



Guidance on Oral Argument Scheduling Conflicts

Pursuant to Federal Circuit Rule 34(d), the Clerk's Office is providing guidance to clarify the criteria for allowable and unallowable counsel scheduling conflicts with upcoming oral argument sessions. The list is neither dispositive nor exhaustive, and the Clerk's Office reviews each submission in its entirety. However, this guidance applies to most conflicts received, and it aims to provide helpful information regarding acceptable scheduling conflicts. Notably, the Clerk's Office may retract or modify this guidance in the future as circumstances dictate.

Following the end of briefing, the Clerk's Office will request counsel submit a completed [Form 32](#) providing up to ten (10) scheduling conflict dates for the next six (6) scheduled court sessions.¹ Form 32 requires the identification of just **one** counsel of record, who is expected to argue in the matter and whose scheduling conflicts will be considered. Counsel should provide a concise list of the dates of unavailability with a brief description of the corresponding good cause for the conflict. If the same cause exists for multiple dates, counsel need only identify the cause once, associated with the dates to which that conflict applies.

The Clerk's Office reviews identified conflicts to determine whether they are allowable for good cause, or unallowable for lack of good cause. The key requirements for "good cause" are (1) **certainty**, meaning the conflict is already scheduled rather than suspected or in planning stages, (2) **specificity**, meaning the Clerk's Office will not accept generalized conflicts with no elaboration, and (3) **strong basis**, meaning that the conflict is one that provides a strong reason for being unable to attend oral argument and that the conflict cannot be easily resolved or rescheduled.

The Clerk's Office typically reviews and responds to scheduling conflicts within three (3) business days after filing. Submissions listing no conflicts will not receive a response. For detailed questions about the scheduling conflict review process or rejected conflict dates, please contact the Clerk's Office at 202-275-8035 during normal business operating hours.

¹ However, counsel are reminded of their continuing obligation to advise the court of any additional scheduling conflicts or changes to existing scheduling conflicts that arise after counsel responds to the clerk of court's initial notice. See Fed. Cir. R. 34(d)(2).



<u>Allowable Conflicts</u> ²	<u>Generally Unallowable Conflicts</u> ³
<ul style="list-style-type: none"> • Scheduled participation in a hearing, trial, arbitration, or mediation. • Scheduled participation in a trial or arbitration the week immediately following the oral argument session. • Scheduled participation in a trial or arbitration the week immediately prior to the oral argument session, if there is any question the trial or arbitration may not be completed within the allotted timeframe. • Scheduled travel to reach the location of a hearing, trial, arbitration, or mediation in this court or another tribunal. • Scheduled medical appointments and recovery timeframes, including parental leave. • Pre-planned vacation. • Pre-planned family engagements. • Service in a local governmental position, if arguing counsel's participation is necessary to continue the position's function. 	<ul style="list-style-type: none"> • Submissions with no explanation, including lack of specificity (e.g. "professional obligations," "preexisting obligations," "unavailable," "engaged in proceedings," etc.). • Any dates in addition to the ten (10) conflict dates allotted for the six (6) court sessions identified on Form 32 (barring extraordinary circumstances). • Preparation for a hearing or mediation, other than the day immediately prior to the proceeding. • Filing deadlines or preparing paper filings for this court or any other tribunal. • Depositions, which can typically be rescheduled. • Bar or other industry group meetings or conferences, unless the attorney has already planned overseas travel. • Generic speaking engagements. • Client meetings, which can typically be rescheduled, unless the attorney has already planned overseas travel. • Scheduling conflicts for anyone other than arguing counsel (e.g., the client, support staff, or additional counsel).

² In the Form 32 submission, please clarify the degree of counsel's participation in any legal proceedings (i.e., trial) asserted as the basis for a conflict.

³ This guidance is intended to be informational and is nonbinding. While the Clerk's Office will generally follow this guidance, it will review every conflict submission in its entirety and the ultimate decision for whether to allow a conflict is at the discretion of the Clerk's Office.