

## Virtual Success: Preparing and Delivering an Effective Virtual Argument

By Justice Judi French, Supreme Court of Ohio

Oral arguments can be challenging for many lawyers, even under the best of circumstances. Add the challenge of remote communication to those circumstances, and **lawyers may wonder whether a virtual oral argument is worth all of the expense and difficulty.**

In all but a very few cases though, I find that oral arguments are helpful to me as a justice on the Ohio Supreme Court. Arguments may not change the tentative conclusions I reached after reading the briefs, but they almost always bring clarity to the issues.

By answering questions during argument, lawyers fill gaps in the briefing, address hypothetical situations that differ slightly from the facts before us, and shed additional light on proposed outcomes and remedies. So, **even though virtual arguments may be more challenging, if I were a lawyer, I would not give up the opportunity to speak directly to the appellate judges or justices deciding my case,** to answer their questions, and to persuade them that my view of the issues is the right one.

Every court is different, and every judge or justice on every court has his or her way of approaching oral arguments. But if I were preparing for a virtual argument, here are some of the things I would be thinking about.

- 1. Know that the best foundation for an effective oral argument, whether virtual or not, is an effective brief.** This much hasn't changed. You are going to make your case in your brief. You will define the propositions of law or assignments of error. You will set the standards of review, your version of the facts, your best legal analysis, and the logical conclusions you want the court to reach. Oral argument is useful and important, but the brief really provides the structure for the court's consideration of the issues.
- 2. Make a roadmap of your argument.** This hasn't changed either. Consider: what are the few basic points you want to stress in the limited time you will have to argue? This is your argument roadmap, and it's important that you pare it down to the points you can reasonably address in the allotted time.
- 3. Consider your surroundings.** Since you won't be able to come to the court for the argument, consider where you will be. You want a quiet room where you will not be interrupted. You want a plain background that won't be distracting. You want a space where you can see your notes and have a glass of water nearby. And you want your computer or laptop set up in a way that projects a good image and has good audio. This is not a time to experiment with virtual backgrounds or clever messaging. Keep it simple.

4. ***Become familiar with the technology you will be using.*** The court is likely to set up a practice session or two, and you should take full advantage of those opportunities. Be sure you are comfortable with logging in and using the microphone. ***Have emergency numbers handy so that if things go wrong, you will be able to troubleshoot quickly.***
5. ***Watch other court sessions.*** If you were going to argue at the court, I would suggest that you visit the court, get familiar with the surroundings, and learn the regular proceedings. My advice for virtual arguments is the same: get to know the proceedings. Watch what the chief justice or presiding judge does. Should you ask for rebuttal time? Does the presiding judge allow additional time for rebuttal, even if you have used your time? (Chief Justice Maureen O'Connor, for example, generally allows counsel 30 seconds or a minute for rebuttal, even if counsel has used the allotted time.) Is there a break between arguments and for how long? Is the time clock visible? Learning these practical details will help you feel more comfortable.
6. ***Practice your argument.*** Moot court sessions are a valuable tool for smoothing out your main points and for anticipating our questions. These sessions may be even more valuable for virtual arguments where you have to navigate different technology. Gather some trusted colleagues for a virtual moot court and let them pepper you with questions. There really is no substitute.
7. ***Decide ahead of time whether you will sit or stand and then stay that way the entire time you are visible.*** If you are seated during opposing counsel's argument and then stand for your argument, there is an awkward on-camera adjustment. I think you can stay seated during your presentation, but you should find out if the court has a preference or requirement that you stand during your argument.
8. ***Wear the same professional clothing you would wear if you were coming to the court.*** With a tight camera shot, be sure your clothing does not become a distraction.
9. ***Begin your argument the same way you would otherwise begin: "May it please the court." Start with the roadmap of your analysis and the major points you will be making.*** It is not necessary to begin with a statement of the facts. We have all read the briefs, and we are ready to jump into the issues. You may consider saying something like, "I know you have read the briefs. I won't give a detailed statement of the facts unless you would like to hear them." That's a nice cue for any judge or justice who has a question about the facts or procedural history. ***You only have a limited amount of time to make your argument; get to it.***
10. ***Above all else, answer our questions.*** In a virtual argument, I think it becomes even more important to listen carefully to questions. Depending on the setup and the audio, it may be difficult to discern which justice asked the question, and you may have to listen and watch more closely. If you are unsure about whether you heard the question entirely, just ask for the question to be repeated. ***I like to think of every question I ask***

***as a gift to counsel.*** With my question, I'm telling you—before I vote—what concerns me. That's your best shot to convince me that your view is the right one.

- 11. *Answer the questions we asked your opponent, too.*** If you are counsel for the appellee, try and begin your argument by answering the questions we asked the appellant's counsel. You will want to convey your agreement or disagreement and use those questions to your best advantage. And for appellant's counsel, during rebuttal, be sure to answer the questions we asked appellee's counsel, too.
- 12. *Try not to get distracted.*** Your screen may show every individual judge or justice, along with opposing counsel. While you are speaking, you may see the judges reach for files or take notes or take a drink. These movements are more distracting on-screen than they would be on the bench. Watching other virtual arguments may help you be aware of these movements without allowing them to be distractions.
- 13. *Stay calm and carry on.*** You will be a better advocate if you can stay calm and focused during your argument. Learn ways to do that, whether through visualization, mindfulness or some other technique. Technology tends to fail at the worst times, so anticipate technological issues and have a plan for resolving them. Whatever the issue, try and stay calm while you resolve it.
- 14. *Finally, remember that we want you to give your best argument.*** If you are able to present a clear and concise argument, then we are better able to decide the important issues before us. We are all learning the technique of virtual meetings and presentations. I am confident that, together, we can achieve the efficiency and clarity that lawyers, litigants, and the public deserve.

*Since 2013, Judi French has served as a justice of the Ohio Supreme Court. Before then, she served as a judge on the Tenth District Court of Appeals in Ohio. As an attorney, Justice French argued two cases before the United States Supreme Court and also argued before other federal and state courts. In 2015, United States Supreme Court Chief Justice John Roberts appointed her to serve on the Federal Appellate Rules Committee. With a passion for equal justice and a special interest in civic education, Justice French is committed to serving as a resource for the people of Ohio.*