

Court of Appeals

STATE OF COLORADO
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Colorado Court of Appeals Policy on Attachments to Motions and Briefs

The Colorado Appellate Rules permit a party to attach documents to a motion or brief in the court of appeals only in very limited circumstances. For example, C.A.R. 28(f) permits an addendum to a brief for regulations, ordinances, statutes, or rules “not currently in effect or not generally available in an electronic format”; and C.A.R. 27(a)(2)(B) allows attaching “other documents *necessary* to support a motion.” (Emphasis added.)

Attachments are only allowed in limited circumstances because “[a]ny facts not appearing in the record cannot be reviewed” by the court of appeals. *In re Marriage of Tagen*, 62 P.3d 1092, 1096 (Colo. App. 2002). Under C.A.R. 10(a), the record on appeal consists of the following:

- (1) All documents filed in the trial court case as of the date of filing of a notice of appeal or any amended notice of appeal; and
 - (A) Transcripts designated by counsel as set forth in section (d); or
 - (B) In limited circumstances, such as when the transcript is unavailable, a statement of the evidence or proceedings certified by the trial court as set forth in section (e).
- (2) If a timely filed motion pursuant to C.R.C.P. 59 has been filed, the record must also include that motion, any responses, and any order on the C.R.C.P. 59 motion.

Documents beyond those listed in C.A.R. 10(a) are not part of the record.

Under C.A.R. 10(f), if any material part of the trial court record is omitted or missing from the record, a party must file a motion to supplement the record. A motion to supplement the record must

specify “the name or title of the document, the date (if any) the document was submitted to the lower court, and the reason the item is necessary to decide the appeal.” C.A.R. 10(f)(2).

In addition, “If 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.” C.A.R. 10(g)(1). 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. *Id.*

Given these rules, the court of appeals will **not** accept the following attachments, unless a party is granted leave.

(1) For briefs, the court will not accept

- documents that are already part of the record on appeal transmitted by the trial court; or
- documents that are not part of the record on appeal because they were never filed in the trial court, they were filed in the trial court after the notice of appeal or amended notice of appeal was filed, or they were filed in a different district court case.

This policy does not apply to documents that comply with C.A.R. 28(f).

(2) For motions, the court will not accept

- documents that are already part of the record on appeal transmitted by the trial court; or
- documents that are not part of the record on appeal because they were never filed in the trial court, they were filed in the trial court after the notice of appeal or amended notice of appeal was filed, or they were filed in a different district court case.

Such documents will be accepted if the movant can show that the document is necessary to support the motion under C.A.R. 27(a)(2)(B).

Parties will be notified if attachments are not accepted by the court. Such attachments will be retained for 28 days and may be retrieved by the filing party. After 28 days, the attachments will be destroyed.