

5.2.07 | ARGUMENT TIME

A digital clock is used to track argument time. The time appears green until only five minutes of argument time remain, at which point it changes to yellow. It changes to red when argument time has expired.

All parties to a side must share the time allotted for oral argument. The party filing the first notice of appeal or, in the event the parties noted an appeal on the same day, the plaintiff in the proceedings below will be deemed the appellant for purposes of both briefing and oral argument. Fed. R. App. P. 34(d); 28.1(b). Each side is normally allowed 20 minutes, except in en banc cases, in which counsel is allowed 30 minutes per side. In social security disability cases, black lung cases, and labor cases where the primary issue is whether the agency's decision is supported by substantial evidence, and in criminal cases where the primary issue involves the application of the sentencing guidelines, each side is limited to 15 minutes. Loc. R. 34(d).

Since the appellant is allowed to open and close the argument, counsel for appellant is asked to allocate their time between opening and rebuttal. Loc. R. 34(d). In a cross-appeal, both appellant and appellee may reserve rebuttal time. No more than 1/3 of the time may be reserved for rebuttal. In a 30-minute argument, counsel may reserve up to 10 minutes for rebuttal. In a 20-minute argument, counsel may reserve up to 7 minutes for rebuttal. In a 15-minute argument, counsel may reserve up to 5 minutes for rebuttal.

It is recommended that no more than two attorneys argue per side. Loc. R. 34(d). Care should be taken to avoid duplication of argument. Fed. R. App. P. 34(d).

Counsel may request additional time by written motion stating reasons, filed after notification that the case has been calendared for oral argument. Loc. R. 34(d). At argument, the panel may reduce or increase the amount of time allotted for oral argument. Loc. R. 34(d).

Briefs for cases assigned to an argument panel are distributed to the panel at the time the assignments are made, and the judges hearing argument will have read the briefs and be familiar with the case. Therefore, in oral argument, counsel should emphasize the dispositive issues. Loc. R. 34(d). Counsel should not read at length from briefs, records, or authorities. Fed. R. App. P. 34(c).



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

