

# Appellate Practice

American Bar Association Litigation Section

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## Five Simple Rules for a Smooth Oral Argument in the Seventh Circuit

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Courts have their idiosyncrasies and judges, their pet peeves. Knowing those quirks probably won't get you a win, but *not* knowing them can be disastrous, particularly if you're blissfully unaware of them until a judge interrupts you at oral argument and says, "Counsel, before we get to the merits .. ."

Not infrequently, advocates in the Seventh Circuit find themselves in precisely this situation, derailed by a train they never saw coming and, instead of cogently laying out their case, fighting to get back on track.

It doesn't have to be that way if you follow these five simple rules:

1. **Make sure the Court has appellate and subject-matter jurisdiction.** Advocates occasionally treat jurisdiction as a *secondary* concern. Do so at your peril. At oral argument, the court will be quick to remind you that jurisdiction always comes *first*. Be ready to argue justiciability doctrines such as standing and, even more basically, make sure you're appealing a *final* judgment or have grounds for an interlocutory appeal.
2. **Put the *judgment* in the appendix.** Did you ever read a judgment in law school? Probably not. That's because a court's *opinion* is typically separate from its judgment. Under Federal Rule of Civil Procedure 58, trial courts generally must enter a judgment as a separate docket entry that orders relief. And under Federal Rule of Appellate Procedure 30 (and Seventh Circuit Rule 30), you must include both the opinion and the *judgment* in the appendix to your brief. At oral argument, don't be caught pointing to an opinion when the court asks, "Where's the judgment?"
3. **Pick a readable typeface.** The Seventh Circuit Practitioner's Handbook emphasizes that the court prefers "typefaces that are designed for books" because they are more readable. Ignoring this guidance can turn oral argument into a lecture on typography. Don't take that path. Make your brief easy on the eyes, and the judges may go easier on you. In short, avoid Garamond and Times New Roman; stick to Century Schoolbook or Palatino Linotype.
4. **"Use real words."** Quite often, advocates in the Seventh Circuit are admonished, "Counsel, we wish you would use real words." Translation: Instead of using acronyms like FOIA or

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initialisms like DOJ, the judges would prefer that you say, “the Freedom of Information Act” or “the Department of Justice.” Now, if you prepared for argument using the acronym or initialism, it can be hard to shift gears when you’re called out. So just use the full name once, and then say, “the act” or “the government” after that.

5. **Answer the question.** One final thing you never want to hear at oral argument is, “I’m going to ask one more time ...” It’s hard to go off script, but oral argument is not an opportunity to read your brief; it’s an opportunity for the judges to ask questions. And answering them usually starts with a yes or no *followed* by an explanation. Many advocates put the cart before the horse, but when you start by explaining, it can sound like you’re dodging. So answer the question, and if you don’t know, say so and, if the context calls for it, consider offering to file a supplemental brief.