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GUIDE FOR COUNSEL FOR ORAL ARGUMENTS BEFORE THE SUPREME COURT OF NORTH CAROLINA

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

GUIDE FOR COUNSEL FOR ORAL ARGUMENTS BEFORE THE SUPREME COURT OF NORTH CAROLINA

I. INTRODUCTION

This guide is intended to help attorneys who will be arguing before the Supreme Court of North Carolina. A separate guide is available [here](#) for attorneys arguing before the North Carolina Court of Appeals. In addition to this guide, counsel also should thoroughly review the North Carolina Rules of Appellate Procedure, which govern in all arguments before the State's appellate courts. Additional assistance with preparing briefs and other filings can be found in the Appellate Style Manual, which is available [here](#). An abbreviated reference guide comparing and contrasting oral argument procedures and practices before the North Carolina Court of Appeals, the Supreme Court of North Carolina, and the U. S. Court of Appeals for the Fourth Circuit is available [here](#).

The Clerk and staff of the Supreme Court also are available to answer questions and provide assistance:

Supreme Court of North Carolina
Clerk's Office
2 East Morgan St.
Raleigh, NC 27601

P.O. Box 2170
Raleigh, NC 27602-2170
(919) 831-5700

The Supreme Court is open Monday through Friday (except for State holidays), 8:00 a.m. through 5:00 p.m.

II. ORAL ARGUMENT BEFORE THE SUPREME COURT

A. The scheduling of oral argument

The Supreme Court normally holds oral arguments between January and May and between September and December of each year. Argument sessions at the Supreme Court begin at 9:30 a.m.

After the appellee's brief is filed, the Court will notify the parties of the session when the Court will hold an oral argument for the appeal. The Supreme Court rarely decides cases solely on the briefs, but will notify the parties if the Court intends to decide a particular appeal without oral argument.

Whenever you have an appeal before the Supreme Court, you should promptly notify the Court of any dates for which you request secure leave. Refer to North Carolina Rule of Appellate Procedure 33.1 for instructions on requesting secure leave. Conflicts between a scheduled oral argument and a proceeding in another court should be resolved pursuant to North

Carolina's Guidelines for Resolving Scheduling Conflicts. Once an oral argument has been scheduled in the Supreme Court, requests for rescheduling will rarely be granted.

B. The day of argument

The Supreme Court is located at Two East Morgan Street in downtown Raleigh. Several parking lots and decks open to the public are nearby, including parking lots and decks at:

120 South Wilmington St.
1 South Wilmington St.
201 West Morgan St.
222 West Hargett St.

On the day of the argument, you should arrive at the Court in plenty of time to pass through security, find the courtroom, and settle into your seat before the session is scheduled to begin. The Justice Building opens at 8:00 a.m. The courtroom, located on the third floor, opens at 8:30 a.m. Oral arguments begin at 9:30 a.m.

If you intend to argue, the Supreme Court requires that you personally sign the brief. If you did not personally sign the brief before it was filed, you should visit the Clerk's office before your argument to sign. Allow plenty of time before your argument session to do so. However, an electronically filed brief is considered personally signed by any counsel whose name is listed on the brief. *See* App. Rule 28(i).

You should be in the courtroom at the beginning of the session even if your appeal is not scheduled to be heard first. The argument schedule is subject to change, and your appeal may be heard earlier than expected. If counsel is not present, argument will proceed.

On arriving in the courtroom, counsel for the first argument may sit at the counsel tables. Appellant's counsel sits at the right-hand table (if you are facing the bench), and appellee's counsel sits at the left-hand table. Only counsel should sit at the tables. Clients and other observers should sit in the audience. Counsel whose appeal is not scheduled first also should sit in the audience until their appeal is called.

Laptops are not currently allowed at the Supreme Court. Cellular phones must be placed on mute or turned off while you are in the courtroom.

Water is provided at the counsel tables. Food and drink should not be brought into the courtroom.

C. The argument

The session begins with the Clerk sounding the gavel as all rise, and the Justices enter the courtroom. Then, while all remain standing, the Clerk opens court. Sessions of the Supreme Court are presided over by the Chief Justice. After any introductory comments, the Chief Justice will call the first case for argument.

Counsel for the appellant should then step to the lectern. If the case involves cross-appellants, traditionally the party that filed its notice of appeal first will argue first. It is

customary to open with the phrase, "May it please the Court" and to introduce yourself before beginning your argument.

The appellant and the appellee each has thirty minutes for its argument. If there are multiple appellants or appellees, they still receive only a total of thirty minutes for their side of the argument. Dividing the thirty minutes among multiple counsel is allowed. On motion, counsel for *amici curiae* may be allowed to participate. *See* Rule 28(i).

The appellant's counsel may reserve part of his or her thirty minutes for rebuttal. Appellant's counsel should notify the Court at the beginning of counsel's argument if counsel wants to reserve rebuttal time. It is customary for the appellant to reserve five to ten minutes, but the Court may allow more time to be reserved. During rebuttal, the appellant's counsel is generally prohibited from raising issues that were not raised during the parties' primary arguments.

During the argument, Justices on the Supreme Court should be referred to as "Justice" or "Your Honor." The Chief Justice should be referred to as "Chief Justice" or "Your Honor."

A timer on the lectern counts down from 30:00 and shows the total time remaining, including rebuttal time. Appellant's counsel must keep track of when counsel is into rebuttal time. The red light on the timer will indicate when time has expired. Counsel should end the argument at that point and sit down.

You are not required to use your full argument time. If you finish your argument before your time has expired, notify the Court that your argument has concluded.

After the appellant's counsel finishes the argument and leaves the lectern, the appellee's counsel should immediately step to the lectern. The appellee's counsel should open with the phrase "May it please the Court" and introduce himself or herself before starting the argument. After the appellee's counsel concludes appellee's argument, appellant's counsel may return to the lectern to use any time reserved for rebuttal. No further argument will be allowed after the appellant's rebuttal.

You may use exhibits during the argument if they are part of the record. The Supreme Court's courtroom does not accommodate electronic display of exhibits. Consequently, any exhibits used must be large enough to be seen by the Justices from the counsel tables. Exhibits may also be handed to the Supreme Court Clerk for distribution to the justices. If you have copies of exhibits to be distributed, they should be given to the Clerk in advance of oral argument. Before oral argument, you should also notify opposing counsel of exhibits that you intend to use.

Once oral argument for one appeal concludes, the Chief Justice will call the next case for argument, if any. Counsel who have just finished arguing should promptly leave the counsel tables and take with them any materials that they brought. They may quietly leave the courtroom if they wish. Counsel for the next case should promptly take their seats at the counsel tables.

If three or more arguments are scheduled for a single session, the Court will generally take a short recess after the second argument.

Once all oral arguments have been completed for the session, the Court will adjourn. The Clerk will instruct all to rise while the Justices leave the courtroom.

D. Preparation and Delivery of Oral Argument

Joseph Story (Associate Justice, Supreme Court of the United States two centuries ago) stated in this excerpt from his poem entitled “Advice to an Advocate” that the appellate advocate during oral argument should do the following:

Be brief, be pointed; let your matter stand
Lucid, in order, solid, and at hand;
Spend not your words on trifles, but condense;
Strike with mass of thoughts, not drops of sense;
Press to the close with vigor, once begun,
And leave (hard the task!) leave off when done;...

1. Preparation

a. Visit the Court

Most good appellate advocates devote substantial blocks of time to preparation for their oral argument—generally from one week to several weeks. The variation depends on the attorney’s level of experience and the complexity of the case. Well in advance of your oral argument, visit the Court on one or more days and observe several oral arguments. There is only one courtroom for the Supreme Court, which is restored to its original elegance, and is beautiful and dignified. To choose good days to observe, check the dockets on www.nccourts.org. If possible, choose oral arguments on topics closely related to the topic of your case. If you are able to find a case with a topic closely related to the topic of your case, review the parties’ briefs online.

Also, look to see what the issues are in the cases being argued on the same day as your case. Occasionally, the issues are related and the justices will ask about an argument from a prior case that day that implicates your argument.

The Court visit is also a trial run for you to determine how long it takes to get to the Court, where to park, where the facilities are, and where you are supposed to sit, stand and put your belongings while you argue.

Another way to plan your visit is to look on the docket for names of practitioners and/or firms that you respect or that your colleagues recommend. Biographies of the justices and a seating chart are available at www.nccourts.org/Courts/Appellate/Supreme.

Dress professionally, and, if you bring anyone with you, be sure he or she dresses professionally as well. Be prompt and enter before the Court convenes or during breaks in the arguments. Note the timing, pace and style of attorneys’ arguments, and what seems effective. Note the concerns of the justices, how they present their questions, and how counsel most effectively answers their questions.

Adjacent to the courtroom is an attorneys' room. Attorneys can enter from the hallway, and from there enter the courtroom. It is wise to consider carefully whether to enter the attorneys' room. Many advocates prefer to avoid distractions by sitting in the courtroom and waiting for their cases to be called. Also, many advocates have found that it is best to go straight from home to Court; for example, do not go to the office and undertake new tasks. By the same token, it may be unwise to bring a client to Court during your oral argument. Your attention should be focused entirely on presentation of your argument. If for some reason you bring your client to courtroom, do not introduce or point to your client or mention his or her presence to the Court.

The Clerk's Office has available digital recordings of attorneys' arguments, which can be purchased for a small fee. Contact the Clerk's office for further information about how to obtain copies.

b. Moot

It is highly recommended that you arrange for a panel of your colleagues to sit as mock judges to moot your oral argument, at least once, but preferably twice. This gives you an opportunity to re-think your argument in response to unanticipated questions by your moot panel. Give both parties' briefs to each of the moot judges to read prior to the moot sessions. Schedule the first session about a week before oral argument. Then, re-group and work on your oral argument and have a second moot session a couple of days before the oral argument. If possible, have at least one attorney serving as a moot judge who is familiar with the substantive area of law. Also have at least one attorney serving as a moot judge who is unfamiliar with the substantive area of law.

c. Practice before a mirror and/or on video

It is very helpful to break bad habits and cultivate good habits by practicing on your feet, at a podium before a mirror or on video. There is nothing like observing one's own facial tic or wry smile at the wrong moment to motivate one to drop that sort of mannerism before oral argument.

2. Master your case

a. Master the record and transcript

Read and re-read the record and tab important documents in the record. It is critical to know what is contained in the documents—usually many of the facts at the heart of your case. Read and re-read the transcript of the proceeding in the court below. It is also critical to know intimately what transpired in the proceeding that is the subject of your appeal.

b. Master the judicial opinions and statutes

Several times, read, re-read, and highlight copies of both briefs and of statutes, regulations, rules, and judicial opinions cited in both briefs. As you read and study, make a list of questions and follow-up work. Mark clean copies of important statutes, other authorities, and opinions and take them with you to court. Beginning a few weeks before you argue, shepardize the statutes and opinions once a week, and again the day before you argue. If there are changes, submit a memorandum of additional authority pursuant to Rule 28(g). When possible, file the memorandum at least a few days before argument so the justices have the opportunity to review the material. At oral argument, counsel may not refer to any authorities not cited in the briefs or in a memorandum of additional authority. *See* App. Rule 28(g).

c. Master opposing counsel's arguments

Again, several times, read, re-read and highlight your opponent's brief. Note any arguments with potential merit and prepare your responses. Note any weaknesses in your argument and know how to address them; and note any weaknesses in your opponent's arguments and prepare your responses to them. Re-read the authorities in support of your opponent's arguments and be prepared to distinguish them, if possible. It is best to do this hard work now so that you are well prepared when you are on your feet at oral argument.

d. Prepare a short recitation of the facts

Choose key facts and prepare a short recitation of the facts.

e. Prepare an argument outline

Prepare an outline of the major issues and best legal and policy arguments. One method is to put the most important issues first, followed by issues of lesser importance in descending order. Keep condensing the outline until it is two to three pages long. Type the outline in all capital letters. One approach is to highlight key words first in yellow, then in other colors until the most important words are most highlighted. Finally, use your pen to make final comments, etc. When you begin practicing your oral argument, use your outline. After finishing your practice sessions, make needed revisions to the outline.

f. Develop a theme or theory of the case

Many advocates have found that the theme or theory of the case can best be developed in explanation of the case to non-attorney friends. The theory is based on the idea that ruling in favor of your client's position is the just thing to do. In one or two sentences, explain why the Court should rule in favor of your client. Keep this theory in mind as you prepare and argue your case.

3. At the Lectern

a. Opening

Greet the Court. Write down your opening lines, “May it please the Court,” followed by “Chief Justice and Associate Justices,” “I am (and write your name), and I represent (name of client).” If you are appellant, you should reserve time for rebuttal. The advocate should have an outline of what he or she intends to say if the Court allows him or her to give a brief opening without interruptions to ask questions.

b. The argument

Oral argument is a chance to respond to the justices’ questions about your case before they vote and write their opinion. You should be prepared to answer any potential questions about your case. Oral argument builds on extensive preparation by counsel. Do not read or memorize a presentation to the Court. However, prepare to 1) make a presentation in the event you receive no questions from the justices; and, 2) know how to answer questions, but still be able to steer the discussion back to your main points if you get many questions from the Court. Be respectful. Articulate clearly. Speak loudly enough to be heard and slowly enough to be understood. Use a normal tone of voice, and talk to the justices about the case. As in any setting, if you do not know the answer to a question, say so, but offer to do further research to answer the question for the judge in a supplemental memorandum to be filed after oral argument.

Relax, be yourself and keep eye contact with all the justices. Although your purpose is to engage in dialogue with the Court, your style should remain dignified. The microphone and timer lights use some of the limited space on the lectern, which may interfere with placement of an opened notebook or other items. Project your voice, speak into the microphone, and enunciate so that all the justices can hear you. It is important to speak with conviction.

When you have made your point, do not continue to argue it. When referring to a judicial opinion, to keep the flow of your argument, do not routinely give the citation to the Court. Do not refer to facts or materials outside the record. You may use exhibits entered into evidence at the trial court. However, use exhibits only when they will make a critical point that cannot be otherwise made. Be extremely cautious about using any kind of humor or informality in addressing the Court. The Court expects advocates to exhibit a serious and respectful demeanor. When the justices use humor, respond briefly in acknowledgment and appreciation of the humor and move on.

c. Answering questions

Listen very carefully to the Court’s questions. Ask for repetition or clarification if you cannot hear or understand. Respond to each of the questions or comments in a respectful tone of voice. Never interrupt the Court. So long as you are fully prepared, you will naturally cover your major points in answering the Court’s questions. The best approach is to remain flexible and open to answer questions in any order given. In response to a question, it is unwise to say, “I’ll address that point later” since the question contains what the judge is most concerned about. The Court may ask questions hypothesizing that the facts are slightly different in some respect, and asking whether the proposed rule would still apply. Do not answer these hypothetical

questions solely by stating, “That is not this case.” In responding to these questions, repeat your strong points and themes. Counsel should not try to avoid answering questions.

d. Conclusion

As in all good courtroom practice, request that the Court rule in your client’s favor and tell the Court specifically how you would like the Court to rule. Reiterate for the Court the one or two strongest arguments. Thank the Court.

4. Checklists (Adapted from Supreme Court and Appellate Advocacy, David C. Frederick, Thomson West (2009))

a. Basic Chronology of Preparation

- Review Briefs
- Review Records
- Review Judicial Opinions, Statutes, Rules, Regulations Cited in Briefs
- Draft List of Potential Questions
- Draft Opening
- Prepare Argument by Issue or/ Section of Briefs
- Research and Prepare Answers to Potential Questions
- Conduct Moot Courts
- Revise Argument/Answers
- Tab Record Materials and Briefs for Quick Reference
- Make List of Key Affirmative Points
- Develop Segues
- Prepare Argument Notebook
- Memorize Opening
- Review Argument Notebook--Judicial opinions, rules, regulations
- Review Briefs

b. Items to Prepare

- Key Portions of Record on Appeal
- Key Precedents
- Affirmative Points
- Responsive Points to Opponent’s Arguments
- Statutory Text
- Legislative History
- Applicable Rules of Procedure
- Policy Rationale for Rule Being Advocated
- Legal and Factual Analogies Raised by Issue Presented
- Opening
- Closing

c. Items in Argument Notebook

- Opening
- Affirmative Points
- Responsive Points to Opponent's Arguments
- Key Statutes, Rules, Regulations
- Brief Chronology of Facts and Proceedings
- Summaries of Judicial Opinions
- Questions and Answers
- Key Judicial Opinion or Opinions

d. Items to Take to Court

- Time-keeping device
- Argument Notebook
- Briefs
- Binder of judicial opinions
- Record on Appeal
- Pertinent Statutes
- Pertinent Rules and Regulations
- Pens
- Pad of paper
- Post-its or Tabs
- Throat lozenges
- Glasses
- Contact lenses, case, and solution
- Tissues
- Hi-liter
- Comb or hairbrush

Sources and Resources:

A Practitioner's Guide to Appellate Advocacy, Anne Marie Lofaso, Editor, American Bar Association, 2010, See Chapter 15, "Oral Argument," by Lawrence D. Rosenberg, partner, Jones Day, Washington, DC. (excellent essay)

Appellate Practice in the U.S., Second Ed., Robert L. Stern, Bureau of National Affairs, Bureau of National Affairs, 1989, See Chapters 13-15: 13-"Before the Argument"; 14- "Preparation for Argument"; 15- "The Contents of the Argument."

Art of Advocacy: Appeals, Houts, Rogosheske, Matthew Bender, 2009, See Chapters 40-42: 40-"The Tragic Passing of Oral Argument"; 41-"A Few Tips on Public Speaking"; 42-"Do's and Don'ts for Oral Argument—contains good chart of suggestions." (notebook with updates)

How to Handle an Appeal, 4th Ed., Herbert Monte Levy, Practising Law Institute, New York, 2009, See Chapter 9: "Oral Argument," (notebook with updates).

Making Your Case: The Art of Persuading Judges, Antonin Scalia and Bryan Garner, Thomson/West, 2008.

Mastering Appellate Practice in North Carolina, Continuing Legal Education, North Carolina Bar Foundation, 2007. See Chapter IV, “Keys to Succeeding at Oral Argument,” James G. Exum, Smith Moore, Greensboro, North Carolina.

North Carolina Appeals Deskbook, Gordon Widenhouse, Jr., Ed., Lexis Nexis, 2008.

Supreme Court and Appellate Advocacy, David C. Frederick, Thomson West, 2009.

Winning An Appeal, 4th Ed., Myron Moskowitz, Matthew Bender, 2007, See Chapter 5, “Oral Argument.” (excellent slim volume of practical advice)

Maps: Court and Parking

<http://www.godowntownraleigh.com/get-around/parking>

http://www.visitraleigh.com/pdf/Downtown_map_printable.pdf

<http://www.raleighconvention.com/raleigh-downtown-city-map.php>

<http://www.godowntownraleigh.com/go/state-court-of-appeals>

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Disclaimer *This Comparison Chart was not created by, and has not been adopted by, any of the appellate courts discussed herein. This Comparison Chart has no binding or precedential value.*

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 that 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>

	<i>NC Court of Appeals</i>	<i>Supreme Court of North Carolina</i>	<i>Fourth Circuit</i>
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>

	<i>NC Court of Appeals</i>	<i>Supreme Court of North Carolina</i>	<i>Fourth Circuit</i>
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).

	<i>NC Court of Appeals</i>	<i>Supreme Court of North Carolina</i>	<i>Fourth Circuit</i>
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.

	<i>NC Court of Appeals</i>	<i>Supreme Court of North Carolina</i>	<i>Fourth Circuit</i>
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>

	<i>NC Court of Appeals</i>	<i>Supreme Court of North Carolina</i>	<i>Fourth Circuit</i>
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>

	<i>NC Court of Appeals</i>	<i>Supreme Court of North Carolina</i>	<i>Fourth Circuit</i>
How Do I Start My Oral Argument?	“May it please the Court.”	“May it please the Court.”	“May it please the Court.”
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.

	<i>NC Court of Appeals</i>	<i>Supreme Court of North Carolina</i>	<i>Fourth Circuit</i>
If I Am The Appellant, How Do I Reserve Oral Argument Time For Rebuttal?	<p>Counsel should tell the senior panel judge at the beginning of oral argument how much time he/she wishes to reserve for rebuttal.</p> <p>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.</p> <p>Time designated for opening argument but not used can sometimes be added to the reserved rebuttal time if permitted by the Court.</p>	<p>Counsel should tell the Chief Justice at the beginning of oral argument how much time he/she wishes to reserve for rebuttal.</p> <p>If appellant exceeds his/her opening argument time, then his/her rebuttal time will be reduced accordingly.</p>	<p>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.</p> <p>Time designated for opening argument but not used at opening cannot be added to the reserved rebuttal time.</p>

	<i>NC Court of Appeals</i>	<i>Supreme Court of North Carolina</i>	<i>Fourth Circuit</i>
How Will I Know How Much Time I Have Remaining During Oral Argument	<p>Counsel must keep his/her own time, but the presiding judge will sometimes inform the appellant how much time remains for rebuttal.</p> <p>There is a working grandfather-clock in the courtroom to the right side of the speaker's podium that you can use to gauge your time.</p>	<p>A timer on the lectern will alert counsel to the total time remaining. However, appellant's counsel must keep track of time remaining for rebuttal.</p>	<p>The oral argument podiums have a three-light (green, yellow, and red) 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 (which does not include the rebuttal time reserved by an appellant). When five minutes of 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>
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>
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).