Guide for Counsel
Presenting Oral Argument to the
Ninth District Court of Appeals

The Ninth District Court of Appeals generally hears oral arguments on Tuesdays and Thursdays every week. The Court sits in Lorain, Medina, Summit and Wayne Counties and generally hears cases in the County from which the case originated.

This Guide is intended to provide background information to attorneys as they prepare for their oral arguments. The Ninth District provides the parties with the opportunity to request oral argument if they believe it is necessary. An effective oral argument can benefit the Judges in deciding the case and the following information should help counsel as they prepare for this important step.

"I used to say that, as Solicitor General, I made three arguments of every case. First came the one that I planned--as I thought, logical, coherent, complete. Second was the one actually presented--interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night." *Resolutions in Memoriam: Mr. Justice Jackson*, 99 L. Ed. 1311, 1318 (1955).

WHO MAY ARGUE?

A party must request oral argument, pursuant to App.R. 21 and Local Rule 21. The request must be on the cover of appellant's opening brief or appellee's brief.

Any attorney who plans to argue before the Ninth District Court of Appeals must be counsel of record or file a notice of appearance before oral argument (a form is available on the Court's web site). If counsel is uncertain whether he or she has made an appearance in the case, then counsel should check with the bailiff before oral argument. An amicus curiae that has filed a brief in a case is not entitled to participate in oral argument without leave of Court. Leave may be sought by motion and should be done well in advance of oral argument.

Any questions counsel may have about oral argument or about other case-related matters should be directed to the Court Administrator at (330) 643-2250.

PREPARATION

Counsel may find it helpful to attend an oral argument before the day scheduled for argument. Oral arguments are usually held on Tuesdays and Thursdays throughout the year in all four Counties under the Court's jurisdiction.

Counsel should anticipate questions that the Judges might ask and be prepared to answer them. Counsel should be familiar with the record, relevant case law, statutes, regulations, other authorities, and this Court's Local Rules.

ARRIVING AT COURT

The Court generally begins oral arguments at 9:30 a.m. and continues until 12:30 p.m. Counsel should arrive ten to fifteen minutes before their scheduled oral argument time. Counsel must sign-in on the oral argument sheet positioned near the courtroom door.

If counsel is dividing argument time with co-counsel or an amicus curiae, counsel must advise the Court about those arrangements and the amount of time that each attorney intends to present argument. After checking in, counsel may wait in the back of the courtroom for the case to be called.

COURTROOM ETIQUETTE

Counsel should wear appropriate business attire befitting argument before the Court. Counsel may use tablets, laptops, or cell phones prior to and during oral argument at counsel table. However, counsel should ensure that those devices do not create any visual or audio disturbance. Cell phones must be silenced or 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. When the presiding judge calls upon counsel, he or she should proceed promptly to the podium.

After the presiding judge has finished speaking, counsel may open with the usual acknowledgement: "May it please the Court, my name is _____ and I represent _____." Counsel should avoid emotional oration and loud, impassioned pleas. The Court of Appeals is not a jury. A well-reasoned and logical presentation should be the goal of those presenting argument.

ORAL ARGUMENTS ARE VIDEO RECORDED

All oral arguments are video recorded and posted on the Court's YouTube Channel. Because the arguments are available online, advocates should not use the names of victims or children, or mention any confidential information, during oral arguments.

> "You could write hundreds of pages of briefs, and, you are still never absolutely sure that the judge is focused on exactly what you want him to focus on in that brief. Right there at the time of oral argument you know that you do have an opportunity to engage or get into the judge's mental process." Bright, *The Power of the Spoken Word: In Defense of Oral Argument*, 72 Iowa L. Rev. 35, 36-37 (1986) (quoting Chief Justice William Rehnquist).

PRESENTING AN EFFECTIVE ORAL ARGUMENT

Before oral argument, the Judges will 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 at the beginning of the argument. The facts are set out in the briefs, and the Judges have read them. Counsel should refer to the parties by name (except for minors or victims) or descriptive label instead of party designations like appellant or plaintiff.

Oral argument should focus on the legal issues before the Court. Counsel should avoid deviating from them and avoid arguing solely about the facts. Oral argument is a conversation between counsel and the Judges. Counsel should not read from a prepared script or simply read the argument contained in the written brief.

Counsel should avoid using the specialized-language of a business or activity that is not widely understood. If necessary, counsel should explain unfamiliar terms so that the Court can more easily follow the argument and understand the points being made. Likewise, counsel should be familiar with his or her client's business. Judges may pose questions about how a product is made, how employees are hired, or how a relevant calculation was made. Counsel who are prepared to answer these questions will help the Court better understand the case.

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. Judges frequently ask counsel if particular matters are in the record. It is helpful if counsel can provide 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 the answer by so stating and then proceed to respond to the question, unless advised otherwise by the Judge.

Unless counsel has complied with this Court's Local Rule regarding supplemental authorities, counsel should refer during argument only to cases or other authorities cited in the 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 appellant's brief").

RESPONDING TO QUESTIONS

Counsel should expect questions from the Court and make every effort to answer the questions directly. Counsel should first respond either "yes" or "no," and then expand on the answer. If counsel does not know the answer, the Court will appreciate and respect an honest response. Counsel should avoid interrupting a Judge when being addressed by the Judge. If counsel is speaking when a Judge interrupts, counsel should stop talking immediately and listen.

If a Judge poses a hypothetical question, counsel should respond to the question in light of the facts stated in the hypothetical. Counsel should avoid responding, "But those are not the facts in this case." The Judge 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."

A Judge 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, especially from this Court, and to avoid distorting the meaning.

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 finish before time has expired. But if the Court asks numerous questions, counsel should be prepared to skip over much of the planned argument and stress the strongest points.

It is counsel's obligation to keep track of time. Counsel for appellant should tell the presiding judge at the start of the argument how many minutes will be reserved for rebuttal, not to exceed five minutes. When counsel's time expires, counsel should conclude immediately. If counsel is answering a question, counsel may continue answering and respond to any additional questions. But counsel should not continue argument after the presiding judge announces that time has expired. After the presiding judge announces that "the case is submitted," all counsel should promptly and quietly vacate the counsel tables.

COURTROOM PARTICIPANTS

The Judges enter the courtroom through a door near the bench. The Judge in the middle of the bench will be (depending on the composition of the panel) the Court's Presiding Judge, the Court's Administrative Judge, or the most senior member of the Court on the panel. The most senior Judge sits on the left side of the bench and the least senior Judge sits on the right side of the bench as one faces the bench. The bailiff sits at a desk near the bench.

The attorneys scheduled to argue cases are seated at the tables facing the bench. The arguing attorney will stand behind the podium directly in front of the bench.

Lorain County Courtroom

Summit County Courtroom

Medina County Courtroom

Wayne County Courtroom

OPINIONS

The Court may release an opinion at any time after an argument. The Court generally releases opinions by 9:00 a.m. on Mondays for cases from Lorain, Medina, and Wayne Counties and on Wednesdays for cases from Summit County. When an opinion is filed, the Clerk of Court will mail a copy of it to all counsel of record in the case. Opinions are typically available on the Supreme Court's web site on the morning the opinion is filed.

"A good oral argument is in the finest tradition of our profession: it confers a benefit both upon your client and upon the court. You should seize the opportunity to give the very best performance of which you are capable." Rehnquist, *Oral Advocacy*, 27 S. Texas L. Rev. 303 (1986).