

Remote Appellate Oral Argument A Checklist for Judges & Justices

A Pandemic Resource from CCJ/COSCA

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As state appellate and supreme courts have proceeded to conduct oral arguments remotely, this resource provides a few practice tips focused on preparation by justices and judges. These have been gathered from several state appellate and supreme courts that have been early adopters and incorporate many of the lessons they have learned. Because this checklist applies to all types of appellate courts, the title judge is used to reference all judicial officers.

- ✓ Adopt uniform virtual backgrounds. Check to see how your background appears in advance. Check to see how movement in your chair affects the appearance of the background (i.e., does movement cause virtual background to break up or become distorted?)
- ✓ Adopt uniform appearance of all judges' names.
- ✓ Be sure you have your robe available at your remote location.
- ✓ Position the camera around eye-level so that your head and shoulders are visible. Your hairline and forehead should appear in the top one-third of the display. You may wish to elevate your laptop or tablet to set the camera at your eye level.
- ✓ Sit facing a light source such as a window or a bright interior light, so that your face is illuminated. Avoid sitting with your back to a window or light, which will result in your face appearing "shadowed." Check it out in advance to see how you appear.
- ✓ Use "Gallery View" instead of "Active Speaker" to ensure you can see all participants.
- ✓ Do not have a fan running in your remote location. Movement of the fan constantly changes the image, which results in more data being transmitted.
- ✓ Decide in advance how to handle any technical problems that may arise during the oral argument, i.e., if your Internet connection fails. Advise participants accordingly (i.e., if there is a technical problem, the clerk may move participants to a waiting room until the problem is resolved.)
- ✓ Determine in advance how the presiding judge or clerk will communicate with all judges, if necessary, such as through a cellphone group text message (be sure cell phone is on vibrate), using the chat feature, or an alternative method.

- ✓ Determine how the timer will be displayed. Some options are using a timer app or displaying the timer by joining the meeting with an iPad pointed at the timer.
- ✓ Determine whether judges should “Leave Meeting” between arguments, or only at the end of the day’s oral argument sessions.
- ✓ Determine when and how “Breakout’ Rooms might be utilized.
- ✓ Decide how mute buttons will be used. Will they be disabled, controlled by the clerk, or will you control your own mute button? Be sure you know how to “mute” and “unmute.”
- ✓ Be sure that remote locations are secure from outside noise or interruption.
- ✓ Be sure cell phones are on vibrate (in the event of a group text message from the presiding judge or clerk), and that tablets and other devices are on silent or turned off. Silence any phone, email, or message notifications on all nearby devices.
- ✓ Judges and all participants, including attorneys and unrepresented parties, should follow the same professional etiquette they would follow in the courtroom.
- ✓ While the court may adhere to its usual procedure of introducing and identifying each judge, and introducing each new case, you may wish to consider deviating from some usual procedures. For example, some courts using remote oral argument allow attorneys and unrepresented parties to proceed uninterrupted for a short period of time before allowing questions from the judges.
- ✓ Determine in advance how you will proceed asking questions. Some techniques include raising hands to be recognized by the presiding judge, proceeding by seniority, or just jumping in with the presiding judge determining the sequence if there are multiple questions.
- ✓ Decide in advance who will be allowed to be present with the attorneys. For example, will parties be allowed to be in the room with their attorneys, or will they be directed to a livestream or web broadcast? If allowed to be present, make sure that court staff controls their video and audio.
- ✓ Determine in advance how post-argument conferences will be conducted. Will you use the same virtual meeting or leave the argument meeting and log into a conference meeting? If using the same meeting, be sure that only the judges remain online.
- ✓ Determine when and how the digital “invite” for oral argument will be sent to the judges, such as the evening before, directly to their calendars, etc.
- ✓ Do not share your Meeting ID or Password with anyone.
- ✓ Hold at least two practice sessions. Enlist court staff to pose as attorneys so you can see exactly how attorneys will appear and sound.
- ✓ Adopt clear instructions for participants. The clerk should meet with the participants in advance to review the rules of the proceeding and technical requirements.

- ✓ Confirm that each participant can see and/or hear all other participants prior to commencing each argument.
- ✓ Remind participants that the oral argument session is live and public, and possibly being livestreamed, and that normal courtroom decorum rules still apply.
- ✓ Participants may overlap when talking. They should be reminded to pause occasionally, if possible, to provide an opportunity for judges to ask questions. Remind participants to speak slowly and not interrupt. If overlap occurs, ask that the comments be repeated. Remind participants to mute their microphone when not speaking and unmute to speak.
- ✓ Consider asking participants to complete a Post-Oral Argument survey for useful feedback. This is easily done with Survey Monkey or other survey tool and can provide valuable feedback. Click [here](#) to see the Washington Supreme Court’s survey.
- ✓ Courts may wish to develop their own Checklists tailored to their particular operations. Click [here](#) for Florida’s *“Best Practices for your Video Oral Argument Session – Judges Edition.”*
- ✓ Idaho’s Administrative Office of the Courts created a training video for lawyers’ use of Zoom for remote hearings. The video provides practical advice for attorneys on how to effectively participate in hearings using Zoom and may be useful for judges as well. Click [here](#) to view the video - topics covered include:
 - Notice of Hearings / Invitations to Participate
 - Downloading and Getting Started with Zoom
 - Getting Ready (appearance, demeanor, setting, lighting)
 - Preparing your client / witness
 - Features (waiting room, breakout room, chat, screen share with annotations)

Click the link below for more information on conducting remote oral arguments, including Guidelines for Attorneys and other resources:

https://nationalcenterforstatecourts.app.box.com/s/n7w8zu89tbayfjr0qz6h7mn6nrg0x6qh/folder/1105_94198866