THE SUPREME COURT *of* OHIO

Guide for Counsel

Presenting Oral Arguments Before the Supreme Court of Ohio

The Supreme Court *of* Ohio

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Justices

This guide for counsel presenting oral argument is prepared by the clerk of the Supreme Court of Ohio, and is designed to assist attorneys preparing cases for argument before the court. It is not a substitute for the Rules of Practice of the Supreme Court, which are available on the court's website at www.supremecourt.ohio.gov under the clerk of the court's page.

WHO MAY ARGUE

Any attorney who plans to argue before the Supreme Court of Ohio must be on record as one of the attorneys for the party or amicus curiae that the attorney represents. If counsel is uncertain whether he or she has entered an appearance in the case, then counsel should check with the Office of the Clerk. Pursuant to Rule 2.01 of the Rules of Practice of the Supreme Court of Ohio, only attorneys licensed to practice in Ohio and attorneys admitted pro hac vice are permitted to orally argue a case.

An amicus curiae that has filed a brief in a case is not entitled to participate in oral argument without leave of the court. Leave may be sought by motion. This should be done well in advance of oral argument, but in any event, no later than seven days before the argument.

Any questions counsel may have about oral argument or about other case-related matters should be directed to the Office of the Clerk at 614.387.9530.

PREPARATION

Counsel may find it helpful to attend a session of court before the day scheduled for argument, or view a session on the court's website. Oral arguments are usually held on Tuesdays and Wednesdays throughout the year, though the court typically schedules fewer arguments during the summer months. The schedule of arguments is posted on the court's website under the clerk of court's page.

In addition, all arguments presented since March 2004 are archived for viewing on the court's website.

Counsel should anticipate questions that the justices might ask, and be prepared to answer them. If a case with similar issues was argued recently at the court, counsel might want to watch the archived video of the argument.

ARRIVING AT COURT

Between 8:30 and 8:45 a.m. on the day of argument, arguing counsel must report to the deputy clerk at the information desk outside the Courtroom on the first floor of the Thomas J. Moyer Ohio Judicial Center. Court convenes at 9 a.m. Counsel can verify the order of argument at that time, but should bear in mind that some cases conclude earlier than planned.

If counsel is sharing argument time, counsel must advise the deputy clerk about those arrangements and the amount of time that each attorney intends to present argument (see Managing Time, *infra*).

Counsel should advise the deputy clerk of any necessary accommodations that counsel or guests may need (e.g., a

wheelchair or a hearing-assistance device). Court personnel can make suitable arrangements to meet the request.

After checking in, counsel may proceed to Room 103 or Room 105 (Attorney Waiting Room), or enter the Courtroom and wait for his or her case to be called. Counsel may use personal computers and other electronic equipment in the waiting room. A live audio feed from the Courtroom allows attorneys in the waiting room to hear Courtroom proceedings as they occur.

COURTROOM ETIQUETTE

Counsel should wear appropriate business attire befitting argument before the court.

Counsel should also be aware that all arguments at the court are televised live on the Ohio Channel, a cable channel supported by Ohio's public broadcasting stations, and are streamed live on the court's website.

Personal computers and other electronic devices, such as laptops and PDAs, may be used at counsel table. However, counsel should take steps to ensure that those devices do not create any visual or audio disturbance. Cellular phones must be turned off in the Courtroom, and audible alarms on wristwatches should be muted.

When it is time for counsel to present argument, he or she should proceed to counsel table. Counsel for the appellant should sit at the counsel table to the left of the bench as one faces the bench. Counsel for the appellee should sit at the counsel table to the right of the bench as one faces the bench.

Additional attorneys who are affiliated with counsel presenting argument may also be seated at each counsel table. Unless presenting argument, parties may not sit at counsel table.

While seated at counsel table, counsel should remove the visitor identification badge he or she was issued when entering the building. Upon leaving the table at the conclusion of argument, counsel should clip the badge to his or her clothing again until leaving the building.

When the chief justice calls upon counsel, he or she should proceed promptly to the attorney lectern. Once the chief justice has finished speaking, counsel may open with the usual acknowledgement: "Chief Justice _____ and may it please the court …."

Counsel should refer to the members of the court this way: "Justice _____" or "Your Honor."

Counsel should avoid referring to an opinion of the court by saying: "In Justice _____'s opinion." It is better to say: "In the Court's opinion, written by Justice _____."

Counsel should avoid emotional oration and loud, impassioned pleas. The Supreme Court is not a jury. A well-reasoned and logical presentation should be the goal of those presenting argument.

PRESENTING AN EFFECTIVE ORAL ARGUMENT

Counsel should assume that all of the justices have read the briefs filed in the case, including amicus curiae briefs. Ordinarily, counsel for the appellant need not recite the facts of the case before beginning argument. The facts are set out in the briefs, and they have been read by the justices.

Argument should focus on the legal question or questions that the court has agreed to review. Counsel should avoid deviating from them, and avoid arguing about the facts.

Oral argument is a dynamic exchange of thoughts and information between counsel and the court. To facilitate this exchange, counsel should refrain from reading argument from a prepared script.

In appropriate cases, counsel may suggest to the court that bright-line rules should be adopted, and suggest what they should be. In many cases, the court must craft a sound rule of law that not only will resolve the case, but also will guide judges and others in future cases.

Counsel should avoid using the "lingo" of a business or activity that is not widely understood. The court may not be familiar with terms that are commonplace in a specialized area of practice. If necessary, counsel should explain unfamiliar terms so that the court can more easily follow the argument and understand the points being made.

Counsel should be knowledgeable about what is and is not in the record in the case, and should be familiar with the procedural history of the case. Justices frequently ask counsel if particular matters are in the record. It is helpful if counsel can provide the volume and page where the information is located.

Counsel should avoid making assertions about issues or facts not in the record. If counsel is asked a question that will require reference to matters not in the record, counsel should begin his or her answer by so stating, and then proceed to respond to the question, unless advised otherwise by the justice.

Unless counsel has complied with Supreme Court Practice Rule 17.08, which allows one to file a list of additional authorities before oral argument, counsel should refer during argument only to cases or other authorities that are listed in the merit or reply briefs.

If counsel quotes from a document verbatim (e.g., a statute or ordinance), he or she should tell the court where the text of the document can be read (e.g., "page ___ of the appellant's brief").

Counsel should know his or her client's business. Justices may pose questions about how a product is made, how employees are hired, or how a relevant calculation was made. Counsel who anticipates those kinds of questions and comes prepared to answer them in clear and simple terms will help the court better understand the case.

During argument, counsel should speak into the microphone so that his or her voice will be audible to the justices, and to ensure a clear recording.

RESPONDING TO QUESTIONS

Counsel should expect questions from the court, and make every effort to answer the questions directly. If at all possible, counsel should first respond either "yes" or "no," and then expand on the answer. If counsel does not know the answer, an honest response is appreciated by the court.

Counsel should avoid interrupting a justice when being addressed by the justice. Counsel should give full time and attention to the justice. If counsel is speaking when a justice interrupts, it is better to stop talking immediately and listen.

If a justice poses a hypothetical question, counsel should respond to the question in light of the facts stated in the question. Counsel should avoid saying, "But those are not the facts in this case." The justice posing the question is aware that there are different facts in the case, but wants and expects an answer to the hypothetical question. Counsel should attempt to answer the question, and if necessary, may add an additional comment like: "However, the facts in this case are different," or "The facts in the hypothetical question are not the facts in this case."

A justice will often ask counsel: "Do any cases from this court support your position?" Counsel should be careful to cite only those cases that support his or her position and avoid distorting the meaning of a precedent. If relying on a case that was announced by a plurality opinion, counsel should be sure to mention that there was no opinion of the court in the case.

MANAGING TIME

Counsel is not required to use all of the time allotted for argument. If counsel has emphasized and clarified the argument in the briefs, and answered all of the court's questions, counsel may consider completing the argument before time has expired.

If counsel is sharing argument time pursuant to Supreme Court Practice Rules 17.05 and 17.06, counsel should inform the court of the argument plan. For example, appellant's counsel might say: "I will address the Fourth Amendment issue, and counsel for the amicus will argue the Fifth Amendment issues." Counsel should also inform the deputy clerk of the intention to share time when checking in (see Arriving at Court, *supra*).

When counsel is sharing argument time with another attorney who represents a different party on the same side of the case, a red light will activate when the first attorney's time has expired. For example, assume that there are two appellants, and each is represented by a different attorney. If the first attorney on the appellant's side of the case has advised the deputy clerk that he or she will argue for five minutes, the red light will activate after five minutes have expired. That attorney must then sit down.

When the marshal activates the yellow light, counsel should be prepared to stop argument in two minutes. (The yellow light is used only for the last arguing attorney if two attorneys are sharing argument time.) The light signals that just two minutes remain of the *total* time allocated to your side of the case. (For example, if counsel has reserved three minutes for rebuttal, but the light comes on during the initial presentation of appellant's argument, counsel has already used one minute of rebuttal time.)

If counsel for the appellant has planned for rebuttal argument, counsel should tell the chief justice at the start of the argument how many minutes he or she intends to reserve for rebuttal.

During argument, counsel should not ask the chief justice how much time there is remaining. It is counsel's obligation to keep track of time. Time is displayed on a digital clock on the attorney lectern.

When the red light comes on, counsel should end argument immediately and either request the chief justice to permit the completion of a point or sit down. If counsel is answering a question from a justice, he or she may continue answering and respond to any additional questions from that justice or any other justice. In that situation, counsel need not worry that the red light is on. However, counsel should not continue argument after the red light comes on. Once the chief justice announces that "the case is submitted," counsel should promptly and quietly vacate the counsel tables in front of the bar.

The allotted time for argument is consumed quickly, especially when numerous questions come from the court. Counsel should be prepared to skip over much of his or her planned argument and stress the strongest points.

COURTROOM PARTICIPANTS

The justices enter the Courtroom through an entrance behind the bench. They sit in order of seniority with the chief justice in the middle, and the others alternating from left to right, ending with the most junior justice on the far right as one faces the bench.

The marshal sits at a desk to the left side as one faces the bench. The marshal calls the court to order, maintains decorum in the Courtroom, and times the oral presentations so that attorneys do not exceed their time limitations.

The attorneys scheduled to argue cases are seated at the tables facing the bench. The arguing attorney will stand behind the lectern immediately in front of the chief justice.

OPINIONS

The court may release an opinion at any time after an argument, though opinions usually are released to the parties, the public, and the news media on Tuesdays, Wednesdays, and Thursdays at 9 a.m.

Opinions are typically available on the court's website as soon as they are announced.

The Courtroom

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1. Chief Justice O'Connor
2. Justice O'Donnell
3. Justice Kennedy
4. Justice French
5. Justice O'Neill
6. Justice Fischer
7. Justice DeWine
8. Attorney Lectern
9. Appellant Counsel Table
10. Appellee Counsel Table

DVM LOQVOR HORA FVGIT

An engraving above the south Courtroom door reminds counsel in Latin that time flies as they speak.

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