

5.1.02 | PRE-ARGUMENT REVIEW PANEL

Under Fed. R. App. P. 34(a)(2), oral argument is allowed in all cases unless a panel of three judges, after examination of the briefs and appendix, is of the opinion that oral argument is not needed. Oral argument will be allowed unless:

- (i) the appeal is frivolous; or
- (ii) the dispositive issue or set of issues has been recently authoritatively decided; or
- (iii) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Local Rule 34(a) sets out the court's pre-argument review procedure. Under Local Rule 34(a), cases are referred to randomly selected three-judge panels for review of the briefs and appendix in light of the oral argument criteria in Fed. R. App. P. 34(a)(2). If all of the judges of the panel conclude that oral argument is unnecessary, they may make any appropriate disposition, without oral argument, including but not limited to, affirmance or reversal. Loc. R. 34(a). A decision against oral argument must be unanimous, and if a case is decided without oral argument the decision on the merits generally will be unanimous also. IOP 34.2. Whenever at least one member of the review panel determines that oral argument would be of assistance, the panel notifies the clerk who places the case on the oral argument calendar. IOP 34.2.

(4th Circuit Court of Appeals // December 2023)