



Guide for Presenting Oral Arguments Before the Supreme Court of Ohio



Guide for Presenting Oral Arguments Before the Supreme Court of Ohio

Sharon L. Kennedy

CHIEF JUSTICE

Patrick F. Fischer

R. Patrick DeWine

Jennifer Brunner

Joseph T. Deters

Daniel R. Hawkins

Megan E. Shanahan

JUSTICES

Robert W. Horner, III

ADMINISTRATIVE DIRECTOR

James P. Cappelli

DEPUTY ADMINISTRATIVE DIRECTOR,
OPERATIONS

Gina White Palmer

DEPUTY ADMINISTRATIVE DIRECTOR,
LEGAL SERVICES



This guide for presenting oral argument is prepared by the clerk of the Supreme Court of Ohio and is designed to assist those 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 supremecourt.ohio.gov.

Who May Argue

Parties undertaking their own representation may participate in oral argument before the court. Parties representing themselves are known as pro se litigants.

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. The Office of the Clerk can confirm whether counsel has entered an appearance in the case. Pursuant to Rule 2.01 of the Rules of Practice of the Supreme Court of Ohio, all attorneys participating in oral argument of a case must either be licensed to practice in Ohio or admitted pro hac vice.

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 or pro se litigants 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

A person scheduled to argue before the Court may find it helpful to attend a session of Court before the day scheduled for argument or review previous oral arguments which are archived at OhioChannel.org. Oral arguments are usually held on Tuesdays and Wednesdays throughout the year. The oral argument calendar can be found at supremecourt.ohio.gov.

Arriving at Court

Between 8:30 and 8:45 a.m. on the day of argument, arguing counsel and pro se litigants 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.



The information desk in the grand concourse of the Thomas J. Moyer Ohio Judicial Center, home of the Supreme Court of Ohio.

Court convenes at 9 a.m. Oral argument participants can verify the order of argument at that time but should bear in mind that some cases conclude earlier than planned.

If there has been an agreement to share argument time, those oral argument participants must advise the deputy clerk about those arrangements and the amount of time that each presenter intends to argue. (See Managing Time, below).

Presenters should advise the deputy clerk of any necessary accommodations that the presenter 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, presenters may proceed to Rooms 103 or 105 (attorney waiting rooms) or enter the courtroom and wait for their case to be called. Oral argument participants may use personal computers and other electronic equipment in the waiting rooms.

A live audio feed from the courtroom allows those in Room 105 to hear courtroom proceedings as they occur. A video feed with audio is available in Room 104, the Media Room.

Courtroom Etiquette

Participants in oral argument should wear appropriate business attire befitting argument before the Court.



Counsel presenting an argument before the Court.

All arguments at the Court are live-streamed on the court's website and on the Ohio Channel, a multimedia public access channel. All arguments are archived in the public domain by the Ohio Channel.

Personal computers and other electronic devices may be used at counsel table. However, appropriate steps should be taken 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, including those on wristwatches, should be muted.

When it is time to present argument, the presenters should proceed to counsel tables. The representative for the appellant should sit at the counsel table to the left of the bench as one faces the bench. The appellee's representative 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 also may be seated at each counsel table. Unless presenting argument, parties may not sit at counsel table.

Those seated at counsel tables should remove the visitor identification badges they were issued when entering the building. Upon leaving the table at the conclusion of argument, the badges should be clipped to their clothing again until leaving the building.

Immediately after being called upon by the chief justice, the first presenter should proceed promptly to the attorney lectern. Once the chief justice has finished speaking, the presenter may open with the usual acknowledgment:

"Chief Justice Kennedy, and may it please the court..."

Counsel should refer to the members of the Court this way:

"Justice _____" or "Your Honor."

Presenters should avoid referring to an opinion of the Court by saying: "In Justice [last name]'s opinion." It is better to say:

"In the Court's opinion, written by Justice _____."

Presenters 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

The representative for the appellant need not recite the facts of the case before beginning argument. The facts are set out in the briefs, which have been read by the justices. Argument should focus on the legal question or questions that the Court has agreed to review.

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

In appropriate cases, a presenter may suggest to the Court that bright-line rules should be adopted and 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.

Oral argument participants should know the business involved in the case. Justices may pose questions about how a product is made, how employees are hired, or how a relevant calculation was made. A presenter 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.

Presenters 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, a presenter should explain unfamiliar terms so that the Court can more easily follow the argument and understand the points being made.

Oral argument participants 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 presenters whether particular matters are in the record. It is helpful if presenters can provide the volume and page where the information is located.

Presenters should avoid making assertions about issues or facts not in the record. If a justice asks a question that will require reference to matters not in the record, then presenters should begin their answer by so stating, and proceed to respond to the question, unless advised otherwise by the justice.

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

If a presenter quotes from a document verbatim (e.g., a statute or ordinance), the presenter should tell the Court where the text of the document can be read (e.g., “page ____ of the appellant’s brief”).

During argument, the presenter should speak into the microphone so that the presenter’s voice is audible to the justices and to ensure a clear recording.

Responding to Questions

Presenters should expect questions from the Court and make every effort to answer the questions directly. If possible, the presenter should first respond either “yes” or “no,” and then expand on the answer. If the answer is not known, an honest response is appreciated by the Court.

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

If a justice poses a hypothetical question, the response to the question should be made in light of the facts stated in the question. Presenters 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. A presenter 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 may ask, “Do any cases from this Court support your position?” Parties should be careful to cite only those cases that support their position and avoid distorting the meaning of a precedent. If the case relied upon was announced by a plurality opinion, the fact that there was no opinion of the Court in the case should be mentioned.

Managing Time

Each side has limited time to present an argument before the Court. Each presenter is expected to limit argument time to the amount of time allotted, without prompting from the chief justice. The podium clock visibly alerts presenters when the allotted time has expired.

The presenter is not required to use all the time allotted to that presenter for argument. The presenter may consider completing the argument before the allotted time has expired if the presenter has emphasized and clarified the argument in the briefs and answered all the questions raised by the Court.

If the presenter is sharing argument time pursuant to Supreme Court Practice Rules 17.05 and 17.06, the presenter 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.” Presenters also should inform the deputy clerk of the intention to share time when checking in. (See Arriving at Court, above).

If the appellant has planned for rebuttal argument, the presenter should inform the chief justice at the start of the argument how many minutes the presenter intends to reserve for rebuttal.

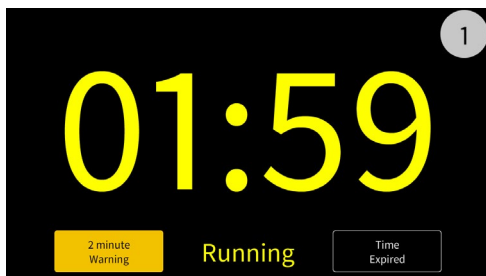
A digital timer is displayed on the lectern. When argument time is being shared with the representative of a different party on the same side of the case, a red banner that says “Split Time Expired” will activate on the top center of the timer when the first attorney’s time has expired.

For example, assume that there are two appellants, and each is represented by a different person. If the appellants have indicated that the first presenter will argue for five minutes, the “Split Time Expired” banner will display after five minutes have expired. That person must then conclude and return to the counsel table.



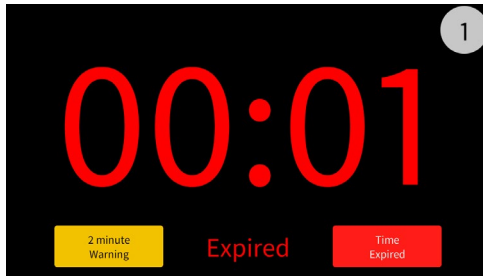
When the yellow “two- minute warning” banner illuminates in the lower left corner of the timer, the presenter should be prepared to stop argument in two minutes. In addition to the “two- minute warning” banner, the time on the display will turn from green to yellow. (The two-minute warning banner is used only for the last arguing presenter if two presenters are sharing argument time.) The banner signals that just two minutes remain of the total time allocated to your side of the case. For example, if the first presenter has reserved three minutes for rebuttal, but the light comes on during the initial presentation of appellant’s argument, the presenter has already used one minute of rebuttal time.

During argument, no one should ask the chief justice how much time there is remaining. It is the presenter’s obligation to keep track of time.



When the “Time Expired” banner activates in the lower-right hand corner of the timer, the presenter should end argument immediately and either request the chief justice to permit the completion of a point or return to the counsel table. If time expires as the presenter is answering a question from a justice, the presenter may continue answering and respond to any additional questions from that justice or any other justice. In that situation, the presenter need not worry that the banner is on. Otherwise, the presenter should not continue argument after the “Time Expired” banner activates.

In addition to the “Time Expired” banner, the time on the display will change from yellow to red. Once the chief justice announces, “We will take the matter under advisement and you will receive a decision from the Court,” oral argument participants should promptly and quietly vacate the counsel tables in front of the bar.



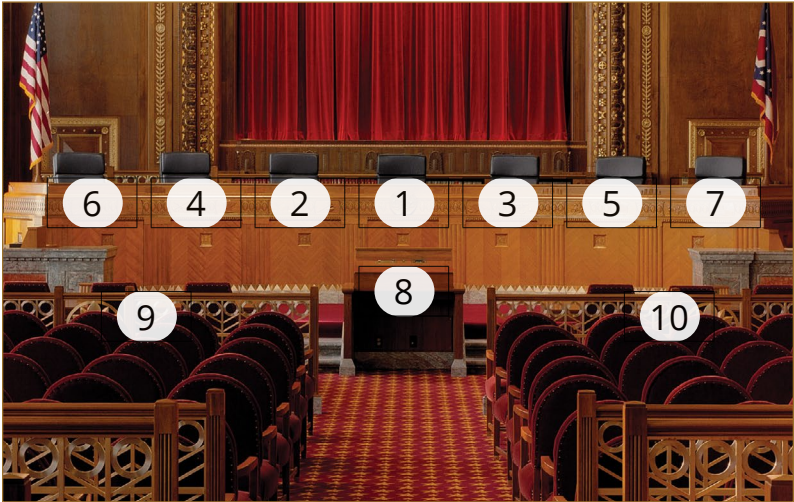
The allotted time for argument is consumed quickly, especially when numerous questions come from the Court. Presenters should be prepared to skip over much of their planned argument and stress the strongest points.

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 presenters do not exceed their time limitations.

Attorneys and pro se litigants scheduled to argue cases are seated at the tables facing the bench. The person arguing will stand behind the lectern immediately in front of the chief justice.

The Courtroom



- | | |
|--------------------------|----------------------------|
| 1. Chief Justice Kennedy | 8. Attorney Lectern |
| 2. Justice Fischer | 9. Appellant Counsel Table |
| 3. Justice DeWine | 10. Appellee Counsel Table |
| 4. Justice Brunner | |
| 5. Justice Deters | |
| 6. Justice Hawkins | |
| 7. Justice Shanahan | |

Opinions

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

Opinions typically are available at SupremeCourt.ohio.gov as soon as they are announced.



Dum Loquor Hora Fugit
"While I speak the Hour Flies"

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



PUBLISHED BY
The Supreme Court of Ohio
January 2025