

## Oral Argument Tips

**BE PREPARED.** Know the critical portions of the record and be familiar with the significant cases.

**TREAT ARGUMENT AS A CONVERSATION.** Judges do not want to hear speeches or, worse yet, listen to you read a brief or an argument. Argument is your chance to be an active participant in the final decision-making. Present your case in a persuasive, non-argumentative manner. Do not pander to the court or individual judges.

**BE SELECTIVE.** Choose your best issue(s) rather than argue all claims presented in the brief. Address only those facts that are critical to your argument. Assume that the court is familiar with the case. The briefing was your opportunity to educate the judges.

**GIVE A ROADMAP.** Your opening remarks should inform the court of your identity (for our recording equipment), tell us the issue(s) you are addressing in the order you hope to discuss them, note the standard(s) of review governing your issue(s), identify the relief you are seeking, and briefly explain why your position prevails. Then proceed to make your argument.

**BE FLEXIBLE.** If the court is interested in your second issue, discuss it first and return to your other issue(s) once you have fully addressed the issue of interest to the court. Consider your prepared remarks as a guideline or reminder sheet rather than a script that must be followed.

**LISTEN, UNDERSTAND, AND THEN ANSWER THE COURT'S QUESTION.** Answering questions is the most important function an advocate performs at oral argument. Questions come in many varieties and serve many purposes. Carefully listen to the question, answer the question, and (if appropriate) then explain your answer. Do not read too much into the nature of the court's questions. Avoid expressing frustration or delight with a question.

**BE PROFESSIONAL.** Professionalism and tone are as important in oral argument as they are in written briefs. Litigation is often contentious and it is not uncommon for one or both sides to believe the other side has acted improperly. Although misconduct is

generally rare, a claim that the opposing party or counsel has behaved improperly is most convincing if presented in an objective, respectful manner.

**APPROACH YOUR ARGUMENT PREPARATION FROM THE COURT'S PERSPECTIVE.** Look objectively at the case and consider how the court most likely will approach its decision. Consider how the outcome you are seeking fits within the scope of existing law. If you are seeking an expansion of the law, be candid that you are doing so and explain why your relief is appropriate and reasonable. Be prepared to explain the narrowest ruling that will still provide your client full relief. Be ready to discuss how your proposed rule or reasoning will apply in future cases. Identify issues that need not be addressed if the court rules as you request. Also identify any non-obvious reason that you believe the court's decision should be precedential. Should you be aware of related cases or cases raising related issues, be prepared to identify them for the court.