

Oral Arguments Before the U.S. Court of Appeals for the Seventh Circuit

The Seventh Circuit hears oral argument in a very high percentage of cases. Below is some helpful advice, should your case be selected for oral argument.

1. IN ADVANCE OF ARGUMENT

- **Scheduling.** Oral argument is usually scheduled after the appellee's brief is filed. Once the date is set for argument, it is virtually impossible to reschedule. Therefore, a notification of unavailability should be filed shortly after the appellee's brief is filed.
- **Confirmation.** Receipt of the notice of oral argument must be confirmed in writing and the name of the attorney presenting oral argument must be provided to the clerk's office at least two days prior to the scheduled argument date. Although dividing arguments among several appellants' or appellees' counsel is strongly discouraged, any "split" of time should be noted, along with the amount of time reserved for rebuttal.
- **Preparation.**
 - Review FRAP 34 and Circuit Rule 34 on oral argument.
 - Review the oral argument portions in the Seventh Circuit's Practitioner's Handbook on www.ca7.uscourts.gov.
 - Narrow your focus for oral argument. There is usually only enough time to cover one or two issues.
 - Know the record upside down, and write down key cites.
 - Know the weaknesses of your case and have responses to questions on those ready.
 - Prepare a clear and concise statement describing 1) the basis for the district court's subject matter jurisdiction and 2) the basis for the appellate court's jurisdiction.
 - Create a page or two of notes in large font to bring with you to the podium.
- **Rehearse.** Do a mock argument well in advance of the date set for argument in order to hone your presentation, determine the length of your presentation and obtain insight into questions the panel may ask.
- **Concessions.** Consult the client to determine if there are any concessions that you could make at oral argument. (Ill-considered concessions made during argument can alter the outcome on appeal.)
- **Attendance.** Carefully consider whether the client should attend the argument. If the client does attend, you should make sure that he or she is adequately prepared for the limited nature of appellate arguments. Obviously, the client may be seen, but should not be heard in the courtroom.
- **Recheck the research.** All pertinent cases should be rechecked to confirm there is no intervening change in authority. If the supplemental research reveals new legal authority directly on point and you plan to use that in your argument, you should file a citation of supplemental authorities under FRAP 28(j) and Circuit Rule 28(e) right away.

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- **Scout the courtroom layout.** Seriously consider attending an argument to acquaint yourself with the courtroom, the procedures and protocols. (The court's argument calendar is published on the court's website.)
- **Know the judges.** Familiarize yourself with all the members of the court. You cannot focus on the three members of your panel because the Seventh Circuit does not disclose the panel until 9 a.m. the morning of the argument.

2. DAY OF ORAL ARGUMENT

The court hears argument in the courtroom on the 27th floor of the Dirksen Federal Building located at 219 South Dearborn Street in Chicago, Ill. (The court sometimes uses the ceremonial courtroom on the 25th floor when more than two panels are hearing argument on the same day or for hearing cases *en banc*.)

- **Dress conservatively.** Wear solid gray or blue suits, simple shirts. (This may not matter to all judges, but it does to some. You want to impress the court with your ideas, not distract them with your appearance.)
- **Check in.** Check in with the clerk's office at 9 a.m. Oral arguments start promptly at 9:30 a.m.
- **Hang up coats.** Do not bring coats or hats into the courtroom. Use the attorney's cloakroom immediately adjacent to the main courtroom.
- **Sit in the right location.** If your case is the first case to be argued that day, assume your position at counsel table. Facing the bench, appellants sit to the left and appellees sit to the right. Otherwise, take a seat in the front row of the gallery and be in the courtroom for the argument of the case immediately before yours. (Arguments can be canceled or shortened, so it is important that you be in the courtroom and prepared.)

3. DURING ARGUMENT

- **Take a seat first.** Do not approach the podium from the gallery. Take your place at the appropriate counsel table, and wait for the presiding judge to call your case. **Never approach the bench.** Finally, you should leave from counsel table, not the podium.
- **Speak slowly and clearly.**
- **Call them "judges."** Address the members of the court as "judges", not "justices." If you know the judges very well, you can address them by name. But, if you are nervous, avoid using names; an error will distract.
- **Answer questions directly and immediately. NEVER** put off a judge with the promise to address an issue later. The question is almost never answered, and it irritates the judges.
- **Do not read your argument.** Also, do not memorize your argument.
- **Do not fidget.** Do not shuffle papers at the podium or fidget. Avoid excessive use of your hands, and **NEVER** point at the bench.
- **Pay attention to the lights on the podium.** Generally, the lights mean:
 - White: Appellant is entering the time reserved for rebuttal. Appellee has five minutes of time remaining.
 - Yellow: One minute of argument time remaining.
 - Red: The time for argument has expired.

- **Red light means STOP.** When the red light comes on, conclude your thought promptly and sit down. If you are in the middle of answering a question, politely request leave from the court to finish your thought (e.g., "I see that my time is up. May I complete my answer?").
- **Conclude.** At the end, reiterate the exact relief your client seeks from the court (e.g., "For these reasons, appellant/appellee respectfully requests that the judgment below be affirmed/reversed/vacated.").
- **Know when to SIT DOWN.** You do not need to use all of the time allotted. If you have made all of your points and answered all of the court's questions, conclude and sit down! If you are the appellee, remember that you usually have more to lose by continuing to talk.
- **Make way for the next argument.** Once both sides are done in your case, promptly yield your table to the attorney arguing the next appeal.

4. GUIDELINES FOR ORAL ARGUMENT

Oral argument requires heightened self-awareness – the ability to listen and understand questions or concerns (stated and implied) and respond in an insightful manner. The goal during appellate argument is to engage the court in an intelligent dialogue about the case with the ultimate objective of convincing the court to rule in your client's favor. Keep it simple. **Avoid colorful language, acronyms (except for universal ones like FBI) and industry jargon.** The court is reviewing a decision under a standard of review and will focus on a few key facts and the legal issues. Few appeals are won on oral argument, but appeals can be lost.

Demonstrate knowledge of the record, the issues and the law.

- Employ reason and logic instead of just relying upon precedents.
- Present arguments clearly and directly.
- Give a brief "road map" (e.g., "I would like to focus on [one issue] this morning").
- Where appropriate, direct the court to the important parts of the record.

Answer questions directly and fairly.

- Respond to questions from the judges directly. Do not attempt to evade them. If you need to explain to avoid a concession, do so, but be sure to answer the judge's question. If the judge asks a question calling for a "yes" or "no" answer, lead with "yes" or "no." You can always follow with an explanation such as "Yes, but let me explain why that doesn't mean ..."
- Do not fight over hypothetical questions. You should not introduce hypotheticals, but if a judge poses one, answer it as best as you can.
- If you are unable to provide an answer, admit it and volunteer to provide supplemental authority following the argument. **NEVER GUESS.**
- Fit relevant questions from the court into your overall analysis and argument.
- After you have answered the court's question, resume your argument.
- Be aware of weak points in your argument.
- Be prepared to drop some of your lesser points and go with the flow.

Argue with appropriate formality.

- Never interrupt any of the judges.
- Show appropriate deference in your word choice and tone. Never sound condescending.

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- If the members of the court get involved in a side conversation, wait for them to finish.
- Do not try to be humorous. The judges can; you cannot.
- Do **NOT** raise your voice. Speak clearly at an appropriate volume.
- Use emphasis and pauses effectively.

Maintain appropriate courtroom demeanor.

- Project an image of professional sincerity.
- Avoid distracting nonverbal mannerisms.
- Avoid "ums," "ahs," "ers" or other distracting fillers.
- Maintain good eye contact, but don't stare. (Act as if you were having a conversation.)
- Be respectful toward the court, the lower court, opposing counsel and the opposing party. Do not disparage the district court judge.
- Do not dwell on the individual authors of prior Seventh Circuit opinions. Except for dissenting and "in chambers" opinions, *all opinions are by the court*.

5. FOLLOWING ORAL ARGUMENT

- **Supplemental authority.** Follow up promptly with any supplemental authorities promised during oral argument. Unless otherwise authorized by the court, supplemental submissions should follow the requirements of FRAP 28.
- **Recording of oral argument available online.** If you need to refresh your recollection of the argument to report to the client or otherwise, the court publishes recordings of oral arguments on its website.
- **Await the decision.** Predicting when the court will announce its decision is nearly impossible. It depends upon a number of factors, including whether the decision is by order or published opinion, the complexity of the issues, the members of the panel, the member of the panel selected to author the decision, and whether the decision is unanimous or has concurring or dissenting opinions. The court's internal operating procedure contains "presumptive times for action" of three months from the date of oral argument. Some decisions are announced in only a month, and others may be issued six or more months following argument.

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