

## APPROACHES TO APPELLATE ORAL ARGUMENT

Video presentation by ADI, Inc.

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### I. Exposure Therapy

- A. Argue cases to overcome anxiety and fear.

### II. Zen and the Art of Appellate Oral Argument

- A. Arrive at the podium in a zen-like state of full awareness (“in the zone”).

1. Your goal is to have an exhilarating dialogue with the panel.
2. Strip your own ego from the case - e.g., avoid clever comments because they are distractions.
3. Familiarize yourself with the courtroom in advance.
4. Visualize questions and answers to work out the thorniest problems of the case.

### III. Preparation

- A. Avoid too narrow a focus. The more defendants the issue could affect, the more interested the court will be.

- B. Thoroughly prepare.

1. Know your issues.
2. Develop a theme.
3. Consider participating in a moot court three to five days in advance to shore up weaknesses.
4. Consider a conference with trial counsel.
5. Consider consulting one of the appellate project/program staff attorneys.
6. Know your record and do not overstate it.
  - a. To be efficient and effective, especially in long record cases, take your first record review notes with oral argument preparation

in mind.

b. Consider taking computerized notes.

7. Shepherdize and re-read the key cases.

a. If there are new developments, send a letter brief to the court as soon as possible and copy the Attorney General.

1) Third/Fifth caveat:

In the Third, before oral argument counsel should furnish the clerk with a list of citations (original + 4 copies) of any decision rendered after preparation of the briefs which will be cited by the name of the attorney submitting the citations. It may not include arguments or explanations. Formal proof of service is required unless presented at the time of oral argument. If presented at oral argument, please hand them to the courtroom clerk together with your business card.

In the Fifth, counsel may submit not only a list of additional cites, but also should discuss the holding for the case and state which contention or argument that it applies to.

8. Know your panel.

9. Know your weaknesses and be prepared to answer the toughest questions the court could throw at you.

10. Have someone else review your briefing for a new perspective.

11. Novices should watch a variety of oral arguments in front of different panels.

12. Prioritize your issues.

a. Do not argue your preservation issues.

b. Focus on issues which will actually do some good for your client in the Court of Appeal.

13. Do not memorize your entire argument.

a. Stay flexible so that you do not become befuddled.

b. Memorize an introduction (few lines) for the comfort of knowing how you will get through the first 45 seconds or so.

c. Memorize the disposition you want; you have to be able to tell the court what it is you want.

14. Eliminate hassles.

a. Plan your wardrobe.

b. Plan your commute.

15. Develop your own style of maintaining peace of mind and focus while waiting for the court to call your case.

a. For example, close your eyes and go back to the image of your opening lines.

#### IV. Presentation

A. Communicate effectively with the court.

1. Listen in order to be fully awake and have a mutually engaging dialogue with the court.

2. Respond to the question(s) asked.

3. Speak to the court on a level they will understand and be persuaded by.

a. Do not assume the court speaks your language.

b. Speak plain English.

c. Avoid overuse of acronyms.

4. Don't interrupt the court. Wait your turn to answer.

B. Use your body language to communicate to the court that you take the matter seriously.

1. Do not appear overly casual.

2. Have a respectful, professional stance.

3. Enunciate.

C. Notes and outlines can be helpful.

1. But minimize clutter and the distraction of fumbling through papers.
2. Consider not bringing a laptop to the podium.
  - a. Court security may prohibit it.
  - b. It's another form of self that may interfere with the message.

D. Avoid talking too fast.

1. Remember you are there to prompt a dialogue and invite questions.

E. Do not come on too strong or attack the court.

F. Do not be put off if the court is hostile.

1. It's not personal.

G. Do not focus on the time.

1. Your responsibility is to convey the fundamental message not spew data.
2. Stay with where the court wants to go until you have exhausted it and you feel comfortable sitting down or your time is up.

H. Do not be afraid to say you do not know.

I. Do not make concessions unless you have checked them out in advance.

J. Know when to sit down.