

White Collar & Criminal Litigation

American Bar Association Litigation Section

Arguing a Multi-Party, Multi-Part Motion

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Oral argument is an opportunity. An opportunity to advance your position with precision and clarity. Seizing that opportunity can be challenging when arguing a motion raising many issues, in a multi-party case where airtime must be divided between those issues and parties.

Recently, I was one of several counsel to argue a motion to dismiss a complaint filed against 11 co-defendants, represented in total by four sets of counsel. Each defendant had moved to dismiss on multiple, independent grounds.

In this practice pointer, I share some of the best practices for navigating such a complex oral argument with multiple parties.

Rules of the Road

At the outset, there are some basic principles to mind.

Know your court. Should you expect a hot bench, or will you be steering the ship? Will the parties be given specific time constraints? Will your side argue first, or will opposing counsel? Plan accordingly.

Prepare. This goes without saying. But focus specifically on the unique points you need to make to ensure your own client's success, and how to make those points with precision in limited time.

Coordinate in common interest. Speak with counsel for any parties with whom you are aligned. Discuss areas each of you plans to cover. Try to avoid repetition. Go into court with a plan.

Advise the court that you've coordinated and are aiming for efficiency and avoiding overlap. Share your proposed path forward for the argument, and advise the court which issues each party plans to cover.

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During argument, listen and adapt. If someone makes the argument you planned to make, don't plow ahead and repeat it anyway. Join in that argument by reference, and then highlight why it applies with particular force to your client.

Finally, be judicious in answering questions directed to any or all parties. Do the question and answer directly bear on your client? Do you need to respond to ensure that your position is addressed and protected? If so, signal to your colleagues and the court that you will answer on behalf of your client. If another lawyer jumps in first, ask if you too may be heard just briefly—and only on how that issue impacts your client.

(Re)frame and Roadmap

With all of those first principles in mind, let's focus on how to use your precious minutes.

We all know the concept of primacy and recency. Especially in a complex oral, multi-party argument, your first words should be powerful, impactful, and focused on your client. Frame (or reframe, if the opposing side has argued first) the issues in your favor, state why you should win, and then offer a roadmap for how you'll use your time to advocate for that outcome.

Advance Your Position

Oral argument in a complex case with multiple parties is not the time to rehash the presumably extensive briefing or to simply rest on the briefs. It is an opportunity. It is a time to *advance* your position—to move the ball forward.

First, address any open questions or loose ends—respond to arguments left unanswered in your opponent's reply brief or raised by your opponent's oral advocacy. Do not leave the court wondering, or with work left to do back in chambers.

Second, focus on the arguments or cases that are the clearest path to victory for your client. Do not get lost in the weedy nuances. Focus on the issues the court absolutely must resolve to rule in your favor.

Overall, make it simple. The court has before it a multitude of written arguments, footnotes, and string cites. Avoid the temptation to speak like you write. Use simple language that cuts through the "legalese." Use non-verbal communication—pauses, hand gestures, pacing—to emphasize your points in ways you could not on paper. When you prepare, try delivering your argument to a non-lawyer or a school-aged child. It should be simple to understand your position and seem just as simple to adopt your position.

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End Strong

Finish with conviction. Reframe the dispute in your favor. Remind the court of the simplest path to ruling in your favor. Explain which issues they can skip entirely if they take the path you suggest. And end with a concise statement seeking exactly the relief you want.