

Arguing Motions at Hearings

You've drafted your motion, filed it with the clerk, sent a copy to the judge, and served the other side. You've supported your motion with a carefully-researched and well-written memorandum, setting out relevant facts and legal arguments why the court should grant your motion. You've scheduled hearing time with the judge's Judicial Assistant agreeable to the other side. You've filed your Notice of Hearing with the clerk and sent a copy to the other side (by fax and mail).



Now the day is here.

You've taken your seat. The courtroom doors have closed behind you. The bailiff announces, "All rise!"

Enter the judge.

Everyone stands.

The judge looks around the room before saying, "Please be seated."

Don't sit down!

The judge will announce the hearing, telling everyone including the court reporter you brought to write things down (You did bring a court reporter, didn't you?), "We're here on case number 05-123, Peter Plaintiff versus Danny Defendant. This is the plaintiff's motion for summary judgment. Mr. Graves, please proceed."

The movant goes first.

Don't let the other side interrupt. This is one of the most egregious things crooked lawyers do. They will jump to their feet and interrupt as often as the judge lets them get away with it. After the second or third interruption, stop your presentation long enough to request of the court, "Your honor, I have only a limited time to present my argument. May I proceed without interruption?" Even if the court allows your opponent to continue interrupting, at least there will be less tendency for the judge to overlook obvious rudeness designed to disrupt your concentration. If the other side doesn't have a valid objection, you should insist on being able to speak without interruption. Often a good

thing to say is, “Your honor, I need to make my record here, and counsel is interrupting with no legitimate purpose other than to prevent me from doing my job.”

You have a right to be heard. It’s been bought for you by the blood of men and women who died for your right to be heard. Remember this, and *demand* to be heard.

The first question I ask the judge at hearings on my motion is, “Have you read my motion, your honor?”

If the judge says he’s already read my motion, then I can refer to it in general as an outline while making my argument – taking care to touch all points so my court reporter writes down every word.

If the judge says he’s *not* read my motion, I ask, “Would the court care to take a moment now to review the written motion?”

If the court agrees, I wait silently while the court reads my motion, keeping on guard for my opponent’s attempts to interrupt the judge’s train of thought (which happens when you’re dealing with crooked lawyers).

If the court gruffly commands, “Get on with it, Mr. Graves. Present your argument,” then I make certain I touch every point of my written motion completely and in every pertinent regard, with my court reporter writing down every word I say. After all, my written motion was prepared at the office, where I wasn’t being interrupted, where I had hours (instead of only a few minutes) to set out my arguments. While writing the motion I had the advantage of doing legal research, reading cases, statutes, rules, and occasionally constitutional provisions in support of my motion ... whereas standing in a courtroom, being stared at by a gun-toting bailiff, being listened to by an impatient judge who’d rather be playing golf, and being interrupted by my opponent at every opportunity imaginable, it is far less likely I can keep my concentration on all those points by simply working from memory.

I use my motion as an outline *and cover every point in detail before sitting down.*

- This continues, of course, in the tutorial. -