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Ten-Step Guide to Oral Argument for Junior Attorneys

By David Grenardo

Junior attorneys are often eager to step into court to argue. Before doing so, attorneys must understand what is necessary to argue effectively. A compelling oral argument must be persuasive, and it requires preparation and precision. By following the 10-step guide outlined below, a junior attorney can maximize the opportunity to argue in court and represent the client's interests to the best of his or her ability.

Tell the judge why you're there and what you want. A judge is extremely busy and may have hundreds of cases on his or her docket. Be prepared to tell the judge in one or two sentences why you are in court and what you want him or her to do. Some judges are better prepared than others with regard to reading the briefs and knowing the subject matter before the hearing. As a result, some judges need to be educated at a hearing, and you must be ready to do so. Prepare a few openings, from 20 seconds to three to four minutes, that include the major points in your argument, and the longer versions should include a short background of the action in case the court requests one at the hearing.

Argument — Counterargument. Create a list of the arguments and counterarguments that the parties will most likely make based on the briefing and your reflection upon the issues. Also make a list of the potential arguments from the court that oppose your arguments, as well as your response to the court's potential arguments. This will allow you to anticipate what you will be asked at the hearing, which will help you to prepare those answers prior to the hearing.



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Keep in mind, though, that you cannot plan for everything that happens, so be on your toes and ready for anything. Thinking about all of the issues and potential issues that may be raised will help you be ready.

Be responsive and respectful to the judge. Although you prepared a fantastic opening and terrific points on all of the issues, the judge may want to focus on only certain issues and skip any openings. Be prepared to jump right into those issues that the judge raises.

Even if you think the issues raised by the judge are not as important as others, you must respond to them, as the judge must believe the issues are important or else he or she would not ask for discussion on them. The judge will rule on the motion and your responses may shape his or her opinion.

Also, when you talk, you are addressing the court, not opposing counsel. And you need to stand when you are speaking to the court. In addition, when the judge or opposing counsel is speaking, you are not.

Be as brief as possible. If you need to address an opposing argument, be as concise and direct as possible. Sometimes the best oral argument involves speaking very little or not at all. If the court says it is inclined to rule for your client, you may not need to argue at all, which may not be what you wanted as you may be eager to argue, but your client will appreciate the great result and your discretion in not speaking when it was unnecessary.

Be specific. In your argument, as well as in your brief, be specific. Specific is always more persuasive than general. For example, arguing that the witness should be compelled to testify because he has relevant information is less effective than arguing that the witness was the manager of the store at the time of the accident and had the authority to determine how to respond and, therefore, should have relevant information.

Provide the judge with legal authority for his or her ruling. A judge wants to know he or she has the power to do what you want them to do. No judge wants to have their ruling appealed and overruled. As a result, provide the court with the legal authority that allows

him or her to do what you are asking them to do. Likewise, if you do not want a judge to do what the other side is asking, inform the court that it lacks the authority to do what the other side is asking for based on a lack of case law, opposing case law or statutes.

Make your arguments easy to follow and avoid legalese. The judge is a human being, just like you. You want to make sure the argument is simple and easy to follow, just as you want the words that you use during your argument to be simple and easy to follow.

Practice your arguments. You would not file the first draft of a brief, so why would the client want your performance at a hearing to be the first time you practice your argument? Practice your opening and key arguments. Oftentimes practicing in front of a colleague not familiar with the case or the applicable law can be extremely helpful to determine if your argument and language are easy to follow and persuasive.

Remember this is important to your client. Regardless of the number of cases on the docket for the day, remember that this is your chance to argue before the court an issue that is important to your client, so take your time. Also, be assertive. For example, always try to start arguing first at a hearing if the judge does not specifically ask a certain party to begin. Being assertive and first to speak shows the judge the hearing is important to you and your client, and it also reaffirms to your client, if they are present, that they have the right person handling the hearing.

Be professional. The gray-haired effect allows more senior attorneys to gain respect and rapport with a judge by virtue of appearing as if they have been practicing for a long time and/or by relationships that those senior attorneys have created with the judges over time. A junior attorney must gain respect from a judge by acting professionally in his or her speech and attire, and by being prepared and organized.

By following these 10 steps, you will help ensure that you perform at your best and that your client is satisfied that you did all you could in furthering its interests.