

## **CHAPTER 18: ORAL ARGUMENT IN FLORIDA'S APPELLATE COURTS AND FLORIDA'S SUPREME COURT**

Oral argument in an appeal is similar to a formal hearing in the lower tribunal. It gives the parties a chance to formally and respectfully talk, in an orderly way, about their appeal or petition with the appellate judges or supreme court justices. Most importantly, oral argument is a chance for the parties to answer questions that the judges and justices may have about the case. Oral argument is based on the arguments presented in the briefs. Parties should not discuss matters not raised in the appellate briefs and/or matters outside the appellate record.

Oral argument is not granted in every case. The First, Second, Third, Fourth, and Fifth District Courts of Appeal often, but not always, grant timely requests for oral argument in cases involving most final orders. In the Florida Supreme Court, oral argument is granted far less often. If oral argument is requested and granted, it is held after all the parties have filed their initial, answer, and reply briefs.

Florida Rule of Appellate Procedure 9.320 governs oral arguments. A party who wants oral argument must ask for it by filing a written request for oral argument. In appeals, any party's request for oral argument must be served within 10 days after the date that the last brief is due to be served (even if that brief is not actually served). For example, the request ordinarily must be served within 10 days after the reply brief is due, but if there is a cross-appeal, the request will be due within 10 days after the cross-reply (the last brief to be filed in that instance) is due to be served. In proceedings commenced by petition, any party must serve a request for oral argument within 10 days after the reply brief is due.

Thus, oral argument generally cannot be requested in the appellate brief. Again, it must instead be requested in a separate written motion or request. If oral argument is granted, the court will send an order notifying the parties when and where the argument will be held. The Florida Supreme Court generally holds oral arguments the first week of each month, except in July and

August. The arguments take place at the Florida Supreme Court in Tallahassee. Oral arguments in the district courts will take place in the courthouse where that district court of appeal is located. Each side is usually given between 10 and 20 minutes to argue their side, depending on the type of case. The appellant or petitioner goes first. The appellant usually begins by stating, “May it please the court,” and their name. Often, the appellant will then ask the court if he or she can “reserve” a certain number of minutes for rebuttal (usually 3 to 5 minutes). The appellant then presents his or her argument, emphasizing the key points in the appeal, and answering any questions the court asks. The appellee’s turn is next, and he or she argues his or her case. After the appellee argues, the appellant usually gets a brief chance to respond, if he or she reserved time for rebuttal. (The appellee does not get a rebuttal).

The order scheduling a case for oral argument usually has a list of other cases the court will hear the same day. The arguments usually begin first thing in the morning (8:30 or 9:00 a.m.). An appellate litigant who is going to oral argument should arrive and check in earlier than the time listed for argument, usually right when the courthouse opens. This is because the court sometimes calls cases in a different order than listed in the schedule.

Before oral argument, it would also be beneficial to watch oral arguments in other cases. Oral arguments at the Florida Supreme Court can be viewed live on the internet (<http://wfsu.org/gavel2gavel/live-hd.php>), or by watching some local cable TV stations. People can also watch past oral arguments from the court’s archives (<http://wfsu.org/gavel2gavel/>). Information on viewing the arguments is contained on the Florida Supreme Court’s website, [www.floridasupremecourt.org](http://www.floridasupremecourt.org) under “Oral Arguments.” People can also watch oral arguments held at the district courts of appeal live on the internet and can view past oral arguments from the archives of some of those courts. Information on viewing the arguments is contained on those courts’ websites: [www.1dca.org](http://www.1dca.org), [www.2dca.org](http://www.2dca.org), [www.3dca.flcourts.org](http://www.3dca.flcourts.org), [www.4dca.org](http://www.4dca.org), and

[www.5dca.org](http://www.5dca.org), under “Oral Arguments.”

Unlike a lower tribunal, which may make a decision at or right after hearing, the Florida Supreme Court and the district courts of appeal will not decide the case at or right after the oral argument. Rather, the appellate court will send the parties a written decision, an opinion, or other order deciding the appeal, often many months after the argument. The length of time it takes the court to decide the appeal depends on a number of factors, such as the complexity of the case and whether a written opinion explaining the court’s reasoning is warranted.