

PRACTITIONER'S GUIDE TO ORAL ARGUMENT
BEFORE THE UTAH SUPREME COURT

In the interest of maintaining a high quality of advocacy before the Utah Supreme Court, this guide is offered to practitioners who appear before the Court. It is intended to supplement, not replace, those portions of the Utah Rules of Appellate Procedure that relate to oral argument before the Court. All references to rules in this guide are to the Utah Rules of Appellate Procedure, and any conflicts should be resolved by referring to the Rules.

LOCATION

The Court and the Appellate Clerks' Office are located on the fifth floor, Matheson Courthouse, 450 South State Street, Salt Lake City, UT. Public parking is available by entering the public parking facility from Fourth South.

ORAL ARGUMENT SCHEDULE

Oral arguments are usually held on the first Tuesday, Wednesday, and Thursday during the months of February, March, April, May, June, September, October, November, and December. Oral arguments are not regularly scheduled in January, July, or August. Oral argument calendars are posted on the Court's Web site <http://www.utcourts.gov/opinions/index.htm#scoral> and on the bulletin board located in the Appellate Clerks' Office on the fifth floor of the Scott Matheson Courthouse thirty days prior to oral argument.

It is the Court's tradition to conduct oral argument at the

S. J. Quinney College of Law, at the University of Utah, in the spring and at the J. Reuben Clark Law School, at Brigham Young University, in the fall. If counsel are asked to appear other than at the Courthouse, they will be advised in advance.

WHO MAY ARGUE

Any attorney who plans to argue before the Supreme Court of Utah must be a member of the bar of the Court and appear as an attorney of record. Counsel who are uncertain whether they have entered an appearance in a case, should confirm this status with the Appellate Clerks' Office in advance of any scheduled argument. Counsel not admitted to the bar must conform to Code of Judicial Administration rule 14-806 regarding Admission Pro Hac Vice.

An amicus curiae that has filed a brief in a case may not participate in oral argument without prior leave of the Court. Leave may be sought by motion, filed as soon as possible, but no later than ten days before the argument. However, leave is not usually granted, and such requests are disfavored.

PREPARATION

Counsel should be fully prepared for the presentation and judicial dialogue that constitutes oral argument. Inexperienced counsel are well advised to seek out experienced counsel for assistance.

It is often beneficial for counsel to attend a session of court before their scheduled day for argument.

In addition, all arguments that have been heard before the Utah Supreme Court since September 2003 may be accessed on the Court's Web site at: <http://www.utcourts.gov/courts/sup/streams>.

ARRIVING AT COURT

Typically, the Court schedules three cases for argument each day it is in session. Cases are set to be heard beginning at 9 a.m., 9:30 a.m., and 10:30 a.m. On the day of argument, counsel should be in the courtroom prior to the time scheduled for argument. Counsel can verify the order of argument by viewing a copy of the court calendar posted within the outer courtroom door. Counsel should advise the Clerk of Court in advance of any special accommodation that counsel or parties may require (e.g., a wheelchair or a hearing-assistance device).

TIME

The total time allocated for all argument by all parties in a given matter is 40 minutes. The appellant and the appellee are allotted a total of 20 minutes for oral argument, irrespective of the number of parties appearing in each category. Division of the time, when required, is the responsibility of counsel.

The appellant argues first. Counsel for the appellant should advise the recording clerk before the argument how many minutes they wish to reserve for rebuttal. The time reserved will be reduced by any time used in opening argument that exceeds the time allocated. If more than one attorney will participate in the argument, counsel are responsible for allocating the time. Counsel who are sharing argument time are encouraged to inform the Court of their argument plan. For example, the appellant's counsel might say, "I will address the --- issues, and counsel for the amicus will address the --- issues, and we will use our time as follows."

MANAGING TIME

During argument, it is counsel's obligation to monitor time. Time remaining is displayed on a digital timer on the lectern. When the timer has reached 00, counsel should conclude immediately. If you are answering a question posed by the Court and your time expires, you should promptly complete the answer and be seated. Counsel should not require the Chief Justice to bring the expiration of time to counsel's attention.

The allotted time for argument is consumed quickly, especially when numerous questions come from the Court. Counsel should be prepared to present the strongest or most significant elements of the case concisely. The Court does not measure the persuasive force of an argument by its duration. The Court encourages counsel to submit the matter with time remaining if appropriate.

COURTROOM ETIQUETTE

Dignified behavior, appearance, and attitude are required. Counsel should wear business attire suitable for argument before the state's highest court.

Only personal computers and other electronic devices required for argument may be used at counsel table. However, counsel must ensure that those devices do not create any visual or audio disturbance. Cellular phones must be turned off in the courtroom.

The Justices enter the courtroom through an entrance behind the bench. They sit in order of seniority, with the Chief Justice in the middle.

When the case is called for argument, 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. Seating at counsel tables is limited to participating counsel and critical support personnel. With the exception of self-represented parties, parties should sit behind the bar. Additional attorneys who are affiliated with counsel presenting argument may also be seated at the appropriate counsel table. If additional chairs are necessary, please inform the recording clerk in advance.

When the Chief Justice calls upon counsel, counsel should indicate their appearances for the record in order and then proceed to the lectern. Once the Chief Justice has finished speaking, counsel may open with the usual acknowledgment: "Chief Justice and Justices of the Supreme Court" and "May it please the Court." Counsel should refer to the members of the Court as "Justice" or "Your Honor." Counsel should avoid referring to an opinion of the Court by saying, "In Justice ---'s opinion." It is preferable to say, "In the Court's opinion authored (or written) by Justice ---."

Guidance on the use of physical exhibits may be found in rule 29(g). The configuration of the courtroom and the need to compile an accurate audio record of oral argument pose challenges to those who use charts, photographic blow-ups or other physical exhibits. If physical exhibits are used, they must be positioned to the rear of the lectern. Counsel should avoid entering the area between the lectern and the bench during oral argument.

Counsel are encouraged to include physical exhibits in their addenda. Copies of the physical exhibits must also be lodged with the clerk in advance of oral argument for distribution to the Justices. Counsel must disclose the contents of all physical exhibits to opposing counsel before utilizing them in argument.

Counsel should avoid straying from the lectern during argument. The microphone on the lectern is the sole reception

point for the sound that becomes the audio record of the proceedings. The time clock is also situated on the podium. Counsel should keep the clock in sight to avoid being surprised by the expiration of their time.

Although not prohibited, computer-based presentations are disfavored if they are likely to inhibit or limit the exploration of the case by dialogue between counsel and members of the Court.

PRESENTING AN EFFECTIVE ORAL ARGUMENT

Counsel may safely assume that all of the Justices have read the briefs filed in the case, including any amicus curiae briefs. Ordinarily, it is not helpful to recite the facts of the case before beginning argument. It is generally a better practice to integrate reference to relevant facts within the body of the argument.

Argument should focus on the legal question or questions that the Court has agreed to review. Counsel must also recognize the broad impact of rulings by the Court and be prepared to assist the Court in evaluating the overall implications of the rules of law at issue.

Oral argument is a dynamic exchange between counsel and the Court. To facilitate this exchange, counsel should refrain from reading from a prepared script or relying too heavily on a rigid order of topics.

Counsel should avoid overwrought oratory and remember that the Supreme Court is not a jury. A well-reasoned and logical presentation should be the goal of those presenting argument. Counsel must also take special care to avoid unprofessional, emotional, or impolite written, oral, or behavioral statements with regard to other counsel, parties, or courts. The highest degree of civility is expected from counsel.

Counsel should ensure that specialized terms are adequately defined in the briefs and in oral argument. Arguments that turn on undefined terms unique to a particular trade, business, or profession are unlikely to be persuasive. Counsel should be familiar with the contents of the case record and 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 Justices. Unless counsel has complied with rule 24(j), Utah Rules of Appellate Procedure, governing the use of supplemental authorities, counsel should refer during argument only to cases or other authorities cited in the briefs.

Addenda submitted with briefs pursuant to rule 24(a)(ii) should be organized with the objective of permitting Justices to easily locate addenda material during oral argument.

RESPONDING TO QUESTIONS

If there is a single reason for oral argument, it is to clarify for the Justices questions they may have regarding your argument, your case, and the impact of the result you seek from the Court.

Counsel should expect questions from the Court and answer the questions directly. Counsel should not fear answering questions with "yes," "no," or "I don't know." When formulating an answer to a Justice's question, counsel should be mindful that candor is essential.

It is rarely wise to defer or delay answering a question posed by a Justice. Doing so often results in failure to reach or adequately address an issue important to the Court.

When being addressed by a Justice, counsel should avoid interrupting the Justice.

OPINIONS

The Court may release an opinion at any time after an argument. Ordinarily, opinions are released to the parties, the public, and the news media on Tuesdays and Fridays at 10 a.m. All counsel of record will receive a courtesy telephone call from the Appellate Clerks' Office when the opinion in the case is released. An audio message identifying decisions to be released is available at 801-238-7982.

Once an opinion is announced, the Clerk of Court will mail a copy of it to all counsel of record in the case. Opinions are typically available on the Court's Web site as soon as they are released. The Appellate Clerks' Office and the Public Information Officer of the Administrative Office of the Courts can provide additional information about opinions once they are released.

MISCELLANEOUS

The Appellate Clerks' Office will answer questions about procedure and protocol on an ex parte basis. All requests for permission to deviate from normal procedure should be submitted in writing. The Appellate Clerks' Office invites parties to request a conference call with the Clerk of Court at least ten days before the oral argument date to review any questions.

MEDIA

Media coverage of cases before the Court is common. Print and broadcast media representatives are often present. Counsel are advised to respect the setting and nature of the occasion in any comment they may offer. Further information regarding media coverage can be found at <http://www.utcourts.gov/media/>.