

HOW DOES ARGUMENT PROCEED IN DIVISION FIVE?

Oral argument is conducted variously by Court of Appeal divisions in Los Angeles and throughout California. Before argument, the attorney should complete an appearance slip and give it to the deputy clerk or the security personnel in the courtroom. A three-justice panel will take the bench. The Presiding Justice or the Acting Presiding Justice will call the cases that remain on the calendar. Generally, most of the cases have been the subject of oral argument waivers. When your case is called, counsel for the appellant, or the appealing party, should stand first and identify yourself and whom you represent. In cases involving mandate or prohibition petitions, this is the time that counsel or petitioner should stand and identify yourself and your client. If you are counsel for appellant or petitioner you should also state your time estimate for oral argument. Because counsel for the appellant or petitioner generally has a right of rebuttal, the time estimate should include time necessary to rebut the argument of the respondent or the real party in interest. Next, it is time to hear from counsel for respondent or, in mandate or prohibition cases, the lawyer for the real party in interest. The attorney for the respondent or the real party in interest should then identify yourself and give your time estimate for oral argument. The court then calls the cases; those with the shortest combined time estimates are called first unless a priority request has been granted. Except in the

rarest of circumstances, a priority request should be submitted in writing well prior to oral argument and as soon as the necessity for priority becomes apparent. The attorney for appellant or petitioner argues first. Then counsel for respondent or the real party in interest argues. The attorney for appellant or petitioner has the right of reply. Appellant must keep track of the time and allocate the time estimate between opening and closing arguments.

HOW LONG SHOULD I ARGUE?

There is no easy answer to this question. It is a matter for the professional judgment of counsel. In many cases, the parties, recognizing that the most important submissions to the court are contained in the briefs, appear just to determine whether the justices have questions. A party may be permitted up to 30 minutes for oral argument. In cases where there are multiple parties on a side, counsel should be prepared to limit their arguments to a total of 30 minutes per side unless the court determines to further limit oral argument. In virtually no cases does the argument of a party consume 30 minutes. The typical oral argument involves less than 10 minutes per side. Rule 8.256(c) of the California Rules of Court, which is included in this pamphlet, allows the court to regulate the time for oral argument. Most experienced lawyers focus on their most important points and use the time to amplify the issues presented in the briefs. In calculating your time estimate for argument, it is generally not fruitful to simply reiterate the arguments made in the

briefs. The most important consideration is to allow yourself an adequate amount of time to advance your client's interests in a professional and effective manner.

WHAT HAPPENS IF I EXCEED MY TIME ESTIMATE?

If you exceed your time estimate, the Presiding Justice or the Acting Presiding Justice will politely interrupt you. Generally, the court will allow the appellant or petitioner an additional minute for rebuttal. If counsel for respondent is interrupted, an additional minute will usually be granted to conclude argument.

WILL THE JUSTICES HAVE QUESTIONS?

Some oral arguments are peppered with questions from the bench. In other oral arguments, no questions are asked. If you are asked questions, answer them directly and honestly. Even if they disagree with your answer, the justices are sincerely interested in your points and analysis. Sometimes, the questions make clear the justices' tentative views of the case. Other times, the questions are not reflective of how the court will view the issues. Time elapsed during questioning by the court is included in the time for argument.

WHAT HAPPENS WHEN THERE IS A CROSS-APPEAL?

Generally, oral argument proceeds as if there is no cross-appeal. The appellant argues first and then the respondent argues. Normally, the cross-appellant's points are argued when the respondent argues. The justices may decide to divide the argument so that the cross-appeal is separately argued. However, the typical case is argued with the appellant going first and then followed by the argument by the respondent who also presents the cross-appellant's arguments.

RULE 8.256(c), CALIFORNIA RULES OF COURT

Unless the court provides otherwise by local rule or order: [¶] (1) The appellant, petitioner, or moving party has the right to open and close. If there are two or more such parties, the court must set the sequence of argument. [¶] (2) Each side is allowed 30 minutes for argument. If multiple parties are represented by separate counsel, or if an amicus curiae — on written request — is granted permission to argue, the court may apportion or expand the time. [¶] (3) Only one counsel may argue for each separately represented party.

(Revised 11/1/2016)

JUSTICES OF DIVISION FIVE



Paul Turner
Presiding Justice



Sandy R. Kriegler
Associate Justice



Lamar W. Baker
Associate Justice

IN MEMORIAM

Associate Justice Richard M. Mosk
May 18, 1939 — April 27, 2016

Associate Justice Orville A. Armstrong
January 21, 1929 — December 22, 2014

Associate Justice Ramona Godoy Perez
November 21, 1946 — June 6, 2001



Court of Appeal

State of California
Second Appellate District

ORAL ARGUMENT GUIDE FOR DIVISION FIVE
