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Guide for Counsel for Oral Arguments Before the North Carolina Court of Appeals & Supreme Court of North Carolina

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The Committee appreciates the advice and comments of those who use the guide. Please send your suggestions to the Appellate Rules Committee of the North Carolina Bar Association.

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Guide for Counsel for Oral Arguments Before the North Carolina Court of Appeals & Supreme Court of North Carolina

This guide will help you prepare for arguments before either the North Carolina Court of Appeals or the Supreme Court of North Carolina. You should also read the North Carolina Rules of Appellate Procedure, the Appellate Style Manual, the guide to remote oral arguments, and the reference guide comparing the United States Court of Appeals for the Fourth Circuit, the North Carolina Court of Appeals, and the Supreme Court of North Carolina.

The Clerk and staff of the Court of Appeals and Supreme Court also are available to answer questions and provide assistance:

North Carolina Court of Appeals
Office of the Clerk
1 West Morgan St.
Raleigh, NC 27601

P.O. Box 2779
Raleigh, NC 27602
(919) 831-3600

Supreme Court of North Carolina
Clerk's Office
2 East Morgan St.
Raleigh, NC 27601

P.O. Box 2170
Raleigh, NC 27602-2170
(919) 831-5700

The courts are open Monday through Friday (except for State holidays), 8:00 a.m. through 5:00 p.m.

I. Scheduling & Pre-Argument

The Supreme Court and Court of Appeals generally hold oral arguments between January and May or June. The Supreme Court holds a fall session from August or September to December and the Court of Appeals holds a fall session from August to December each year. Both courts start arguments at 9:30 AM and may have afternoon sessions. Both courts occasionally hold arguments outside of Raleigh (for example, at law schools in North Carolina); when the courts hold arguments elsewhere they provide attorneys advance notice of this.

After the parties complete their briefing, the court notifies the parties of the session when the court will hold an argument for the appeal. You should receive an email with the calendar attached.

The Supreme Court rarely decides cases solely on the briefs. The Court of Appeals has the opposite practice: it decides most cases without oral argument. The court's calendar will say whether your case is calendared for oral argument.

Whenever you have an appeal before either court, you should promptly notify the court of any dates for which you request secure leave. Rule 33.1 of the Rules of Appellate Procedure describes the process for requesting secured leave. You must file for secured leave on the ncappellatecourts.org website. There is a tab on the ncappellatecourts.org website to designate secured leave. If you have difficulty locating the tab or designating secured leave, please contact the Clerk of Court.

If you have a conflict between oral arguments and another proceeding, North Carolina's Guidelines for Resolving Scheduling Conflicts will explain how to resolve it. The courts disfavor rescheduling arguments.

The North Carolina Supreme Court requires a letter saying who will be present, who will argue the case, and how you will divide your time. This letter is a great opportunity to ensure that whoever will argue the case signed the brief. If you want to argue the case, in either appellate court, you need to (physically or electronically) sign the brief. If you haven't signed the brief, you can go to the clerk's office before the argument and sign the brief. It may take some time to sign the brief. We advise not doing this on the day of your argument. It is a better idea to simply electronically file a revised signature page for the brief that adds your signature. The Supreme Court has a filing category for revised signature pages.; the document file type is correspondence and the document description is signature page. The Court of Appeals does not have a similar filing category so you should use the notice file type and other document description. You should also review the other cases calendared the same day as your case. They may have similar issues.

II. Preparation

Joseph Story (Associate Justice, Supreme Court of the United States two centuries ago) stated in this excerpt from his poem "Advice to an Advocate" that the appellate advocate during oral argument should do the following:

> Be brief, be pointed; let your matter stand Lucid, in order, solid, and at hand;
>
> Spend not your words on trifles, but condense; Strike with mass of thoughts, not drops of sense; Press to the close with vigor, once begun,
>
> And leave (hard the task!) leave off when done;…

A. Visit the Court

Good appellate advocates devote large blocks of time to preparation for their oral argument. If the court will hear your case in Raleigh, visit the court on one or more days and observe oral arguments. If possible, you should also visit the location the court will hear arguments if the court is conveying outside Raleigh. To choose good days to observe, check the dockets on www.nccourts.org. If possible, choose oral arguments on topics closely related to the topic of your case or with the same panel of judges. If you do find a case with a topic closely related to your case, you can read the briefs online.

Another way to plan your visit is to look on the docket for names of practitioners or firms that you respect or that your colleagues recommend. Biographies of the judges and justices and a seating chart are available on the www.nccourts.org website.

Watching oral arguments is much easier now that the courts livestream their arguments online. You can easily watch arguments on the Court of Appeals or Supreme Court's YouTube pages. Note the timing, pace and style of attorneys' arguments, and what seems effective. Note the court's concerns, how they present their questions, and how counsel most effectively answers their questions.

If you have not been to the court before, we recommend you visit the court in person at least once before your argument—especially if the court will hear your case in Raleigh. This visit is a trial run for you to determine how long it takes to get to the court, where to park, where the facilities are, and where you are supposed to sit, stand, and put your belongings while you argue.

If you visit the court in person, dress professionally and, if you bring anyone with you, be sure he or she dresses professionally as well. Be prompt and enter before the court convenes or during breaks in the arguments. And be sure to silence or turn off your cell phone.

B. Moot

We recommend that you arrange for a panel of your colleagues to sit as mock judges to moot your oral argument, at least once, but preferably twice. This gives you an opportunity to re-think your argument in response to unanticipated questions by your moot panel. Give both parties' briefs to each of the moot judges to read before the moot court. Schedule the first session about a week before oral argument. If possible, re-group and work on your oral argument and have a second moot session a couple of days before the oral argument. If possible, have at least one attorney serving as a moot judge who is familiar with the substantive area of law. Also have at least one attorney serving as a moot judge who is unfamiliar with the substantive area of law.

Upon initiative of the newly established Appellate Practice Section and following an initial period of conceptualization and coordination, in 2015 the Section launched the *Appellate Moot Court Program for Practitioners* in collaboration with faculty from the University of North Carolina School of Law. The Program is entirely volunteer-based, and it is emphasized to volunteer panelists that they are bound to disclose potential conflicts and to confidentiality. (In addition to volunteers, one may also elect to secure panelists of one's own choice.) Panels are usually composed of at least three volunteers, but efforts can be made to attempt to secure more panelists

upon request with adequate notice. The Program operates on a first-come, first-served basis, and accordingly those utilizing the Program are respectfully asked to provide notice of the need for a potential moot as soon as possible upon the conclusion of the briefing period, if there is a likelihood that oral argument will occur. As a courtesy to volunteers and mindful of their time, participants are respectfully requested to shortly thereafter forward a detailed Executive Summary (akin to a balanced bench brief) of approximately eight-to-sixteen pages, encapsulating the key facts and mainly highlighting each side of the major substantive issues on appeal, with appropriate page references to the briefs and record. If you are interested in scheduling a moot, please contact Associate Dean Andy Hessick [ahessick@email.unc.edu] at the UNC School of Law or the NCBA Communities Manager of the Appellate Practice Section.

C. Practice before a mirror, on video, or both

We all have tics or bad habits when speaking. One of the best ways to break those habits is to see them in a mirror or on video.

D. Master your case

1. Documents to master.

Start with the briefs. You need to understand the arguments to know which authorities and parts of the record are important. Then, read and re-read the record and transcripts. Tab important sections. Knowing what they say is the first step to winning your case. Then go over the authorities the briefs rely on. Don't just read them for their holding or a key quote: go over their factual and procedural history. Take notes. Make highlights.

Update your research leading up to oral argument. If you find something significant, submit a memorandum of additional authority under Rule 28(g). When possible, file the memorandum at least a few days before argument so the justices or judges have a chance to review the material. At oral argument, you can only refer to authorities cited in the briefs or in a memorandum of additional authority. See App. Rule 28(g).

2. Master opposing counsel's arguments

Again, several times, read, re-read, and highlight your opponent's brief. Note any arguments with potential merit and prepare your responses. Note any weaknesses in your argument and decide how to address them; and note any weaknesses in your opponent's arguments and prepare your responses to them. Re-read the authorities in support of your opponent's arguments and be prepared to address them.

3. Make a list of possible questions

As you master the briefs, the record, the authorities, and the arguments, you should start to think of questions the court may want to ask. Write those down. Start thinking as early as possible about how to answer them.

4. Prepare an argument outline

Prepare an outline of the major issues and best legal and policy arguments. One method is to put the most important issues first, followed by issues of lesser importance in descending order. Keep condensing the outline until it is one to three pages long. When you begin practicing your oral argument, use your outline. After you finish your practice sessions, make needed revisions to the outline.

That said, don't plan to read or memorize a presentation to the court. However, be ready to (1) make a presentation if you receive no questions from the justices; and (2) know how to answer questions while steering the discussion back to your main points if you get many questions from the court. Outlines can help you pick up the flow of your argument after an interruption.

5. Develop a theme or theory of the case

Many advocates have found that the theme or theory of the case can best be developed in explanation of the case to non-attorney friends. The theory is based on the idea that ruling for your client's position is the just thing to do. In one or two sentences, explain why the court should rule for your client. Keep this theory in mind as you prepare and argue your case.

III. The Argument

A. The Day of Argument

The North Carolina Supreme Court and Court of Appeals are directly across the street from one another in downtown Raleigh. The Supreme Court is at Two East Morgan Street and the Court of Appeals is at One West Morgan Street. Ample public parking is available, including at:

- 120 South Wilmington St.
- 1 South Wilmington St.
- 201 West Morgan St.
- 222 West Hargett St.

However, both courts occasionally hold arguments in cities other than Raleigh. The court's calendar will note this and you will receive communication about alternate locations from the court ahead of time.

It is never a mistake to arrive early for argument but always a mistake to arrive late. You will need time to get through security, find the courtroom, and settle into your seat. The courts open at 8:00 AM. Attorneys, clients, and people associated with the attorneys may enter the courtroom 8:00 AM.

Even if your case isn't first on the calendar, you should be in the courthouse at the start of the session. You may wait in the library or a room adjoining the courtroom, but be sure to keep track of the court's progress. The calendar can change, meaning the court could hear your case earlier than you expect. The court will proceed without you if you are not there.

On arriving in the courtroom, counsel for the first argument may sit at the counsel tables. Appellant's counsel sits at the right-hand table (if you are facing the bench), and appellee's counsel sits at the left-hand table. Only counsel should sit at the tables. Clients and other observers should sit in the audience. Counsel whose appeal is not scheduled first should also sit in the audience until their appeal is called.

If you arrive early and your case is not the first on the calendar, pay attention to where you sit. Especially in the afternoon, the Court of Appeals' gallery can get hot if you sit in the sun. The North Carolina Supreme Court reserves tables for clerks. At least one counselor has accidentally sat at a reserved table only to realize his error after the court called the first case.

The courts allow laptops, as long as the sound is turned off. If you have a cellphone, you must mute it or turn it off. Many lawyers don't bring their cellphones at all.

The court provides water at counsel table. Don't bring any other food or beverages.

Both courts have an attorney's room next to the courtroom where you may prepare yourself or quietly meet with a client. Many advocates prefer to avoid distractions by sitting in the courtroom and waiting for their cases to be called.

B. Argument Logistics.

The session begins with the Clerk sounding the gavel as all rise, and the Judges or Justices enter the courtroom. Then, while all remain standing, the Clerk opens court. After any introductory comments, the Chief Justice or senior-most judge will call the first case for argument.

The appellant and the appellee each have thirty minutes for their argument—even if there is more than one appellant or appellee. You may divide your arguments between counsel or between parties. Amici may participate in arguments only if the court grants a motion allowing them to participate.

If you represent the appellant, you can reserve time for rebuttal. And you should. Typically, appellant's counsel asks to reserve time after she has introduced herself to the court. Five to ten minutes is customary for rebuttal.

The lectern will have a timer. The timer counts down from 30:00 and shows the total time remaining, including rebuttal time. If you represent the appellant, it is your job to track when you have gone into your rebuttal time. A yellow light warns

you when you are running into your rebuttal time or have two minutes left. A red light will tell you when your time has expired. If your time expires mid-sentence, you should say, "I see my time has expired, may I have a moment to conclude." If the court allows it, finish your sentence, tell the court the relief you want, and sit down—doing any more than this invites the court's ire.

You may use visual aids during the argument if they are part of the record or cited authorities. If you want use visual aids, you should talk to the Clerk of Court **and** notify opposing counsel. The Supreme Court and Court of Appeals allow electronic display of exhibits. Both courts have a television with an HDMI port and an elmo projector, and Court of Appeals judges also have display screen at their seats on the bench. Electronic visual aids can be very effective in some cases. For example, showing the court a recorded plat map may help in a real estate dispute. If you plan to use electronic visual aids, we recommend that you go to the court before your argument to get familiar with the equipment and test presenting your exhibits. You may also benefit from contacting the court's director of information technology (currently, Fred Wood).

The following describes the courts' practices as of May 2024. You should confirm these details with the Clerk of Court before your arguments.

The North Carolina Supreme Court takes a fifteen-minute recess between each case. The North Carolina Court of Appeals may take a similar recess between cases but usually does not.

Counsel who have just finished arguing should promptly leave the counsel tables and take with them any materials that they brought. The Supreme Court's current practice is to shake hands with the attorneys for each party at the end of each argument. After oral argument and, at the Supreme Court, handshakes, counsel may quietly leave the courtroom if they wish. Counsel for the next case should promptly take their seats at the counsel tables.

Once all of a session's oral arguments are done, the court will adjourn. The Clerk will instruct all to rise while the justices or judges leave the courtroom.

C. At the Lectern

Don't keep your hands on the lectern during arguments. Practice making natural, effective gestures as you argue.

1. Opening

Greet the court. Start with, "May it please the court, I am (your name), and I represent (name of client)." If you are appellant, you should reserve time for rebuttal. After you've introduced yourself, introduce your case. It is safe to assume the court knows the facts of your case, so you can go directly to legal arguments. Tell the court the issue in your case. Then give them two or three reasons why the court should rule for your client. If the court doesn't interrupt you, go right into explaining your first reason.

2. The argument

Oral argument is a conversation. You want to respond to the judges' or justices' questions about your case before they vote and write their opinion. You should be prepared to answer questions.

Be respectful. Articulate clearly. Speak loudly enough to be heard and slowly enough to be understood. Use a normal tone of voice and talk to the justices about the case. If you don't know the answer to a question, say so, but if it seems appropriate to the question you may offer to do further research to answer the question for the judge in a supplemental memorandum to be filed after oral argument.

Relax, be yourself, and keep eye contact with all the judges or justices. Although your purpose is to engage in dialogue with the court, your style should remain dignified. The microphone and timer lights use some of the limited space on the lectern, which may interfere with placement of an opened notebook or other items. Project your voice, speak into the microphone, and enunciate so that all the judges or justices can hear you. It is important to speak with conviction.

When you have made your point, don't continue to argue it. When referring to a judicial opinion, to keep the flow of your argument, don't routinely give the citation to the court. Do not refer to facts or materials outside the record. You may use exhibits entered into evidence at the trial court. However, use exhibits only when they make a critical point that cannot be otherwise made. Be extremely cautious about using any kind of humor or informality in addressing the court. The Court expects advocates to exhibit a serious and respectful demeanor. When the judges or justices use humor, respond briefly in acknowledgment and appreciation of the humor and move on.

3. Answering questions

Listen very carefully to the court's questions. Ask for repetition or clarification if you cannot hear or understand. Answer the question directly. If the question calls for a yes or no, give one and then explain. It is never a good idea to dodge the question. If the question is based on a hypothetical situation, you should accept the hypothetical and respond accordingly without telling the court the facts of your case are different to the hypothetical's facts.

Respond to each of the questions or comments in a respectful tone of voice. Never interrupt the court. So long as you are fully prepared, you will naturally cover your major points in answering the court's questions. The best approach is to remain flexible and open to answer questions in any order given. In response to a question, do not say, "I'll address that point later" because the question may be what the judge is most concerned about. The Court may ask hypothetical questions, varying the facts in some respect and asking whether the proposed rule would still apply. Don't fight the hypothetical. Saying "those aren't the facts of this case" doesn't cut it. Arguing about the hypothetical or trying to change it doesn't cut it either. Explain why your rule would or would not apply to that hypothetical situation and ground your answer in your argument's strong points and themes.

Questions can easily drive attorneys off their prepared track. Attorney Jack Metzler advises advocates to use a "circular argument" to prepare for questions. You may have three main points and each point has three subpoints. Structure the main points to reinforce each other and decide how to transition from one to the other. As you're thinking about your argument, decide which points are most responsive to

questions judges may ask you. If you're arguing point 1(b) but the judges ask you something that brings up point 2(c), roll with it. Once you've answered and explained point 2(c), start arguing point 3(a). And so on.

You can practice this by writing your arguments down on flash cards. Put one point on each card, then shuffle them. Move through the arguments in whatever random order shuffling puts them in. This exercise helps you practice transitioning from one argument to the next when questions call for an adjustment to your planned order.

4. Conclusion

As in all good courtroom practice, request that the court rule in your client's favor and tell the court specifically how you would like the court to rule. Reiterate for the court the one or two strongest arguments. Thank the court.

D. Checklists (Adapted from Supreme Court and Appellate Advocacy, David C. Frederick, Thomson West (2009)

This checklist is not a list of hard and fast rules. Not every attorney prepares the same way. Some bring binders to the lectern. Some bring notecards. Some bring nothing. And one attorney may prepare for different cases differently. This checklist may help you but, if it doesn't, find what works for you.

<u>Basic Chronology of Preparation</u>

- Review Briefs
- Review Records
- Review Judicial Opinions, Statutes, Rules, Regulations Cited in Briefs
- Draft List of Potential Questions
- Draft Opening
- Prepare Argument by Issue or/ Section of Briefs
- Research and Prepare Answers to Potential Questions
- Conduct Moot Courts
- Revise Argument/Answers

- Tab Record Materials and Briefs for Quick Reference
- Make List of Key Affirmative Points
- Develop Segues
- Prepare Argument Notebook
- Memorize Opening
- Review Argument Notebook--Judicial opinions, rules, regulations
- Review Briefs

Items to Prepare

- Key Portions of Record on Appeal
- Key Precedents
- Affirmative Points
- Responsive Points to Opponent's Arguments
- Statutory Text
- Legislative History
- Applicable Rules of Procedure
- Policy Rationale for Rule Being Advocated
- Legal and Factual Analogies Raised by Issue Presented
- Opening
- Closing

Items in Argument Notebook

- Opening
- Affirmative Points
- Responsive Points to Opponent's Arguments
- Key Statutes, Rules, Regulations
- Brief Chronology of Facts and Proceedings
- Summaries of Judicial Opinions
- Questions and Answers
- Key Judicial Opinion or Opinions

Items to Take to Court

- Time-keeping device
- Argument Notebook
- Briefs
- Binder of judicial opinions
- Record on Appeal
- Pertinent Statutes
- Pertinent Rules and Regulations
- Pens
- Pad of paper
- Post-its or Tabs

- Throat lozenges
- Band-Aids
- Glasses
- Contact lenses, case, and solution
- Tissues
- Highlighter
- Comb or hairbrush

E. Virtual Oral Arguments:

The beginning of the COVID-19 pandemic in spring 2020 ushered in the era of remote oral arguments in North Carolina's appellate courts. As of the updating of this guide in 2024, many of North Carolina's judges and attorneys have developed considerable experience in handling virtual oral arguments. Regardless of an attorney's experience with virtual arguments, however, there are several tips to keep in mind.

First, learn the technical aspects of virtual oral arguments. Our appellate courts use Webex for virtual arguments. You should acquaint yourself with this software. Fred Wood, the Director of Information Technology at the Supreme Court, has published several videos on YouTube to help attorneys with recurring technical issues. Those videos can be accessed at this internet address: https://www.youtube.com/playlist?list=PLDFPja9khPYhara7eVCBv4NAHkncL0KZY. Those videos emphasize the importance of having grid view turned on, so that you can see all the participants as well as the timer. The videos also walk attorneys through correctly setting microphone volume. If you have never argued virtually in our appellate courts, be sure to contact the appropriate clerk's office at least a week ahead of your calendared argument, so that you can set up a technology practice

session with the Court. Likewise, on the day of your argument, join the Webex conference as soon as you are allowed to do so, to confirm that you are not having any new technology issues.

You should determine far in advance where you will argue. If possible, avoid doing the virtual argument from your residence, unless you can ensure that family members and pets will not disrupt the argument. Generally, the better choice will be your office.

The offices of some law firms already have video conferencing hardware set up in a conference room. If that is the case for you, consider presenting at a podium in your conference room. This setup creates an appearance that is more like an in-person oral argument, which is itself more familiar to the court.

Alternatively, if you are presenting through your personal computer, there are several other concerns to keep in mind:

- If possible, use a hardwired connection for your internet, such as an ethernet cable. If you must use a wireless connection, ensure that it is strong.
- Before logging on to Webex, close all other applications on your computer. Ruthlessly disable all audible and pop-up notifications.
- Be sure that your laptop is plugged into a power outlet.
- Silence or turn off your cellphone

In a virtual argument, maintaining eye contact with the judges is just as important as an in-person argument, but it is more difficult to manage. Standing at a podium and using video-conferencing hardware makes it easier to maintain the appearance of eye contact. By contrast, using a laptop camera presents unique

challenges. If you look at your screen rather than the camera, you will probably lose eye contact. Practice giving an argument while looking at the camera.

If you are using a laptop camera, be aware of the camera's angle. If the camera is below your face and pointing upward, then the view may cast shadows on your face, which is distracting and unflattering. Try elevating the laptop so that the camera angle is at or above your head.

Regardless of your camera setup, you will need to consider other issues affecting how you are visually presenting yourself to the court. Although our appellate judges often use virtual backgrounds, these backgrounds are not recommended for advocates. The variety of backgrounds an advocate may choose from is distracting. Virtual backgrounds can also be more taxing on your computer. Instead, position yourself in front of a neutral wall with no visual clutter. If you happen to be in a room with a ceiling fan, be sure the fan is off or out of view.

A critical concern is lighting. For best results, the lighting should come from in front of you, not from behind you. Do not stand in front of a window. To ensure appropriate lighting, check how things will appear (based on the sunlight) at the same time of the day as your argument. It is a good idea to try video-chatting with a friend or colleague at that same time of the day to get their thoughts on your lighting and appearance.

A related issue is clothing. Stripes and conservative patterns often appear distorted for virtual arguments. Stick to solids over stripes and other small patterns.

Shortly before logging on for your argument, take care of your cell phone. Although advocates generally power their phones off before an in-person argument, advocates may instead consider setting their phones to vibrate for remote arguments. Situations have arisen when the court could no longer hear an attorney during argument, and the clerk's office tried calling the attorney to notify him or her of the technical problem but was unable to reach the attorney by phone.

When you log on to Webex on the day of the argument, there are other things to keep in mind as well. Be sure that Webex is displaying your name correctly. If your office shares computers, be sure the Webex software is presenting your name and not someone else's. If you are using a conference room at your office and cannot change how your name appears, put a name tag on your podium.

Before you begin arguing, ensure that you are not muted. Sometimes the clerk automatically mutes all participants when the argument begins. That means attorneys for appellants must be ready at the outset to unmute their microphones. Attorneys for appellees should keep their microphones on mute until their turn to argue. During appellee's argument, appellant's counsel should be on mute until rebuttal.

When you are arguing, even though you are focused on looking at the camera, you must also be sure to keep an eye on all the judges on your screen. At an in-person argument, advocates must keep a lookout for panelists who indicate they have a question. That is doubly true at a virtual argument, when it is harder to notice a panelist trying to intervene in the argument.

When you are not actively arguing, you must still remain visible on the screen. Although your microphone can (and should) be muted, your camera must stay on. During that time, conduct yourself as you would during an in-person argument.

If you use demonstratives at argument, take care to understand how that works with remote arguments. Depending on how screen sharing is set up, the court may no longer be able to see your face or may only be able to see your face in a small thumbnail. That break in eye-contact is usually not to your advantage. Consider whether the demonstrative is important enough to warrant it.

Lastly, consider observing other remote oral arguments before giving your own. Near the beginning of the pandemic, the Supreme Court of North Carolina and North Carolina Court of Appeals began livestreaming arguments (virtual and in-person) on YouTube. Those livestreamed arguments are still available at these links (or just search YouTube for the names of our appellate courts):

- Supreme Court: https://www.youtube.com/channel/UCWo6zIpwtve9U-ynsAS7GfQ.
- Court of Appeals: https://www.youtube.com/channel/UC5RBqtdOMqHTErl7ysntfBA

F. Sources and Resources:

A Practitioner's Guide to Appellate Advocacy, Anne Marie Lofaso, Editor, American Bar Association, 2010, See Chapter 15, "Oral Argument," by Lawrence D. Rosenberg, partner, Jones Day, Washington, DC. (excellent essay)

Appellate Practice in the U.S., Second Ed., Robert L. Stern, Bureau of National Affairs, Bureau of National Affairs, 1989, See Chapters 13-15: 13-

"Before the Argument"; 14- "Preparation for Argument"; 15- "The Contents of the Argument."

Art of Advocacy: Appeals, Houts, Rogosheske, Matthew Bender, 2009, See Chapters 40-42: 40-"The Tragic Passing of Oral Argument"; 41-"A Few Tips on Public Speaking"; 42-"Do's and Don'ts for Oral Argument—contains good chart of suggestions." (notebook with updates)

How to Handle an Appeal, 4th ed., Herbert Monte Levy, Practicing Law Institute, New York, 2009, See Chapter 9: "Oral Argument," (notebook with updates).

Making Your Case: The Art of Persuading Judges, Antonin Scalia and Bryan Garner, Thomson/West, 2008.

Mastering Appellate Practice in North Carolina, Continuing Legal Education, North Carolina Bar Foundation, 2007. See Chapter IV, "Keys to Succeeding at Oral Argument," James G. Exum, Smith Moore, Greensboro, North Carolina.

North Carolina Appeals Deskbook, Gordon Widenhouse, Jr., Ed., Lexis Nexis, 2008.

Supreme Court and Appellate Advocacy, David C. Frederick, Thomson West, 2009.

Winning An Appeal, 4th ed., Myron Moskovitz, Matthew Bender, 2007, See Chapter 5, "Oral Argument." (excellent slim volume of practical advice)

American Academy of Appellate Lawyers, Remote Video Argument: Suggestions for Arguing Counsel, available at https://www.appellateacademy.org/publications/Counsel_AAAL_Remote_Task_Force_Recommendations_for_Counsel_Final.pdf

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