Six Tips for Appellate Oral Arguments

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A successful oral argument requires thorough preparation, adaptability, and refined presentation skills. It is an opportunity to engage in a direct conversation with the judges about your case. By following these six principles, you'll be better positioned to make that conversation productive and persuasive.

1. Know Your Record Cold

Nothing undermines credibility faster than uncertainty about the case record. It simply isn't enough to state that you weren't counsel in the trial court. You must be intimately familiar with every relevant fact, procedural detail, and citation. This comprehensive knowledge allows you to respond confidently to questions and strengthens your position as a trustworthy advocate.

2. Focus on Your Best Arguments

While your brief may include several arguments, oral argument isn't the time to rehash them all. Instead, lead with your strongest points and be prepared to abandon weaker ones. Structure your presentation around two or three key themes that crystallize why your client should prevail. And counsel should be prepared to articulate the policy underlying a contention, so the court understands the "why" of the argument as well as the "what," focusing on why the case fits within one series of precedents rather than another. This approach helps judges understand your core position and makes your limited time more effective.

3. Listen Carefully and Answer Directly

Questions from the bench are the most important part of the argument, not an incidental interruption that must be tolerated. When judges ask questions, they're often testing the boundaries and implications of your position. A judge's question may be a barometer of that judge's determination of the dispositive issue in the case and enables counsel to be sure that the issue is addressed. Responding to questions is, therefore, the priority, and a

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question should be answered immediately and forthrightly. Listen carefully to understand the real concern behind each question. Then, answer directly—begin with "yes," "no," or "it depends," followed by a brief explanation. Be mindful of the basic public speaking admonition about eye contact: counsel should look directly at the judge who is asking and respond directly to the question. Avoid the temptation to dodge tough questions or immediately pivot to more favorable territory. Judges appreciate candid responses and will often return to let you make your affirmative points.

4. Master the Art of Concession

Strategic concessions can strengthen your overall position. Be prepared to acknowledge unfavorable facts or precedents while explaining why they don't dictate the outcome. This approach enhances your credibility and allows you to focus the court's attention on the aspects of your case that matter most. Remember, you don't need to win every point to win the appeal.

5. Maintain Professional Composure

Even under intense questioning, maintain a calm, professional demeanor. Speak clearly and at a measured pace. The goal is to talk with the judges, speaking in a conversational tone rather than engaging in oratorical flourishes. Never interrupt a judge, show frustration, or become defensive. Composure shows respect for the court and confidence in your position.

6. Be Ready to Adapt

No matter how well you've prepared opening remarks, be ready to deviate from any planned script. Judges may begin questioning at once or focus on issues you considered peripheral. Adapt gracefully to the court's interests while finding opportunities to weave in your key themes. The ability to engage in a genuine dialogue with the court while advancing your client's position is the hallmark of effective appellate advocacy.

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