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Preparing for and Delivering an Effective Appellate Argument

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Preparing For And Delivering An Effective Appellate Argument

Oral argument is a vital stage of the appellate process. At its best, appellate argument is a focused conversation in which the judges explore the advocates' contentions, test their views, and clarify the stakes and options for a disposition. The time is brief, and the dynamics are complex and unpredictable. What should you do in the weeks leading up to the argument and in the precious minutes when you come face-to-face with the judges to be ready? Here is guidance and advice on three key topics: (1) framing your preparation; (2) preparing for your argument; and (3) delivering your argument.

Framing Your Preparation

It is important to frame your approach by thinking about the purposes of oral argument and the goals of preparation.

Purposes of Oral Argument

Thinking through the purposes of oral argument from the appellate court's perspective helps frame your strategy for preparation.

In appellate courts, the core purposes of oral argument generally fall into three categories:

- (1) clarifying the facts and the procedural posture of the case;
- (2) clarifying the parties' legal positions and the principles that animate those positions; and

(3) assessing the practical consequences of a ruling.

Judges on multimember panels pay close attention to their colleagues' concerns and often ask questions to expose weaknesses in a position in an effort to persuade their fellow panelists. Hypothetical questions frequently play the role of illuminating the limits and consequences of a position and, if not carefully answered, can reveal that a position is unclear, extreme, or unworkable. At other times, panel members search for common ground or ways to narrow the scope of a ruling. Appellate argument is often as much a dialogue *between* the judges as it is a conversation *with* the advocates. To participate in that conversation and influence its direction requires attentive listening, clarity of expression, and flexibility. Preparation is the key.

Goals of Oral Argument Preparation

An advocate should have two central goals in mind in preparing for oral argument:

- (1) developing a list of affirmative points that you would like to make—and return to regularly—over the course of the argument; and
- (2) developing responses to weaknesses in your argument that will allow you to allay doubts and then pivot back to your affirmative points, or adjust them in light of concerns that emerge about frontline positions.

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