

PREPARING FOR ORAL ARGUMENT IN THE FIFTH CIRCUIT

The following information will be helpful to you in preparing for oral argument:

1. You should not start with a recitation of the background facts, but should go immediately to the key issues upon which the case turns. Each judge receives a copy of the briefs and record excerpts in his or her chambers. It is the invariable practice of the judges to read these materials prior to oral argument.
2. Prepare your argument in advance. Select one or two key issues, because that is all that the time allowed you will permit you to cover. You may find it helpful to begin by stating the issues you intend to cover so that any judge who wishes you to discuss other issues may so advise you. Rely on your brief for the rest. The Court will not consider those issues to have been abandoned.
3. Counsel are advised that large poster sized aids are disfavored. It is almost invariably more helpful to the court to furnish four smaller sized (approximately 8x14 inches, or less) copies of charts, diagrams, etc., to the courtroom deputy. For en banc cases, please furnish 20 copies. The deputy will give a copy to each judge.
4. If you have not made prior arrangements with the deputy clerk to call in, report in person to the Clerk's Office promptly thirty minutes before court is scheduled to convene on the date set for oral argument regardless of the order in which your case is listed. This is essential because occasionally cases are rescheduled, or cases listed before yours may be settled or continued.
5. Expect questions during your argument and, when they are asked, answer them directly, then explain your answer. In addition, before your case is called for argument, you may receive questions in writing. Don't forget to consider these.
6. Do not address your argument entirely to one judge even though one may ask more questions than the others. No case is assigned to a judge before oral argument. At the conclusion of each day's arguments a conference is usually held on the cases heard by the panel. A tentative decision is reached and one of the judges is designated to prepare the opinion. Assignments are made so as to equalize the workload of the entire session, taking into account possible dissents.
7. There are microphones on the lectern. These serve for both amplification and recording of the argument. Do not walk away from them in presenting your argument. The courtroom acoustics can make it difficult for the judges to hear you and the recording of your argument will be affected. Speak loudly and clearly so that your argument can be fully heard and understood.
8. 5th Cir. R. 34.4 permits only two counsel for each party to be heard. In view of the limited time allowance, it is usually better for only one lawyer to handle the entire argument.

9. If you have discovered additional authorities not cited in your brief while preparing for oral argument, do not waste your short time reciting the citations at oral argument. Prior to arriving to check-in for oral argument, electronically file a FRAP 28(j) letter giving the name of each such case or authority and its citation. Paper copies of your filing are only required if filed within 24 hours of your argument. Print four copies and give three copies to your Courtroom Deputy at check-in. You must serve opposing counsel with the last copy prior to the beginning of court.

10. Unless additional time is allowed, each side has twenty minutes, including rebuttal time for the appellant. The green light on the lectern will be on when you start. A yellow light will go on when you have two minutes left. When the red light goes on, finish your sentence and stop. Do not press on until stopped; whatever you add is unlikely to overbalance the annoyance you create by exceeding the allotted time. If the judges have additional questions or wish you to continue, they will tell you. If you continue on your own, and have reserved time for rebuttal, it will be deducted from that time.

11. The appellant is permitted to reserve time for rebuttal. This must be restricted to rebuttal. Obviously only a fraction of the time requested for direct argument should be reserved. The Court would prefer no more than 5 minutes rebuttal time.