

MOVING YOUR APPEAL FORWARD...

The things that must happen before
your case is put at issue and how to
make the process go smoothly.

Plus plenty of interesting statistics.

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All appeals filed in the Court of Appeals must have the
following elements completed before the case will be
placed at issue for a merits division to determine:



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THE NOTICE OF APPEAL

The Court of Appeals is a statutory court and it must have
jurisdiction before it can proceed to determine a case on
the merits.

In dependency or neglect cases the Court's jurisdiction
comes from sections 19-1-109 and 13-4-102.

A properly filed notice of appeal satisfies the following
elements:

1. Finality
2. Timeliness
3. Subject Matter Jurisdiction

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Finality

An appeal generally MUST be from a final order.

The general requirement that an order must be final to be appealable stems from the well-established principle “that the entire case must be decided before any ruling in that case can be appealed.” *Cyr v. Dist. Court*, 685 P.2d 769, 770 (Colo. 1984). We have consistently characterized a final order as “one that ends the particular action in which it is entered, leaving nothing further for the court pronouncing it to do in order to completely determined the rights of the parties involved.” *People v. Gaultney*, 214 P.3d 1049, 1051 (Colo. 2009) (citing *People v. Jefferson*, 748 P.2d 1223, 1224 (Colo. 1988); *Stillings v. Davis*, 158 Colo. 308, 406 P.2d 337, 338 (1965)).

People v. G.S., 2018 CO 31, ¶ 37.

An order is not final until it is written, signed, and dated by the district court judge. C.R.C.P. 58(a)

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Finality

However, an order or judgment is also final and appealable if a statute or case law says that it is.

For example:

1. The adjudicatory order is final, appealable order after entry of the dispositional order. § 19-1-109(2)(c).
2. The initial dispositional order is a final, appealable order. *People in Interest of C.L.S.*, 934 P.2d 851, 854 (Colo. App. 1996).
3. An order terminating, or refusing to terminate, parental rights is a final, appealable order. § 19-1-109(2)(b)

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Timeliness

Pursuant to C.A.R. 3.4(b), a notice of appeal and designation of transcripts must be filed “with the clerk of the court of appeals with an advisory copy served on the clerk of the trial court **within 21 days** after the entry of the judgment, decree, or order.”

- A prematurely filed notice of appeal may be “cured” by the juvenile court’s entry of a final order. *Cf. Musick v. Woznicki*, 136 P.3d 244, 246-47 (Colo. 2006) (“We hold that a trial court is not divested of jurisdiction when a party files a premature notice of appeal of a nonfinal judgment. As applied here, we hold . . . that the jurisdictional defect has been cured, rendering the appeal ripe to proceed as of the date of the trial court’s certification of its judgment.”).

Pursuant to C.A.R. 3.4(c), the notice of appeal must include “a copy of the judgment, decree, or order from which the appeal is taken.”

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Timeliness

A timely filed motion under C.R.C.P. 59 may be determined by the district court despite a timely filed notice of appeal. C.A.R. 3.4(b)(1) ("The trial court continues to have jurisdiction to hear and decide a motion under C.R.C.P. 59 regardless of the filing of a notice of appeal, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within the time specified in C.R.C.P. 59(j).").

Pursuant to C.A.R. 3.4(b)(2), if a timely notice of appeal is filed by a party, any other party may file a notice of appeal or cross-appeal "within 7 days of the date on which the notice of appeal was filed or within the 21 days for the filing of the notice of appeal, whichever period last expires."

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Subject Matter Jurisdiction

The Court's subject matter jurisdiction comes from sections 19-1-109 and 13-4-102.

"Any provision of law to the contrary notwithstanding, the court of appeals shall have initial jurisdiction over appeals from final judgments of . . . the district courts, the probate court of the city and county of Denver, and the juvenile court of the city and county of Denver . . ." § 13-4-102(1).

"An appeal as provided in the introductory portion to section 13-4-102(1), C.R.S., may be taken from any order, decree, or judgment." § 19-1-109(1).

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THE RECORD ON APPEAL

Pursuant to C.A.R. 3.4(d)(1) "[t]he record on appeal must include the trial court file, including all exhibits. No designation of record is necessary for the trial court file and all exhibits. The record on appeal may also include any transcripts designated and ordered by the parties pursuant to this rule."

Under C.A.R. 3.4(e), the record is to be transmitted to the court of appeals within 42 days. One 14-day extension to file the record may be granted at the discretion of the court. C.A.R. 3.4(e)(2).

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Designating Transcripts using JDF 545

JDF 545 can be found on the Colorado Judicial Branch's website. The form allows you to fill in the blanks to order transcripts from the hearing dates held in the juvenile court.

The screenshot shows the JDF 545 form with the following sections:

- Case Information:** Includes fields for Case Number, Date of Filing, and Court.
- Hearing Dates:** A table with columns for Date, Time, and Location. It lists several hearing dates from 08/15/2015 to 08/19/2015.
- Designated Transcript Information:** Includes fields for the name of the designated transcript, the name of the designated transcript, and the name of the designated transcript.

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How to Find Out What Needs to Be Designated? Use the juvenile court register of actions...

The screenshot shows the juvenile court register of actions with the following sections:

- Case Information:** Includes fields for Case Number, Date of Filing, and Court.
- Actions:** A table with columns for Date, Time, Location, and Action. It lists several actions from 08/15/2015 to 08/19/2015.
- Designated Transcript Information:** Includes fields for the name of the designated transcript, the name of the designated transcript, and the name of the designated transcript.

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Having Problems Deciding if a Hearing was Held or with what Transcripts to Designate?

Give the local
appeals clerk a call!

<https://www.judicialbranch.org/ContactUs/AboutUs/ContactUs>

You should be able to reach out to the district court and receive help to determine if the register of actions accurately reflects the dates hearings have been held.



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Motion to Supplement the Record and Motions to Settle the Record

It is important to remember that the record on appeal consists of "[a]ll documents filed in the trial court case as of the date of filing of a notice of appeal..." C.A.R. 10(6)(1) (emphasis added).

Pursuant to C.A.R. 10(2), after the record is transmitted from the juvenile court to the court of appeals, "[i]f any material part of the trial court record is omitted or missing from the record by error or accident..." The appellate court, on motion or of its own initiative, may order that the supplemental record be certified and transmitted.

- Average period of time for a supplemental record to be filed in a juvenile matter is 21 days.

Pursuant to C.A.R. 10(6)(1), "[i]f any difference arises as to whether the record truly discloses what occurred in the trial court or a portion of the record is not in the possession of the trial court, the difference must be submitted to and settled by the trial court. The party moving to settle the record must file a motion to stay the appellate court proceedings in the appellate court while the trial court considers the motion to settle the record."

- A motion to settle the record must be filed with the district court. A motion filed in the appeals court stating that a motion will be filed in the district court may be denied because speculation that the record is incomplete does not satisfy C.A.R. 10(6). In those cases in which a portion of the record is not in the possession of the trial court because a recorder malfunctioned, once there is confirmation from either the district court clerk or the district court itself that the record must be settled, the appeal is stayed. It should be noted that no limited remand is necessary for the juvenile court to settle the record, and, therefore it is unnecessary for the parties to seek permission in this court before going to the district court to settle the record.

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THE BRIEFS

All the requirements for the briefs can be found in C.A.R. 3.4(f), (g), and (h).

Common errors with briefing in the juvenile context are:

- Failure to include an ICWA statement that complies with all 6 items listed in C.A.R. 3.4(f)(1)(E)(i)-(vi).
- Failure to replace names with initials in quotations from the trial court record. C.A.R. 32(f).
- Failure to use proper record citations. C.A.R. 28(e); August 2017 Record Citation Policy.
- Failure to include all the items listed in C.A.R. 3.4(f) "in the order indicated" by the Rule.
- Failure to double-space the table of contents and table of authorities; failure to alphabetically arrange the table of authorities.

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Understanding Brief Strikes

The law clerks at the court of appeals screen all opening and answer briefs filed in juvenile cases. A brief that is found deficient by a clerk will be routed to the juvenile motions attorney who will read the brief and determine whether the brief should be struck. Briefs are always struck if the protected person's name is used violating C.A.R. 32(f).

- A copy of the brief screening sheet used by the law clerks to determine compliance of a brief with C.A.R. 3.4 is available in the materials included with this presentation. If you check your brief against that sheet before filing the brief, the likelihood of not having your brief struck is far greater.

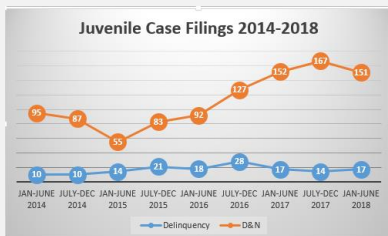
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AND NOW TO
SOME OF THOSE
INTERESTING
STATISTICS....



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Number of Notices of Appeal Filed in Juvenile Dependency Cases



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Average Age of Dependency and Neglect case 2018

- From NOA to Record: **56 days**
- Record to Complete Briefing: **74 days**
- At-issue through to Division: **132 days**
- Once assigned to opinion: **16 days**
- To Mandate: **@ 43 days** (varies greatly depending on whether cert. review is sought)
- Total: **321 days**

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