

**Lesson:** How to Argue a Case in the Colorado Appellate Courts

**Objective:** Understand the procedure for oral arguments; prepare for the actual oral arguments. (*Colorado Model Content Standards: Theater, Standard 5; Reading and Writing, Standards 2, 4, and 5*)

**Activities:** Teacher lecture (background information and lecture outline provided); class participation activity; and homework assignment.

**Outcomes:** Students will understand how lawyers prepare for and use their argument time.

**Grade Level:** Grades 9-12

**Anticipated classroom time:** 45-60 minutes

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**Message from former Colorado Supreme Court Chief Justice Michael L. Bender:**

Oral argument is an important part of the appellate process. It is the way that each attorney can talk directly to the court and explain why his or her client's position should prevail. As part of the argument, the judges will ask the attorney questions about the case. Thus, as a practical matter, the attorney will often not be able to finish a prepared speech. To be an effective persuader, the attorney must do a number of things:

1. The attorney must prepare thoroughly. This means the attorney must know all the facts of the trial, be familiar with all cases and statutes argued by both sides in the brief, and understand fully the opponent's arguments.
2. After doing this homework, the attorney must decide what are the two or three strongest arguments he or she can make that have the best chance of convincing the court. Sometimes, this will mean emphasizing the strengths of a part of the written brief, or a counter position to an opponent's argument, or a combination of both.
3. The attorney should talk to the court in a conversational manner and not read the argument. In response to individual court members' questions, the attorney must answer each question directly and candidly. Thus, as part of preparation, the attorney must consider concerns that court members might have about the case and anticipate questions that may be asked.
4. Lastly, the attorney should frame his or her entire talk around the perspective of what would be important to know and take into consideration if the attorney were on the court and had to decide the case. In this way, the court will be more open to the attorney's arguments than if the attorney simply argues why his or her client should win.

## **Teacher background information:**

### **Important terms to know:**

- **Appellant:** The party appealing the lower court's decision.
- **Appellee:** The party prevailing in the lower court and arguing, on appeal, against setting aside the lower court's decision.

During oral arguments in front of the Colorado Court of Appeals, each side is allowed 15 minutes to present its side of the case, which includes questioning by the court. The time limits are strictly enforced. However, the appellant (the party appealing the lower court's decision) goes first and has the option to "reserve" some minutes to use after the appellee (the party prevailing in the lower court and arguing, on appeal, against setting aside the lower court's decision) has presented its case. For example, an appellant can use 10 minutes presenting its case, reserving the remaining five minutes to summarize its argument or to address anything the appellee may have brought up during its 15-minute presentation. The appellee cannot reserve any of its minutes. Any party may make a motion to be granted additional time for argument, but such a motion must be filed within 10 days after the briefs are closed and must show good cause for the additional time for argument. The Court may terminate oral arguments if it believes further argument is unnecessary.

Similar time limits and procedures apply in the Colorado Supreme Court, where each side is allowed 30 minutes to present its side of the case.

Colorado's appellate rules contain certain requirements concerning the content of oral arguments. First, the appellant must include a "concise statement of the case." Second, the lawyers are forbidden to read "at length" from briefs, from the record, or from authorities. Third, counsel is limited to arguments raised in the briefs, unless permitted by the court. Fourth, when multiple parties urge the same result, lawyers are directed to avoid duplication of argument.

When preparing for an oral argument, lawyers review the briefs, and summarize the case and their arguments. They prepare themselves to answer questions from the Court and try to anticipate sticking points with some of the personalities on the bench. Some may role-play with other attorneys in their office; some may practice in front of a mirror.

**Class participation activity:** The teacher reads aloud the case synopsis provided. The class fills out the worksheet provided.

**Homework assignment:** Students are given a copy of the case synopsis provided. They choose one side for which to argue, then fill out the worksheet provided.

## **Lecture outline:**

### **Oral arguments in front of the Supreme Court**

- Each side allowed 30 minutes (includes questioning by the court)
- Appellant goes first
- Appellant has option to “reserve” minutes to use after the appellee has presented its case
- Appellee cannot reserve any of its minutes

### **Oral arguments in front of the Court of Appeals**

- Each side allowed 15 minutes
- Appellant goes first
- Appellant has option to “reserve” minutes to use after the appellee has presented its case
- Appellee cannot reserve any of its minutes

### **Content of oral arguments**

- Appellant must include “concise statement of the case”
- Lawyers forbidden to read “at length” from briefs, from the record, or from authorities
- Counsel limited to arguments raised in the briefs
- When multiple parties urge same result, lawyers directed to avoid duplication of argument

### **Lawyers preparing for oral argument**

- Review briefs
- Summarize the case and their arguments
- Prepare to answer questions from the Court
- Anticipate sticking points with some justices/judges
- Role-play
- Practice in front of mirror

### **Class participation activity:**

- After going over the background information to inform students how time is used during oral arguments, the teacher will read aloud the case synopsis provided.
- The class will decide how to use time in an oral argument and fill out the worksheet provided.

Fifteen one-minute intervals are listed below for each side to argue. As a class, delineate how you would spend those 15 minutes for each side. How would you start your argument, and how many minutes would you spend on your introduction? What issues would you bring up first? What would you save until last? What points would you emphasize? On the appellant's side, would you reserve any minutes for a rebuttal?

**Appellant(s)**

**Appellee(s)**

**1.**

**1.**

**2.**

**2.**

**3.**

**3.**

**4.**

**4.**

**5.**

**5.**

**6.**

**6.**

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**13.**

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**14.**

**15.**

**15.**

**Homework assignment:**

Read the case synopsis provided. Put yourself in the role of one of the lawyers who is to argue before the justices. Because the facts surrounding the appeal are rather confusing and lengthy, it is not important that you understand every detail, as long as you comprehend the larger issues at hand.

Choose a stance: appellant or appellee. Answer the following questions.

Which side did you choose to defend?

Outline your major points and decide how many minutes (out of 15) would you spend on each:

What other topic would you want to mention or emphasize?

How many minutes, if any, would you try to reserve (appellant only)?

Think of five questions the judges might ask you.

- 1.
- 2.
- 3.
- 4.
- 5.

How would you respond to each of the five questions?

- 1.
- 2.
- 3.
- 4.
- 5.

Think of five questions the judges might ask the other side.

- 1.
- 2.
- 3.
- 4.
- 5.