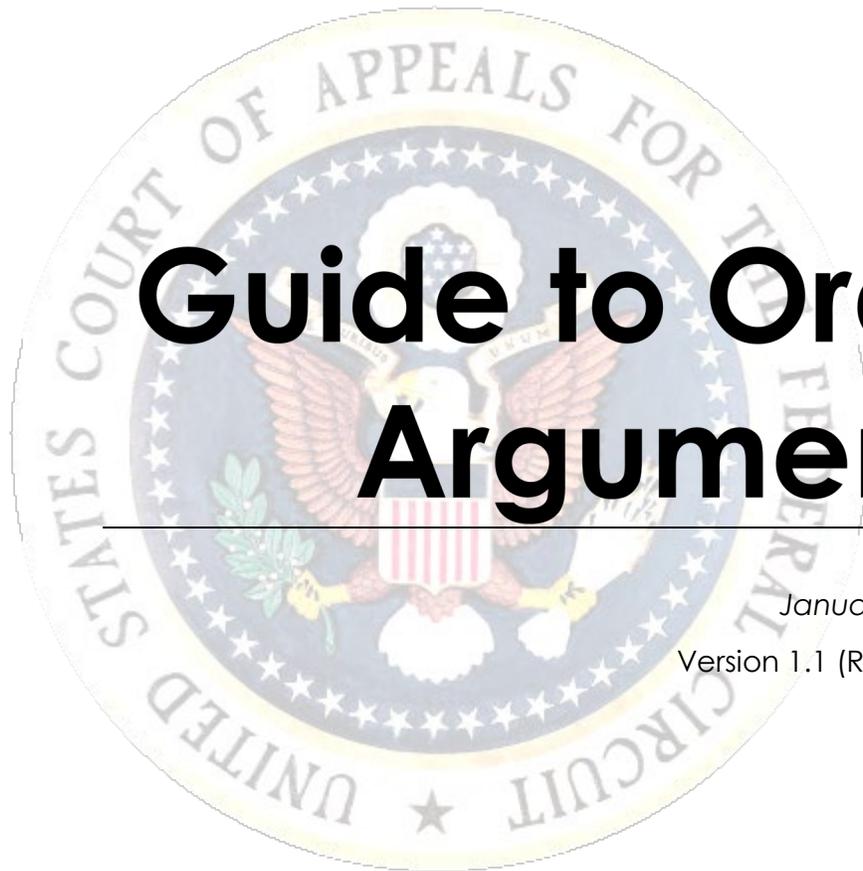


U.S. Court of Appeals for the Federal Circuit
Clerk's Office



Guide to Oral Argument

January 2019
Version 1.1 (Revised)

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I. Introduction

The Clerk's Office has prepared these materials to aid parties and counsel in preparing for, and participating in, oral argument before the U.S. Court of Appeals for the Federal Circuit. This information is derived from the Federal Rules of Appellate Procedure, Federal Circuit Rules of Practice and related Practice Notes, the court's Internal Operating Procedures, and related local practices. When in conflict, the parties should always defer to either the federal or local rules of court.

For questions about these procedures, please contact the Clerk's Office Court Services team at 202-275-8035 from 8:30 a.m. to 4:30 p.m. (Eastern), Monday through Friday. Additional resources are available on our website at <http://www.cafc.uscourts.gov/>.

II. Screening Cases for Argument

A. Calendar Screening

Pursuant to IOP #7:

Consistent with Fed. R. App. P. 34 and Fed. Cir. R. 34, it is the court's policy to allow oral argument unless:

(a) The appeal is frivolous; or

(b) The dispositive issue or set of issues recently has been authoritatively decided; or

(c) The facts and legal arguments are presented adequately in the briefs and record, and the decisional process would not be aided significantly by oral argument.

After all briefs and the joint appendix have been filed, the Clerk's Office screens cases selected for oral argument to determine if they are calendar-ready. See IOP #3.

B. Notice to Advise of Scheduling Conflicts

In counseled cases, the Clerk's Office issues a Notice to Advise of Schedule Conflicts at the close of merits briefing. Arguing attorneys are

asked to advise the Clerk's Office within seven days of any conflicts for the next six court session months not already scheduled.

C. Response to Notice to Advise of Scheduling Conflicts

Within seven days of receiving notice from the Clerk's Office, each arguing attorney must file a Response to Notice to Advise of Scheduling Conflicts. A blank response form is available on the court's website at http://www.cafc.uscourts.gov/sites/default/files/arguments/Response_to_Notice_to_Advise_of_Scheduling_Conflicts_Form.pdf. Counsel should review the Calendar of Sessions on the court's website and identify only conflicts with scheduled court dates. Attorneys should limit the number of scheduling conflicts during court weeks to assist with the timely scheduling of cases for argument.

Counsel may only list ten days of unavailability for the six month period of court sessions identified on the Notice to Advise of Scheduling Conflicts. A showing of good cause must be provided for any conflict identified on the response form. Arguing counsel must attach an explanation for each identified scheduling conflict. Conflicts submitted without a sufficient showing of good cause will not be considered by the court when scheduling argument.

Please note that, between filing the response and receiving a Notice of Oral Argument, attorneys have a continuing obligation to advise the court of any additional scheduling conflicts as they become known by filing an updated Response to Notice to Advise of Scheduling Conflicts form.

For assistance with completing the [Response to Notice to Advise of Scheduling Conflicts form](#), please contact the Court Services team at 202-275-8035.

For electronic filing, use the event **Response to Notice to Advise of Scheduling Conflicts** and upload a completed [Response to Notice to Advise of Scheduling Conflicts form](#) when prompted to do so. The form

must be flattened before it can be uploaded. Refer to the [Electronic Filing Procedures](#) for additional guidance.

III. Scheduled Cases

A. Calendaring Cases

Argued cases are typically calendared three to four months after all briefs are filed. The Clerk's Office releases the calendar approximately six weeks in advance of argument (for example, argued cases set for the January calendar will receive Notices of Oral Argument in November).

Cases with pending motions are not able to be calendared until all pending items are resolved. Multiple conflict notices filed in one case may delay the scheduling of argument.

B. Notice of Oral Argument

The Clerk's Office will issue a Notice of Oral Argument once a case has been scheduled for oral argument. The notice is typically issued six weeks before the scheduled court session. The Notice of Oral Argument provides information about the scheduled argument, as well as general information about how oral argument is conducted in the Federal Circuit.

C. Response to Notice of Oral Argument

The Notice of Oral Argument will state when the Response to Notice of Oral Argument is due, which is typically the 15th of the month prior to argument. A blank response form is available on the court's website at http://www.cafc.uscourts.gov/sites/default/files/arguments/Response_to_Notice_of_Oral_Argument_Form.pdf.

A response must be filed by each attorney that will argue on behalf of each party in the case. The lead attorney in the case must sign the response. Up to three attorneys can file their responses on a single form and an additional sheet should be attached to the form if more than three attorneys are arguing.

Total argument time (including rebuttal time) is limited to 15 minutes per side for panel hearings and 30 minutes per side for en banc hearings.

If multiple attorneys are arguing for one party, they must note on the response form how the argument time will be allotted among them.

If one attorney is arguing on behalf of multiple parties, the attorney must include the names of all parties being represented at argument in the **Party Arguing on Behalf of** portion of the response form.

If a party would like to waive oral argument, select the waiver box on the [Response to Notice of Oral Argument form](#).

For assistance with completing the [Response to Notice of Oral Argument form](#), please contact Court Services at 202-275-8035.

For electronic filing, use the event **Response to Notice of Oral Argument** and upload a completed [Response to Notice of Oral Argument form](#) when prompted to do so. The form must be flattened before it can be uploaded. Refer to the [Electronic Filing Procedures](#) for additional guidance.

D. Waiving Oral Argument

If a party does not believe argument is necessary in the case, the party must file a Motion to Waive Oral Argument if a Notice of Oral Argument has not yet been issued.

If a party has already received a Notice of Oral Argument, select the waiver box on the [Response to Notice of Oral Argument form](#). It is not necessary to complete the arguing attorney section of the form if argument is being waived.

E. Notice of Submission Without Oral Argument

Cases not scheduled for argument will be submitted to a three-judge panel for consideration based on the argument in the briefs and the materials in the record of the case. The Clerk's Office will issue a Notice of Submission Without Oral Argument approximately six weeks before the case will be submitted to the panel.

Parties then have the option of filing a Memorandum in Lieu of Oral Argument and/or a Motion Requesting Oral Argument. Additional information about the case submission process is included in the notice.

F. Scheduling Conflict

For any scheduling conflicts with argument after the Notice of Oral Argument has issued, parties must either file a motion to reschedule

argument or a motion to waive oral argument. If the motion to waive is granted, the case will be submitted on the briefs without oral argument.

G. Telephone Appearances

Parties requesting to appear at oral argument by telephone conference must file a motion to do so at least 14 days before the scheduled argument.

H. Accessibility Accommodation

The court's policy on accessibility accommodations during court sessions is available on its website at <http://www.cafc.uscourts.gov/sites/default/files/arguments/AccommodationNotice.pdf> and is reprinted as Part VI of this Guide.

I. Use of Visual Aid at Argument

To present electronic material, such as a PowerPoint presentation, at argument, a party must file a motion requesting approval to do so at least 14 days before the scheduled argument.

For all other visual aids, please refer to Federal Circuit Rule 34. A party must provide notice of intent to use a visual aid at least 14 days before the scheduled argument if the visual aid was used at the trial or hearing below, or 21 days prior if the visual aid was not used at the trial or hearing below.

J. Use of the Court's Nursing Room

The court is pleased to support nursing mothers who are a part of the Federal Circuit community by offering a private and comfortable place to breastfeed or express milk. The space, located on the third floor of the Tayloe House, may be reserved by contacting a member of the court's Human Resources team at 202-275-8150 in advance of attending argument.

IV. Attending Argument

A. Check-In

All arguing attorneys are required to check-in with the Clerk's Office on the fourth floor in Room 401, between 8:30 a.m. and 9:30 a.m. (for a 10:00 a.m. court session), or between 12:30 p.m. and 1:30 p.m. (for a 2:00 p.m. court session), on the day of argument.

All arguing attorneys must be checked in with the Clerk's Office no later than 30 minutes before argument is scheduled to begin. At check-in, the Clerk's Office will verify the name of the arguing attorney(s) and the argument time allotted. Last minute changes at check-in to the arguing attorney(s) are generally not allowed, unless the new arguing attorney has already filed an entry of appearance and has submitted a response to the oral argument order in the case.

Attorneys who are not arguing do not need to check-in with the Clerk's Office.

B. Courtroom Decorum

The court's courtroom decorum policy is available on its website at <http://www.cafc.uscourts.gov/argument/court-decorum> and is reprinted as Part V of this Guide.

C. Electronic Devices

Electronic devices are permitted in the courtroom during argument, but they must be turned off, not simply silenced. Attorneys sitting at the counsel tables may use laptops or tablet devices in silent mode.

D. Courtroom Seating and Setup

1. Counsel Tables

Only members of the Federal Circuit bar may sit at the counsel tables. Parties and legal support staff may not sit at the counsel tables or in the well of the court unless they are also members of the Federal Circuit bar.

2. General Seating

For general seating, the courtrooms open one hour before court begins. Seating is available on a first-come, first-served basis. The Clerk's Office does not reserve seating during oral arguments for parties or by special request of arguing counsel.

E. Panel Composition

The identity of the judges sitting on the panel will not be disclosed until the morning of argument. Panel members are typically posted in the courthouse and on the court's website one hour before argument begins.

Arguing attorneys will be told their panel members at the time of check-in.

F. Session Schedule

1. Order of Cases

Cases will typically be argued in the order they appear on the court's website. Final calendars for each panel are posted outside the courtroom the morning of argument. Cases will be argued in the order listed on the posted calendar.

Regardless of the position of a case on the calendar, arguing attorneys must check-in with the Clerk's Office a minimum of 30 minutes before the start of the court session.

2. Digital Clock

The digital clock on the podium provides a countdown of the time remaining for argument, along with color-coded light cues:

- **Green** Within allotted time
- **Yellow** Within scheduled rebuttal time (if applicable)
- **Red** Time expired

G. Record of Argument

1. Argument Recordings

Except in closed sessions, all oral argument recordings are posted on the court's website by the end of the day of each court session.

2. Argument Transcript

The court does not prepare a transcript of argument, only the audio recording. Parties may contract with an independent court reporter to obtain a transcript from the audio recording.

3. Inadvertent Disclosure

In the event an attorney inadvertently discloses confidential or sealed information during an open court session, the attorney must promptly contact the Clerk's Office after argument either at 202-275-8035 or in person after the close of argument.

V. Courtroom Decorum Policy

The dignity of the Court is to be respected and maintained at all times.

Attire for counsel and spectators should be restrained and appropriate to the dignity of a Court of Appeals of the United States.

Court security officers and Court staff are authorized to open and inspect any item carried into a courtroom.

Everyone in the courtroom, unless physically challenged, must rise when the judges enter and remain standing until the presiding judge invites everyone to be seated. Similarly, when court adjourns, everyone stands in place until the judges are no longer visible.

Standing in the courtroom may be permitted only at the discretion of the Clerk. Areas marked as reserved are for Court Staff and Federal Circuit Law Clerks.

Counsel may address the court when invited to do so. Only counsel associated with the appeal being argued may address the Court, unless a judge directs otherwise.

Coat racks in the hallways outside the courtrooms are to be utilized.

Only material related to the Court's business can be read in the courtroom while court is in session.

When Court is in session, no one should be heard except for counsel making argument or a judge.

The following items are prohibited in the courtroom and adjacent lobby area:

- Recording or broadcasting devices
- Cameras, including those contained in computers and other electronic devices
- Food and drink except for the water provided at the counsel table
- Computers (except for those to be used by counsel in argued cases)
- Phones must be turned off

Inappropriate facial gestures or exaggerated gesticulating is forbidden.

Repeated entrances and departures are to be avoided.

Doorways and passageways should be kept clear at all times.

Effective October 1, 2009

VI. Accessibility Accommodations During Court Sessions

The United States Court of Appeals for the Federal Circuit has designated Jarrett B. Perlow and Jennifer A. Bayles as the Court's Access Coordinators, pursuant to [The Guide for Judiciary Policy, vol. 5, § 255.40](#).

Communication-Based Disabilities

The Access Coordinators are responsible for coordinating sign language interpreters or other appropriate auxiliary aids and services to participants in federal court proceedings who are deaf, hearing-impaired, or have other communications disabilities.

Counsel of record and parties participating in federal court proceedings who require the assistance of a qualified sign language interpreter or other similar auxiliary aides and services must submit requests for services **at least two weeks** before the court proceeding. The Clerk's Office may not be able to accommodate requests received on shorter notice and, absent good cause shown, may require reimbursement of any expedited charges incurred.

Assistive auditory devices ("hearing loop") are available in each courtroom for participants and spectators during argument and do not require notice.

Mobility-Based Disabilities

While not required, case participants with mobility disabilities may wish to contact the Clerk's Office to coordinate access and any adjustment of court furniture, as needed, before the day of argument.

Service Requests and Additional Information

Please direct all requests for services or for additional information to the Clerk's Office

- by mail to 717 Madison Place, NW, Room 401, Washington, DC 20439;
- by telephone at 202-275-8035; or
- by email to chiefdeputyclerk@cafc.uscourts.gov.

Effective January 5, 2018

VII. Revision Control

Version	Summary of Changes	Date
1.0	New release, supersedes all prior related documents.	10/1/2018
1.1	Section II.C was updated based on changes to the court's new procedure for notifying of scheduling conflicts; § III.C added the standard time allotted for argument. (Revised to correct errata, 2/12/2019.)	1/2/2019