

5.1.04 | CALENDARING OF CASES FOR ARGUMENT

After removing cases affected by conflicts or pending motions, the clerk's office calendars the remaining cases from the tentative calendar list for oral argument or assigns them to standby status.

The clerk's office uses a computer program designed to achieve total random selection of three-judge panels, and merges those panels with the cases remaining on the tentative calendar list. IOP 34.1. The composition of each panel changes each day during court week except on those occasions where only one panel is sitting in a given geographical location. The varied assignment of judges to panels and the independent assignment of varied cases to panels is designed, insofar as practicable, to assure the opportunity for each judge to sit with all other judges an equal number of times, and to assure that both the appearance and the fact of presentation of particular types of cases to particular judges is avoided. IOP 34.1.

If a prior panel or judge has had previous involvement with the case by way of a pre-argument motion or a prior appeal, the clerk's office will make every effort to assign the case for oral argument to that judge or panel, but there is no guarantee that any of the judges who have previously been involved with an appeal will be assigned to a hearing panel. IOP 34.1.

The clerk's office sends counsel a "calendaring notice" approximately six weeks prior to the argument date, advising counsel of the date of oral argument and the time by which counsel must register for argument. The notice directs counsel to acknowledge who will appear and argue the case and state how much argument time will be used. In consolidated criminal cases, the court requires that counsel appear on behalf of each defendant separately represented, unless the defendant signs a waiver of counsel's appearance and co-defendant's counsel certifies in advance of argument that he or she is prepared to argue on behalf of the defendant whose attorney is not present. Counsel uses the entry oral argument acknowledgment to acknowledge that they are arguing or appearing for oral argument.

Once a case has been calendared for a date certain, it will be removed from the argument calendar only for good cause shown for the requested relief and that the relief could not have been requested within the tentative calendar period. Loc. R. 34(c). Continuance of an established oral argument date is not granted because of a prior professional commitment. Although the case will



not be removed from the calendar because of a scheduling conflict by counsel after the notification of oral argument has been issued, the court may direct another lawyer from the same firm to argue the appeal if counsel of record cannot be present. Loc. R. 34(c) & 28(c) (court will interpret listing of an attorney on a brief as a representation that he or she is capable of arguing the appeal if lead counsel is unavailable).

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

