This includes transcripts of hearings and trial. Here is the form: [JDF1912i.pdf (state.co.us)](https://www.courts.state.co.us/Forms/PDF/JDF1912i.pdf) | Appellant: File in the trial court within 7 days of filing the NOA. Also file an advisory copy in the COA.  Appellee: Appellee may file its own designation of transcripts in the trial court within 14 days of the date the NOA is filed. Also file an advisory copy in the COA. | C.A.R. 10(d). |
| Record on Appeal | The clerk of the trial court will prepare the record on appeal and transmit it to the COA. The record on appeal must include all documents filed in the trial court case as of the date the appellant filed the NOA (or amended NOA).  Parties should ensure all trial exhibits are uploaded to the electronic docket. | The clerk of the trial court must transmit the record to the COA within 63 days of the date the appellant files the NOA. | C.A.R. 10(a)-(c). |
| Opening Brief | Maximum of 9,500 words. (Self-represented litigants without access to a word processor: maximum of 30 double-spaced, single-sided pages.) See instructions: [Microsoft Word - CV13I. OBRF Inst.docx (state.co.us)](https://www.courts.state.co.us/userfiles/file/Court_Probation/Court_Of_Appeals/Forms/CV13I_%20Opening%20Brief%20Instructions.pdf) | Due to the COA within 42 days after the record on appeal is filed. | C.A.R. 28 (content requirements); C.A.R. 31 (timing requirements); C.A.R. 25 (filing and service requirements); C.A.R. 32 (style requirements). |
| Answer Brief | Maximum of 9,500 words. (Self-represented litigants without access to a word processor: maximum of 30 double-spaced, single-sided pages.) See instructions: [Microsoft Word - CV14I. ABRF Inst.docx (state.co.us)](https://www.courts.state.co.us/userfiles/file/Court_Probation/Court_Of_Appeals/Forms/CV14I_%20Answer%20Brief%20Instructions.pdf) | Due to the COA within 35 days after the Opening Brief is filed. | C.A.R. 28 (content requirements); C.A.R. 31 (timing requirements); C.A.R. 25 (filing and service requirements); C.A.R. 32 (style requirements). |
| Reply Brief (optional) | Maximum of 5,700 words. (Self-represented litigants without access to a word processor: maximum of 18 double-spaced, single-sided pages.) See instructions: [Microsoft Word - JDF1917I.docx (state.co.us)](https://www.courts.state.co.us/Forms/PDF/JDF1917I.pdf)] | Due to the COA within 21 days after Answer Brief is filed. | C.A.R. 28 (content requirements); C.A.R. 31 (timing requirements); C.A.R. 25 (filing and service requirements); C.A.R. 32 (style requirements). |
| Request for Oral Argument | Either party may file a request for oral argument.  The COA will decide whether to set the case for argument. It rarely allows argument in cases involving self-represented parties. | File within 7 days after the briefing is closed. | C.A.R. 34; C.A.R. 25 (filing and service requirements). |
| Oral Argument | Each side receives 15 minutes.  The appellant argues first and may reserve any remaining time at the end of her/his argument for rebuttal.  Do not read from the briefs, the record, or other authorities.  Develop a theme.  Know the record.  Watch arguments archived on the Colorado Judicial Branch website. | The COA will schedule the argument and notify the parties. | C.A.R. 34 |

Colorado Supreme Court (Cert Review)

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| **Step** | **Description** | **Deadline** | **Reference** |
| Petition for Writ of Certiorari | Maximum of 3,800 words. (Self-represented litigants without access to a word processor: maximum of 12 double-spaced, single-sided pages.) | File in the CSC within 42 days after the lower appellate court enters its final judgment. If the petitioner files a petition for rehearing in the lower appellate court, then the petition for writ of certiorari is due within 28 days after the lower appellate court denies the petition for rehearing. (Note: these deadlines are shorter in certain cases, including dependency and neglect, workers’ compensation, and unemployment insurance cases. See C.A.R. 52(b)(2)-(3).) | C.A.R. 52 (timing requirements); C.A.R. 53 (content requirements); C.A.R. 25 (filing and service requirements); C.A.R. 32 (style requirements). |
| Docket Fee | To file petition for writ of certiorari, the petitioner must pay a $225 docket fee or complete an application to proceed *in forma pauperis*. See a copy of that form here: [Microsoft Word - JDF205\_R05.21.2021.docx (state.co.us)](https://www.courts.state.co.us/Forms/PDF/JDF205.pdf) | Pay upon filing petition for writ of certiorari. | C.A.R. 51(b). |
| Opposition to Certiorari | Maximum of 3,800 words. (Self-represented litigants without access to a word processor: maximum of 12 double-spaced, single-sided pages.) | The respondent may file within 14 days after service of the petition.  The respondent must pay a docket fee of $115 when filing the opposition brief, unless the CSC approves an application to proceed *in forma pauperis*. See a copy of that form here: [Microsoft Word - JDF205\_R05.21.2021.docx (state.co.us)](https://www.courts.state.co.us/Forms/PDF/JDF205.pdf) | C.A.R. 51(c) (fee requirement); C.A.R. 53 (content and timing requirements); C.A.R. 25 (filing and service requirements); C.A.R. 32 (style requirements). |
| Reply in Support of Certiorari | Maximum of 3,150 words. (Self-represented litigants without access to a word processor: | The petitioner may file a reply within 7 days after service of the opposition. | C.A.R. 53 (content and timing requirements); C.A.R. 25 (filing and service requirements); C.A.R. 32 (style requirements). |
| Record on Appeal |  | When the petition seeks review of a district court judgment, the clerk of the district court must certify the complete record and transmit it to the clerk of the Colo. Supreme Court within 14 days of the date the petition is filed.  When the petition seeks review of a judgment from the COA, the clerk of the COA need not transmit the record. | C.A.R. 51 |
| Briefs (Upon Grant of Certiorari) |  | Must be formatted, filed, and served in the same form and within the same time limits as briefs in the COA. See table above. | C.A.R. 57 |
| Oral Argument | Occurs at the CSC’s discretion.  See tips for oral argument in COA table above. |  |  |

1. **Motions for Extensions of Time**

Appellate courts may extend the time for any deadline prescribed under the C.A.R., for “good cause” shown. C.A.R. 26(b). Requesting parties should attempt to be as specific as possible in establishing good cause and avoid generic reasons, such as “vacation plans” or general “business.”

1. “[A] final judgment [is one] which ends the particular action in which it is entered, leaving nothing further for the court pronouncing it to do in order to completely determine the rights of the parties involved in the proceeding.” *Harding Glass Co., Inc. v. Jones*, 640 P.2d 1123, 1125 (Colo. 1982). [↑](#footnote-ref-1)