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News for Associates and Young Lawyers

Career Development

Preparing For Oral Argument

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Appearing in court to orally argue a motion is one of the most exciting tasks a junior litigation attorney is asked to perform—and proper preparation is an essential prerequisite to any successful oral argument. To be sure, there is no precise checklist of preparatory activities, but the following suggestions provide a solid foundation.

For starters, to the extent practical, a junior attorney should visit the actual court to observe it in session during an unrelated oral argument. This reconnaissance mission offers a lawyer the chance to learn about the "personality" of the courtroom in which he will be arguing, as well as of the judge that he will be trying to persuade with his argument.

Keep in mind that no two judges are alike. An attorney should pay attention to whether a particular judge is an active questioner during argument, and if so, the types of questions asked (i.e., does the court's focus tend to be on the facts, the law or both). An attorney can also get a sense of whether a particular judge reads the written motions in advance of the argument or prefers to peruse the submissions while on the bench. By becoming familiar with the personality of the courtroom and judge, an attorney can tailor his presentation to the court, both in terms of substance and style.

A pre-argument visit also offers an opportunity to learn about the logistics of the particular courtroom. A lawyer will discover: whether the argument will be held in the courtroom itself (potentially in front of a large gathering of attorneys) or in chambers; what the courtroom acoustics are like; whether the court regularly employs a court reporter to transcribe oral argument; where counsel for the plaintiff and defendant sit during argument; how attorneys check-in with the court prior to argument; and whether the court has its own specific rules governing oral argument.

Familiarizing oneself in advance to the mechanics of a particular court limits the possibility of distracting surprises at the actual argument, and helps insure that a lawyer is well positioned for success.

Colleagues are also a great resource for "inside" information about a particular court. By speaking with colleagues, an attorney can determine whether what was observed during the visit is consistent with the court's usual practices, or an anomaly. If an attorney is unable to make a visit to the court before his oral argument, colleagues may provide helpful insight.

On the day of the argument, the attorney should prepare and bring to court an outline of the critical points to be presented to the court. An outline is preferred over a word-for-word speech since most courts are likely to interject early on with questions, and this may happen repeatedly during oral argument.

The court's questions are often an indication of the factual or legal issues it considers to be of critical importance in reaching a decision on the motion. Finally, when an attorney has completed responding to the court's questions, he must be able to bring the court's attention back to the points he deems salient to his argument.

An attorney must arrive at the argument with a rock-solid command of the facts and law of key cases cited in the legal memoranda submitted to the court. If the record is voluminous, an attorney should consider preparing an index of exhibits so he can quickly access any document referred to by the court. In addition to an index, the personal copy of the exhibits should be highlighted and/or annotated so important references in documentary or testimonial evidence can be quickly referenced during the course of an argument.

A lawyer should consider ways in which to make it easy for the court to follow along with the evidence. If an attorney is relying on a few key pieces of evidence, he should consider offering to provide a highlighted copy to the court. He should be certain the document merits the special attention of the court, that it is part of the record and that a similarly highlighted copy is also available for all other counsel.

And an attorney should take heart that no matter how prepared he is, there may be times that counsel simply cannot answer a question from the court. Should an attorney find himself in that uncomfortable position, he should be candid about his inability to respond to the court's question, and if the issue is of significance to the court, he should offer to promptly submit a short supplemental memorandum addressing the court's query.

Finally, attorneys who are most successful during oral argument are the ones who can simply and concisely explain to the court the precise relief sought by the motion. I have seen too many judges irritated by long-winded attorneys struggling to tell the court about the nuts and bolts of their case and what specific relief they are seeking. To the extent possible, keep it simple and straightforward.

Oral argument should be a welcome challenge and responsibility for any junior attorney. Even the most seasoned acknowledge some jitters when appearing before a court for oral argument. But fear not, by implementing these guidelines you will be well positioned for a positive court experience.

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