

What to Expect at Oral Argument Before the Oregon Court of Appeal

I. Introduction

This guide is intended to help self-represented litigants (sometimes described as proceeding "*pro se*," which is a Latin phrase meaning "for oneself") to understand oral argument in the Oregon Court of Appeals and the rules that apply.

Do not rely entirely on this guide. Oregon law prevents the Oregon Judicial Department and its employees from offering legal advice to the public. This guide is not a legal authority and does not provide legal advice. Understanding the law and rules that apply to your case will require you to conduct additional research. If you think there is a conflict between a rule and this guide, follow the rule.

Parties should review the Oregon Rules of Appellate Procedure (also known as the ORAPs) because those rules apply to all cases before the Oregon Court of Appeals. In particular, self-represented litigants will want to review ORAP chapter 6, which are the rules governing oral argument.

General Tips for Self-Represented Litigants

- Be sure the Court always has your correct address and phone number, and communicate using your case number. If your contact information changes, contact the Records Office in writing immediately. Always include your case number on any paperwork you submit to the court.
- Read everything you get from the court and the opposing party right away, including the papers you get from the Records Office when you file. It is very important that you know what is going on in your case and what deadlines that the court has set for the parties.
- Meet every deadline. It is important to obey all deadlines and file appropriate responses on time because sometimes missing a deadline can carry consequences by law. If you need more time to do something, ask the court in writing for more time as soon as you know that you will need it and before the deadline has passed.
- Use your own words and be as clear as possible. When interacting with the court in writing or during oral argument, you do not need to try to sound like a lawyer. Be sure to listen and understand what is asked of you before responding. When you respond, be as clear and direct as possible.

II. Pre-Argument Process

A. Waiting for argument to be scheduled

The appellant/petitioner files the opening brief, and then the respondent files an answering brief, if they choose to appear. Depending on the type of the case, the appellant/petitioner may file a reply brief or asks to file one. *See* ORAP 5.70.

Once the briefing is complete, the case is considered "queued for scheduling" (also known as "at issue") and the court will put the case on a "preliminary" oral argument calendar. Because the court hears a high volume of cases, the preliminary oral argument date is usually several months after the case is fully briefed.

The court generally issues the preliminary calendar approximately eight weeks before the argument. The preliminary calendar is not final; the court can change it at any time. You will not know the identity of the panel of judges who will hear oral argument until the calendar is final.

Some cases are prioritized because a statute or rule sets a specific time limitation on when oral argument is scheduled.

The court issues the final calendar approximately three weeks after the preliminary calendar is created.

B. Notification of Submission of Case and Return of Notification

The court will issue a written notice to the self-represented party or parties or to the attorney(s) of record. The notice is entitled: "Notice of Submission of Case to Court." It identifies the date on which the case has been scheduled to be submitted on the briefs--that is, without oral argument--and also outlines the process to request oral argument. *See* ORAP 6.05.

If any party requests oral argument within 14 days, the notice explains when the case will be remotely argued. Remote argument refers to an oral argument conducted by video conference with all parties and judges appearing remotely.

Oral argument is generally conducted remotely. Once a party makes a timely request for oral argument, all parties who have filed briefs are generally expected to participate in oral argument unless they notify the court and the

other parties at least 48 hours in advance that they will not appear as provided by ORAP 6.10(5).

The notice also explains that a party may request oral argument be held in-person as described by ORAP 6.05(2)(b)(iii) and ORAP 6.05(2)(b)(iv). Self-represented parties in custody may not request in-person arguments. The court will instead set the case for remote argument under ORAP 6.30(2).

Each self-represented party or attorney should complete, sign, and return, the notice to the court to opt-in for oral argument. It is important to carefully read the Notice of Submission of Case to Court and adhere to any deadlines.

C. Requesting a Setover: asking to change the date of oral argument

If a party finds that the date the case is set for oral argument does not work, the party may request for a case to be setover. If there has not been an opt-in notice filed in the case, the party may call the records section (503-986-5555) and request that the case be removed from the docket and no motion will need to be filed. If an opt-in notice has been filed for the date that it is set and a party wants to request a setover, a motion to postpone oral argument will need to be filed with the court. A motion to postpone oral argument accrues a \$53 filing fee.

D. Waiving Oral Argument

If no party files a timely request for oral argument--which is what happens in most cases--the case generally will be submitted to the court for decision on the submission date without oral argument. If one party timely requests oral argument, the case will be set for remote argument as described in ORAP 6.30.

E. Respondent's Confession of Error

When a respondent submits an answering brief confessing error as to all assignments of error and not objecting to the relief sought by the opening brief, the respondent is required to inform the court and the opposing party by letter. ORAP 6.05(4). When the court receives respondent's notification that a brief confesses error, the case will be submitted without oral argument.

F. Court of Appeals Panels

Generally, the court sits in three-judge panels to hear oral argument. The identity of the panel of judges who will hear oral argument will be released

when the final calendar is posted on the court's website, which generally is about three weeks after the preliminary calendar is created.

II. PREPARING FOR ORAL ARGUMENT

A. Function of oral argument

Oral argument is an opportunity to highlight a specific issue or issues that you believe support your position. It does not serve the same function as the written brief, which should have all of your arguments. Oral argument is strictly limited to 15 minutes per side. ORAP 6.15(2)(a).

B. No new evidence or argument

The court does not receive new evidence or argument during oral arguments. Rather, the court generally is limited to evidence in the record on appeal or on review. *See* ORAP 3.05 (describing trial court record on appeal) and ORAP 4.20 (defining record on judicial review). Oral argument is an opportunity to focus the court on the issue or issues that you believe will help the court make its decision. The panel of judges will have reviewed all the briefs before argument.

If you believe there is additional legal authority that is helpful to the court that you did not include in your brief, you should review ORAP 5.85(1) to determine whether to file a memorandum of additional authorities.

C. Preparing for oral argument

Oral argument is an opportunity to discuss your case with the court and answer questions from the judges. Before the argument, review all the briefs that have been filed, update yourself on any developments in the law that might impact your case, and be familiar with information in the record of the case and with the other party's position.

People often create an outline of their planned argument and then remain flexible enough to answer the court's questions, which sometimes will deviate from your planned argument. Because oral argument is to give the court the information it needs to make a decision in the case, you should prioritize answering the court's questions before returning to your planned outline.

The judges will have read all of the briefs before oral argument, so you do not need to repeat everything in your brief. Rather, it is helpful to highlight the

specific issue or issues that you believe support your position and respond to the court's questions. As described below, it would be helpful for you watch some video oral arguments to help you prepare.

D. Memorandum of Additional Authorities

You may submit a memorandum with additional cases or other legal authorities after the filing of the party's brief but before oral argument without permission from the court. ORAP 5.85(1). After oral argument, you must seek permission to file a memorandum of additional authorities by filing a motion as provided by ORAP 5.85(1).

A memorandum of additional authorities may not exceed two pages unless the court gives permission to exceed the page limit.

E. Resources to help you prepare

It would be useful to watch video oral arguments to help prepare. Both are available on the court's website. Visit <https://www.courts.oregon.gov/courts/appellate/media/Pages/webcasting.aspx> and click on the "Watch Oral Arguments Now!" button to navigate to the arguments for the Oregon Court of Appeals. Recorded arguments for both remote and in-person arguments are available to watch.

III. ORAL ARGUMENT DAY

A. Time and Place

The court hears argument either by "remote means," which refers to a video conference with all parties and judges appearing remotely, or in-person in Salem, Oregon.

The Notification of Submission of Case will specify the time of argument, which begins at either 9:00 AM or 1:30 PM. You must check in with the bailiff 30 minutes before the argument session begins. The check-in requirement applies whether the argument is held by remote means or is in-person. If you are arguing remotely, you will have the opportunity to test your video and microphone with the bailiff. Failure to check-in before the morning or afternoon session may result in the argument being held without your participation.

B. Time Allotted for Oral Argument

Generally, the appellant and respondent each have 15 minutes to argue. ORAP 6.15(2)(a). When two or more parties are on one side of the case, the parties divide the 15 minutes among themselves, unless the court orders otherwise. ORAP 6.15(1)(c).

The appellant argues first, followed by the respondent. An appellant usually chooses to save some of their 15 minutes to use after respondent's turn (called "rebuttal") to have a chance to address respondent's arguments.

When checking in with the bailiff, the appellant's attorney or the appellant proceeding without counsel will tell the bailiff the amount of time they wish to reserve for rebuttal. The appellant may reserve up to five minutes of the total 15 minutes allowed for argument. ORAP 6.15(2)(b). The appellant is responsible for keeping an eye on the clock to make sure they save enough time for rebuttal. *See* section on Timer and Lectern Lights, below. Only the appellant has the opportunity for rebuttal; the respondent only argues one time after the appellant's opening argument.

C. Attire

Case participants should wear clothing that is clean and not distracting. Clothing should not display foul language, insults, or other negative words.

For proceedings conducted by remote means, all attorneys, self-represented parties, and court officials must wear appropriate attire, remain on camera, and conduct themselves as if they were appearing in person in the courtroom. ORAP 6.30(5).

D. Volume, Enunciation, Pace

When it is your turn to argue, please make sure that your microphone properly amplifies your voice and that all the participants can hear without straining. Speakers should speak clearly and enunciate. Be careful not to speak too quickly; strive for a conversational tone and pace to better communicate your points.

E. Appellant's Opening Remarks

Once the presiding judge calls the case for argument, the attorney for appellant or self-represented appellant generally acknowledges the court and the

opposing party before beginning their argument. The standard introduction is something similar to: "May it please the court and counsel, my name is ____ and I represent ____, the appellant/respondent on appeal." For self-represented parties, the introduction can be along the lines of: "May it please the court and counsel (if applicable), my name is ____ and I am the appellant/respondent on appeal."

After the introduction, the argument generally highlights the areas that the person intends to cover and then dives into the heart of their argument.

EXAMPLE: "This case contains four assignments of error. I intend to focus on assignments one and three, unless the court has questions about the other assignments of error. The first assignment involves a search and seizure issue and presents the question whether the officer seized the defendant under state or federal constitutional law when they approached the defendant on a public bus at 1 a.m., asked the defendant where they were traveling, and asked to see identification."

F. Respondent's Argument

Similarly, respondent will begin argument by saying, "May it please the court, counsel, my name is ____ and I represent ____." For self-represented parties, the introduction can be along the lines of: "May it please the court and counsel (if applicable), my name is ____ and I am the appellant/respondent on appeal." Respondent will also want to highlight a specific issue or issues that they believe supports their position. A respondent may want to include in the argument a response to the points discussed in appellant's opening argument. Not every point in the brief needs to be discussed at oral argument. That is, a party does not waive or abandon an issue or an argument by not addressing it at oral argument. ORAP 6.15(4).

You do not need to use up all 15 minutes allowed if you have highlighted the specific issue or issues you believe support your position and have answered the court's questions. *See* section on Ending the Argument below.

G. Rebuttal

The appellant has the opportunity for rebuttal argument if they have not used up their allotted 15 minutes in their opening argument. The respondent does not get a rebuttal argument.

Rebuttal is limited to the matters that were raised in respondent's oral

argument. The appellant may not raise issues that were not addressed in respondent's oral argument. Generally, an appellant will not attempt to respond to every point raised by respondent; rather, the appellant should prioritize key arguments to respond to and make sure the court has no further questions about appellant's position.

H. Demeanor while the Opposing Party Addresses the Court

Oral argument is a formal court proceeding and everyone is expected to act professionally. Only one person should be speaking at a time. When listening to the opposing party arguments or the court's questions, a party should not gesture, shake one's head, roll one's eyes, or make other facial expressions or other gestures reacting to the argument.

Oral arguments are directed at the panel of judges, not to the opposing party or anyone else in the courtroom or on the videoconference.

I. Limitation to Cited Authorities

You should limit your oral argument to the same arguments you made in writing in your brief. Generally, a party may not reference any authority not cited in any brief or in a pre-argument memorandum of additional authorities. *See* ORAP 5.85 (setting out rule on memoranda of additional authorities). Under ORAP 6.15(6), if a party intends to refer to an authority not previously cited, the party shall inform the court at the time of argument and shall make a good faith effort to inform opposing counsel or the opposing self-represented party of the authority at the earliest practicable time.

J. Questions from the Court

Remember that the purpose of oral argument is to assist the judges in understanding your position. The panel of judges often interrupt to ask questions, which helps you understand what they want to know. Please listen carefully to the entire question before beginning your response.

If you do not hear or understand a question, you should ask the court to repeat or restate the question. Strive to answer the question directly. If the question invites a yes or no response, begin your response with yes or no and then you may, if you think it is helpful, provide a further explanation or qualify that answer.

Viewing archived oral arguments may be helpful to understand the flow of oral

argument. Visit

<https://www.courts.oregon.gov/courts/appellate/media/Pages/webcasting.aspx> and click on the "Watch Oral Arguments Now!" button to navigate to the arguments for the Oregon Court of Appeals. Recorded arguments for both remote and in-person arguments are available to watch.

K. Timer and Lectern Lights

For either remote or in-person arguments, you will see a clock and two small lights that help you keep track of your allotted time. The clock is controlled by the bailiff. The clock counts down and when it hits zero, you are out of time.

The yellow light will come on when you have two minutes remaining for that portion of the argument (*i.e.* opening, response, or rebuttal). If you are the appellant in your opening argument and have reserved five minutes, the yellow light will come on after eight minutes.

The red light signals that you have used up all of the reserved time for argument. You should stop your argument immediately or ask the presiding judge if you may finish your thought. Please wait for the presiding judge's respond. If you are the appellant and the red light comes on, you begin using the time you reserved for rebuttal. You may continue to use that time and any time you use will be deducted from the time reserved for rebuttal.

L. Ending the Argument

Once you believe you have communicated all the points you wanted to highlight for the court, you should end your argument even if you have time remaining. Most advocates conclude with something along the lines of: "Unless the court has any further questions, I ask the court to * * * [insert relief requested]."

Upon conclusion of your argument, you either return to your seat during in-person argument or mute yourself for remote arguments.

When rebuttal, if any, is concluded, the presiding judge will announce that the case will be submitted and the oral argument session ends. For in-person argument, you should promptly gather your materials and allow the next party access to counsel table. For remote argument, the bailiff moves you back to attendee position and you may leave the videoconference call.

M. No Electronic Recordings Permitted

Generally, electronic recording of an appellate oral argument being conducted by remote means is not permitted without express prior approval of the court. "Electronic recording" includes, but is not limited to, video recording, audio recording, live streaming, and still photography by cell phone, tablet, computer, camera, recorder, or any other means.

Similarly, for in-person arguments, no electronic recordings are permitted without the approval of the judge presiding in a proceeding. The judge presiding in a proceeding has the authority and responsibility to control the conduct of the proceedings before the court, enforce decorum and prevent distractions, and insure the fair administration of justice in proceedings before the court. ORAP 8.35(2).

Although parties are prohibited from electronically recording oral arguments, the court maintains a library of archived oral arguments. Visit <https://www.courts.oregon.gov/courts/appellate/media/Pages/webcasting.aspx> and click on the "Watch Oral Arguments Now!" button to navigate to the arguments for the Oregon Court of Appeals. Recorded arguments for both remote and in-person arguments are available to watch.

There are special rules for media coverage of appellate court proceedings under ORAP 8.35.

N. Accessibility information and ADA accommodations

For accessibility information or to request ADA accommodations, please visit: <https://www.courts.oregon.gov/courts/appellate/go/Pages/accessibility.aspx>

For additional information on Accessibility and Access for Persons with Disabilities, please visit:

<https://www.courts.oregon.gov/services/ada/Pages/default.aspx>

IV. SUBMISSION

Once a case has been submitted either after oral argument or without argument, the case remains under advisement until the court issues a decision. The court will not rule from the bench after oral argument; rather, the court will issue its decision sometime after submission of the case. This can take a few weeks or may take several months or longer. You will be notified of any written decision from the court. Please refer to the ORAPs for further information.