

TIPS ON ARGUING TO A JUDGE

At all appearances

Win the day

Keep things in perspective

Leave a good impression

Big picture tip

Be old school

Preparation

Know the judge

Know the file, facts, cases; be ready to distinguish cases, respond to incorrect summary

Assume judge reads the papers

Thoughtfully prepare a succinct outline – think of Mark Twain’s letter

Visual

No PowerPoint!!

Consider providing copies of key statute, critical case, pertinent paragraph(s)

Crux

What is wrong with tentative or opponent’s argument?

Focus on essential facts, law, application, standard, burden, etc.

Identify the critical disputed fact or authority

Give a concise reason why you are right

90% of time, you should win because of one or two reasons

Don’t ignore tentative

Start with outline

First sentence gives the ask

Second sentence gives key issue

Tell us when you moving to next section in outline

Tell us what you will tell us, tell us, tell us what you told us

At the hearing

- Cite the case, cite the record
- Tell the judge where to find it
- Thus, you need to know where it is
- Take the judge by the intellectual hand
- Avoid the kitten argument

Listen

- To the judge, adversary and yourself

Respect

- Respect the Court and adversary
- Welcome questions; answer the damn question; never postpone an answer
- If you don't know the answer, say so; first word is yes or no
- Concede a losing point
- Know how to win; know how to lose

Not showing respect

- Don't interrupt the judge, including non-verbal
- Don't argue after the judge has ruled
- Don't say "This is very complicated" or "What you don't understand"
- Never say "With all due respect"

Complex comments

- Encourage request for further briefing if we cite new case
- Right way to say you will seek a writ

Pointers

- Attack opposing argument, not opposing counsel
- "Your Honor" – not "Judge"
- No "I"
- If you are winning, SHUT UP

Communication tips

- Master the pause
- Provide audible punctuation