

- Discuss unwritten guidelines for oral arguments such as proper attire, how to address the court, who may sit at counsel's table, etc.

---

## RESOURCES

---

### Indiana Rules of Appellate Procedure

#### **Rule 52. Setting And Acknowledging Oral Argument**

- A. Court's Discretion.** The Court may, in its discretion, set oral argument on its own or a party's motion. If the Court sets oral argument in a Criminal Appeal, the Clerk shall send the order setting oral argument to the parties and to the prosecuting attorney whose office represented the state at trial.
- B. Time for Filing Motion for Oral Argument.** A party's motion for oral argument shall be filed no later than seven days after: (1) any reply brief would be due under Rule 45(B), or (2) any reply brief would be due under Rule 57(E) if petitioning to transfer, or (3) any reply brief would be due under Rule 63(E), if petitioning for review.
- C. Acknowledgment of Order Setting Oral Argument.** Counsel of record and unrepresented parties shall file with the Clerk an acknowledgment of the order setting oral argument no later than fifteen (15) days after service of the order.

#### **Rule 53. Procedures For Oral Argument**

- A. Time Allowed.** Each side shall have the amount of time for argument set by court order. A party may, for good cause, request more or less time in its motion for oral argument or by separate motion filed no later than fifteen (15) days after the order setting oral argument. A party is not required to use all of the time allowed, and the Court may terminate any argument if in its judgment further argument is unnecessary. A side may not exceed its allotted time without leave of the Court.
- B. Order and Content of Argument.** Unless the Court's order provides otherwise, the appellant shall open the argument and may reserve time for rebuttal. The appellant shall inform the Court at the beginning of the argument how much time is to be reserved for rebuttal. Failure to argue a particular point shall not constitute a waiver. Counsel shall not read at length from briefs, the Record on Appeal, or authorities.
- C. Multiple Counsel and Parties.** Unless the Court otherwise provides, multiple appellants or appellees shall decide how to divide the oral argument time allotted to their side. If more than one attorney on a side will participate in oral argument, the first attorney shall inform the Court at the beginning of the argument of the intended allocation of time, but the Court will not separately time each attorney.
- D. Cross-Appeals.** Unless the Court directs otherwise, if both parties file a Notice of Appeal, the plaintiff in the action below shall be deemed the appellant for purposes of this Rule. Otherwise, the party filing a Notice of Appeal shall be deemed the appellant.
- E. Amicus Curiae.** An *amicus curiae* may participate in oral argument without leave of the court to the extent that all parties with whom the *amicus curiae* is substantively aligned consent. Otherwise, the

Court shall grant leave for an *amicus curiae* to participate in oral argument only in extraordinary circumstances upon motion by the *amicus curiae*.

**F. Use of Physical Exhibits at Argument; Removal.** If physical objects or visual displays other than handouts are to be used at the argument, counsel shall arrange to have them placed in the court room before the Court convenes for the argument. Counsel shall provide any equipment needed. After the argument, counsel presenting the exhibits shall be responsible for removal of the exhibits from the court room and, if necessary, for return to the trial court clerk.

**G. Non-Appearance at Argument.** If one or more parties fail to appear at oral argument, the Court may hear argument from the parties who have appeared, decide the appeal without oral argument, or reschedule the oral argument. The Court may sanction non-appearing parties.

**H. Appeals Involving Records Excluded From Public Access.** In any appeal in which case records are deemed confidential or excluded from public access, the parties and their counsel shall conduct oral argument in a manner reasonably calculated to provide anonymity and privacy in accordance with the requirements of Administrative Rule 9(G)(4).

See [http://www.in.gov/judiciary/rules/appellate/index.html#\\_Toc243286302](http://www.in.gov/judiciary/rules/appellate/index.html#_Toc243286302)

**SAMPLE FAX NOTICE OF SUPREME COURT OA DATE**

**TO FAX RECEIVER: THIS IS TIME-SENSITIVE INFORMATION  
FROM THE INDIANA SUPREME COURT.**

PLEASE BRING THIS TO THE ATTENTION OF THE INTENDED RECIPIENT(S).

This facsimile transmission is directed to:

Attorney

Your name is associated with a brief filed in connection with the following appeal:

Case

The Indiana Supreme Court is scheduling oral argument for the following date and time:

Date and Time

Finding dates when all five Justices can be present is difficult, so requests for a different argument date generally cannot be accommodated. The Court's typical practice is to expect someone else from your firm or other co-counsel to argue if you have a conflict with the scheduled date. Other client commitments are generally not a sufficient basis for trying to identify a different date on which the Justices might all be available to hear argument.

If you think special circumstances warrant the Court trying to identify a different date for this argument, then send an explanation of those circumstances to: **oa@courts.state.in.us** If you do not have email capability, you may contact the Division of Supreme Court Administration at 317-232-2540. To be given consideration, your emailed explanation must include the following: (1) detailed reasons why rescheduling is necessary; (2) the number of attorneys in your firm; and (3) a representation that you have contacted opposing party and advised counsel that you intend to seek rescheduling. **If the Court does not hear from you within two business days, or if the reasons cited are insufficient, or if you have failed to indicate the number of attorneys in your firm and state that you have notified opposing counsel of your objection, then an order scheduling the oral argument will be issued.** Once the order is issued, the Court generally will permit a motion for continuance only in the event of a sudden emergency.

sending fax number: 317-232-8372

receiving fax number:

**SAMPLE SUPREME COURT ORDER SETTING OA**

**In the  
Indiana Supreme Court**

Case Name:            **CaseName**  
Cause Number:        **CauseNumber**

**ORDER SCHEDULING ORAL ARGUMENT**

The Court has determined that the above-captioned case warrants oral argument. The argument will be conducted in the Courtroom of the Indiana Supreme Court, 317 Statehouse, 200 West Washington Street, Indianapolis, Indiana. The argument will be forty (40) minutes in length, equally divided between appellant(s) and the appellee(s). If there are multiple appellants or appellees, the parties shall divide the time among themselves as they deem appropriate. Any entity granted *amicus curiae* status may argue without further motion, but only with the consent of the party or parties with whom the *amicus* is substantively aligned. Additional time will not be added for multiple parties or for the participation of *amici*. Attorneys who plan to sit at counsel's table should arrive at least fifteen (15) minutes before the scheduled start of the argument. The argument will take place at the following date and time:

**Date and Time**

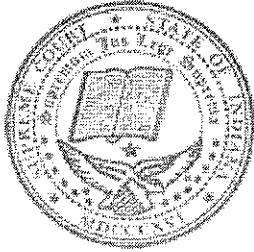
If this is a direct appeal, a certified question from the United States Supreme Court or a United States Circuit Court, or a case granted transfer under Appellate Rule 56 or 57, the appellant shall argue first. If the petition to transfer jurisdiction is pending, the petitioner on transfer shall argue first. If this is a case in which a party is seeking review from an opinion of the Tax Court pursuant to Appellate Rule 63, the party seeking review of the Tax Court's decision shall argue first. If this is a certified question from a United States District Court, the plaintiff shall argue first. The party or parties arguing first will be allowed to reserve part of their allotted time for final rebuttal following opposing counsel's argument.

**Attorneys of record and self-represented parties are obligated to file an acknowledgement of the oral argument setting no later than fifteen (15) days after service of this order. See App. R. 52(C).** Important information about oral argument procedures can be found on the internet at [www.in.gov/judiciary/arguments](http://www.in.gov/judiciary/arguments). Please review this information. If you have additional questions not answered at the website, contact the Division of Supreme Court Administration at 317-232-2540.

The Clerk is directed to send copies of this order to all counsel of record and to the Supreme Court Administrator.

Done at Indianapolis, Indiana, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Chief Justice of Indiana



## INSTRUCTIONS FOR COUNSEL SCHEDULED TO PRESENT ORAL ARGUMENT TO THE INDIANA SUPREME COURT

This website provides instruction concerning the Indiana Supreme Court's standard oral argument procedures.

---

Most arguments are conducted in the Courtroom of the Indiana Supreme Court, located in Room 317 of the State House. The State House is the large domed building occupying the space between Washington, Ohio, Capitol and Senate Streets in downtown Indianapolis. There are parking garages near the State House and on-street metered parking is sometimes available.

The following instructions are designed to apply to arguments conducted in the Courtroom of the Indiana Supreme Court. Occasionally, however, the Court will schedule an argument elsewhere. The order you received will identify the location of the argument. If it is scheduled to take place somewhere other than the Courtroom, please contact the Division of Supreme Court Administration at 317-232-2540 for specific instructions.

Plan to arrive at least fifteen minutes before the scheduled start of the argument. Upon first arriving, please fill out the forms you will find at the Sheriff's desk outside the Courtroom. The blue form is for the appellant and the yellow for the appellee. Be sure to print your name clearly and legibly and give the form to the Sheriff or to someone from the Division of Supreme Court Administration who will be in the courtroom to provide procedural assistance.

By custom, the appellant sits at the counsel table on the left of the bench as you face the Court (near the door), and the appellee on the right (near the windows). Counsel of record and attorneys licensed in Indiana may sit at the counsel's table. Non-attorney clients may sit in the front row of the gallery behind counsel's table.

The total argument length is usually forty minutes, although sometimes there are variations. Please refer to the order you received to be sure about the amount of time allocated. The Court's usual practice is to have the appellant go first in direct appeals or if transfer has been granted. If transfer has not been granted, usually the petitioner will go first. However, from time to time the Court may alter the typical sequence. The order you received from the Court will be controlling. The party authorized to go first may reserve any portion of the allotted time for rebuttal, but must tell the Court, and not just court staff, before beginning the argument how much time is being reserved.

The Courtroom is equipped with an electronic timing system, and you will notice a small box sitting on the podium. When you begin speaking, a green light will glow. When two minutes remain of the time for your argument, a yellow light will glow. When your time has expired, a flashing red light will glow. You will also see a digital display counting down the time remaining. Important note: The clock continues counting after time has expired; if the light is blinking red, then the number you see is the amount of time you are over the limit.

For the first argument, the timing system will be set according to the time reserved for rebuttal. For example, assume you have been allotted 20 minutes as the party to go first. If you tell the Court you intend to use 15 minutes in the main argument and reserve 5 minutes for rebuttal, the yellow light will glow after 13 minutes and the flashing red light after 15 minutes. If you use less than the time you have set aside for your main argument, that time will be added to the time for rebuttal. If you use more, that time will be subtracted from the time for rebuttal. For example, if you requested 5 minutes for rebuttal but nevertheless used 17 minutes for the main argument because you were held over by questions from the Court, only 3 minutes remain for rebuttal. If you have been allotted more or less than 20 minutes, the same general principles will apply but in a different time frame.

For the responding party (often, but not always, the appellee) the yellow light will glow when 2 minutes of the allotted time remains, and the red light will come on when time has expired.

The Court can see when the yellow and red lights come on. If you are responding to a question when the red light is on, answer the pending question, advise the Court your time is up, and sit down. Do not summarize or add concluding comments without permission of the Court.

The Court's practice is to allow an entity that has been granted amicus curiae status in this proceeding to participate in oral argument without need of an additional motion. The party with whom the amicus is substantively aligned may share oral argument time with the amicus, but only if that party so chooses. Neither party should feel obligated to share time with an amicus.

Counsel should advise the Court concerning any agreements to share time both on the appearance form filled out at counsel table and at the start of counsel's oral presentation. No special motion need be filed concerning the sharing of argument time. Experience has demonstrated that it is sometimes difficult for attorneys effectively to share time or divide issues among themselves. The timing system will not be adjusted to reflect shared-time arrangements, and the Court will not keep track of time to insure such arrangements are realized. The Court may have its own agenda of questions that may not coincide with the way you have decided to divide your time. Please keep that consideration in mind.

The Courtroom is equipped with an amplification system, and there is a microphone on the podium. The clearest amplification of the speaker's voice is achieved by speaking directly in front of the microphone, not to the side. Volume is controlled by the speaker's voice and the distance from the speaker's mouth to the microphone. Please be sensitive to the sound of your voice as amplified by the speakers. Speaking either too loudly or too softly makes it difficult for the Court to understand your arguments. If you require auxiliary aids or other accommodations to participate in the oral argument due to hearing impairment or other form of disability, please contact the Division of Supreme Court Administration (317-232-2540) at least seven (7) days prior to the scheduled argument.

If you use an exhibit as part of your argument, you may want to consider limiting such use to 8.5" x 11" documents copied from the record of proceedings. Using some form of document from outside the record of proceedings might be useful in the right type of case, but bear in mind that new evidence cannot be introduced at this stage of the proceedings without leave of court obtained well in advance of the argument. If you use a documentary exhibit, have enough copies for each Justice and opposing counsel. The Sheriff or someone from the Division of Supreme Court Administration will place these on the bench before the argument begins. Using exhibits placed on an easel would be unusual and can be problematic in the Courtroom. The Justices are seated about eighteen feet from the speaker's podium, making most visual aids hard to see. Further, to point to the visual aid, you almost certainly will have to separate yourself from the podium microphone, making it hard for you to be heard. Also, the exhibits will not be picked up by our webcast cameras (see below). Please keep these considerations in mind.

Often, an argument will immediately precede yours or another will immediately follow. There will be a brief recess between arguments, with enough time for you to complete the appearance form and arrange your papers. You are welcome to arrive early or to remain after your argument to hear others, but you may not enter or exit the Courtroom while an argument is ongoing. A television monitor in the atrium outside the Courtroom broadcasts arguments as they occur, and is a convenient way to view them while you are waiting for your argument to start.

As you probably know, the Court allows news cameras into its Courtroom during oral argument. We do not know the extent to which there may be media interest in your case. However, the Court has strict rules in place to make the presence of cameras as unobtrusive to counsel as possible.

You may also be aware that the Supreme Court now records and broadcasts its oral arguments live over the Internet. The recordings are also archived on the Court's website for later viewing. You will be able to watch and listen to your oral argument soon after it has concluded. Access to the live broadcast and to the archived list of recorded oral arguments is available at [www.indianacourts.org/apps/webcasts](http://www.indianacourts.org/apps/webcasts). Occasionally, one of the Court's oral arguments will be selected for special treatment as a teaching tool in Indiana schools. When that occurs, the briefs are also made available over the Internet. You can find more information at the Courts in the Classroom website at [courts.IN.gov/citc](http://courts.IN.gov/citc).

Additional information about oral arguments can be found in Appellate Rules [52](#) and [53](#). If you have not already taken care of it, please remember your obligation of acknowledgment under Appellate Rule [52\(C\)](#). If you have additional questions about the facilities or procedures, please contact the Division of Supreme Court Administration at 317-232-2540.

See <http://www.in.gov/judiciary/arguments/>

## Oral Argument Guidelines

General guidelines for arguing before the Court of Appeals:

- Submit clear and concise briefs.
- Know the rules of the Court.
- Per Rule 52, be sure to properly acknowledge oral argument, in writing, to the Clerk of Courts. Calling the Court of Appeals does not fulfill this requirement.
- Avoid argumentation when stating the facts of the case.
- Avoid personal attacks on the trial court, the parties, or opposing counsel.
- Arrive early for your argument before the Court.
- The Court usually provides additional information if the oral argument is set in a location outside of Indianapolis. You should be given directions, parking information, and details about the venue.
- Be prepared for any question—the judges will interrupt your presentation and ask anything they would like to ask. While you should still thoroughly prepare your oral presentation, the judges will ultimately determine what you discuss during the course of the argument.
- Answer the question asked by the judge. Your credibility is important. Be honest if you do not know an answer.
- Appellants are usually allowed to ask for rebuttal time. The Court's bailiff will provide appellants a request form to fill out and submit just prior to the start of oral argument. Appellees are not granted rebuttal time.
- Time is closely monitored. The Court uses flash cards or a lighting system to give arguing attorneys cues on the amount of time left.
- Should you wish to request something special, such as using a visual aid in your presentation, file a motion with the Court prior to your oral argument date.

See <http://www.in.gov/judiciary/appeals/arguments-guide.html>