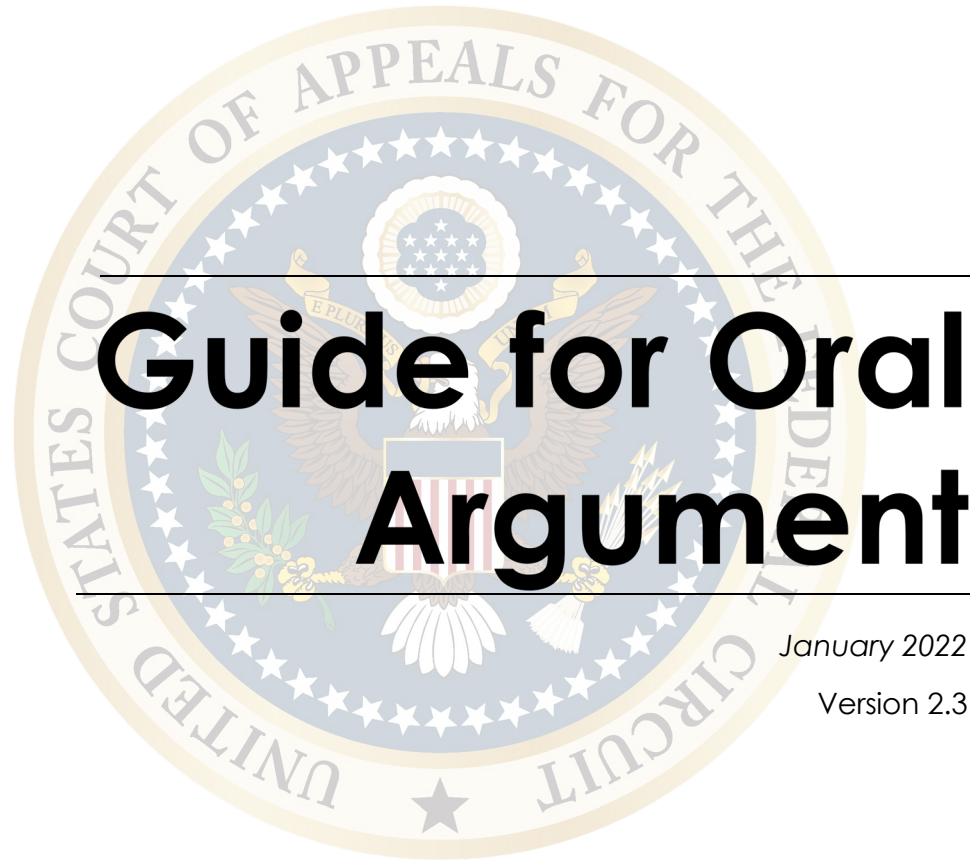


U.S. Court of Appeals for the Federal Circuit  
Clerk's Office



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# Guide for Oral Argument

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Version 2.3

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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 established Federal Circuit practice. 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 section 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 <https://www.cafc.uscourts.gov/>.

## II. Screening Cases for Argument

### A. Calendar Screening

Consistent with [Fed. R. App. P. 34 and Fed. Cir. R. 34](#), it is the court's policy to allow oral argument in counseled cases unless (a) the appeal is frivolous; (b) the dispositive issue or set of issues have recently 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. See IOP #7. Argument is rarely allowed in cases where the appellant or petitioner is unrepresented and appearing pro se.

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 Scheduling Conflicts after the close of merits briefing. Arguing counsel are asked to advise the Clerk's Office within seven (7) days of any conflicts for the next six (6) court session months not already scheduled.

### C. Response to Notice to Advise of Scheduling Conflicts

Within seven (7) days after receiving notice from the Clerk's Office, arguing counsel must identify conflicts with upcoming court dates through filing a Response to Notice to Advise of Scheduling Conflicts. [Fed. Cir. R. 34\(d\)\(2\)](#). A blank response form is available on the court's website ([Form 32](#)). Counsel should review the Calendar of Sessions on the court's website and identify only conflicts with scheduled court dates. Counsel should limit the number of scheduling conflicts during court weeks to assist with the timely scheduling of cases for argument. Counsel who do not have conflicts are not required to submit the form.

For assistance with completing the [Response to Notice to Advise of Scheduling Conflicts form \(Form 32\)](#), please contact the Court Services section at 202-275-8035.

For electronic filing, use the event **Response to Notice to Advise of Scheduling Conflicts** and upload a completed [Form 32](#) when prompted to do so. Refer to the [Electronic Filing Procedures](#) for additional guidance.

1. Limited Number of Scheduling Conflicts

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. [Fed. Cir. R. 34\(d\)\(3\)](#).

2. Notification of Accepted Scheduling Conflicts

Only submitted conflict dates that are accepted by the court will be indicated in a public docket notation. The docket notation will list the name of the party, counsel presenting argument, and all conflict dates that are accepted by the court. Submitted conflict dates that are not accepted will not be listed in the docket entry. The non-acceptance of a submitted conflict date does not mean that the case will be scheduled for argument on a non-accepted date. **Counsel should refrain from filing a motion to schedule or reschedule argument until the case is actually scheduled for argument.** Likewise, counsel should avoid contacting the Clerk's Office concerning conflict dates or scheduling argument absent an emergency.

3. Continuing Obligation to Notify

Between filing the response and receiving a Notice of Oral Argument, counsel 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 \(Form 32\)](#). Counsel should also file a revised response if previously identified conflicts are resolved prior to argument being scheduled.

## III. Scheduled Cases

### A. Calendaring Cases

Argued cases are typically calendared three (3) months after all briefs are filed. The Clerk's Office releases the calendar approximately six (6) 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 will 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 (6) weeks before the scheduled court session. The Notice of Oral Argument provides information about the scheduled argument, including argument location, as well as general information about how oral argument is conducted in the Federal Circuit.

The Notice of Oral Argument will identify whether argument will occur in-person or be conducted via an alternative method. Should the court schedule telephonic argument or other remote argument, counsel will be provided detailed instructions on how such argument will operate, which may deviate from the standards provided in this Guide for Oral Argument, at least one (1) week before the scheduled date of argument.

### 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 fourteen (14) days from the issuance of the Notice. Arguing counsel must submit a [Response to Notice of Oral Argument form \(Form 33\)](#). [Fed. Cir. R. 34\(e\)\(1\)](#).

Absent leave of court requested at least seven (7) days before argument, no more than two counsel may argue on behalf of each side and no more than one counsel may argue on behalf of each party. [Fed. Cir. R. 34\(e\)\(2\)](#). A response must be filed for each party in the case, and each party scheduled for argument will either need to identify which counsel will represent it at argument or otherwise waive argument. One counsel may argue on behalf of multiple parties, including parties not represented by that counsel, so long as that counsel has filed an entry of appearance

for a party in the case. Counsel for parties permitted to argue that elect not to present argument or be represented at argument by counsel for another party must also file the completed form indicating an intent to waive argument.

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, unless otherwise directed by order of the court.

If one counsel is arguing on behalf of multiple parties, counsel 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 form.

For assistance with completing the [Response to Notice of Oral Argument form \(Form 33\)](#), please contact the Court Services section 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 \(Form 33\)](#) when prompted to do so. Refer to the [Electronic Filing Procedures](#) for additional guidance.

**Note: A Response to Notice of Oral Argument that indicates zero total argument time will not be accepted.** Please follow the above instructions if the party is waiving argument or having counsel argue on behalf of multiple parties.

#### D. Waiving Oral Argument

If a party does not believe argument is necessary in the case, the party may file a **Motion to Waive Oral Argument** and request that the case be submitted on the briefs. A party may also select the waiver box on the [Response to Notice of Oral Argument form \(Form 33\)](#); however, the waiver selection does not guarantee the court will submit the case on the briefs. [Fed. R. App. P. 34\(e\)-\(f\)](#).

#### 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 (6) 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.

In cases scheduled for oral argument, if the panel later determines that oral argument is no longer necessary, the court will issue an order or a revised notice indicating that the case will be submitted on the briefs.

## F. Scheduling Conflict

For any scheduling conflicts with argument after the Notice of Oral Argument has issued, parties must do one of the following:

1. file a motion to reschedule argument,
2. file a motion to waive oral argument and submit the case on the briefs, or
3. file a Response to Notice of Oral Argument indicating waiver of argument.

## G. 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/https://cafc.uscourts.gov/home/oral-argument/attending-oral-arguments/> and is reproduced as Part VII of this Guide.

## H. Use of Visual Aid at Argument

The use of visual aids at argument is discouraged, particularly the use of electronic presentations in a slideshow format. A party must provide notice of intent to use a visual aid at least fourteen (14) days before the scheduled argument if the visual aid was used at the trial or hearing below, or twenty one (21) days prior if the visual aid was not used at the trial or hearing below. Presentation programs or project equipment may not be used at argument without leave of court filed no later than seven (7) days before argument. See [Fed. Cir. R. 34\(c\)](#).

## I. 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 office at 202-275-8150 in advance of attending argument.

## IV. Attending Argument

### A. Check-In

All arguing counsel 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. In the event the court schedules argument for another time slot, counsel must check in between an hour and a half and 30 minutes before argument.

All arguing counsel must be checked in with the Clerk's Office no later than 30 minutes before argument is scheduled to begin. At check-in, Clerk's Office staff will verify the name of the arguing counsel and the argument time allotted. Last minute changes at check-in to arguing counsel are generally not allowed, unless the new arguing counsel has already filed an entry of appearance and has submitted an amended Response to Notice of Oral Argument in the case.

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

### B. Courtroom Decorum and Guidelines for Counsel During Argument

Counsel should be careful to review the court's [Courtroom Decorum Policy](#) (reproduced as Part V of this Guide) and [Guidelines for Counsel During Argument](#).

### C. Electronic Devices

All electronic devices, including computers, laptops, tablets, phones, and other mobile devices, must be turned off while in the courtroom. However, arguing counsel may use laptops or tablet devices in silent mode while seated at the counsel tables.

## D. Courtroom Seating and Setup

### 1. Counsel Tables

Only members of the Federal Circuit bar and government counsel appearing pursuant to [Fed. Cir. R. 46\(d\)](#) 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 or registered government counsel.

### 2. General Seating

For general seating, the courtrooms open one (1) 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 (1) hour before argument begins.

Arguing counsel 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 unless the panel reorders them.

Regardless of the position of a case on the calendar, arguing counsel must check in with the Clerk's Office a minimum of 30 minutes before the start of the court session. Because the panel may wish to reorder the cases, counsel for all cases on the calendar before the same panel should be present in the courtroom at 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, for which no recording is available, all oral argument recordings for cases argued in Washington, DC are posted on the court's website by the end of the day of each court session. A copy of the recording will also be attached to an entry on the case docket. Argument recordings for out-of-town sittings will be posted as soon it is feasible, but posting may be delayed.

### 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. The court is not able to recommend or provide such services.

### 3. Inadvertent Disclosure

In the event arguing counsel inadvertently discloses confidential or sealed information during an open court session, counsel 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 unable to do so, 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.

Only members in good standing of the Federal Circuit bar may sit either at counsel tables or within the well of the court when court is in session.

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.

Coats, outerwear, and large bags must be stored at the coat racks outside the courtroom areas. Arguing counsel may bring in bags containing materials necessary for argument.

Only material relating 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 activities are prohibited in the courtroom and adjacent lobby area while court is in session:

- Audio or visual recording or broadcasting of any kind;
- Photographing of any kind;
- Eating or drinking, except for water provided at the counsel tables; and
- Using any electronic device, including computers, laptops, tablets, and mobile devices (including phones), except by counsel in argued cases while seated at counsel tables.

All electronic devices must be turned off before entering the courtroom, except those used by counsel while at the counsel tables.

Repeated entrances and departures are to be avoided. Doorways and passageways should be kept clear at all times.

## VI. Guidelines for Counsel During Argument

The following guidelines are provided to assist counsel in making the best use of the allotted time at argument.

- Counsel should not interrupt a judge.
- Assume the court is familiar with the facts of the case.
- Minimize reading.
- Have a copy of the appendix and be familiar with the location of items.
- Assume the court is familiar with the briefs and appendix contents.
- When raising new authority at argument, provide a copy to opposing counsel ahead of time by email or, if time permits, by filing a citation of supplemental authority pursuant to [Fed. R. App. P. 28\(j\)](#).
- Stop your argument when your time expires unless the court permits you to continue.
- Answer questions directly.
- Avoid pejoratives.
- When referring to specific portions of the appendix, provide accurate page citations.
- Do not respond to a question with an unqualified citation to your brief.
- Counsel seated at counsel tables should neither make inappropriate facial gestures nor engage in exaggerated gesticulation.

## VII. Accessibility Accommodations During Court Sessions

The United States Court of Appeals for the Federal Circuit has designated John C. Paul and Jarrett B. Perlow 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 communication 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 (2) 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 loops") 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 [publicinformation@cafc.uscourts.gov](mailto:publicinformation@cafc.uscourts.gov).

## VIII. 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
2.0	Document renamed; § I minor wording; § II clarified how cases are selected for argument, incorporated April 2019 changes to the procedure for reviewing scheduling conflicts; § III revised language on multiple argument counsel, clarified use of visual aid and forms of appearance; § IV revised electronic device usage policy, clarified the ordering of cases; § V revised permissible conduct in and around courtrooms; § VI added new section Guidelines for Counsel During Argument; and other non-substantive stylistic changes.	1/15/2020
2.1	Revised to reflect July 2020 amendments to Federal Circuit Rules and Forms 32 and 33; inserted section regarding oral argument conducted telephonically (§ III.B).	7/1/2020

<b>Version</b>	<b>Summary of Changes</b>	<b>Date</b>
2.2	Clarified expectations for counsel with no conflicts (§ II.C); clarified argument waiver responsibilities (§ III.C); identified how the court may advise parties of submission of a case on the briefs (§ III.E); clarified who may sit at counsel tables (§ IV.D); expanded on the court's processing of argument recordings and inability to offer transcription services (§ IV.G); revised designated Access Coordinators (§ V.II).	1/14/2021
2.3	Revised the date by which the Response to Notice of Oral Argument is due (§ III.C); clarified when cases are typically calendared after all briefs are filed (§ III.A); and other non-substantive stylistic changes.	1/3/2022