

Basic Criminal Appellate Law and Procedures

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Dos and don'ts of oral argument.

I. Notice of oral argument.

A. Notify client.

B. Client has no constitutional right to be present at oral argument.

C. What are the benefits or detriments of having the client present?

1. Need to explain to client the dynamics of oral argument.

2. Why you might want to have a client available.

D. Update the cases in your brief. Go to your appellate court's website and to the Ohio Supreme Court website to search for cases decided after the filing of your brief.

E. Appellate Rule 21(I) – if you discover a decision that is relevant to your case decided after you file your brief you may present a notice of additional authorities, identifying the assignment of error to which the case applies and citing the case. The court frowns upon extended argument.

II. One week before your oral argument.

A. Read and outline your brief, the opposing brief, and your Reply brief if any. Purpose of this exercise is to more fully understand the total dimensions of the issues presented to the court.

B. Re-read ,or re-read your notes on, all cases. After outlining the briefs this will be valuable as both parties may likely be citing the same cases.

C. Re-read the key cases, or your notes on the key cases. You will receive notice of the panel members so note the members of the panel who were on any of these cases with a specific focus on the author of any opinion.

D. Develop an outline of your argument. **Under No Circumstances Bring Your Brief to the Podium.** The court frowns upon this and draws a negative inference from this practice.

III. Oral argument

A. Arrive early. Become comfortable with the surroundings if you never argued in this particular Court of Appeals and gauge the activity of the court. Be prepared to start sooner than the oral argument time previously designated. Ignore the camera if any.

B. Structure of argument.

1. Brief introduction, identifying yourself, the party represented, and amount of time you wish for rebuttal.
2. Craft an issue, the answer to which is positive and yields you the result you wish.
3. In three or four sentences outline the arguments surrounding each of the assignments of error you choose to argue.
4. In a multiple assignment of error brief consider which of the issues you need to discuss. Conventionally, given the amount of time allocated for oral argument, one should not argue more than two assignments of error. Rely upon your brief for any remaining assignments of error but be prepared to discuss them as the court may have thought them more important than the ones you have chosen.
5. Begin to discuss your argument setting forth the standard of review and the legal test.
6. Different techniques of argument.
 - a) Present only your argument.

b) Present your argument, contrasted with your opponent's position and rebut that position.

7. Conclusion – short prayer for relief, and if there was significant questioning during the argument, precede it with an offer to answer any additional questions. Why?

IV. Rebuttal – Reserve two or three minutes for rebuttal but use it strategically. Rebut only those matters which have been raised by your opponent anew or matters that have been confused. Do not reiterate your main argument.

V. Write to the client, explain what transpired and when you might expect the court to issue an opinion.

VI. Alternative to the above for the appellee.

A. During the Appellant's argument have ready at hand a blank pad on which you will write the questions and answers and/or points made by your opponent.

B. When the Appellee first stands up do the conventional introduction but then raise two or three points that you have considered from the appellant's argument or from the questions posed by the bench.

C. Thereafter, proceed according to conventional oral argument remembering always that you won below. Do not snatch defeat out of the jaws of victory.

D. Avoid arguing issues not discussed by the Appellant.