

ORAL ARGUMENT in the ALASKA SUPREME COURT

Whether this is your first oral argument before the Alaska Supreme Court or you have argued to the court before, please consider these suggestions.

Requesting or Waiving Oral Argument

You are not required to present oral argument. The court will schedule argument only if at least one party requests it. If the appellant or petitioner waives his or her opening argument or limits it to particular issues, any rebuttal argument after the appellee or respondent argues will be limited to topics discussed by the appellee or respondent. Argument gives you the opportunity to explain the legal reasons you believe you should prevail. The court does not want parties to feel afraid of presenting oral argument.

This pamphlet is published by the Clerk of the Appellate Courts with the approval of the Alaska Supreme Court.

Order of Argument

Normally appellants or petitioners argue first. Appellees or respondents argue next. Appellants or petitioners may close with a rebuttal argument if they have any remaining argument time. Complex cases involving multiple parties may require a different argument order.

Time for Argument

Before the court enters the courtroom, the clerk will ask the appellant or petitioner how he or she wishes to split the allotted time between opening argument and rebuttal. For example, if the allotted time is 15 minutes, an appellant may wish to leave 5 minutes for rebuttal. When the opening argument begins, the clerk triggers a clock that counts down the time. If the appellant tells the clerk that the opening argument is to be 10 minutes long, when the clock reaches 0, 10 minutes have expired, leaving 5 minutes for rebuttal. If that opening argument lasts longer than 10 minutes, the clock will begin to read minus numbers. Normally the court will not grant additional time for rebuttal. Time not used by the appellant during the opening argument is available for the appellant's rebuttal argument. When the clock shows that the party is out of time, the party should promptly conclude the argument.

Opening the Argument

The chief justice will tell the parties when to begin their arguments. It is common, but not mandatory, to begin an oral argument with words to the effect "May it please the court" It is not necessary to address the chief justice and each justice by title or name. You must identify yourself after addressing the court.

Structure of Argument

It is helpful to announce briefly the legal issues to be discussed, and to then discuss each significant issue in turn. Experienced appellate lawyers usually do not discuss every issue in an appeal, but focus on those they feel are most important. Please be aware that the supreme court decides legal issues, and is not a trial court that decides factual disputes. There is nothing complex about presenting an oral argument and it is not necessary or desirable to try to phrase it in legal jargon. You should simply explain the factual and legal grounds for the result you seek.

Questions by the Court

It is not unusual for justices to ask questions. The questions are often pointed at issues the justice finds important. They may concern the facts of the case or some proposition of law. The party should

Questions by the Court (cont.)

answer the question without delay. The questions often do not reflect how the entire court views the case or even that issue. The questions give an opportunity to respond to a justice's possible concerns. No additional time is added to a party's argument time for the time spent on questions.

Demeanor

Parties and their attorneys are expected to act with courtesy in the courtroom and to be quiet during an opponent's presentation.

Preparing for Oral Argument

The court expects the person arguing to have a good working knowledge of the significant facts and the controlling legal doctrines. The time allotted is short, and preparation helps use the limited time effectively. Notes or an outline can be useful. Reading a written speech is rarely effective, but for persons, especially non-lawyers, not familiar with the process, this practice can be helpful. It can be useful to practice before the argument, preferably in front of someone else. Practicing with a tape recorder can also be helpful. You may want to listen to prior arguments to know what to expect.

Exhibits, Evidence

Exhibits displayed in the courtroom are often difficult to read. Be sure the type size is ample, equivalent to 72 point, and can easily be read by justices who may be as far as 40 feet from the display. Unless properly used, such displays are potentially distracting. In real property disputes, however, the court often finds legible displays such as maps to be very helpful.

The Court's Preparation

The justices will have read the parties' briefs, the excerpts of record, and a law clerk memorandum which thoroughly summarizes the arguments, the facts, and pertinent legal propositions. The justices will have already given substantial attention to your case before you begin. Oral argument, nonetheless, can be very helpful in persuading the court. It allows the court to inquire into areas that might be important, and to explore implications the parties may not have considered.

After Argument

The court normally confers promptly after leaving the courtroom, and discusses each of the pertinent issues and reaches a tentative consensus on how the case should be decided. The case will have been assigned to a justice before the

After Argument (cont.)

argument, and if the conference position taken by that justice is in the majority, that justice will be assigned responsibility for drafting an opinion or other disposition. If the conference position of that justice is no longer in the majority, the case will be reassigned. The assigned justice circulates a draft to the other justices. The other justices then vote on the draft. They often exchange memoranda during the voting process. The opinion will normally be published within 6-12 months after argument. In some cases, justices may write separate opinions. Sometimes the majority changes during the voting process, and the case must be reassigned. The time it takes the court to publish its opinion varies depending on the complexity of the issues and on whether the court is divided on one or more of the issues. It may also depend on whether the case is expedited.