

6.4 - Oral Argument

After consultation with the client, counsel should request oral argument when counsel determines that an oral presentation advances the client's goal. Counsel should consider the strength of the case, the novelty or complexity of the legal issues, whether an oral argument will clarify the issues, facts and arguments, or would be helpful to emphasize the overall importance of the case. The final consideration must be whether an oral argument is in the best interest of the client.

Counsel shall inform the client of the date, time and place scheduled for oral argument as soon as counsel receives notice from the appellate court.

In preparation for oral argument, counsel shall review the briefs and appendices of the parties, and all relevant case law.

Counsel should be accurate in referring to the record and the authorities upon which counsel relies in oral argument.

Appellate counsel should not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.

Adapted from: ABA Standards for Criminal Justice: Defense Function, Standard 4-8.4; Michigan Minimum Standards for Indigent Criminal Appellate Defense, Standard 16 (1982); Massachusetts Committee for Public Counsel Services, Assigned Counsel Manual Policies and Procedures, Standard IV (as set forth in the Compendium of Standards for Indigent Defense Systems, Vol. 2 (Dec. 2000)).

Approved with changes at September 25, 2025 meeting.

See also: N.D.R. App. P. 34 (Oral argument); N.D.R. App. P. 28