

Oral Advocacy 101: Tips & Tricks for Effective Oral Advocacy

Presented by:
Tiffany J. Gates
Certified Appellate Specialist*

*Certified by the State Bar of California
Board of Legal Specialization

OVERVIEW

Purposes and Goals of Oral Argument

Purpose of Oral Argument

- Oral argument is the only opportunity for a dialogue between the parties and the judge or justices who will decide the case; it enables counsel to breathe life into their written discussions.

“There is a reason why litigants are afforded their proverbial ‘day in court’—to speak directly to the decision maker. Cold words on a printed page are not the same as a live presentation.” (*Mediterranean Const. Co. v. State Farm Fire & Cas. Co.* (1998) 66 Cal.App.4th 257, 266, fn. 11.)

Purpose of Oral Argument

- Oral argument *cannot* fill the gap left by a poorly written brief; indeed, motions and appeals are generally won or lost on the briefs, not at argument.
- The briefs must thoroughly discuss each and every point a party wishes to raise on appeal, under risk of waiver. Oral argument, on the other hand, is intended to *highlight* or *simplify* the most cogent points made in the briefs.

“An oral argument is as different from a brief as a love song is from a novel. It is an opportunity to go straight to the heart!” (*Mediterranean Const. Co. v. State Farm Fire & Cas. Co.*, *supra*, 66 Cal.App.4th at p. 264, emphasis added.)

Primary Goals of Oral Argument

- Identifying and addressing the court's concerns;
- Answering the court's questions;
- Focusing on “decisive” points; and
- Presenting a broader picture.

Secondary Goals of Oral Argument

- Clarification;
- Augmentation of particular arguments; and
- Discussion of post-briefing developments.

Compare: What Oral Argument Is *Not* For

Oral argument should *never* be used for the following purposes:

- Repetition of briefs;
- Raising new issues; or
- Abandoning claims.

PRE-ARGUMENT PREPARATION

How to Effectively Prepare for Oral Argument

Preparing for Oral Argument

Preparation for oral argument typically involves the following steps:

1. *Become Reacquainted with the Motion/ Appeal*
2. *Update Your Research*
3. *Select Limited Topics for Discussion*
4. *Outline Discussion*
5. *Prepare Modular Discussions*
6. *Budget Argument Time*
7. *Organize Argument Materials*
8. *Anticipate Court Questions and Dialogue*

DELIVERY OF ORAL ARGUMENT

How to Effectively Present an Oral Argument

Component Parts of Presentation

Effectively presented oral argument typically breaks down into five component parts:

- Opening lines
 - Salutation
 - Attorney and client identification
 - Summary
- Prepared discussion
- Response to court questions and comments
- Brief conclusion
- Rebuttal

Responding to the Court's Questions and Comments

Generally, counsel should not be rattled by questions from the bench; the court's questions should be welcomed, because they may open a window to the court's thinking and influence its perspective about the case.

- Respond immediately and directly;
- Tailor argument to the court's questions and comments;
- Correct or clarify if necessary; and
- Beware of concessions and admissions.

Dealing with the Inability to Answer a Question

- If you cannot answer a question posed by the court, say so; if the matter may be pivotal, request an opportunity to discuss the point in a supplemental letter.
- Do *not* “fudge” or guess at an answer; the court may well know the correct answer and, if not, is sure to discover it after argument.
- And *never misstate the facts or law*, which is a violation of counsel’s ethical duties.

Appropriate Demeanor

- Avoid excessive oratory
- Avoid speech-reading
- Maintain eye contact
- Maintain an organized appearance
- Be courteous but firm

Appropriate Demeanor

- Keep quiet when waiting to be called
- Conduct during opposing counsel's argument
- Importance of flexibility
 - Listen carefully
 - Tailor the presentation to the course of argument
 - Know when to stop
- BE YOURSELF

QUESTIONS?

Tiffany can be reached at tiffanyjgates@gmail.com.