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Oral Argument

I. The Rules

Rule 52. Setting and Acknowledging Oral Argument

A. Court's Discretion. The Court may, in its discretion, set oral argument on its own or a party's motion. If the Court sets oral argument in a Criminal Appeal, the Clerk shall send the order setting oral argument to the parties and to the prosecuting attorney whose office represented the state at trial.

B. Time for Filing Motion for Oral Argument. A party's motion for oral argument shall be filed no later than seven days after: (1) any reply brief would be due under Rule 45(B), or (2) any reply brief would be due under Rule 57(E) if petitioning to transfer, or (3) any reply brief would be due under Rule 63(E), if petitioning for review.

C. Acknowledgment of Order Setting Oral Argument. Counsel of record and unrepresented parties shall file with the Clerk an acknowledgment of the order setting oral argument no later than fifteen (15) days after service of the order.

Rule 53. Procedures for Oral Argument

A. Time Allowed. Each side shall have the amount of time for argument set by court order. A party may, for good cause, request more or less time in its motion for oral argument or by separate motion filed no later than fifteen (15) days after the order setting oral argument. A party is not required to use all of the time allowed, and the Court may terminate any argument if in its judgment further argument is unnecessary. A side may not exceed its allotted time without leave of the Court.

B. Order and Content of Argument. Unless the Court's order provides otherwise, the appellant shall open the argument and may reserve time for rebuttal. The appellant shall inform the Court at the beginning of the argument how much time is to be reserved for rebuttal. Failure to argue a particular point shall not constitute a waiver. Counsel shall not read at length from briefs, the Record on Appeal, or authorities.

C. Multiple Counsel and Parties. Unless the Court otherwise provides, multiple appellants or appellees shall decide how to divide the oral argument time allotted to their side. If more than one attorney on a side will participate in oral argument, the first attorney shall inform the Court at the beginning of the argument of the intended allocation of time, but the Court will not separately time each attorney.

D. Cross-Appeals. Unless the Court directs otherwise, if both parties file a Notice of Appeal, the plaintiff in the action below shall be deemed the appellant for purposes of this Rule. Otherwise, the party filing a Notice of Appeal shall be deemed the appellant.

E. *Amicus Curiae*. An *amicus curiae* may participate in oral argument without leave of the court to the extent that all parties with whom the *amicus curiae* is substantively aligned

consent. Otherwise, the Court shall grant leave for an *amicus curiae* to participate in oral argument only in extraordinary circumstances upon motion by the *amicus curiae.*

F. Use of Physical Exhibits at Argument; Removal. If physical objects or visual displays other than handouts are to be used at the argument, counsel shall arrange to have them placed in the court room before the Court convenes for the argument. Counsel shall provide any equipment needed. After the argument, counsel presenting the exhibits shall be responsible for removal of the exhibits from the court room and, if necessary, for return to the trial court clerk.

G. Non-Appearance at Argument. If one or more parties fail to appear at oral argument, the Court may hear argument from the parties who have appeared, decide the appeal without oral argument, or reschedule the oral argument. The Court may sanction non-appearing parties.

H. Appeals Involving Records Excluded From Public Access. In any appeal in which Court Records are excluded from Public Access, the parties and counsel at any oral argument and in any public hearing conducted in the appeal, shall refer to the case and parties only as identified in the appellate Chronological Case Summary and shall not disclose any matter excluded from Public Access in accordance with the requirements of Access to Court Records Rule 5.

The focus of Appellate Rule 52 is primarily technical and procedural. It tells us the deadline for filing a motion for oral argument and that an acknowledgment must be filed when argument is set. Part A notes that oral argument is discretionary, but the rule provides no guidance about which cases are appropriate for oral argument.

Similarly, Rule 53 is fairly technical and not particularly specific about what should be done at an oral argument. The court will specify a length for the argument, the appellant will go first and last, counsel should not read at length from notes, physical exhibits may be used under certain conditions, and, not surprisingly, it is important for counsel to show up.

II. Motion for Oral Argument

A. Deadline

Motions for oral argument in the court of appeals must be filed no later than seven days after the reply brief would be due. App. R. 52(B). Reply briefs are due fifteen days after the appellee's brief is filed. Although oral argument could be requested when filing the Appellant's brief, an effective strategy is to wait until reading the State's brief to decide whether argument would be helpful for the reasons explained in (C)(1) below.

B. Content of Motion

The appellate rules do not provide specific guidance about the content of a motion for oral argument. The general requirements for motions are discussed in Section III. Judges of the court of appeals who have spoken at CLE programs have urged counsel to include specific information about how oral argument will materially assist the court in deciding the case. For example, does your case raise an issue of first impression or implicate a new statute or court rule? The motion should not be used as a way to supplement your reply brief; make all the important and necessary points in the briefs.

C. Practical Considerations in Filing in Motion for Oral Argument

The Indiana Supreme Court and Court of Appeals may set argument in any case for any reason. That said, a motion likely enhances the chances of argument being set in the court of appeals. In 2016 and 2017, oral arguments were held in 23 and 18 criminal appeals—a little less than 2% of the roughly 1,100 criminal appeals decided by the Court of Appeals each year. The Indiana Supreme Court holds argument in most cases in which it grants transfer and in some cases in which it is considering whether to grant transfer. For example, in the 2021-22 fiscal year, of the 519 transfer petitions, the Court heard oral argument in ten cases before granting transfer and twenty-five cases after transfer was granted. In another five cases, the Court issued an opinion without hearing oral argument; these tend to be cases that raise an issue already argued in another case or cases in which the Court issues a narrow, per curiam opinion, such as sentence revision under Appellate Rule 7(B).

Counsel should make a strategic decision about when to ask for oral argument. As explained in the Introduction, the court of appeals decides cases in three-judge panels with one judge (and his or her law clerks) doing most of the work. Therefore, in the absence of oral argument, two of the judges will likely spend relatively little time on cases in which they are panel members. As you brief a case and consider the possibility of oral argument, ask yourself: Is a fresh-out-of-law-school clerk who has read all the briefs and reviewed the record likely to draft an opinion in my client's favor? If you think oral argument is likely to help the clerk, judges, and client, ask for it.

1. When Not to Request Oral Argument

As hard as we may try, sometimes an appeal does not present any strong arguments. If the case seems hopeless and you have nothing to add, do not ask for oral argument.

On the flip side, some cases look like sure-fire winners on paper. The law is solidly on your client's side and the facts are favorable—or at least do not present a problem. If the State's brief is not strong, do not ask for oral argument. It will only give the State a chance to make more arguments and give the court reasons why perhaps you should not win.

2. When to Request Oral Argument

Oral argument is most helpful in cases in which it is important to engage all three panel members. Your issue may be novel or especially complicated with a lot of moving parts. Oral argument will provide you an opportunity to help the court sort through the issue and provide a path to victory for your client. In addition, oral argument may be helpful in cases that raise questions of broader impact or public policy concerns. As explained below, judges often ask questions about policy implications or the practical consequences of a decision at oral argument. If your case raises serious questions about important constitutional or statutory rights, oral argument may be an opportunity for that point to become much clearer than it will in a brief.

Finally, oral argument may be appropriate when the State's position seems plausible at first blush but quickly unravels under scrutiny. Judges may not delve into the nuances of an issue on paper; oral argument forces them to do so. Although judges often ask tough questions of appellate defenders, they ask them of the State as well. Oral argument can be useful to force the State to defend its position in the heat of twenty minutes of questioning from engaged and interested judges.

Some successful motions for oral argument are posted on the IPDC website. Considering the large number of arguments, the Court of Appeals holds "on the road" each year, counsel may want to note when a case might be particularly appropriate for a high school or college audience.

3. Indiana Supreme Court Practice

Motions for oral argument are not necessary or useful with petitions to transfer to the Indiana Supreme Court. The justices generally meet weekly to discuss transfer petitions. Justices and staff attorneys have told CLE audiences that the Court will generally schedule oral argument in cases in which transfer is granted or cases in which the court is contemplating transfer but seeks further dialogue. The reason(s) to grant transfer are generally the same as the reason(s) to hold oral argument. A request for oral argument is not likely to increase the possibility of either.

III. Preparing for Oral Argument

The court will usually allow you at least one month (and sometimes considerably longer) to prepare for an oral argument. The Indiana Supreme Court will send a form email setting the date, subject to revision only for extraordinary cause. The court of appeals will simply issue an order setting the date.

A. Review the Order and File an Acknowledgement

Appellate Rule 52(C) requires counsel to file a written acknowledgement of oral argument within fifteen days of the order setting it. This acknowledgement need only be a sentence or two, informing the court that you have received its order for oral argument on [day] at [time] in [location] and that you will appear and present argument. If you are truly unable to attend the argument for an extraordinary reason, such a longstanding prepaid vacation, surgery, or perhaps a longstanding lengthy trial commitment, you should promptly file a motion to reschedule the argument. The motion should state the specific reason you cannot attend and offer alternative dates for rescheduling. Plans or court proceedings that can be easily rescheduled should not be cited as the reason.

If another lawyer in your office is able to present oral argument, the court may want him or her to do so. But if a specific attorney has done all the preparation and is best person to argue the case, explain to the court why it is important for that attorney to present the argument.

B. Do Not Divide Your Time; In Extraordinary Cases, Ask for More Time

Although the rules do not address it, judges and justices regularly and consistently tell lawyers at CLEs and other presentation not to split oral argument time. If more than one lawyer wrote the brief, the lawyer most familiar with the case and most comfortable doing an oral argument (and willing to put in the necessary preparation time) should do the entire oral argument. If two cases are consolidated for oral argument and involve the same issue, one lawyer will be more effective than trying to divide (or create) issues. If you decide to disregard this advice and divide your argument time, counsel must be prepared to address questions even if better addressed as part of co-counsel's argument. Judges do not want to hear, "Sorry, that is my co-counsel's issue." Finally, if the first lawyer goes over his or her allotted time, the court is unlikely to say anything. Indeed, Rule 53(C) specifically says "the Court will not separately time each attorney." Rather, the first lawyer can and sometimes does burn into the second lawyer's time. To prevent this, the second lawyer should rise and stand behind the first lawyer at the podium at the appropriate time. This will let the court (and co-counsel) know that it is time to move on.

With the exception of death penalty cases, oral arguments are almost always scheduled for a total of forty minutes or twenty minutes per side. Appellate Rule 53(A) permits counsel to request additional time by filing a written motion demonstrating "good cause" no later than fifteen (15) days after the order setting oral argument. Counsel should only invoke this rule in an extraordinary case, such as ones involving multiple arguing parties or perhaps a case with significant time allocated to amicus counsel.

See, e.g., Gunderson v. State, Case No. 46A03-1508-PL-01116 (order on August 11, 2016); Brewington v. State, Case No. 15A01-1110-CR-00550 (order on July 15, 2013).

C. Review the Case, Develop a Theme, and Make an Outline

Early in the preparation process, you should review the briefs, relevant cases, and refresh your memory of the record. If your brief argues five or more issues, you will not have time to address all of those in twenty or thirty minutes. You should generally choose the one or two issues mostly likely to lead to relief for your client. If the law is unsettled in a particular area, you should prepare to discuss that issue regardless of how important it is to your client. The court will be interested in it.

Below is a helpful checklist for oral argument, which includes a section on developing an appellate theory of your case:

1. Write a paragraph of one to three sentences that summarizes each of the issues and will help an appellate judge understand why what happened was improper, unfair, unjust, or will leave them with a feeling of uncertainty or discomfort about the propriety of the outcome at trial or sentencing.

2. Your appellate theory of the case should usually:

a. explain the factual context of the issue;
b. explain the actions of the people involved, i.e., witness, judge, prosecutor, defense lawyer;
c. contains the legal issue;
d. be able to be stated simply and concisely; and
e. produce a fair and just result.

3. Your appellate theory should consider that appellate judges:

a. do not make decisions based solely on their conscience, but they rarely make decisions contrary to their conscience; and
b. like jurors, they want to be able to go home after writing an opinion and be able to explain what they did to their spouse, significant other, children, relatives, neighbors, and friends, and feel good about it.

Sometimes the court will specify the issues it wants to discuss in its order setting argument. If this happens, focus on those issues—regardless of how meritorious you might think the other ones are. You will only alienate the court if you go in with your own agenda and use the court's time to advance it. That said, you might briefly find a way to address a key issue the court has not identified after addressing the court's questions and concerns.

The court of appeals and supreme court often post summaries of upcoming arguments online. These might give you a hint of the issue(s) of interest to the court. If you are still baffled about why the court set the case for oral argument, ask other lawyers to read the briefs and offer their opinion.

D. Begin to Anticipate the Judges' Questions

Judges may and often do ask questions on a wide array of different topics at oral argument. It is impossible to anticipate every question, but it is possible to anticipate and prepare to address many of them. At a minimum, be prepared to discuss the following:

- Any factual questions about the record.

- The holdings of all key cases, statutes, and other authorities. Adverse authority is most likely to be the source of questions. Be prepared to address it. Adverse authority can usually be distinguished; other times you have no choice but to argue that it should be overruled.

- The practical effect and policy reasons that support your argument. If your client wins, will the floodgates swing open for other defendants? Are there retroactivity issues? Judges routinely ask questions to test the limits of your argument. Be prepared to address these and make reasonable concessions to make your argument as reasonable as possible.

- The precise relief you are seeking. If the case is reversed, what happens? Is the conviction vacated or can the State retry the case? If you are challenging the sentence, do you want a new sentencing hearing or reduction to a specific term of years?

- Finally, the types of questions posed at an Indiana Supreme Court argument may differ from those posted by the Court of Appeals. As explained in Part V, the Indiana Supreme Court generally focuses on broad issues of state-wide significance in deciding whether to grant transfer. Thus, especially when the Court has not yet granted transfer, be prepared to address why the issue in your case in your case is one that affects other cases. Justices will sometimes ask how other states or federal courts have addressed your issue. Highlighting the potential effect on other defendants is fine, but often an adverse Court of Appeals' decision may also raise concerns for others. Highlighting concerns of judicial efficiency, the need for clarity for trial courts and prosecutors, or the effect on public confidence and understanding of the judicial system are sometimes effective themes and strategies on transfer.

E. Set up One or More "Moots"

Before delivering your oral argument, you should have practiced ("mooted") it with a group of lawyers on more than one occasion. You should initially meet to "brainstorm" the issues and then twice or more to practice the argument while being interrupted with questions. Regardless of your location in the state, lawyers are available to help you prepare—either in person or via telephone or skype conference.

The attorneys at the Indiana Public Defender Council have many years of appellate experience and offer a free mooting program for public defender cases (and the same service for private lawyers at a modest cost.) CLE credit is available for mooting an oral argument with the Indiana Public Defender Council. For a non-criminal defense perspective, the Appellate Institute at the Indianapolis Bar Association has numerous experienced appellate lawyers and former clerks available for free moots for first-time advocates or those representing public defender clients.

No matter how well you know the case, mooting will better prepare you for an argument. Judges and justices often comment that they can tell which lawyers have mooted their case and which ones have not. Those who have are better prepared to address the wide variety of questions from the bench and will be prepared for problem areas or tough questions that can leave an unprepared advocate speechless.

F. File Additional Authority, if Helpful

If you come across significant new cases or other authorities as you prepare for oral argument, consider filing a Notice of Additional Authority. As explained in Section IV, such notices may be filed at any time while an appeal is pending and cannot include more than a one-sentence description of the authority and its importance to your case. Although there is no official deadline for such notices to be filed, counsel should strive to file a single notice—not multiple ones—at least a week before the argument. This will give the judges enough time to read and consider the cases cited. A notice filed on the day before the argument may not be well-received by the judges.

G. Be Cautious About Using Visual Aids, Except Perhaps a Short Handout

Although Rule 52(F) mentions the possibility of using "physical objects or visual displays" during oral argument, seldom will this be a good idea. Unless the exhibit is very large, the judges or justices will have a difficult time seeing it and a difficult time hearing you if you are turned trying to explain something about it. If you want the judges or justices to follow along with a key exhibit or statutory excerpt, consider preparing a short handout for their use during the argument. You may want to file something like a "Notice Regarding Use of Handout" at least a few days before argument to apprise the court and opposing counsel of the handout, which could be attached.

On rare occasion, use of an exhibit may be appropriate and helpful. For example, counsel showed part of a troubling interrogation by police at a Court of Appeals' argument in a case that was ultimately reversed by the Indiana Supreme Court. Bond v. State, 9 N.E.3d 134 (Ind. 2014). In a civil case, the Indiana Supreme Court reconsidered and allowed a large bucket from a utility truck at the argument, which counsel argued was "absolutely critical" to resolving the legal claims in the case. See Cause No. 29S05-1209-CT-557 (order on Jan. 2, 2013). If an exhibit is critical or very helpful in your case, alert the court and opposing counsel of your plans early in the process. Counsel is responsible under Rule 53(F) to provide any equipment needed and remove the exhibit promptly.

H. Watch an Argument Online

If you have never had an oral argument or have not had one for several years, you will feel much more comfortable by watching one or more recent arguments. All Indiana Supreme Court arguments since 2001 are available for viewing on the court's website; several years of Court of Appeals arguments are also archived: https://mycourts.in.gov/arguments/default.aspx?court=sup. You may search for an argument on an issue similar to yours by entering keywords or can watch a specific lawyer's argument by entering his or her name. Although an argument on a similar issue may be helpful, watching newer Indiana Supreme Court arguments may be especially helpful considering the change in membership in recent years.

I. Know Your Panel

If you are arguing at the Indiana Supreme Court, all five justices will attend and ask questions. If one or more cases are crucial to your argument, you should be aware of which justice wrote that opinion (or a dissent to that opinion) in preparing for the argument. That justice may have a special interest in asking questions about the case. Moreover, it is useful to know a little about the justices' backgrounds, which can be easily researched by reading their biography on the court's website. Justices who have practiced criminal law or been a trial judge may have a different perspective from those who have not.

If you are arguing at the Indiana Court of Appeals, only three judges will attend and ask questions at your argument. The court's order setting oral argument will usually include the names of the three

panel members. If it does not, you may call the court administrator's office and ask. Again, a judge who wrote a particular opinion will likely have a special interest in it. Moreover, there are occasional splits among different panel of the court of appeals on some issues. You will want to know which judge(s) have decided previous cases in a way favorable or adverse to the position you are arguing. This does not mean you should give up on a judge who has written an adverse decision, but you should be aware of their prior decision. Most judges are open to reconsidering prior decisions, especially when asked to do so in a thoughtful, well-reasoned, and respectful way.

J. Review the Court's Website

Both the Indiana Supreme Court and Indiana Court of Appeals have posted detailed information about oral arguments on their websites. Be sure to review the website in the course of preparing for your argument.

IV. Delivering the Oral Argument

The best oral arguments are conversations with the court. They are not a prepared speech but rather an opportunity to make your key points while responding to the court's questions. Consider taking a two-page outline that lies flat to the podium with you. You may take additional materials but strive to avoid shuffling a lot of paper during the argument.

The following points are worth considering in delivering a high-quality oral argument.

A. Relax

Sure, you may have gone into appellate work because you dread public speaking. This may not be a pleasant experience for you but relax. You know more about the case and issues than the judges do. You have read the record and cases and written a brief; they have probably just read your brief. This is your chance to share your knowledge. Relax and take advantage of it. Being overwhelmed by fear or nervousness will not help your client—and it really is not warranted.

B. Get Started and Reserve Time for Rebuttal

Perhaps your last oral argument was in law school during a moot court competition. That is not a bad start, but a real argument is a little different. The presiding judge or Chief Justice will probably introduce the lawyers, so there is no need for you to tell the court again who you are. Simply walk to the podium and say, "May it please the court," and proceed to your argument. You will probably be asked by a clerk or bailiff ahead of time about rebuttal time, and five minutes seems to be the norm. The Supreme Court staff will likely tell you it is important to begin your argument by stating, "I have reserved X minutes for rebuttal."

C. Offer a Short Preview or Roadmap of your Key Points

Most judges will give counsel a minute or so to introduce their case and key points before asking questions. This is your prime—and possibly only—opportunity to offer your theme and the key points that you want to make. A clear roadmap lets the judges know where the argument is likely to go. Take advantage of it; it will allow the judges to better follow your argument and ask questions at the appropriate time.

D. Keep the Facts to a Minimum in Most Cases

With rare exception, judges will have read the briefs and be familiar with the facts of your case. There is no reason to begin your argument with a lengthy summary of the facts. However, if you have a roadshow argument at a high school or college, the court will appreciate you providing some basic factual information for the benefit of the audience.

E. Answer the Judges Questions

Oral argument is an opportunity to convince the judges to rule in your favor. This requires you to answer their questions and concerns rather than simply making a speech or the points you believe are important. At the top of your agenda should be answering the judges' questions. When a judge starts to speak, you should stop. Listen carefully to the question, pause briefly to consider the answer if necessary, and provide a specific answer. "Yes, your honor" or "No, your honor," then explain the specific reason(s) for your answer. After answering the question, return as seamlessly as possible to your outline.

F. Be Respectful and Deferential

Judges do not like to be interrupted, ignored, or insulted. Regardless of how silly or irrelevant you might find a question, answer it respectfully without a grimace or annoyed tone in your voice. There is a difference between deference ("yes, your honor") and sucking up ("that is an excellent question, your honor"). Show deference and respect; do not suck up.

G. Use Your Time Wisely

There should be a timing device at the podium. Do not obsess about it, but do not ignore it either. The judges have considerable control over what you discuss at oral argument through their questions. You certainly want to be responsive to those questions. However, you also want to make your key points. This is best accomplished by finding a subtle way to weave back into your theme and key points after responding to questions. If you have not hit on a key point and have only a few minutes remaining, you should try to find a way to get to it.

H. Remember Confidentiality Concerns and Rules on Access to Court Records

Oral arguments are webcast live and archived. Appellate Rule 53(H) makes special note of the importance of maintaining confidentiality of certain information at oral argument; specifically, counsel must be sure to refer to "parties only as identified in the appellate Chronological Case Summary" and not otherwise "disclose any matter excluded from Public Access in accordance with the requirements of Rules on Access to Court Records Rule 5. Thus, in TPR/CHINS, civil commitment, protective order, and juvenile cases, be sure to use initials instead of names. In criminal cases, the names of child victims of sex crimes are protected, although the court often avoids use of names more broadly. Thus, the safest approach would be to avoid using the name of any child or the adult victim of a sex offense or domestic violence.

I. Listen Carefully to the State's Argument; Take Notes

If you are the Appellant, you will get to go first and last. During the State's argument, listen carefully and take notes. Pay attention to the judge's questions and concerns. These will be your best points on rebuttal. If the State misstates the record or a holding of a case, be prepared to bring it up in a tactful way during your rebuttal.

J. Offer an Effective Rebuttal

Most lawyers will reserve five minutes for rebuttal. Rebuttal is not an opportunity to make new points or to repeat the same points you made in your initial argument. It is your chance to respond to the State's argument—and especially the concerns of the judges raised during the State's argument. This is best done by careful listening and note-taking. Near the end of the State's argument, compile a short list of the most important points you need to make. If a helpful case or statute has not yet been mentioned, you should bring it up during your rebuttal as well.

H. Supreme Court Specifics

The suggestions outlined above apply for the most part to oral arguments at the Indiana Court of Appeals and the Indiana Supreme Court. Because the supreme court is more interested in the statewide impact of your case, however, the court is less likely to be interested in the particular facts of your case. Therefore, you should approach the argument expecting the court to "probe the outer limits" of your position and its statewide impact. If the justices embrace your argument, what else may happen?[1]

V. After the Oral Argument

If the court of appeals, Indiana Supreme Court, or United States Supreme Court decides an important new case, counsel should promptly file a Notice of Additional Authority to bring that case to the attention of the court and briefly explain its significance to the pending appeal. Although such a notice may be filed at any time while an appeal is pending, counsel should be cautious in filing additional authority after oral argument is held. The court may strike a Notice of Additional Authority if it is merely "an attempt to file a surrebuttal to the arguments raised during the oral argument, as the case law cited . . . could have been cited in the . . . brief." Heather Smith, Indiana Appellate Rule 48 – Additional Authorities, No Second Chances!, The Appellate Advocate 3 (Spring 2007).

Indiana used to allow advocates to file "Notes on Oral Argument" for the limited purpose of answering questions from oral argument. Kent Zepick, Notes on Oral Argument (citing Wiltrout, Indiana Practice, Sec. 2738 (1967)). In 2012, the Indiana Supreme Court made clear such a filing "without leave of court" is no longer allowed. Reed v. Reid, 969 N.E.2d 589 (Ind. 2012). More recently, after lengthy filings under a number of different captions, the Indiana Supreme Court issued an order to "amplify *Reed*'s admonition: After transfer briefing is closed, further arguments on the merits—by any name—may be filed only by leave of this Court or in the limited form Rule 48 authorizes for notices of additional authority." Care Grp. Heart Hosp., LLC v. Sawyer, 93 N.E.3d 743, 745 (Ind. 2018).

In a rare case where a truly unexpected or significant issue arises during oral argument, counsel may request permission of the court to file a post-argument submission. If the court appears amenable during the oral argument, counsel should promptly file a Motion for Leave to File Post-Argument Submission and tender the proposed submission with the request for leave. Examples from Purvi Patel v. State, 71A04-1504-CR-166 are available on the IPDC website.

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[1] This is advice is based on comments offered by Chief Justice Shepard after an oral argument held at the Indiana University School of Law at Bloomington on January 30, 2007. The argument was *Richard Brown v. State* and may be accessed on the court's website.