

PRACTITIONERS' GUIDE TO ORAL ARGUMENT
BEFORE THE UTAH COURT OF APPEALS

In the interest of maintaining a high quality of advocacy before the Utah Court of Appeals, 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, Utah. Public parking is available by entering the public parking facility from Fourth South.

ORAL ARGUMENT SCHEDULE

Oral arguments are usually held during the last three weeks of January, February, March, April, May, July, August, September, October, and November. Oral arguments are not regularly scheduled in June or December.

Oral argument calendars are posted on the Court's Web site <https://legacy.utcourts.gov/opinions/> and on the bulletin board located in the Appellate Clerks' Office on the fifth floor of the Scott Matheson Courthouse, the last week of the month prior to oral argument month.

The Court of Appeals sometimes travels to areas outside of Salt Lake County to hear oral arguments. When cases are scheduled

for argument at locations other than the Matheson Courthouse, counsel will be advised in advance.

WHO MAY ARGUE

Any attorney who plans to argue before the Utah Court of Appeals must be a member of the Utah State Bar and appear as an attorney of record. Counsel who are uncertain whether they have entered an appearance in a case should confirm their status with the Appellate Clerks' Office in advance of any scheduled argument. Counsel not admitted to the Utah State Bar must conform to Code of Judicial Administration rule 14-806 regarding Admission Pro Hac Vice. Pro se parties -- individuals not represented by licensed attorneys -- will receive notices from the Court about their cases and any scheduled court hearings.

Amicus curiae may participate in oral argument only with prior leave of the Court. Leave may be sought by motion, filed as soon as possible, but no later than ten days before the scheduled oral argument.

PREPARATION

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

It may be beneficial for counsel to attend a session of Court before their scheduled day for argument. In addition, all arguments that have taken place before the Utah Court of Appeals since October 2005 may be accessed on the Court's Web site at: <https://legacy.utcourts.gov/courts/appell/streams/>

ARRIVING AT COURT

Typically, the Court schedules two or three cases for argument each day it is in session. Cases are usually set to be heard beginning at 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, a hearing-assistance device, or permission to use charts, exhibits, or similar items).

TIME

The total time normally allocated for all argument by all parties in a given matter is 30 minutes. The appellant and the appellee are each allotted a total of 15 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 and may reserve part of the 15 minutes for rebuttal. The appellee argues after the appellant. Rebuttal by the appellant follows. If there is a cross-appeal, the cross-appellant may reserve time for rebuttal. The time reserved for rebuttal will be reduced by any time used in opening argument that exceeds the time allocated. Counsel who are sharing argument time must inform the Court of their argument plan. If counsel wish to vary this process or request extra time, they should file a motion with the clerk's office prior to the date of argument.

MANAGING TIME

During argument, it is counsel's obligation to monitor time. Time remaining is displayed on a digital timer on the lectern. The timer begins at 15 minutes and the time remaining includes rebuttal time. When the timer has reached 0:00, counsel should conclude immediately. If counsel is answering a question posed by the Court and time expires, counsel should promptly complete the answer and be seated. Counsel should not require the panel chair 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 concisely present the strongest or most significant elements of the case. 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 a court appearance.

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

The judges enter the courtroom through an entrance behind the bench. The panel chair sits in the middle.

When the case is called for argument, counsel for the appellant normally 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. 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 in-court clerk in advance.

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

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 avoid impeding the view of the judges or opposing counsel. Counsel should not enter the area between the lectern and the bench during oral argument.

Counsel are encouraged to include copies of physical exhibits in the addenda to their briefs. Copies of physical exhibits should be provided to the Clerk of Court in advance of oral argument for distribution to the panel. Counsel must disclose the contents of all physical exhibits to opposing counsel before using them in argument.

Counsel should avoid straying from the lectern during argument. The microphone on the lectern is the sole reception point for the audio record of the proceedings. If circumstances

warrant, counsel, with prior permission, may present argument while seated at counsel table. The time clock is also situated on the lectern. Counsel should keep the clock in sight to avoid being surprised by the expiration of their time.

Although not prohibited, computer-based presentations may inhibit or limit the exploration of the case by dialogue between counsel and members of the Court, and so should be used with caution. Counsel should make prior arrangements with the Clerk of Court if they intend to present a computer-based presentation during oral argument.

PRESENTING AN EFFECTIVE ORAL ARGUMENT

Counsel may safely assume that all of the judges have read the briefs filed in the case, including any amicus curiae briefs. Ordinarily, it is not necessary to recite the facts of the case or procedural background in great detail when time is limited and could be better used to present legal analysis and arguments. It is generally a better practice to integrate reference to relevant facts within the body of the argument.

Argument should focus on the legal issues. Counsel should also acknowledge the potential 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 must be flexible.

Counsel should avoid dramatic or exaggerated oratory and remember that the Court of Appeals 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. Judges frequently ask counsel if particular matters are in the record and 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 supported 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 respond to the question unless advised otherwise by the judges. Unless counsel has complied with rule 24(j) of the 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 judges to easily locate addenda material during oral argument.

RESPONDING TO QUESTIONS

If there is a single reason for oral argument, it is to answer questions the judges may have regarding counsel's argument, the case, and the impact of the result sought from the Court.

Counsel should expect questions from the Court and answer them directly. Counsel should not fear answering questions with

"yes," "no," or "I don't know." When formulating an answer to a judge's question, counsel should be mindful that candor is essential.

It is rarely wise to defer or delay answering a question. Doing so may result in failure to reach or adequately address an issue important to the Court.

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

OPINIONS

The Court may release an opinion at any time after an argument. The distribution list identifying decisions is available on the court's website <https://legacy.utcourts.gov/opinions/pending.php>, and is updated every Wednesday. Once an opinion is filed, the Clerk of Court will email a copy to counsel of record in the case. Opinions are available to the public and the news media on Thursdays at 10:00 a.m., and are available on the court's website 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.

MEDIA

Information regarding media coverage can be found at:
<https://www.utcourts.gov/en/media/media.html>