



**4TH CIRCUIT COURT OF APPEAL'S
PRO SE HANDBOOK
VOL 5 CHP 2: ORAL ARGUMENT**

Volume 5 | Chapter 2
Oral Argument

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4TH CIRCUIT COURT OF APPEALS'
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VOLUME 5 CALENDARING & ARGUMENT

CHAPTER 2 ORAL ARGUMENT

ITEMS 5.2.01 through 5.2.14

DATE 12/1/2023



5.2.01 | RICHMOND SESSIONS

The court sits in Richmond, Virginia from Tuesday-Friday during six separate "court weeks" scheduled between September and June. The court hears and decides cases in panels consisting of three judges. Each panel hears oral argument in four cases each day during court week. Additional days and sessions are added to the schedule as needed.

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5.2.02 | SPECIAL SESSIONS

Special sessions are scheduled at law schools and other locations within the Circuit. The court generally hears three cases at a law school, followed by a question and answer session.

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5.2.03 | COURTHOUSE SECURITY

All visitors are required to show photo identification before they are directed through screening by Court Security Officers. Prohibited at all times are weapons and potential weapons, including firearms, pocket knives, scissors, letter openers, screw drivers, mace, and pepper spray. Umbrellas must be left at the entrance. Food and beverages may not be brought into the Courthouse or Annex. Storage lockers are not available. Additional time should be allowed to complete security screening.

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5.2.04 | ELECTRONIC DEVICE POLICY

On the days the court is hearing argument, attorneys and their staff may bring electronic devices into the Courthouse or Annex (other than devices that serve only as cameras or recorders). All electronic devices must be turned off in any courtroom or chambers but may be turned on with all sounds muted during oral argument of counsel's case to enable counsel to refer to documents previously downloaded to the device. Wireless Internet access is available for use of personal electronic devices in the library but not in the courtrooms. Electronic devices are prohibited on days the court is not hearing argument. More information may be found in the court's Electronic Device Policy

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5.2.05 | PRE-ARGUMENT REGISTRATION

Attorneys appearing for oral argument must register at least 30 minutes in advance on the morning of argument to learn of panel assignment, courtroom assignment, order of appearance, and allocation of oral argument time.

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5.2.06 | ARGUMENT PANEL

The identity of the argument panel is kept confidential until the morning of oral argument.

The chief judge presides over en banc sessions of the court and over all three-judge panels on which the chief sits. The active circuit judge most senior in service on a panel is the presiding judge for all other oral argument panels. The presiding judge sits in the center of the panel; the next most senior judge sits to the right of the presiding judge; and the least senior judge on the panel sits to the left of the presiding judge.

An appeal may be heard and decided by two of the three judges assigned to a panel, when one judge becomes unavailable. If a panel is reduced to two and the two cannot agree, however, the case will be reargued before a new three-judge panel which may or may not include prior panel members. IOP 36.2.

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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).



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5.2.08 | INTERNET AVAILABILITY OF ARGUMENT AUDIO FILES

Audio links to the court's digitally recorded oral arguments are made available on the court's internet site, without charge. Counsel should not include in their arguments any sensitive personal information (juvenile names, dates of birth, social security numbers, financial account numbers, home addresses in criminal cases) or sealed criminal information (presentence reports, statement of reasons for judgment, juror names, victim statements, sealed plea agreements, or sealed motions for downward departure for substantial assistance).

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5.2.09 | INTERVENORS

Intervenors are treated as parties for purposes of both briefing and argument, and share argument time with whichever side they support.

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5.2.10 | **AMICUS**

Amici curiae do not participate in argument except upon permission of the court. Fed. R. App. P. 29. If such a motion is granted, amicus is typically permitted to argue on time ceded by the party whose position they support.

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5.2.11 | EXHIBITS

Counsel wishing to use physical exhibits at argument should make prior arrangements in writing with the clerk. Exhibits must be part of the lower court record to be used during argument. The court may request the exhibits be distributed as copies rather than enlarged for presentation in open court. Prior motion and leave of court are required to use physical or electronic exhibits at argument. The motion must indicate whether opposing counsel has any objection.

Advance arrangements must be made with the clerk's office if counsel wishes to place any physical exhibits in the courtroom. Such arrangements are best made after receipt of notice of oral argument. Loc. R. 11(c). Counsel should make arrangements to have exhibits placed in the courtroom before court convenes on the date of argument. After argument, counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. Fed. R. App. P. 34(g).

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5.2.12 | SEATING

Only counsel and law students practicing under Local Rule 46(a) may sit at the attorney tables. Parties must use general seating outside the well of the courtroom. Counsel for the first case should be seated at counsel table when court convenes. The presiding judge will call upon appellant's counsel to begin argument.

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5.2.13 | RECESS

The court may choose to hear the day's cases without a break or may take a brief recess between cases.

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5.2.14 | GREETING

Traditionally, Fourth Circuit judges come down from the bench following argument to shake hands with counsel and thank them for their advocacy.

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APPENDIX



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