

TEN

Tips for Oral Argument

by Edward Ricco



- 1.** Prepare thoroughly. Master the record and the law. Thorough preparation instills confidence which projects credibility—the most important attribute of an oral advocate.
- 2.** Try to observe or find out in advance about the physical setting and procedures of the court in which you will be arguing. Learn what you can about your panel members’ interests, demeanor, and questioning style.
- 3.** You are talking to appellate judges who want help with the case. Put yourself in their place and think about what you would want to know to reach a decision. Give a legal argument, not a jury argument. Aim to have a conversation with the court.
- 4.** Do not replay the brief. Select the issues that can be presented well orally and restructure the argument on those issues to suit the oral format.
- 5.** Speak from an outline that is too spare to tempt you to read. Know what are your “must make” points and use the outline to be sure you cover them.
- 6.** Anticipate questions. What is your best case and your response to your opponent’s best case? What beneficial policies are promoted or deleterious results avoided if the court adopts your view? What happens if a crucial fact is changed hypothetically? Is the rule you propose self-limiting so it cannot be extended to situations where the result would be undesirable? Is your opponent’s position only the first step on a slippery slope? If you can think of a question you cannot answer, you are not ready.
- 7.** Listen to the court’s questions. Answer them immediately and succinctly, then elaborate if necessary. Be honest if you don’t know the answer. Remember that a question may be intended to help you.
- 8.** If you are the appellee, listen to the questions asked of your opponent. Listen to your opponent’s argument. Use what you hear to shape your own argument.
- 9.** Keep rebuttal short and focused.
- 10.** Do not overstay your time or be reluctant to sit down early.

About the Author

Edward Ricco heads the Appellate Practice Group at the Rodey Law Firm.