

RULE 34. ORAL ARGUMENT

(a) Notice of Argument; Postponement. The clerk ~~[shall]~~ will advise all parties of the date, time, and place for oral argument, the time allowed for oral argument, the court before which argument will occur, and if before the Supreme Court, whether it will be before the full court or a panel, and if deemed appropriate, the issues to be addressed at oral argument. A motion to postpone the argument must be filed reasonably in advance of the date fixed for hearing.

(b) Time Allowed for Argument. Unless the case is submitted for decision on the briefs under Rule 34(f) or the court otherwise orders, each side ~~], at the court's discretion,~~ will be allowed 15 ~~[or 30]~~ minutes for argument. If counsel believes that additional time is necessary for the adequate presentation of ~~[his or her]~~ their argument, counsel may request such additional time ~~[as he or she deems necessary]~~. A motion to allow longer argument must be filed reasonably in advance of the date fixed for the argument and ~~[shall]~~ will be liberally granted if cause therefor is shown. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Order and Content of Argument. The appellant opens and concludes the argument. ~~[If the appellant has not filed a reply brief, however, a concluding or rebuttal argument will not be allowed except by permission of the court or at the request of a justice or judge.]~~ The opening argument ~~[shall]~~ must include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. Unless the court directs otherwise, a cross-appeal or separate appeal ~~[shall]~~ must be argued with the

initial appeal at a single argument. If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the respondent for the purpose of this Rule, unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care ~~[shall]~~ must be taken to avoid duplication of argument.

(e) Nonappearance of a Party. If the respondent fails to appear for argument, the court will hear the appellant's argument. If the appellant fails to appear, the court may hear the respondent's argument. If neither party appears, the case will be decided on the briefs unless the court orders otherwise.

(f) Submission on Briefs.

~~[(1)]~~ The court may order a case submitted for decision on the briefs, without oral argument.

~~[(2) The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.]~~

~~[(3) Appeals brought in pro se and postconviction appeals will be submitted for decision without oral argument, but the court may direct that a case be argued.]~~

(g) ~~[Submission on Record Without Briefs]~~ Postconviction Appeals. Postconviction appeals may be submitted and decided on the record on appeal without briefing or oral argument when the appellant is ~~[not represented by counsel]~~ proceeding pro se.

REVIEWING NOTE

The proposed amendment in subdivision (a) sets the default time for oral argument at 15 minutes for each side—the standard amount generally scheduled by the court for oral argument—but also gives the court the ability to give each side more time when necessary.

The proposed amendment in subdivision (c) removes the general requirement that an appellant must file a reply brief in order to argue in rebuttal. A reply brief replies to arguments raised for the first time in an opposing brief, whereas rebuttal argument is intended to address arguments raised in the respondent's oral argument. During oral argument, a respondent may raise unanticipated arguments or the court may ask questions during the respondent's time that take the argument in an unanticipated direction. An appellant/petitioner should be able to respond to such arguments regardless of whether they filed a reply brief. Because a reply brief and a rebuttal argument are intended to address separate things, the lack of a reply brief should not automatically forfeit rebuttal argument.

The proposed amendments in subdivisions (f) and (g) are not substantive but rather remove redundant language and clarify that postconviction appeals may be decided without briefing or oral argument when the appellant is pro se.