

# Oral Argument

## 8. Oral Argument

Oral argument is the last step in the appeal process before the Court of Appeal makes a decision.

During oral argument, all parties who filed a brief are offered a limited amount of time to speak directly to the Court of Appeal justices before they decide the appeal.

Oral argument is an opportunity for the parties to make sure the court understands the most important issues of an appeal. The parties can explain the arguments in their briefs and answer questions from the justices.

Here's an overview of what to expect in this step of the appeal process and how to prepare an oral argument.

You can also review these **step-by-step guides** on [how to prepare for oral argument](#) and [what to do the day of oral argument](#).

### Who Can Make an Oral Argument

Any party – appellant or respondent – who filed a brief that was accepted by the Court of Appeal is eligible to make an oral argument.

If the respondent did not file a brief, then he or she cannot make an oral argument.

### Timeline of Oral Argument

After all the briefs are filed or the time to file them has passed, the Court of Appeal contacts each eligible party in the case about oral argument.

The Court of Appeal sends notice to ask the parties if they want to participate in oral argument. Sometimes the notice includes a date for oral argument and sometimes it does not.

When the court sends notice, each party must tell the court if they want to make an oral argument. A party must respond to the court in writing by the deadline given in the notice. If any party requests oral argument, then the court will have oral argument for the case.

The court will send all parties at least 20 days advance notice including the date, time, and location of oral argument.

# Cost of Presenting an Oral Argument

There is no additional court cost to make an oral argument.

## Deciding Whether to Make an Oral Argument

In most cases oral argument is optional, and it is a small part of an appeal.

In some cases oral argument can be helpful, but it is less important in the court's decision than the briefs or the record on appeal.

An appellant or respondent can choose to make an oral argument *or* choose to waive (give up) oral argument.

### *Reasons to make an oral argument*

- to explain something in a brief
- to talk about an argument in any party's brief
- to highlight the most important issues in the appeal
- to give the justices a chance to ask questions
- to talk about new legal authorities that support an argument in a brief

### *Reasons not to make an oral argument*

- there is nothing new or different to say about what's already in a brief
- the arguments and issues are fully explained in a brief
- a party does not want to take questions from the justices
- a party wants to talk about a new legal issue or new evidence (this is not permitted in oral argument)

Here are some important things to know when making a decision about whether or not to request oral argument:

- If a party chooses not to make an oral argument, it does not impact what the court thinks about that party or their argument in the appeal.
- Not all parties have to do the same thing. So if only one party wants to make an oral argument, the court will have oral argument for the case but it will not make the other parties participate.
- If a party has a lawyer, then the lawyer will present the oral argument. A party is not required to go to court for oral argument if he or she is represented by a lawyer.
- Many appeals do not have oral argument because all parties waive (give up) oral argument. When there is no oral argument, the Court of Appeal justices decide an appeal based on the briefs and the record on appeal.
- Oral argument does not slow down or speed up the appeal process. So the court will not make a decision faster if there is no oral argument, and the court will not take longer to make a decision if there is oral argument.
- Making an oral argument may or may not help a party's side of the

appeal. There is no way to know in advance.

- If the appellant decides not to make an oral argument, then the respondent usually does not make an oral argument. This is because the law favors the respondent in an appeal.
- It does not happen often, but in some cases the Court of Appeal will require a party to participate in oral argument. The court may do this if it has specific questions to ask a party.

## Telling the Court if You Will Make an Oral Argument

The Court of Appeal permits oral argument in every appeal case. But the court will only schedule time for oral argument if it receives notice from any parties who want to participate.

### ***When to tell the court***

When a party receives notice about oral argument from the Court of Appeal, they must respond by the deadline in the notice.

### ***How to tell the court***

To say YES and make an oral argument, a party must tell the Court of Appeal by the deadline given in the court's notice. The party must tell the court in writing.

To say NO and not make an oral argument, a party can simply do nothing. If the court does not receive a response, it will assume the party is waiving oral argument.

## Preparing for Oral Argument

During oral argument there is a short amount of time to talk to the Court of Appeal justices and answer questions, so it's important to be prepared.

Before oral argument a party should spend time getting ready. This includes reviewing the record on appeal, all the briefs, and the most important legal authorities.

[Here's a step-by-step guide on HOW TO PREPARE for oral argument.](#)

### ***What to talk about***

Here are some general rules about what an appellant or respondent should and should not discuss in oral argument.

#### **DO:**

- focus on the legal issues in the appeal
- explain arguments you made in your brief
- talk about legal issues that are in your brief
- clarify issues you talked about in your brief
- talk about legal issues or argument in the other party's brief
- talk about new legal authorities such as a new case or change to a law (you or the other side must notify the court of new legal authorities)

before oral argument)

- tell the justices what you think is most important in your appeal
- ask the justices if they have questions for you

#### **DO NOT:**

- talk about new evidence
- introduce new legal issues or new arguments that are not in any of the briefs
- read your brief out loud
- repeat what's in your brief word-for-word
- repeat or argue the facts of the case

#### ***How much time to talk***

The court sends notice in advance to each party who is participating in oral argument. The notice says how much time the party will have to talk. Generally each party has between 15 and 30 minutes to talk in oral argument. Keep in mind this also includes questions from the justices.

If a party has a lawyer, then the lawyer will talk in oral argument.

#### ***What to expect from the justices***

The Court of Appeal justices do many of the same things the parties do to prepare for oral argument. The justices fully review the record on appeal, so they know what happened in the trial court. The justices also read all the briefs and research the legal authorities, so they know about the legal issues in the appeal. During oral argument the justices will listen to the parties and they may ask questions.

## **The Day of Oral Argument**

The court has rules about oral argument and the parties are expected to follow the rules.

Here's a [step-by-step guide on WHAT TO DO THE DAY OF ORAL ARGUMENT](#).

Here are some keys to making a successful oral argument:

#### **BE PREPARED**

- Bring an outline of your key points and look at it when you need to.
- Be sure you have reviewed all the briefs, the legal arguments, the record on appeal, and the important legal authorities.

#### **BE CLEAR**

- Speak slowly and clearly.
- Focus on the most important things you want the court to know.

#### **BE FLEXIBLE**

- Remember the justices can interrupt you and ask you anything.
- It's okay if you have to stop what you are saying and answer their

question.

## **BE RESPECTFUL**

- Talk to the justices and other parties in a calm voice, and do not interrupt.
- Even if you get frustrated or upset, try to control your emotions.

## **Recording of Oral Arguments**

All oral arguments in the Court of Appeal are electronically recorded. Any party may pay a fee to get a copy of their oral argument recording from the court. If a party wants a written transcript of the recording, they will need to contact a transcription service.

**What happens next?** After oral arguments are made or waived, the Court of Appeal makes a decision.

## **Helpful Links**

[Learn more about oral argument from the California Courts](#)

[Listen to oral arguments made before the Supreme Court of California](#)

[Get a step-by-step guide on how to prepare for oral argument](#)

[Get a step-by-step guide on what to do the day of oral argument](#)

## **Common Questions:**

Why do I have to tell the court in advance if I want to make an oral argument?

The California Courts of Appeal are busy hearing thousands of cases every year. There are rules to keep the appeal process fair and efficient. One rule is that the courts only schedule time for oral argument when they know people want to participate.

If the court scheduled time for oral argument in every case but few people showed up, the justices would lose valuable time that they could have spent reviewing appeals and making decisions. That would slow down every appeal – including yours – in the whole court system.

What happens if I do not tell the court in advance, but I still want to make an oral argument?

If you do not tell the Court of Appeal that you want to make an oral argument, the court will assume you do not want to participate. If this

happens you will lose your chance to have oral argument unless the other side requests oral argument. If the other side requests oral argument and you do not, you may still participate in oral argument if you filed a brief.

If you want to make an oral argument, the only way to guarantee you have the opportunity is to respond by the deadline in the court's notice and go to the court on the day of oral argument for your case. There are no exceptions and no extensions for more time. After the time for oral argument passes, the court moves on to make a decision on your appeal.

Can I talk about what's in my brief or not?

Yes, you can talk about things that are in your brief. But you should not read directly from the brief. Instead you should tell the justices what you think is the most important part of the appeal. You can explain more about what you want them to think about most in your brief. It is a mistake to spend the short time you have for oral argument saying the exact same thing that the justices have already read in your brief.

Will it affect the court's decision if I get nervous or I can't answer all the questions?

Many people feel nervous before and during oral argument. Keep in mind that the Court of Appeal justices hear oral arguments all the time. The justices understand that making an oral argument can be difficult and that some people are more comfortable speaking in court than others.

You should know that the justices will be very prepared for your oral argument. Before you speak, the justices will have reviewed the record on appeal and read all the briefs. Even though they may ask you questions, the justices understand that you may not have all the answers.

Just do your best in oral argument. Remember that oral argument is one small part of the whole appeal process. So while it can help your case, it is not the most important of an appeal.

What does my lawyer do in oral argument?

If you have a lawyer, then the lawyer will present your oral argument. You can go to court for oral argument but you are not required to go if you are represented by a lawyer.

Can I get a transcript of what was said in the oral argument for my case?

All oral arguments in the Court of Appeal are electronically recorded. Any party may pay a fee to get a copy of the oral argument recording from the

Court of Appeal. If you want a written transcript of the recording, you will need to contact a transcription service and pay them a separate fee.

What does the court think if I do not make an oral argument?

If you decide not to make an oral argument, the court will not think that you are not interested or that you don't care about the appeal. You do not give up or weaken any arguments in your brief. The court will not think differently or badly about you or your arguments. If you do not make an oral argument, it will not negatively impact the way the court decides an appeal.

How will the court decide if there are no oral arguments?

If all the parties waive oral argument – meaning no parties talk to the justices in person – then the Court of Appeal will decide your appeal based on the briefs, the law, and the record on appeal.

What does it mean if the court sends me a notice saying they don't need oral argument?

Sometimes the Court of Appeal will send notice to the parties saying the court is prepared to issue a decision without oral argument. This is not a sign that the court will decide either for or against the appeal.

Even though the court says oral argument is not necessary, you can still request oral argument. You would need to give the court notice in writing and tell them you want to make an oral argument. As long as you meet the deadline in the court's notice about oral argument, the court will almost always schedule time for your oral argument.

Where can I get legal help?

[Form APP-001](#) has full instructions on appeal procedures.

Each Court of Appeal has [self-help resources online](#). You can also contact your local Court of Appeal to see if they have a self-help center at the court.

You can also visit a [law library](#) to do legal research.

The California Courts website has a lot of [information about lawyers and legal help](#).

If you need help finding a lawyer, the California Bar Association website can connect you to a [lawyer referral service](#) in your area.

## **FORMS**

Documents you will need for your case.