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A Comparison Chart:
**Oral Arguments Before The North Carolina Court Of Appeals,
The Supreme Court Of North Carolina, And The
United States Court Of Appeals For The Fourth Circuit**

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The Committee appreciates the advice and comments of those who use the comparison chart. Please send your suggestions to the Appellate Rules Committee, NC Bar Association, P.O. Box 3688, Cary NC 27519 or to kcrouch@ncbar.org.

Statement of Purpose

The North Carolina Bar Association’s Appellate Rules Committee prepared this comparison chart to assist North Carolina practitioners in preparing for oral arguments. This chart is intended to provide an abbreviated reference guide for counsel already familiar generally with oral arguments before the various courts. The chart sets forth some key similarities and differences between oral arguments before the three appellate courts in which North Carolina practitioners most often appear. For more detailed information for each court, please refer to the state (www.aoc.state.nc.us/www/public/html/rules.htm) and federal (www.ca4.uscourts.gov/pdf/RULES.pdf) rules of appellate procedure, the two “Guides for Counsel” for cases orally argued before North Carolina’s appellate courts (www.ncbar.org/about/committees/appellate-rules-committee.aspx), and the Fourth Circuit’s Pre-argument Review, Calendaring & Oral Argument information sheet (www.ca4.uscourts.gov/pdf/preargumentreviewcalendaringargument.pdf). Also, be advised that in some instances, the Comparison Chart contains information and recommendations based on the opinions and experiences of the various Committee members, rather than any formal rule or policy of the appellate courts.

	<i>NC Court of Appeals</i>	<i>Supreme Court of North Carolina</i>	<i>Fourth Circuit</i>
<p>Where Is The Courthouse Located?</p> <p><i>*Please read the oral argument notice carefully. The courts may occasionally hold oral argument in different buildings (or even different cities)</i></p>	<p>One West Morgan Street Downtown Raleigh *</p> <p>(Looking south down Fayetteville Street and away from the State Capitol, the Court of Appeals is located on the right-hand side of Fayetteville Street)</p> <p>Court of Appeals Clerk’s Office: (919) 831-3600.</p>	<p>Two East Morgan Street Downtown Raleigh*</p> <p>(Looking south down Fayetteville Street and away from the State Capitol, the Supreme Court Building is located on the left-hand side of Fayetteville Street)</p> <p>Supreme Court Clerk’s Office: (919) 831-5700</p>	<p>1000 East Main Street Downtown Richmond * (Between 10th and Main Street).</p> <p>Attorney’s entrance is located on Main Street.</p> <p>Fourth Circuit Clerk’s Office: (804) 916-2700</p>

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When Does the Court Typically Hold Oral Arguments?	<p>The Court of Appeals holds oral arguments year-round except from early June to approximately mid-August.</p> <p>Morning sessions generally begin at 9:30 a.m. and afternoon sessions generally begin at 1:00 p.m.</p>	<p>The Supreme Court usually holds oral arguments from January to May and September to December.</p> <p>Argument sessions at the Supreme Court usually begin at 9:30 a.m.</p>	<p>The Fourth Circuit holds six regular weekly oral argument sessions per year, generally Tuesday through Friday, but sometimes Monday through Friday. The Fourth Circuit also occasionally adds additional oral argument dates to its regular calendar.</p> <p>Arguments usually begin at either 9:30 (most days), 8:30 a.m. (last day of the session), or 9:00 a.m. (<i>en banc</i> arguments).</p> <p>An oral argument session calendar for the current and upcoming term can be located on the Fourth Circuit’s website http://www.ca4.uscourts.gov/argCal.htm</p>
How Will I Know Whether My Case Has Been Selected For Oral Argument?	<p>The Clerk of the Court will email a Court Calendar/Rule 30(f) notice. Read the notice carefully, as it may state that you are to appear for oral argument, or it may state that your case will be “heard” or “decided” on a specified date, but you should not appear for oral argument.</p>	<p>The Supreme Court of North Carolina generally hears oral argument in all cases either selected for discretionary review or appealed as of right.</p>	<p>If your case is <i>not</i> selected for oral argument, you will receive a Rule 34 pre-argument review notice stating that the case has been referred to the panel for disposition without oral argument. Sometimes the opinion will issue a few days after the Rule 34 notice.</p> <p>If your case is selected for oral argument, you will receive a “Case Tentatively Calendared For Oral Argument” Notice.</p> <p>If two or more of your cases are noticed for oral argument during the same session, inform the Clerk when you return your scheduling conflict form if you prefer to have your cases heard on consecutive days or with a break between.</p>

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How Far In Advance Will I Generally Know When I Will Have To Appear For Oral Argument?	Approximately 21 to 30 days.	Approximately 30 days, and sometimes less.	Generally, at least 6 weeks in advance <i>of a date certain</i> . However, counsel generally has an idea regarding what week oral argument will occur at least 2 months in advance. At least two months before oral argument, the Fourth Circuit will issue a “Case Tentatively Calendared For Oral Argument” notice. The notice will state during which week-long court session the Court tentatively plans to hold oral argument in your case. Counsel then will have 14 days to notify the Clerk’s office of any scheduling conflicts before the Court selects a final oral argument date.
How Many Judges Will Be On My Panel/the Court?	3 (the court does not sit <i>en banc</i>)	7	Panel- 3 <i>En banc</i> -All active, non-senior Fourth Circuit judges. There are currently 15 potential seats for active judges, but seats can be vacant. Check the Fourth Circuit’s website for a current list of active judges. Also, if a senior Fourth Circuit judge was on your initial three-judge panel, that judge will also participate in the <i>en banc</i> court proceedings.
Will I Know The Identity Of My Panel Before Oral Argument Day?	Yes, the panel’s identity is disclosed upon notification that oral argument will be held in your case. However, last minute substitutions of panel members are possible.	Yes. The entire court sits for oral argument, unless a justice recuses.	The identity of the argument panel is not disclosed until the morning of argument. A bulletin board located outside of the attorney check-in room lists the judges on each panel. Also, do not be surprised if your panel has a visiting judge from a federal district court, another appellate circuit, or even a retired Supreme Court justice.
Do I Have To Inform The Court Prior To Oral Argument Who Will Be Arguing The Case?	No.	Yes. Counsel must send the clerk a letter acknowledging receipt of the oral argument notification and stating who will be orally arguing the case.	Yes. After the final oral argument date is selected, Counsel must return an “Oral Argument Acknowledgement Form.” That form will state who will argue the case (and in <i>criminal</i> cases, which counsel will be present at oral argument, but not arguing).

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Any Special Advance Requirements To Orally Argue My Case?	Counsel must have <i>personally</i> signed the brief. The brief can be signed at the Clerk’s office the day of, but prior to, the oral argument. However, a brief electronically filed is considered personally signed.	Counsel must have <i>personally</i> signed the brief. The brief can be signed at the Clerk’s office the day of, but prior to, the oral argument. However, a brief electronically filed is considered personally signed.	Counsel must be admitted to practice before the Fourth Circuit and have returned the Oral Argument Acknowledgement Form informing the court who will be arguing the case. It is very difficult to meet these requirements the morning of oral argument.
What Must I Bring To Gain Entry To The Courthouse?	A government issued photo identification is required for entry into the courthouse.	A government issued photo identification is required for entry into the courthouse.	A government issued photo identification is required for entry into the courthouse.
In Addition To Potential Weapons (Including Pocketknives And Pepper Spray), What Items Am I Prohibited From Bringing Into The Courthouse?	No beverages or food. No cameras, unless preapproved by the Chief Judge.	No beverages or food. No cameras or tape recorders, unless preapproved by the Chief Justice. Umbrellas left at the security desk.	Cameras, tape recorders, food, and beverages may not be brought into the courthouse. Cell phones, smart phones, tablets, Blackberrys, pagers, laptops, notebooks, netbooks, or similar functioning devices must be turned off when in a courtroom or judicial chambers and must not be used to take photographs or for audio or video recording. Umbrellas must be left at the entrance to the building.
What Is The Check-In Procedure The Morning Of Oral Argument?	Arrive in the courtroom before oral argument begins. There is a library adjacent to the rear courtroom door that attorneys can use to collect themselves both before and after the argument.	Arrive in the courtroom before oral argument begins. There is a connected attorneys’ room through the back of the courtroom that attorneys can use to collect themselves both before and after the argument.	Counsel must register for oral argument in Room 222 in the Richmond courthouse between 8:45 and 9:00 a.m. for arguments beginning at 9:30 a.m. and between 7:45 and 8:00 a.m. for arguments beginning at 8:30 a.m. (generally on the last day of the Court session). Multiple counsel arguing <i>on the same</i> side must check in together and notify the court of the order in which they will argue and how the allotted time will be divided among them.

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In How Many Courtrooms Are Oral Arguments Held At Any Given Time?	<p>There is one courtroom at the Court of Appeals, which is located on the 3rd floor.</p> <p>However, the Court of Appeals occasionally holds special oral argument sessions in courtrooms in other counties, as well as in North Carolina's law schools.</p>	<p>There is one courtroom at the Supreme Court, which is located on the 3rd floor.</p>	<p>The Court generally uses the four courtrooms located on the 2nd and 4th floors of the courthouse. (The courtrooms are named Tan, Tweed, Green, and Red based on the color of the carpet in each courtroom.) The Fourth Circuit also now uses two Courtrooms on the 3rd Floor (Spencer and Payne courtrooms).</p> <p>The Green courtroom is the <i>en banc</i> courtroom.</p>
How Much Time Is Allotted For Oral Argument Per Side?	<p>30 minutes per side (all parties to a side must share the time allotted for oral argument)</p>	<p>30 minutes per side (all parties to a side must share the time allotted for oral argument)</p>	<p><i>Most Cases</i>—Each side is allotted 20 minutes (All parties to a side must share the time allotted for oral argument).</p> <p><i>Social Security Disability Cases, black lung cases, and labor cases</i> where the primary issue is whether the agency's decision is supported by substantial evidence—Each side is allotted 15 minutes.</p> <p><i>Criminal Cases</i> where the primary issue is the application of sentencing guidelines—Each side is allotted 15 minutes.</p> <p><i>En Banc</i>—Each Side is Allotted 30 minutes</p>
Can Parties On The Same Side Represented By Different Counsel Split Oral Argument Time?	<p>Yes</p>	<p>Yes</p>	<p>Yes, but disfavored. Local Rule 34(d) recommends that no more than two attorneys argue per side.</p>

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At Which Counsel Table Do I Sit During Oral Argument?	<p>When facing the bench, appellant’s counsel sits at the right-hand table and appellee’s counsel sits at the left-hand table.</p> <p>Counsel for the first case should be seated at counsel table when court convenes. After any midday or midmorning break, counsel for the next case should already be seated at counsel table when the court returns.</p>	<p>When facing the bench, appellant’s counsel sits at the right-hand table and appellee’s counsel sits at the left-hand table.</p> <p>Counsel for the first case should be seated at counsel table when court convenes. After any midday or midmorning break, counsel for the next case should already be seated at counsel table when the court returns.</p>	<p>Attorneys may sit at either counsel table, and counsel for the first case should be seated at counsel table when court convenes. After any midmorning break, counsel for the next case should already be seated at counsel table when the court returns.</p>
Can I Use My Laptop at Counsel Table?	<p>Yes, as long as the sound is turned off. The Court of Appeals has the capacity to make PowerPoint and “ELMO” presentations.</p>	<p>Not currently.</p>	<p>No. You may bring a laptop into the courthouse, but it must be turned off while in the courtroom.</p>
What Size Papers Will Fit On The Oral Argument Podium?	<p>Legal size papers (if in the Raleigh courtroom).</p>	<p>Legal size papers, but space is limited on the lectern. The lights and microphone may interfere with placement of an opened notebook or other items on the lectern.</p>	<p>Podiums <i>normally</i> accommodate legal size papers.</p>
When Can I Approach The Podium And When May I Begin My Argument?	<p>After the judges have entered the courtroom and been announced, the attorney who is arguing first may approach the podium but should not speak until the presiding judge calls the case.</p>	<p>After the justices have entered the courtroom and been announced, the attorney who is arguing first may approach the lectern when the Chief Justice calls the case.</p>	<p>Appellant’s counsel should be seated and ready to go, but should not approach the podium until the presiding judge calls his case.</p> <p>Also, counsel for the next case should not proceed to counsel table until after the panel concludes its greeting of prior arguing counsel. The Court will wait for counsel to be seated for the next argument before it calls the next case.</p>
How Do I Start My Oral Argument?	<p>“May it please the Court.”</p>	<p>“May it please the Court.”</p>	<p>“May it please the Court.”</p>

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How Do I Address The Members Of The Panel or Court?	Judge “X” or Your Honor * if on your panel, Chief Judge “X”	Justice “X” or Your Honor * Justice sitting in the center seat is Chief Justice “X”	Judge “X” or Your Honor *if on your panel, Chief Judge “X” Tip: The bench now has name plates before each judge’s seat.
As The Appellant, Should I First Summarize The Facts for the Court?	The Court of Appeals encourages counsel to provide only a <i>very brief</i> summary of facts and only to the extent necessary to facilitate the Court’s understanding of the issues.	The Supreme Court usually leaves the decision up to counsel, but counsel should keep the summary brief.	Local Rule 34(d) states that “members of the Court hearing oral argument will have read the briefs before the hearing and therefore will be familiar with the case.” Therefore, counsel for the appellant ordinarily should not recite the facts of the case at the beginning of the argument.
If I Am The Appellant, How Do I Reserve Oral Argument Time For Rebuttal?	Counsel should tell the senior panel judge at the beginning of oral argument how much time he/she wishes to reserve for rebuttal. Although the practice can vary by panel, there is no formal limit to the amount of time reserved for rebuttal. However, most judges prefer the parties not request more than 10 minutes for rebuttal. If appellant exceeds his/her opening argument time, then his/her rebuttal time will be reduced accordingly. Time designated for opening argument but not used can sometimes be added to the reserved rebuttal time if permitted by the Court.	Counsel should tell the Chief Justice at the beginning of oral argument how much time he/she wishes to reserve for rebuttal. If appellant exceeds his/her opening argument time, then his/her rebuttal time will be reduced accordingly.	When registering for argument the morning of oral argument, counsel for appellants and cross-appellants may reserve up to one-third of their total time for rebuttal by telling the clerk how much time he/she wants to reserve. Time designated for opening argument but not used at opening cannot be added to the reserved rebuttal time.

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How Will I Know How Much Time I Have Remaining During Oral Argument	<p>A timer on the lectern will start at 30:00 and alert counsel to the total time remaining, including any rebuttal time.</p> <p>Appellant’s counsel must keep track of when counsel is into rebuttal time. When five minutes of total argument time remain, the green signal goes off and the yellow signal comes on. The red signal comes on when the attorney’s oral argument time has ended.</p>	<p>A timer on the lectern will start at 30:00 and alert counsel to the total time remaining, including any rebuttal time.</p> <p>Appellant’s counsel must keep track of when counsel is into rebuttal time. When five minutes of total argument time remain, the green signal goes off and the yellow signal comes on. The red signal comes on when the attorney’s oral argument time has ended.</p>	<p>The oral argument podiums have a three-light (green, yellow, and red) and digital timing system that counsel can use to monitor their argument times. The green light comes on when oral argument begins, and a digital clock counts down the argument time remaining.</p> <p>When 5 minutes of argument time remain on the timer, the green signal goes off and the yellow signal comes on. The red signal comes on when the attorney’s argument time has ended.</p> <p>At the beginning of appellant’s argument, the digital clock reflects a deduction of any rebuttal time reserved by the appellant. For example, if appellant’s counsel has 20 minutes of total oral argument time and reserves 2 minutes of that time for rebuttal, the digital timer will start at 18 minutes for appellant’s initial argument and the yellow light will come on 13 minutes into the argument. During rebuttal time, the digital clock will start with appellant’s reserved rebuttal time. In our example, the rebuttal timer would start at 2 minutes, and because the appellant started with 5 minutes or less of time, the yellow light would come on when the rebuttal began.</p>
What Cases And Other Authorities Can I Cite And Discuss During Oral Argument?	<p>Only cases or authorities cited in one of the parties or amicus’ briefs or in a Rule 28(g) memorandum of additional authority.</p> <p>Counsel should endeavor to submit, and insure that opposing counsel actually receives, any memorandum of additional authority prior to the day of oral argument.</p>	<p>Only cases or authorities cited in one of the parties or amicus’ briefs or in a Rule 28(g) memorandum of additional authority.</p> <p>Counsel should endeavor to submit, and insure that opposing counsel actually receives, any memorandum of additional authority prior to the day of oral argument.</p>	<p>No restrictions. However, if pertinent and significant authorities are discovered after submission of the briefs, as a courtesy to both the Court and opposing counsel, counsel should submit a Rule 28(j) letter of supplemental authorities prior to oral argument.</p>

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What Do I Do When Oral Argument Has Concluded?	<p>Either quietly exit the courtroom <i>through the rear side door</i> or return to the public seating benches.</p> <p>There is a library adjacent to the rear courtroom door that attorneys can use to collect themselves both before and after oral argument.</p>	<p>Either quietly exit the courtroom <i>through the rear door</i> or return to the public seating benches.</p> <p>There is a connected attorney room at the back of the courtroom that attorneys can use to collect themselves both before and after oral argument.</p>	<p>Wait for the Fourth Circuit judges to come down from the bench to greet counsel and shake their hands. Then while judges are returning to the bench, either quietly exit the courtroom or return to the public benches behind the oral argument bar.</p>

“I used to say that, as Solicitor General, I made three arguments of every case. First came the one that I planned—as I thought, logical, coherent, complete. Second was the one actually presented--interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night.”

Resolutions in Memoriam: Mr. Justice Jackson, 99 L. Ed. 1311, 1318 (1955).