PREPARING AND PRESENTING YOUR ORAL ARGUMENT

IN THE COURT OF APPEAL

I. PREPARING FOR ORAL ARGUMENT

A. Observing Other Arguments

When faced with the prospect of a difficult task, there’s nothing like seeing how other people—especially the pro’s—do the same job. When the time is approaching for you to present oral argument in the Court of Appeal (or even sooner if you wish), you have the opportunity to observe arguments presented by other people, including some *super*-pro’s, and to make notes about what they do that is most effective, and what you would like to imitate in your own upcoming argument.

Take advantage of this opportunity!

You should have been provided with a copy of the Second District’s oral argument schedule for the current year along with this set of instructions. If you were not, it is always posted at the following link-- <https://www.courts.ca.gov/11603.htm>. The colored number in each calendar date represents the Division of the Court that is hearing arguments on that date. All of the arguments are open to the public.

You will benefit from attending any Division’s arguments. Ideally, however, try to attend arguments being held in the Division where your appeal is pending. That will give you the chance to see how *your* justices handle oral arguments and what kinds of questions they ask, in addition to observing how the attorneys argue.

If you cannot attend an oral argument session in advance of your argument date, at least plan to arrive (or log in if the argument is remote) at the very beginning of the argument session for your date, so that you can observe the arguments in a few cases. If your case is the first on the calendar, you will, of course, not have this opportunity. (A trick to ensure that your case will *not* be first, and that you will thus have a chance to observe some other arguments, is to give a long time estimate for your arguments. Arguments with short time estimates ordinarily are placed first on the day’s docket.) If your argument is on the court’s afternoon calendar, it is an excellent idea to attend that *morning’s* arguments, or at least part of them.

B. Remote Oral Arguments

The best way of observing an oral argument is to come to the Court of Appeal’s courtroom in the Ronald Reagan State Building (300 So. Spring Street in downtown L.A.) and experience oral arguments in person. During the court closures related to COVID-19, however, the Court of Appeal held all oral arguments via video-conference. Some Divisions are continuing to do this, and some Divisions offer parties the *option* of participating in oral argument via video. The public can observe video-feeds of arguments that are being held via video-conference.

To observe arguments via the Court of Appeal’s video-conference feed, click on the following link (or cut and paste the web address into your browser’s address line) and follow the instructions under the heading “Public Access to Oral Argument by Videoconference”--https://www.courts.ca.gov/11603.htm

After you click the link for the oral argument you wish to attend, a portal will open where you will be asked to provide your name and e-mail address, and then you will be admitted to the session (as an observer only, of course).

You can also view live and archived webcasts of oral arguments in the California Supreme Court at the following link/web address-- <https://supreme.courts.ca.gov/case-information/oral-arguments/webcast-library>

The procedures for arguments in the Supreme Court and for public access to the arguments are substantially similar to the procedures for arguments and accessing them in the Courts of Appeal.]

C. Preparing *Your* Argument For *Your* Case

Your argument is likely to have two components. One will be your prepared presentation; the other will be your answers to questions from the justices. It is not uncommon for one or more justices to jump in with questions right away, and for the arguing attorney (or self-represented party) to never get a chance to present their prepared speech. That is not necessarily bad *if* you have prepared well. It is also not uncommon for the justices to have no questions, and for your prepared presentation to the *only* component of your argument as it actually plays out.

The best way to be ready for whatever happens is to set up your prepared speech not as *“a*”speech, but as a group of mini-speeches, in which each mini-speech addresses a separate point, i.e. a separate argument as to why you are entitled to a reversal of the judgment you are challenging.

The foundation and source of what you will argue orally are found in your briefs. To decide which points to talk about in your oral argument, review your brief or briefs and decide which are the *most important* points. You will probably have time for only one or two points during your argument, so pick the most important point, and plan to present your mini-speech about that argument first, then your mini-speech about the second most important speech and so on.

Except in very, very rare circumstances, you will not be allowed to raise new points in your oral argument. Ordinarily, only points raised in briefing are allowed in oral argument.

The skills and strategies of creating speeches (or mini-speeches) are too large a topic to be addressed in these instructions. There are many books and online resources about speech writing. In creating your mini-speeches, it is strongly recommended that you consult one of those.

After you have written mini-speeches for all of the points you intend to make at oral argument, rehearse each mini-speech, either in front of a mirror, on your computer’s Zoom (or equivalent) app, or best, in front of a friend you can trust to provide reliable constructive criticism. Time each mini-speech, then edit them all, if necessary, to make sure you can get to all of the important ones within your time estimate.

Now we get to the reason for preparing mini-speeches, rather than *a* single speech, and the reason why it is not necessarily bad to be interrupted by justices’ questions before you get into your prepared presentation—

On the subject of interruptions by the justices, these interruptions are not only not necessarily bad; *they’re often a good sign*. That’s because if a justice has a question about a particular point, that’s often a sign that the justice has some doubt about whether the trial judge may have been wrong about that point, or that the justice may even be inclined to believe the trial judge *was* wrong about that point, and wants further information to make a final decision. In other words, questions from a justice can be a sign that you have a significant chance of getting the trial judge reversed on the point addressed by the question. Therefore, if a justice asks a question about one of the points in your overall argument, it is crucial that you answer that question thoroughly and persuasively.

And here is the reason for preparing a mini-speech about each and every separate point--There is no way of knowing in advance what issues the justices may focus on as grounds for their decision, and may therefore have questions about during oral argument. The justices may be most strongly persuaded, one way or the other, by one of the points that you thought were minor.

If you have prepared a mini-speech for each separate point, and a justice asks a question about one of them, you will be ready to discuss whichever point the justice asks about. You will just need to reshuffle your note cards, or the pages of your speech outline, move the point the justice wants to hear about to the top, and proceed. And you *do* need to do that—If a justice asks a question about point #3, or #7, or #10 in your list, you *must not* say “I’ll be getting to that soon,” but *must* move #3 or #7 or #10 up to the top of the list and answer the justice’s question ... *now.*

The final step in preparing your argument will be to write a concluding sentence stating the major, crucial reason you are entitled to a reversal of the judgment, and then thanking the justices for their time, attention and consideration of your appeal.

Regarding that “major, crucial” point, be prepared to think on your feet at the end of the actual argument, about *which* point really *is* major and crucial. If a justice has asked a question about a point other than the point you originally thought was the major point, and especially if the justice appears to be inclined to reverse the judgment based on that point, make *that* point your major point, and then, if time permits, say “and also.....” and add the point you originally believed was major.

As noted in section I above, Public Counsel’s Appellate Clinic can help you prepare for oral argument. To obtain this assistance, call or go online for a Clinic appointment as soon as you receive your “calendar notice.”

II. ARRIVING AT THE COURTROOM (OR LOGGING INTO A REMOTE ARGUMENT) AND WAITING TO ARGUE:

The courtroom for Divisions 1 through 5, and 7 and 8 of the Second Appellate District are located in the Ronald Reagan State Building, 300 South Spring Street, Third Floor, North Tower. Plan to arrive *at the courtroom door* (***not*** *in the parking lot*) a half hour before your scheduled argument time to give yourself time to go through security. You will go through two security checkpoints—one at the building entrance, and another at the courtroom entrance, and the one at the courtroom entrance is often long and slow.

After going through security, pick up a check-in slip at the table located just across the entrance lobby from the courtroom door, fill in the slip, then enter the courtroom and hand the slip to the clerk. The clerk will be sitting in the front of the courtroom, between the bench and the audience, at the right side of the courtroom as you face the bench.

You can sit in the center section of the audience, which is marked for “counsel addressing the court,” as you *are* counsel addressing the court.

If your argument is being held via video-conference, you will have been sent instructions for logging in and arguing approximately a week before your argument date and time. Open those instructions and follow them carefully. If you have questions after reading the instructions, call the Office of the Clerk ((213)830-7000) and ask. Be sure to do this at least a day or so before the argument so there is time to get answers to any questions that you do have.

When the justices take the bench, the Presiding Justice will probably call roll, and may ask you to state (or restate) your time estimate. When your case is called, stand up, say, “Good morning, your honors.” Then state your name, and that you are representing yourself, then give your time estimate if it was asked for. If you are the appellant, you will have two turns to speak—once for your opening argument, and once to rebut the respondent’s argument. So in giving your time estimate, be sure to tell the justices how much of your total estimate you want to reserve for your rebuttal. When you have announced your presence and given your time estimate, sit back down and wait for your case to actually be called for argument.

Anywhere from one to 10, and sometimes as many as 20 or so arguments are ordinarily scheduled for a given time. They all take turns, usually in order of the amount of time estimated for argument. The shortest arguments go first, and the longest ones go last. Even if you have previously attended an argument, pay careful attention to the arguments ahead of you. That will give you a further chance to see how the justiceshandle arguments, what kinds of questions they ask, how the professional attorneys argue.

III. WHEN YOUR CASE IS CALLED:

You will see a podium, plus two desks for persons presenting argument. One desk (the one on the left as you face the bench) is for the appellant; the other (the one on the right as you face the bench) is for the respondent. If you are the appellant, put your belongings on the desk at the *left* of the podium; if you are the respondent, put your belongings on the desk at the *right* of the podium.

If you are the appellant, you will argue first, so take any documents you will be using for the argument up to the podium.

If you are the respondent, you are second, so place all your belongings on the respondent’s desk, sit down and wait for your turn to speak.

When you approach the podium, you will be able adjust the podium height and the microphone to your height if you need to. To adjust the podium height, use the lever located on the right-hand side of the podium.

When you are ready to begin your argument, take a deep breath, look the presiding justice in the eye, and say, “Good morning/afternoon, your honors. May it please the court, [YOUR NAME] appearing in my own behalf.”

Then begin your prepared argument.

If a justice has a question, STOP TALKING INSTANTLY and listen. Then answer directly and clearly. When you have answered the justice’s question and any follow-up questions from that justice or other justices, you may proceed with the rest of your argument.

At the end of your “opening” argument. Say, “I will reserve the rest of my time.”

Then listen carefully to the Respondent’s argument, and take notes.

If you are the Respondent, step to the podium as soon as the Appellant or their attorney is seated, and take documents you will be using to the podium. Follow the same instructions given for the Appellant, except the instruction to reserve time. As Respondent, you have only one turn, so say everything you have to say during your one turn.

If you are Appellant, return to the podium as soon as the Respondent or their attorney is seated. Respond to any arguments made by the Respondent that you have not covered before.

As before, if a justice interrupts with a question, STOP TALKING INSTANTLY, listen carefully, then answer directly and clearly.

At the end of your argument, say, “If the court has no further questions, I will submit.”

The Presiding Justice will then say “The matter will stand submitted,” or words to that effect.

Say, “Thank you, your honors,” gather your belongings and leave the courtroom (unless you wish to stay and hear other arguments, which you are entirely welcome to do).

IV. GETTING IT FROM THE HORSE’S MOUTH

In addition to the instructions above, you should look at what the Judicial Council (the administrative side of the California court system) itself has to say about oral argument. See Judicial Council Form app-001-Info, “Information On Appeal Procedures For Unlimited Civil Cases,” which was provided to you when you began your appeal. If you an appellant, see items 18 through 20 on page 12; if you are a respondent, see items 27 through 29 on page 16.

The following link is also helpful--<https://www.courts.ca.gov/12421.htm#panel12637>. If the link doesn’t work as a link directly from this document, cut and paste or type it into the address line of your web browser. Of course, the Appellate Courts’ Self-Help Resource Center (<https://www.selfhelp.appellate.courts.ca.gov> ), with which you should be well acquainted by the time your case has reached the oral argument phase, offers a wealth of information and guidance.

Wishing you the best of success with your oral argument!