

1 **Rule 29. Oral argument.**

2 (a) In general. Oral argument will be allowed in all cases in which the court determines that
3 oral argument will significantly aid the decisional process. ~~unless the court concludes:~~

4 ~~(a)(1) The appeal is frivolous; or~~

5 ~~(a)(2) The dispositive issue or set of issues has been recently authoritatively decided; or~~

6 ~~(a)(3) The facts and legal arguments are adequately presented in the briefs and record and the~~
7 ~~decisional process would not be significantly aided by oral argument.~~

8 (b) Notice by clerk and request by a party for argument; continuance. Not later than 30 days
9 prior to the term of court in which a case is to be submitted, the clerk shall give notice to all
10 parties that oral argument is to be permitted, the time and place of oral argument, and the time to
11 be allowed each side. Any party may waive oral argument by filing a written waiver with the
12 clerk not later than 15 days from the date of the clerk's notice. If one party waives oral argument
13 and any other party does not, the party waiving oral argument may nevertheless present oral
14 argument. A request to continue oral argument or for additional argument time must be made by
15 motion. A motion to continue oral argument must be supported by (1) a stipulation of all parties
16 or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit of
17 counsel specifying the grounds for the motion. A motion to continue filed not later than 15 days
18 from the date of the clerk's notice may be granted on a showing of good cause. A motion to
19 continue filed thereafter will be granted only on a showing of exceptional circumstances.

20 (c) Order of argument. The appellant shall argue first and the appellee shall respond. The
21 appellant may reply to the appellee's argument if appellant reserved part of appellant's time for
22 this purpose. Such argument in reply shall be limited to answering points made by appellee in
23 appellee's oral argument.

24 (d) Cross and separate appeals. A cross or separate appeal shall be argued with the initial
25 appeal at a single argument, unless the court otherwise directs. If a case involves a separate
26 appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule
27 unless the parties otherwise agree or the court otherwise directs. If separate appellants support the

Rule 29.

Draft: April 3, 2012

28 same argument, care shall be taken to avoid duplication of argument. Unless otherwise agreed by
29 the parties, in cases involving a cross-appeal the appellant, as determined pursuant to Rule 24(g),
30 shall open the argument and present only the issues raised in the appellant's opening brief. The
31 appellee/cross-appellant shall then present an argument which answers the appellant's issues and
32 addresses original issues raised by the cross-appeal. The appellant shall then present an argument
33 which replies to the appellee/cross-appellant's answer to the appellant's issues and answers the
34 issues raised on the cross-appeal. The appellee/cross-appellant may then present an argument
35 which is confined to a reply to the appellant's answer to the issues raised by the cross-appeal. The
36 court shall grant reasonable requests, for good cause shown, for extended argument time.

37 (e) Non-appearance of parties. If the appellee fails to appear to present argument, the court
38 will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court
39 may hear argument on behalf of the appellee, if present. If neither party appears, the case may be
40 decided on the briefs, or the court may direct that the case be rescheduled for argument.

41 (f) Submission on briefs. By agreement of the parties, a case may be submitted for decision
42 on the briefs, but the court may direct that the case be argued.

43 (g) Use of physical exhibits at argument; removal. If physical exhibits other than documents
44 are to be used at the argument, counsel shall arrange to have them placed in the courtroom before
45 the court convenes on the date of the argument. After the argument, counsel shall remove the
46 exhibits from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by
47 counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or
48 otherwise disposed of as the clerk shall think best.

49 **Advisory Committee Notes**

50 The former practice was to presume that argument was waived unless requested. The
51 amendments change the practice to presume that argument is requested unless expressly waived.

52 The rule incorporates the oral argument priority classification formerly found in the
53 administrative orders of the Supreme Court.

54 The [2012?] amendment to rule 29(a) was intended to reflect current court practice.

Rule 29.

Draft: April 3, 2012