

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, 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. Visitor parking is located on the north side of the State Museum Building east of the Supreme Court Building. 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 www.courts.state.wy.us. Cases are set for argument approximately five to six weeks prior to argument. A case may be set any time after the brief of the Appellee or Respondent is filed. The Court conducts oral argument at the University of Wyoming College of Law in the fall, and when invited to do so, it will also hear oral argument in communities around the State of Wyoming to afford citizens the opportunity to see the Court in session. If Counsel are scheduled to appear at a location other than the Supreme Court Building, they will be so advised in advance.

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 who are uncertain whether they have entered an appearance in a case should confirm that they have done so with the Clerk of Court by reviewing the Court's electronic docket before any scheduled argument. Counsel not admitted to the Wyoming Bar must comply with the rules 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 would be well advised to confer with an experienced lawyer for tips on how to proceed. It is often beneficial for Counsel 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 connect to the streamed audio through the Supreme Court website if the case being argued is not confidential.

ARRIVING AT COURT

The Court typically schedules three to five cases for argument each day it is in session. All cases to be heard on a given day are set at 9 a.m. unless indicated otherwise on the setting. Counsel must report to the Clerk's office no later than fifteen minutes prior to the start of oral arguments (normally 8:45). They must provide an estimate of the time they will need for their argument. The Appellant/Respondent may reserve time for rebuttal. When the Court hears an appeal and cross appeal, both parties may reserve time for rebuttal. Counsel for all cases must be in the courtroom when Court is opened (normally 9 a.m.) for docket call. The Chief Justice will advise Counsel in all cases set on a given day when they must return to the courtroom, although Counsel, parties, and the public are welcome to remain in the courtroom except for those cases which are confidential (for example, juvenile proceedings and adoptions). 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 in advance of argument, the total time allocated to all parties in a given matter 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.

Counsel for Appellant argues first. If he or she exceeds the time requested for the opening portion of the argument, the additional time used will be taken from 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 encouraged 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 goes to the podium, a green light will be lit. When five minutes is left in the argument, the light will change to yellow and when that time is up, the light will change to red. If you are answering a question posed by the Court and your time expires, you should promptly complete the answer and be seated. When Counsel for Appellant has reserved time for rebuttal, the lights are set to the amount of time reserved for the opening portion of the argument. For example, if Appellant reserved 10 minutes for rebuttal, the yellow light will go on at the 15 minute mark, and the red light at the 20 minute

mark. Attorneys in that situation may continue after the red light is lit if they wish, and the additional time used will be deducted from that available for rebuttal. 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.

The time allotted for argument passes quickly, especially when members of the Court ask numerous questions. Counsel should be prepared to present argument concerning the most significant aspects of the case concisely. The Court does not measure the persuasive force of an argument by its duration.

COURTROOM ETIQUETTE

Dignified behavior, appearance, and attitude are required in any Wyoming court, including the Supreme Court. Counsel should wear business attire suitable for argument before the state's highest court.

Personal computers and other electronic devices may be used during argument. Counsel must ensure, however, that those devices do not create any visual or audio disturbance. Court Security does not take electronic devices from clients or members of the public, but they 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.

The Justices enter the courtroom through an entrance behind the bench. They sit in order of seniority, with the Chief Justice in the middle, most senior Justice to his right, second in seniority to his left and so forth.

Counsel for the Appellant should sit at the counsel table to the right of the bench as one faces the bench, 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 the appropriate table or in the chairs in front of the bar.

Counsel must argue from the lectern. The microphone for the sound system is on the lectern, as is the light which advises attorneys of the time remaining for argument. 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." It is improper to refer to the Court as "you guys" or with some other similar colloquial phrase.

If Counsel wish to use exhibits or demonstrative materials in argument, the Electronic Presentation System (EPS) may be used. Training information can be found below the link for this guide and the Judicial Branch website. (<http://www.wepresentwifi.com/training-videos.html>). The configuration of the courtroom and the need to compile an accurate audio

record of oral argument pose challenges to those who use charts, photographic blow-ups or other large physical exhibits. The Court prefers that a reduced version be published through the EPS. If physical exhibits are used, they must be positioned to the side of the lectern so Counsel do not have to move away from the microphone because of the need to use the sound system for the benefit of the gallery and those listening to the streaming audio. 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.

Counsel should be mindful that the argument is being streamed live and 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

Treatises have been written on the art of appellate advocacy, and the limited information presented here certainly cannot be anywhere near so exhaustive. The Court offers a few tips, however. Counsel may safely assume that all of the Justices have read the briefs filed in the case, and that their staff attorneys may have also reviewed all or part of the transmitted record. Whether or not it is helpful to attempt to delve deeply into the facts of a case will depend upon the nature of the issues on appeal. It is often not particularly helpful to plan on restating the facts at length. It is generally a better practice to refer to relevant facts during legal argument. Counsel can expect that Justices who have questions about facts will ask them.

Argument should focus on the questions presented by the appeal. Counsel should also anticipate that any ruling the Court makes will impact many other cases, and 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. Members of the Court hope to resolve questions they perceive to be important, and to clarify positions, facts, and contentions. 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 appellate 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 in argument.

A comment must be included about technology in the courtroom. Counsel should remember this is an appellate argument, not a trial. A 15 minute Power Point presentation may chill interaction with the Justices instead of answering their questions. If you decide to use EPS, consider your choices wisely from the trial court record. A map in a boundary dispute may aid the court in their understanding of the issues. Photos of the deceased in a wrongful death will be of no use in deciding the issues raised on appeal.

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. Justices frequently ask if particular matters are in the record. It is helpful if Counsel can provide the volume and page where the information can be found.

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. Unless Counsel has complied with Rule 7.04 of the Wyoming Rules of Appellate Procedure governing the use of additional authorities, Counsel should refer during argument only 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 in argument, it may become a topic of discussion in conference or the formulation of the opinion, when Counsel will not be able 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 oral argument. Counsel are advised to respect the setting and nature of the occasion in any comment they may offer. Further information regarding electronic devices in the Courtroom can be found at www.courts.state.wy.us, Rules of the Supreme Court of Wyoming, Rule 5.

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 stays. Once under advisement, it will not be first in, first out; 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.

Filing Notice of Appeal: After entry of the final order, judgment & sentence, a party has 30 days from the date the order was **filed** in the District Court to file a Notice of Appeal.

Trial Court Record: It is critical that Appellant have a record for the Supreme Court to review. Transcripts, statement of the evidence or agreed statement are to be filed 60 days after the Notice of Appeal is filed. If redactions are necessary, that will add another 30 or more days.

Docketing and Briefing: After the previous steps are complete, the case is docketed in the Supreme Court and notice goes to the parties. Appellant has 45 days after service of this notice to file its opening brief. Appellee has 45 days after service of Appellant's brief to file its brief. Appellant has 15 days after service of Appellee's brief to file a reply brief to respond to a new issue or argument raised by Appellee. Three additional days for service will be added to each period.

Oral Argument/Briefs Only Docket: The case will be assigned to one of these dockets and will go before the Court as soon as possible.

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.

Filing of Notice of Appeal:	30 days
Record Completion:	60 days
Docketing:	5 days
Briefing:	115 days
Oral Argue/Briefs Only	35 days
Under Advisement	<u>120 days</u>

365 days*

***This illustration is for informational purposes and does not reflect the actual number of days any of the events may take for completion in the appeals process. 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.**