

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

The Court offers this guide as a means of assisting practitioners to effectively represent their clients in oral argument. Attorneys and parties to appeals will also find useful information in the Supreme Court timeline at the end of this guide. This guide is intended to supplement, and not to replace, those portions of the Wyoming Rules of Appellate Procedure governing oral argument before the Court. All references to rules in this guide are to the Wyoming Rules of Appellate Procedure (W.R.A.P.), and any conflicts should be resolved by referring to the Rules, which govern.

LOCATION & SECURITY

The Supreme Court and Clerk's Office are located at 2301 Capitol Avenue, Cheyenne, Wyoming. There is no dedicated parking for visitors or attorneys appearing before the Court. Counsel and visitors must use the main entrance on Capitol Avenue and will be subject to security screening.

ORAL ARGUMENT SCHEDULE

Oral arguments are usually held every month except July and September, although the Court may hold arguments in conjunction with the State Bar Convention in September, depending on where the convention is held. Oral argument calendars are posted on the Court's Web site at www.courts.state.wy.us. Cases are set for argument approximately five to six weeks prior to argument, once the case matures upon the filing of the appellee's or respondent's brief. The Court hears arguments at the University of Wyoming College of Law in the fall, and when invited to do so, it will also hear arguments in communities around the State of Wyoming to afford citizens the opportunity to see the Court in session. Dates, times, and location of oral arguments can be found in the Order Setting Cases for Oral Argument. In addition to the order setting argument, the parties will also receive an Oral Argument Receipt Acknowledgement form, which should be filled out and returned by email to the Supreme Court Clerk no later than two weeks prior to the oral argument scheduled.

WHO MAY ARGUE

Any attorney who plans to argue before the Supreme Court of Wyoming must be a member of the bar and appear as an attorney of record. Counsel not admitted to the Wyoming Bar must comply with (W.R.A.P.) regarding admission pro hac vice, and local Counsel must be present unless excused by the Court before argument.

An amicus curiae who has been authorized to file a brief may not participate in oral argument without prior leave of the Court. Leave should be sought as soon as possible after the case is set for oral argument.

PREPARATION

Counsel should be fully prepared for the presentation and judicial dialogue that constitutes oral argument. Inexperienced attorneys are advised to confer with an experienced

lawyer for tips on how to proceed, and to attend an argument session or listen to the streamed audio of an argument before they are to appear before the Court. Attorneys, parties, and any other interested person may listen to the streamed arguments of non-confidential cases through the Supreme Court's broadcast link on the Court's website. [add link?]

ARRIVING AT COURT

The Court typically schedules three to five cases for argument each day it is in session. All cases scheduled for oral argument will be set at the time indicated on the Order Setting Cases for Oral Argument. On the day of argument, Counsel must report to the Clerk's office no later than twenty minutes prior to their argument start time. Counsel should advise the Clerk of Court in advance of any special accommodation that they or the parties may require. Hearing-assistive devices are available.

TIME

Unless the Court orders otherwise, the total time allocated to all parties in each case is 60 minutes. The Appellant and the Appellee are each allotted a total of 30 minutes for oral argument, regardless of the number of parties in each category. Division of time among Appellants or Appellees is the responsibility of Counsel for those parties. The parties must include an estimate of the time they will need for their argument on the Oral Argument Receipt Form. The Appellant/Respondent may reserve time for rebuttal. When the Court hears an appeal and cross appeal, both parties may reserve time for rebuttal. If multiple attorneys are arguing on behalf of any party, they must reference who will be arguing first, second, third, etc., and how much time each attorney plans on using.

Counsel for Appellant argues first. If he or she exceeds the time requested for the opening portion of the argument, any additional time used will be taken from the reserved time for rebuttal. If more than one attorney participates in the argument for Appellant or Appellee, and one of the attorneys exceeds the agreed-upon time, the excess will be deducted from the other attorney's time. Counsel who are sharing argument time are requested to inform the Court of their plan for argument. For example, the Appellant's Counsel might say, "I will address the -- issues, and Counsel for [the other Appellant] will address the --- issues."

MANAGING TIME:

The Court uses a "traffic light" for oral argument. When Counsel begins their argument, a green light will be lit. The light changes to yellow when there are five minutes remaining, and then to red when time has expired. If the Court asks a question, and time has expired, Counsel should promptly complete the answer and be seated. Counsel may ask the Clerk of Court how much time remains when beginning rebuttal if they are uncertain as to how much time they have used. Counsel should be attentive to the lights and should not require the Chief Justice to advise them that their time has expired.

COURTROOM ETIQUETTE

Counsel should wear business attire suitable for appearing before the Supreme Court.

Personal computers and other electronic devices may be used during an argument. Counsel must ensure, however, that those devices do not create any visual or audio disturbance. Cell phones must be turned off in the courtroom. There is an attorney conference room across the foyer from the courtroom, and attorneys and parties are welcome to use their devices in that room or the foyer if they wish.

Counsel for the Appellant should sit at the counsel table to the right of the bench, next to the window, and Counsel for the Appellee should sit to the left. Seating at counsel tables and in the well is limited to participating Counsel and critical support personnel. Parties attending argument are not allowed to sit at counsel table but are welcome to sit in the gallery. Additional attorneys affiliated with Counsel presenting argument may also be seated at counsel table or in the chairs in front of the bar.

Counsel must argue from the lectern, unless physically unable to do so and with prior arrangements made with the Clerk. For the record and for the benefit of those listening to the audio stream, attorneys should introduce themselves and identify the party on whose behalf they appear. It is customary to open an argument by acknowledging the Court: “Chief Justice and Justices of the Supreme Court,” “May it please the Court,” or a similar respectful form of address. Counsel should refer to the members of the Court as “Justice” or “Your Honor.”

The Court strongly encourages attorneys to use a court presentation system if it is beneficial to an argument. If Counsel wishes to present demonstrative materials during their argument, they may reserve either the document camera or the court presentation system on the Oral Argument Receipt form. The configuration of the courtroom and the need to compile an accurate audio record of oral argument pose challenges to those who use charts or large physical exhibits. Large demonstrative exhibits should be positioned to the side of the lectern, so Counsel avoids stepping away from the microphone. Photocopies of materials to be used may also be provided to the Clerk before argument for distribution to the Justices. Counsel should not enter the area between the lectern and the bench while the Court is on the bench unless granted leave to do so by the Chief Justice.

Non-confidential cases are streamed live so Counsel should not disclose any information that would be subject to the Redaction Rules, such as a minor child’s name, an account number, or other personal information.

PRESENTING AN EFFECTIVE ORAL ARGUMENT

Whether or not it is helpful to recite the facts of a case will depend upon the nature of the issues on appeal; however, counsel can assume that the justices have read the briefs and are familiar with the facts. Counsel should not plan on restating the facts at length but should refer to only relevant facts during their argument.

Arguments should focus on the questions presented by the appeal. Counsel should also anticipate that any ruling the Court makes will impact other cases and Counsel should be prepared to assist the Court in evaluating the overall implications of any ruling it is being asked to make.

Oral argument is a dynamic exchange between Counsel and the Court. Counsel should not plan on reading from a prepared script or assume that the Court will address issues in the same order that they were presented in briefing.

Counsel should avoid overwrought oratory and remember that the Supreme Court is not a jury. A well-reasoned, logical, and conversational presentation should be the attorney's goal. Counsel should take special care to avoid unprofessional, emotional, or impolite written or oral statements or conduct disparaging of other attorneys, parties, the trial courts, or citizens. The Court expects the highest degree of civility.

Counsel should ensure that specialized terms are adequately defined in the briefs and clarified in oral argument as needed. Attorneys should be familiar with the record and the procedural history of the case. It is helpful if Counsel can provide the bates number where information can be found in the record.

Counsel should avoid making assertions of facts which are not in the record. If a member of the Court asks a question that would 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 directed to do otherwise. Counsel should only refer to cases or other authorities cited in the briefs.

RESPONDING TO QUESTIONS

Oral argument allows the Justices to explore questions they have after reviewing the briefs, to sharpen their understanding of the rules the parties are advocating, to explore the implications of a ruling, and to determine whether the parties may agree on certain issues. 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." Candor is essential. It is wise for attorneys to remember that a question is an opportunity – if the question is not asked or is not answered, it may become a topic of discussion in conference or the formulation of the opinion when Counsel will not be available to address it.

It is rarely wise to defer or delay answering a question a Justice has posed. The argument may be completed before the attorney can return to it. When being addressed by a Justice, Counsel should avoid interrupting the Justice.

MISCELLANEOUS

The 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 prior to the argument.

MEDIA

Print and broadcast media representatives may be present during an argument. Counsel is advised to respect the setting and nature of the occasion in any comment they may offer. Information regarding electronic devices in the Courtroom can be found in Rule 5 of Rules of the Supreme Court of Wyoming.

SUPREME COURT TIMELINE

Attorneys and their clients often have questions for the Clerk's Office regarding the process of appeals. A variety of factors can affect the time from docket to disposition, including delays in production of the transcripts; extension of time to file a brief; and matters that stay a case. Cases involving children take priority and a complex case will take more time than an issue that the Court has previously decided. What follows are the steps in the appeal process, after the case has been docketed in the Supreme Court.

Docketing and Briefing: Appellant's opening brief is due 45 days after service of the Court's notice that the case has been docketed. Appellee has 45 days after service of Appellant's brief to file its brief. Appellant then has 15 days after service of Appellee's brief to file a reply brief to respond to any new issues or arguments raised by Appellee. Three additional days for service by mail will be added to each period. Once a case has matured, Counsel will receive a Notice of Case Maturity. Counsel should review the court's calendar and promptly notify the Clerk's office if there are any anticipated scheduling conflicts.

Case Assignments: When the case has matured, the case will be set for oral argument or assigned to the Brief Only docket.

Under Advisement: Once an appeal is before the Court, an initial vote will be taken on the outcome of the case, and it will be assigned to a Justice to write the opinion on behalf of the Court. Within 90 days the initial draft will be circulated to the other Justices who will then have 10 days to respond. If a Justice chooses to write a dissent or concurrence, it will be circulated within 30 days and the other Justices will then have 5 days to respond. Any of these timeframes may be extended for up to 30 days. After all responses have been submitted, the opinion will be published within 20 days. In extraordinary cases such as a death penalty appeal, this schedule may be waived.

Delays in filing transcripts, extensions of time, or staying proceedings may significantly extend the time from filing the notice of appeal to publication of the Supreme Court's opinion.

As a reminder, Counsel is advised to review the Wyoming Rules of Appellate Procedure, prior to appearing before the Wyoming Supreme Court.