

■ Rule 28. Briefs

(a) Appellant's Brief. The appellant's brief must be entitled "opening brief" and must contain the following under appropriate headings and in the order indicated:

- (1) a certificate of compliance as required by C.A.R. 32(h);
- (2) a table of contents, with page references;
- (3) a table of authorities—cases (alphabetically arranged), statutes, and other authorities—with references to the pages of the brief where they are cited;
- (4) a statement of the issues presented for review;
- (5) a concise statement identifying the nature of the case, the relevant facts and procedural history, and the ruling, judgment, or order presented for review, with appropriate references to the record (*see* C.A.R. 28 (e));
- (6) a summary of the arguments, which must:
 - (A) contain a succinct, clear, and accurate statement of the arguments made in the body of the brief;
 - (B) articulate the major points of reasoning employed as to each issue presented for review; and
 - (C) not merely repeat the argument headings or issues presented for review;
- (7) the arguments which must contain:
 - (A) under a separate heading placed before the discussion of each issue, statements of the applicable standard of review with citation to authority, whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised and where the court ruled; and
 - (B) appellant's contentions and reasoning, with citations to the authorities and parts of the record on which the appellant relies;
- (8) a short conclusion stating the precise relief sought; and
- (9) any request for attorney fees.

(b) Appellee's Brief. The appellee's answer brief must be entitled "answer brief" and must conform to the requirements of C.A.R. 28 (a) except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the appellant's statement. For each issue, the answer brief must, under a separate heading placed before the discussion of the issue, state whether the appellee agrees with the appellant's statements concerning the standard of review with citation to authority and preservation for appeal, and if not, why not. The answer brief must also contain any request for attorney fees or state any opposition to attorney fees requested in the opening brief.

(c) Reply Brief. The appellant may file a brief, which must be entitled "reply brief" in reply to the answer brief. A reply brief must comply with C.A.R. 28(a)(1)-(3), and must state any opposition to attorney fees requested in the answer brief. No further briefs may be filed except with leave of court.

(d) References in Briefs to Parties. Parties should minimize use of the terms "appellant" and "appellee." Parties should use the designations used in the lower court or

agency proceeding, the parties' actual names or initials, or descriptive terms such as "the employee," "the injured person," or "the taxpayer."

(e) References to the Record. Reference to the record and to material appearing in an addendum to the brief should generally follow the format detailed in the "Court of Appeals Policy on Citation to the Record." Record references, including abbreviations, must be clear and readily identifiable.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of regulations, ordinances, or any statutes or rules not currently in effect or not generally available in an electronic format, the relevant parts may be reproduced in an addendum at the end of the brief.

(g) Length of Briefs.

(1) An opening brief and an answer brief must contain no more than 9,500 words. A reply brief must contain no more than 5,700 words. Headings, footnotes, and quotations count toward the word limitations. The caption, table of contents, table of authorities, certificate of compliance, certificate of service, and signature block do not count toward the word limit.

(2) A self-represented party who does not have access to a word-processing system must file a typewritten or legibly handwritten opening or answer brief of not more than 30 double-spaced and single-sided pages, or a reply brief of no more than 18 double-spaced and single-sided pages. Such a brief must otherwise comply with C.A.R. 32.

(3) A party may file a motion to exceed the word limitation explaining the reasons why additional words are necessary. The motion must be filed with the brief.

(h) Briefs in Cases Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a single brief, and any party may adopt by reference any part of another's brief, but a party may not both file a separate brief and incorporate by reference the brief of another party. Parties may also join in reply briefs. In cases involving a single appellant or appellee with multiple opposing parties, the single party must file a single brief in response to multiple opposing parties' briefs. Except by permission of the court, such a brief is restricted to the page and word limits set forth in C.A.R. 28(g), regardless of the cumulative page and word counts of the opposing parties' briefs. Multiple parties represented by the same counsel must file a joint brief.

(i) Citation of Supplemental Authorities. If pertinent and significant new authority comes to a party's attention after the party's brief has been filed, a party may promptly advise the court by giving notice, with a copy to all parties. The notice must set forth the citation and state, without argument, the reason for the supplemental citation, referring either to the page of the brief or to a point argued orally. The body of the notice must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Source: IP(a), (b), (c), (g), and (h) amended March 17, 1994, effective July 1, 1994; entire rule amended and adopted December 4, 2003, effective January 1, 2004; entire rule amended and adopted February 24, 2005, effective July 1, 2005; (k) and committee comment added and effective

June 22, 2006; (e) amended and effective September 7, 2006; (g) amended and effective May 28, 2009; entire rule and comments amended and effective June 25, 2015.

COMMENT

2006

Compliance with subsection (k) does not warrant lengthy discussion but requires only the declaration of the applicable standard of review and the record reference to where the issue was preserved. The following are examples:

(1) An appellate court reviews the wording of an instruction for abuse of discretion. [cite case]. Because this is a criminal case and no objection was made or alternative instruction tendered in the trial court, the issue should be reviewed for plain error [cite case].

(2) The admissibility of expert testimony is reviewed for abuse of discretion. [cite case] This issue was preserved by appellant's offer of proof. R. _____, p. _____.

2015

Prior subsection (h) entitled, "Briefs in Cases Involving Cross-Appeals," has been deleted from C.A.R. 28. The substance of prior subsection (h) now appears in C.A.R. 28.1, which sets forth briefing requirements for cases involving cross-appeals.

Prior subsection 28(k) entitled, "Standard of Review; Preservation," has been deleted, but parties must continue to comply with its substantive requirements, which are now set forth in subsections 28(a)(7)(A) and (b). Compliance with subsections 28(a)(7)(A) and (b) does not warrant lengthy discussion but requires only the declaration of the applicable standard of review with citation to authority and the record reference to where the issue was preserved. The following are examples:

(1) An appellate court reviews the wording of an instruction for abuse of discretion. [cite case]. Because this is a criminal case and no objection was made or alternative instruction tendered in the trial court, the issue should be reviewed for plain error [cite case].

(2) The admissibility of expert testimony is reviewed for abuse of discretion. [cite case] This issue was preserved by appellant's offer of proof. R. CF, p.

The deletion of prior subsections (h) and (k) required the re-lettering of the substance of previous subsections (i), "Briefs in Cases Involving Multiple Appellants or Appellees," and (j) "Citation of Supplemental Authorities," to new subsections (h) and (i), respectively.

ANNOTATION

Law reviews. For article, "How Not to Write a Brief", see 22 *Dicta* 109 (1945). For article, "Supreme Court Proceedings: Rules 111-119", see 23 *Rocky Mt. L. Rev.* 618 (1951). For article, "Colorado Criminal Procedure—Does It Meet Minimum Standards?", see 28 *Dicta* 14 (1951). For article, "Appellate Procedure and the New Supreme Court Rules", see 30 *Dicta* 1 (1953). For article, "Some Observations on Colorado Appellate Practice", see 34 *Dicta* 363 (1957). For article, "Some Observations on Brief Writing", see 33 *Rocky Mt. L. Rev.* 23 (1960). For note, "Colorado Appellate Procedure", see 40 *U. Colo. L. Rev.* 551 (1968). For article, "Amendments to Appellate Rules Concerning Type Size and Word Count", see 34 *Colo. Law.* 27 (June 2005). For article, "Complying With C.A.R. 28 and 32", see 39 *Colo. Law.* 65 (November 2010).

Where court could discern that certain issues manifested themselves from a search of the briefs, fact appellant's brief was deficient relative to the requirements of this rule did not require dismissal. *Barr Lake Vill. Metro. Dist. v. Colo. Water Quality Control Comm'n*, 835 P.2d 613 (Colo. App. 1992).

Purpose of rules of court. Rules of court are for the purpose of enforcing an orderly and diligent preparation and submission of causes. *La Junta & Lamar Canal Co. v. Fort Lyon Canal Co.*, 25 Colo. 515, 55 P. 728, motion to set aside order dismissing appeal granted, 25 Colo. 513, 55 P. 729 (1898).

Requirements of this rule adopted as aid to court in disposing of causes. The requirements of this rule were not adopted merely for the protection or convenience of litigants, but in a large measure as aids to the court in disposing of causes submitted. *Dubois v. People*, 26 Colo. 165, 57 P. 187 (1899).

Counsel cannot determine for themselves in what manner they shall prepare a case for hearing, in disregard of the requirements prescribed by the rules. *Dubois v. People*, 26 Colo. 165, 57 P. 187 (1899).

Failure to comply with this rule may result in dismissal. *Denver, W. & Pac. Ry. v. Woy*, 7 Colo. 556, 5 P. 815 (1884); *Meyer v. Helland*, 2 Colo. App. 209, 29 P. 1135 (1892); *McDonald v. McLeod*, 3 Colo. App. 344, 33 P. 285 (1893); *Hammond v. Herdman*, 3 Colo. App. 379, 33 P. 933 (1893); *Buckey v. Phenicie*, 4 Colo. App. 204, 35 P. 277 (1894); *Wilson v. People*, 25 Colo. 375, 55 P. 721 (1898); *Dubois v. People*, 26 Colo. 165, 57 P. 187 (1899); *Meldrum v. Bassler*, 40 Colo. 506, 90 P. 1033 (1907); *Knapp v. Fleming*, 127 Colo. 414, 258 P.2d 489 (1953); *Waters v. Culver*, 130 Colo. 360, 275 P.2d 936 (1954).

Or affirmance of judgment. A judgment may be affirmed upon appellant's failure to comply with the requirements for printing briefs. *Mitchell v. Pearson*, 34 Colo. 281, 82 P. 447 (1905).

General composition of briefs. *Gardner v. City of Englewood*, 131 Colo. 210, 282 P.2d 1084 (1955).

Length and contents of appellate briefs. It is neither necessary nor advisable that every previous procedural move and ruling be presented to the appellate court. Only those procedural steps which are relevant to the issues raised in the appellate court need be recited. *People v. Galimanis*, 728 P.2d 761 (Colo. App. 1986).

For when the limit on length may be modified, see *People v. Galimanis*, 728 P.2d 761 (Colo. App. 1986).

Rule does not extend an open invitation to counsel to conduct additional research after the close of briefing and then present the fruits of such research to the court on the eve of argument. *Glover v. Innis*, 252 P.3d 1204 (Colo. App. 2011).

Sufficient statement of the case is presented by relating only the facts material to a decision. *F. W. Woolworth Co. v. Peet*, 132 Colo. 11, 284 P.2d 659 (1955).

This rule requires a statement in the brief of the facts material to a decision of the case. *Lowe v. United States Fid. & Guar. Co.*, 171 Colo. 215, 466 P.2d 73 (1970).

Rule provides for a summary of argument. *Farrell v. Bashor*, 140 Colo. 408, 344 P.2d 692 (1959).

Appellant required to set out part of record supporting contentions of error. The elimination of the requirement of an abstract of the record does not relieve the appellant of the duty of setting out such parts of the pleadings, the evidence, the findings, and the judgment as are required to support his contentions of error. *In re Hay's Estate*, 127 Colo. 411, 257 P.2d 972 (1953).

As court will not search through briefs to discover errors and supporting evidence. The court will not search through briefs to discover what errors are relied on, and then search through the record for supporting evidence. It is the task of counsel to inform the court, as required by the rules, both as to the specific errors relied on and the grounds and supporting facts and authorities therefor. *Mauldin v. Lowery*, 127 Colo. 234, 255 P.2d 976 (1953); *Westrac, Inc. v. Walker Field*, 812 P.2d 714 (Colo. App. 1991); *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006).

Where a taxpayer appeals from an adverse decision in a quo warranto action challenging right of member of the federal rent advisory board to hold office as a city councilman and the federal statutes were not quoted or cited or summarized or analyzed in the record or in the taxpayer's brief, the appellate court will not search through the federal statutes to find grounds of technical disability in order to remove the councilman from office. *People ex rel. Miller v. Cavender*, 123 Colo. 175, 226 P.2d 562 (1950).

Argument that is merely a bald assertion of error violates section (a) of this rule and is not properly presented for review. *Sinclair Transp. Co. v. Sandberg*, 2014 COA 76M, ___ P.3d ___.

Brief held inadequate. *Mauldin v. Lowery*, 127 Colo. 234, 255 P.2d 976 (1953); *In re Hay's Estate*, 127 Colo. 411, 257 P.2d 972 (1953); *Westrac, Inc. v. Walker Field*, 812 P.2d 714 (Colo. App. 1991); *Castillo v. Koppes-Conway*, 148 P.3d 289 (Colo. App. 2006).

Scurrilous brief attacking trial judge stricken. *Knapp v. Fleming*, 127 Colo. 414, 258 P.2d 489 (1953).

Briefs stricken and appeal dismissed due to uncivil language and inadequate argument. *Martin v. Essrig*, 277 P.3d 857 (Colo. App. 2011).

Applied in *Barlow v. Staples*, 28 Colo. App. 93, 470 P.2d 909 (1970).

■ Rule 28.1. Briefs in Cases Involving Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and C.A.R. 34. These designations may be modified by the parties' agreement or by court order.

(c) Appellant's Opening Brief. The appellant must file an opening brief in the appeal. This brief must be entitled "opening brief" and must comply with C.A.R. 28(a) and (d)-(h).

(d) Appellee's Opening-Answer Brief. The appellee must file an opening brief in the cross-appeal and must, in the same brief, respond to the opening brief in the appeal. This brief must be entitled "opening-answer brief" and must comply with C.A.R. 28(a), (b), and (d)-(h), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement of the case.

(e) Appellant's Answer-Reply Brief. The appellant must file a brief that responds to the portion of the opening-answer brief that constitutes an opening brief in the cross-appeal, and may, in the same brief, reply to the portion of the opening-answer brief that constitutes an answer brief in the appeal. This brief must be entitled "answer-reply brief" and must comply with C.A.R. 28(b)-(h).

(f) Appellee's Reply Brief. The appellee may reply to the portion of the answer-reply brief that constitutes an answer brief. This brief must be entitled "reply brief" and must comply with C.A.R. 28(c)-(h) and must be limited to the issues raised in the cross-appeal. No further briefs may be filed except with leave of court.

(g) Length of Briefs.

(1) An opening, opening-answer, and answer-reply brief must contain no more than 9,500 words. An appellee's reply brief must contain no more than 5,700 words. Headings, footnotes, and quotations count toward the word limitations. The caption, table of contents, table of authorities, certificate of compliance, certificate of service, and signature block do not count toward the word limit.

(2) A self-represented party who does not have access to a word-processing system must file a typewritten or legibly handwritten opening, opening-answer, or answer-reply brief of not more than 30 double-spaced and single-sided pages, or a reply brief of no more than 18 double-spaced and single-sided pages. Such a brief must otherwise comply with C.A.R. 32.

(3) A party may file a motion to exceed the word limitation explaining the reasons why additional words are necessary. The motion must be filed with the brief.

(h) Citation of Supplemental Authorities. If pertinent and significant new authority comes to a party's attention after the party's brief has been filed, a party may promptly advise the court by giving notice, with a copy to all parties. The notice must set forth the citation and state, without argument, the reason for the supplemental citation, referring either to the page of the brief or to a point argued orally. The body of the notice must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Source: Entire rule added and effective June 25, 2015.

COMMENT

2015

The new rule is similar to Fed. R. App. P. 28.1 and applies to briefs involving cross-appeals. The portions of the previous version of C.A.R. 28(h) and (g) referencing cross-appeals have been removed. The substance of those subsections has been imported into C.A.R. 28.1.

■ Rule 29. Brief of an Amicus Curiae

(a) When Permitted. An amicus curiae may file a brief only by leave of court or at the court's request.

(b) Motion for Leave to File. The motion to file an amicus brief must identify the movant's interest and state the reasons why an amicus brief would be helpful to the court. The brief must be conditionally filed with the motion, unless the court grants leave to file the motion without the brief.

(c) Content and Form. An amicus brief must comply with Rule 32. The caption page on the brief must indicate whether the brief is submitted in support of a party, and if so must identify the party or parties supported. The brief must also comply with Rule 28(a)(2) and (3) and must include the following:

- (1) a certificate of compliance as required by Rule 32(h);
- (2) a concise statement of the identity of the amicus curiae and its interest in the case; and
- (3) an argument, which may be preceded by a summary but need not include a statement of the applicable standard of review or whether the issue was preserved.

(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of the amicus brief.

(e) Time for Filing. An amicus curiae must file its brief within the deadline for filing the principal brief of the party being supported. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's opening brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief. Unless the court orders otherwise, an amicus curiae may not file a reply brief.

(g) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission, which will be granted only for extraordinary reasons. A motion to participate in oral argument must state that the supported party does not object and will share its allotted time with amicus. The length of oral argument will not be extended to accommodate amicus participation.

Source: Entire rule amended and effective June 25, 2015.

ANNOTATION

Amicus curiae limited to questions raised by appealing parties. An appellate court will consider only those questions properly raised by the appealing parties. Amicus curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curiae will not be considered. *Denver United States Nat'l Bank v. People ex rel. Dunbar*, 29 Colo. App. 93, 480 P.2d 849 (1970).

Applied in *First Lutheran Mission v. Dept. of Rev.*, 44 Colo. App. 417, 613 P.2d 351 (1980).

■ Rule 30. E-Filing

(a) Definitions.

(1) **Document.** A pleading, motion, brief, writing or other paper filed or served under Colorado Appellate Rules.

(2) **E-Filing/Service System.** The E-Filing/Service System ("E-System") approved by the Colorado Supreme Court for filing and service of documents via the Internet through the Court-authorized E-System provider.

(3) **Electronic Filing.** Electronic filing (“**E-Filing**”) is the transmission of documents to the clerk of the court, and from the court, via the E-System.

(4) **Electronic Service.** Electronic service (“**E-Service**”) is the transmission of documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service via the E-System.

(5) **E-System Provider.** The E-Service/E-Filing System Provider authorized by the Colorado Supreme Court.

(6) **S/Name.** A symbol representing the signature of the person whose name follows the “S/” on the electronically or otherwise signed form of the E-Filed or E-Served document.

(b) Types of Cases Applicable. E-Filing and E-Service are permissible in all cases.

(c) To Whom Applicable.

(1) Attorneys licensed to practice law in Colorado may register to use the E-System.

(2) Where the system and necessary equipment are in place to permit it, pro se parties and government entities and agencies may register to use the E-System.

(d) E-Filing—Date and Time of Filing. A document transmitted to the E-System Provider by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.

(e) E-Service—When Required—Date and Time of Service. Documents submitted to the court through E-Filing shall be served under C.A.R. 25 by E-Service. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date.

(f) Filing Party to Maintain the Signed Copy—Paper Document Not to Be Filed—Duration of Maintaining of Document. A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. When these rules require a party to maintain a document, the filer is required to maintain the document for a period of two years after the final resolution of the action, including the final resolution of all appeals.

(g) Documents Requiring E-Filed Signatures. For all E-Filed and E-Served documents, signatures of attorneys and parties may be in S/Name typed form to satisfy signature requirements, once the necessary signatures have been obtained on a paper form of the document. Attorneys and parties may also use an electronic ink signature.

(h) Documents Under Seal. A motion for leave to file documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court may be E-Filed at the direction of the court; however, the filing party may object to this procedure.

(i) Transmitting of Orders, Notices, Opinions and Other Court Entries. Appellate courts shall distribute orders, notices, opinions, and other court entries using the E-System in cases where E-Filings were received from any party.

(j) Form of E-Filed Documents. E-Filed documents shall comply with all requirements as to form contained within these rules.

(k) E-Filing May be Mandated. The Chief Justice may mandate, or, with the permission of the Chief Justice, the Chief Judge of the court of appeals may mandate E-Filing for specific case classes or types of cases. An appellate justice or judge may mandate E-Filing and E-Service for a specific case for submitting documents to the court and serving documents on case parties. Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the E-Service Provider. After notice to an attorney that all future documents are to be E-Filed, the court may charge a fee of \$50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory an appellate justice or judge may exclude pro se parties from mandatory E-Filing requirements.

(l) Relief in the Event of Technical Difficulties.

(1) Upon satisfactory proof that E-Filing or E-Service of a document was not completed because of: (a) an error in the transmission of the document to the E-System Provider which was unknown to the sending party; (b) a failure of the E-System Provider to process the E-Filing when received, or (c) other technical problems experienced by the filer or E-System Provider, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

(2) Upon satisfactory proof that an E-Served document was not received by or unavailable to a party served, the court may enter an order extending the time for responding to that document.

(m) Form of Electronic Documents.

(1) **Electronic Document Format, Size and Density.** Electronic document format, size, and density shall be as specified by Chief Justice Directive # 11-01, as amended.

(2) **Multiple Documents.** Multiple documents may be filed in a single electronic filing transaction. Each document in that filing must bear a separate document title.

The Court authorized service provider for the program is ICCES (www.courts.states.co.us/icces).

Source: Entire rule added and effective February 7, 2008; (e) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b); entire rule amended and effective June 23, 2014.

■ Rule 31. Serving and Filing Briefs

(a) Time to Serve and File Briefs. The appellant must serve and file the opening brief within 42 days after the record is filed. The appellee must serve and file the answer brief within 35 days after service of the opening brief. The appellant may serve and file a reply brief within 21 days after service of the answer brief. In cases involving cross-appeals the appellant must serve and file the opening brief within 42 days after the record is filed, the cross-appellant's opening-answer brief and the appellant's answer-reply brief shall be

served and filed within 35 days after service of the opposing party's brief. The cross-appellant may serve and file a reply brief within 21 days after service of the appellant's answer-reply brief.

(b) Consequence of Failure to File. If an appellant or cross-appellant fails to file a brief within the time provided by this rule, or within an extended time as permitted by the court, the court may dismiss the appeal on its own motion or a motion to dismiss filed by the appellee or cross-appellee.

Source: (a) amended March 17, 1994, effective July 1, 1994; (b) and (c) amended May 12, 1994, effective July 1, 1994; (a) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b); (a) and (b) amended and (c) repealed and effective June 25, 2015.

ANNOTATION

Law reviews. For article, "The Problem of Delay in the Colorado Court of Appeals", see 58 Den. L.J. 1 (1980).

Purpose and observance of rule. This rule is for the proper dispatch of business, and its observance is required in the interests of litigants generally. *Wilson v. People*, 25 Colo. 375, 55 P. 721 (1898); *People v. J. H. Cooper Enterprises*, 111 Colo. 338, 141 P.2d 414 (1943).

Briefs may not be filed whenever or wherever counsel may find it convenient. *Smith v. Woodall*, 129 Colo. 435, 270 P.2d 746 (1954); *Freeman v. Cross*, 134 Colo. 437, 305 P.2d 759 (1957).

Burden is clearly on appellants to make a timely filing of their opening brief pursuant to this rule and § 24-4-106(4), C.R.S. *Warren Village, Inc. v. Bd. of Assmt. Appeals*, 619 P.2d 60 (Colo. 1980); *Wilkinson v. Motor Vehicle Div.*, 634 P.2d 1016 (Colo. App. 1981).

Right to file answer brief is lost where no request for extension of time is made within the time limit the brief was due, except upon a showing that failure to act was the result of excusable neglect. *Fraka v. Malernee*, 129 Colo. 87, 267 P.2d 651 (1954).

Court's discretion to dismiss. Dismissal for failure to comply with statutory time limitations for filing briefs is within the discretion of the trial court. *Wilkinson v. Motor Vehicle Div.*, 634 P.2d 1016 (Colo. App. 1981).

Time for filing when motion to dismiss appeal denied. Time for filing an answer brief on the merits, where a motion to dismiss an appeal is denied, shall commence to run on the date of the announcement of the opinion; otherwise, this rule will control in the matter of filing briefs. *Johnson v. George*, 119 Colo. 153, 200 P.2d 931 (1948).

Judicial review of agency action pursuant to § 24-4-106(4), C.R.S., is subject to the time limitations specified in section (a) of this rule. Dismissal for failure to comply with statutory time limitations for filing briefs is left within the trial court's discretion. *DuPuis v. Charnes*, 668 P.2d 1 (Colo. 1983).

Agreement between parties extending time not binding on court. A court is not bound by an agreement between parties which extends the time for filing briefs. *Wilkinson v. Motor Vehicle Div.*, 634 P.2d 1016 (Colo. App. 1981).

Applied in *Smith v. County of El Paso*, 42 Colo. App. 316, 593 P.2d 979 (1979); *People v. Boivin*, 632 P.2d 1038 (Colo. App. 1981).

■ Rule 32. Form of Briefs and Appellate Documents

(a) Form of Briefs and Other Appellate Documents. Except as otherwise provided in this rule or by leave of court, all briefs and other appellate documents must comply with the following standards:

(1) Type Size. The typeface must be 14-point or larger, including footnotes, except that the caption may be in 12-point if necessary to fit on one page.

(2) Typeface. The type must be a plain, Roman style with serifs. Italics or boldface may be used for emphasis. Cited case names must be italicized or underlined.

(3) Paper Size, Line Spacing, and Margins. All documents must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least 1 1/2 inches on the top and 1 inch on the left, right, and bottom. Page numbers are required and may be placed in the bottom margin, but no text may appear there.

(4) Length. If a brief or other appellate document is subject to a word limit, it must include a certificate by the attorney, or by a self-represented party, that the document 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. The certificate must state the number of words in the document.

(b) Documents Submitted by Self-Represented Parties. A self-represented party who does not have access to a word-processing system must file typewritten or legibly handwritten briefs and other appellate documents. Such documents must otherwise comply with the form requirements of this rule and the requirements of C.A.R. 28 and, if applicable, C.A.R. 28.1.

(c) Binding and Reproduction. Briefs and other appellate documents may be produced by any process that yields a clear black image on white paper. The paper must be opaque and unglazed. Only one side of the paper may be used. Text must be reproduced with a clarity that equals or exceeds the output of a laser printer. Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy. Consecutive sheets must be stapled together at the top left margin.

(d) Caption. The first page of each brief or other appellate document must contain a caption that includes the following basic document information:

(1) the name and address of the court in which the proceeding is filed;

(2) the nature of proceeding (e.g., Appeal, Petition for Writ of Certiorari, Petition for Rule to Show Cause); name of the court(s), agency, or board below; and the lower court judge(s), and case number(s);

(3) the names of parties with appellate court party designations as follows:

(A) 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 filed pursuant to C.A.R. 21 and certiorari proceedings.

(B) **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.

(4) the name, address, telephone number, e-mail address (if any), and fax number (if any) of counsel or self-represented party filing the document;

(5) if the document is filed by counsel, his or her attorney registration number;

(6) the title of the document (e.g., Opening Brief, Petition for Writ of Certiorari), identifying the party or parties for whom the document is filed; and

(7) on the top-right side (opposite filing court information), a blank area that is at least 2 1/2 inches wide and 1 3/4 inches long, with the words “Case Number.”

Form 7 illustrates the required caption for all documents created using a word-processing system. Form 7A illustrates the required caption for all documents filed by a self-represented party who does not have access to a word-processing system and is unable to obtain and complete Form 7.

(e) Signature. Every brief, motion, or other document filed with an appellate court must be signed by the party filing the document or, if the party is represented, by one of the party’s attorneys.

(f) References to Sexual Assault Victims and Minors. Except as otherwise provided by this rule or by leave of court, the following individuals must not be named in briefs or other appellate documents and must be identified by initials or appropriate general descriptive terms such as “victim” or “child”:

(1) sexual assault victims; and

(2) minors in criminal cases and cases brought under Title 19.

Any relative whose name could be used to determine the name of a person protected under this subsection must also be identified by initials or appropriate general descriptive terms. When the defendant in a criminal case is a family member of the person protected under this subsection, the defendant may be named.

(g) Non-Compliant Documents. If the clerk determines that a brief or other document does not comply with the Colorado Appellate Rules or is not sufficiently legible, the clerk will accept the document for filing but may require that a conforming document be filed.

(h) Certificate of Compliance. Each brief must 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, and, if applicable, C.A.R. 28.1 or 29. Forms 6 and 6A are the preferred forms for a certificate of compliance and will be regarded as meeting the requirements of C.A.R. 32(a)(4).

Source: (a), (b), and (c)(2) amended and (d) added, effective July 8, 1993; entire rule amended and adopted March 13, 1997, effective July 1, 1997; (c) amended and Comment added June 1, 2000, effective July 1, 2000; entire rule and Comment amended and adopted June 28, 2001, effective July 1, 2001; (c)(1)(II) and (c)(2)(II) corrected July 24, 2001, effective nunc pro tunc July 1, 2001; entire rule amended and adopted February 24, 2005, effective July 1, 2005; IP(a) amended

and effective February 7, 2008; (f) added and effective May 28, 2009; entire rule and comment amended and effective October 17, 2014; entire rule and comments amended and effective June 25, 2015.

COMMENT

2000

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 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 (c)(1)(I). The preferred caption for documents issued by the court or clerk of court is found in subsection (c)(1)(II). Because some parties may have difficulty formatting their documents to include vertical lines and boxes, alternate case caption formats are found in subsections (c)(2)(I) and (c)(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/scao/Forms.htm>.

2014

This rule conforms the appellate practice to the forms of case captions provided in C.R.C.P. 10 for all documents filed in Colorado appellate courts. The purpose of the form caption 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). Parties who cannot format documents to include vertical lines and boxes may use the alternate case caption format in subsections (d)(2). However, the box format is the preferred and recommended format.

2015

The purpose of the form caption is to provide a uniform and consistent format that enables practitioners, clerks, administrators, and judges to locate identifying information more efficiently. The changes to this rule make the appellate practice caption forms consistent with the forms of case captions provided in C.R.C.P. 10 for all documents filed in Colorado appellate courts.

The required case caption format for documents created using a word-processing system is found in Form 7. Self-represented parties who do not have access to a word-processing system and cannot format documents to include vertical lines and boxes may use the alternate case caption format in Form 7A. However, Form 7 caption format is preferred and recommended.

Subsection (f) is a new subsection. It is based on the legislative requirements set forth in Colo. Rev. Stat. §§19-1-102(1.7), 19-1-109(1), and 24-72-304(4)(a), and is consistent with longstanding court practice.

Prior subsection (e), formerly titled “Improper Form and Briefs of Other Papers,” now titled “Non-Compliant Documents” and (f) titled “Certificate of Compliance” have been re-lettered to subsections (g) and (h), respectively. The substance of the prior subsections has not changed.

ANNOTATION

Law reviews. For article, “Amendments to Appellate Rules Concerning Type Size and Word Count”, see 34 Colo. Law. 27 (June 2005). For article, “Complying With C.A.R. 28 and 32”, see 39 Colo. Law. 65 (November 2010).

Noncompliance will result in dismissal. Where an appellant fails to comply with this provision, the appeal will be dismissed. *Dubois v. People*, 26 Colo. 165, 57 P. 187 (1899).

Example of noncompliance. A reply brief which is in indistinct and blurred typewriting flagrantly violates this provision. *Mitchell v. Pearson*, 34 Colo. 281, 82 P. 447 (1905).

■ Rule 33. Prehearing Conference

Repealed effective January 7, 2015.

Source: Entire rule repealed effective January 7, 2015.

ANNOTATION

Law reviews. For article, “The Problem of Delay in the Colorado Court of Appeals”, see 58 Den. L.J. 1 (1980).

■ Rule 34. Oral Argument

(a) In General. Oral argument may be allowed at the discretion of the court. A request for oral argument must be made in a separate document entitled “request for oral argument.” The request must be filed no later than 7 days after briefs are closed. The court may order oral argument regardless of whether any party requested oral argument.

(b) Notice of Argument; Postponement. The clerk must advise all parties of the date, time, and place of oral argument. A motion to postpone the argument must be filed reasonably in advance of the argument date.

(c) Time Allowed for Argument.

(1) In the Supreme Court. Unless the court orders otherwise, each side will be allowed 30 minutes for argument. Any motion for additional time must be filed within 7 days after the briefs are closed and will be granted only if good cause is shown. The court may vacate or terminate the argument if, in its judgment, further argument is unnecessary.

(2) In the Court of Appeals. Unless the court orders otherwise, each side will be allowed 15 minutes for argument. Any motion for additional time must be filed within 7