

## **CHAPTER 11: The Judicial Program**

Welcome to the appeals competition for the YMCA Pennsylvania Youth & Government program! These instructions also provide a brief overview of the nature of appeals, and provide some research pointers. Please review the qualifications of judicial participants on page 70 of the Blue Book.

### ***Summary of 2007-2008 Changes***

- No outside legal research can be conducted; participants are limited to the material provided by the State YMCA.
- If a team fails to complete a brief prior to the weekend, the attorneys will be reassigned as bailiffs during the weekend.
- Tournament and Schedule:
  - Each team will argue three times before the three different justice panels between Friday and Saturday.
  - Each side will be limited to fifteen minute arguments in the first three rounds; twenty minutes in the final rounds.
  - A discussion regarding the nature of judicial review will take place prior to the beginning of the tournament.
- Scoring:
  - With an additional round of arguments, the finals will be determined by adding each team's average individual round scores and the brief score. (Brief + Rd 1 + Rd 2 + Rd 3 = total score). Top two appellant and top two appellee teams advance to the finals Sunday morning.
  - Brief scores will count for 25% of the overall score, and not impact an individual round score.
  - In the first three rounds, a justice must recuse him/herself from scoring any argument in which a team from the justice's home delegation is participating. Additionally, if a justice's score of their delegation's attorneys are significantly different in the finals, the Chief Justice and Judicial Coordinator can invalidate the score.
  - Teams will be provided a scoring sheet Sunday morning with a breakdown of their brief scores and individual round performance.
  - At the banquet on Saturday, the teams advancing to the finals and best brief score winners will be announced.
- Justices will be evaluated throughout the weekend by members of the judicial advisory board.

### ***Nature of Appeals***

The appeal process is an integral part of our legal system. When parties lose at trial, they are entitled to pursue an appeal in order to obtain a new trial, or to have the decision reversed and decided in their favor.

In Pennsylvania, an appeal could go to either the Superior Court or Commonwealth Court before reaching the Pennsylvania Supreme Court. If a party is unsatisfied with the ruling of one of the two

lower level courts of appeals, they may then attempt to appeal the case to either the Pennsylvania Supreme Court.

The federal government also has its own court system. Trials are conducted in the “district courts,” and appeals go to the Court of Appeal for the particular region or “circuit” in which the district court is located. For example, appeals from U.S. district courts in Pennsylvania proceed to the Third Circuit Court of Appeals. If the parties are unsatisfied with the decision of the Court of Appeals, they may attempt to have the United States Supreme Court hear the case.

The Superior Court, Commonwealth Court, Circuit Court of Appeals, and Supreme Court (PA and US) are generally referred to as “appellate courts,” as opposed to the trial courts in which trials are held. A person who files the appeal to the appellate court is the “appellant,” while the other party (usually the party who prevailed at trial) is the “respondent.”

In an appeal, parties are initially required to file briefs setting forth their arguments and authorities. After the briefs are filed, the parties then present “oral arguments” to the appellate court. In this respect, proceedings in appellate courts sharply differ from trial proceedings: the parties do not bring witnesses to testify or attempt to offer documents into evidence. Instead, the attorneys for the parties make oral presentations to the appeals court detailing the reasons why their respective clients should prevail. The judges or justices of the appellate court may interrupt the attorneys at any point and ask questions about their arguments. At some point after the oral arguments, the appellate court will issue its decision, usually accompanied by a written opinion setting forth its analysis on the issues. If a particular judge or justice disagrees with the holding of the Court, he or she may file a “dissenting opinion.”

## **Briefs**

Prior to the beginning of the competition, you and your partner will be required to submit a brief for your side (either the appellant or respondent). A sample brief can be found online.

While you are strongly encouraged to seek the assistance of attorneys or adults to assist in the preparation of your briefs, *the actual writing must be done by you and your partner*. Your starting point should be the cases provided to you from the State YMCA office; however teams are strongly encouraged to perform their own research in preparing briefs. A team is more likely to obtain a better score if the brief reflects additional, independent research.

If a team fails to complete a brief prior to the weekend, the attorneys will be reassigned as bailiffs during the weekend.

**Additionally, we strongly encourage you to complete your through our brief wizard on our website. If you choose to write a brief in Word or another word processing program, you still must copy and paste the text in to the brief wizard. E-mailed briefs will not be accepted.**

The following will walk you through the step-by-step process in writing your brief and utilizing our Online Brief Submission System.

**Step 1 - Login:** When you login to the system the first time, you will enter your e-mail address and create a password for the brief. After you login once and saved information, you will be able to just login using the existing user side of the system.

**Step 2 – Attorney Entry:** After you login the first time, the system will ask you to select your club name from a dropdown menu and your case assignment. Once your club name has been selected, you will pull down the dropdown menu next to attorney names and find your names. *Note: If you do not see your or your partner’s name listed, it means your advisor has not registered you as an attorney in the advisor registration system. You will need to be in the system as an attorney to see your name in this window.*

**Step 3 – Questions, Answers, and Arguments:** Section 3 is the bulk of the brief. On this page, you will enter the question for the Court to consider, provide the suggested answer of Yes or No, and then provide your argument. Although the formatted brief will have the body of the argument on a separate page, the brief wizard has put it on one page so you can continue to review your question as you answer it.

Your question presented should state the **Issue** that is presented in this matter. The Issue should be the fact specific question that poses a question in a light most favorable for your position. Fact specific means that you state relevant facts from your factual summary in your issue, as well as the question of law. When stating the issue, separate it from the body of the argument in some fashion, such as indenting it and making it single space.

For the examples in this section, the factual event is the same. A high school teacher has prayer at the beginning of each homeroom. However, the manner in which the question is phrased suggests an answer to the reader of either yes or no. The issue is your opportunity to phrase the question how it benefits you the most

1. Does a public high school violate the First Amendment of the United States Constitution where a high school teacher, in an exercise of his personal religious belief, compels his students to participate in a morning prayer each day before school? -- OR --
2. Is it proper for one to exercise his constitutional right to freedom of religion where he provides a prayer at the beginning of each school day, but where there is no evidence of any type of compulsion to participate should a student choose not to pray?

After you draft a question, and provide the Yes/No answer, you will draft an argument for that question. The first part of this process is setting forth the **Rule**. The Rule is a proposed statement of the law that you are arguing governs the facts of the case. It is typically one sentence. With the Rule you are answering the question that you posed in the Issue, with a favorable result to your case, of course.

The Rule relevant to the above Issues could be:

1. The Constitution prohibits a government from making laws respecting the establishment of religion, and a public school, as an agent of the State, is likewise prohibited from either supporting or condoning religious activity during school.
2. – OR -- The Constitution guarantees one the right to the free exercise of religion, and where that free exercise does not compel any others to participate, it is entirely proper regardless of the setting.

Next comes the most important part of your brief - **the analysis**. In the analysis, you examine other cases for material and language favorable to your case. This includes fact patterns as well as conclusions drawn by the court. Essentially, you want to tell the *relevant portions* of the story of what occurred in the case, how the court decided the issue, and why the same result should occur in your case. The analysis section can be used to anticipate arguments of opposing counsel, and can afford you the opportunity to “head off” those arguments.

Basically, all the analysis section does is provide you with the opportunity to point out the court what other courts did in similar situations, and why the court should do the same thing in your case. Make your analysis concise and feel free to quote the other cases and say “in Lee v. Weisman the court said x and did y.” When you do quote or paraphrase from another case in the case materials, refer to it in some manner so the Court knows to which case you are referring (you will provide the citations in Step 4). The brief must cite the legal sources (cases) used **every time** you reference facts or ideas from a case.

The last part of the analysis section allows you to refer specifically to your facts and to analogize what the other courts did. “Just as in Lee v. Weisman, this case involves a public school where students are made to participate in a religious exercise.” Or, “Unlike Lee v. Weisman in this case, there is no evidence of compulsion.” You are telling the court that the facts in your case are so similar, that the court should rule just as the court in the other case did. You could also argue that the facts in your case are so different, that the court can reach a different result.

**Step 4 – Case Citations:** In this section, you will provide the full citation for each case you cite in your arguments.

References to published cases are referred to as “citations.” The goals of citation are: provide attribution for another’s ideas in your work, provide the judge with the *location* of the source, and provide important information as briefly as possible.

So what’s so different about legal citations over what you do for a research paper? Legal citations tell the judge more than where you found your ideas... They provide the judge with valuable information about how strong of an argument you have (seen through level of court, year of opinion, and whether it was majority or minority) and how the cited materials relates to your argument.

You need to use a citation every time you cite to an authority... Even if you are just getting a small idea from what another judge wrote, you must cite it! In fact, the more citations you have, the better. It looks like more judges would agree with you.

A sample citation is listed as follows: Billings v. Cotter, 562 A.2d 462 (Pa. 1987)

For that case:

- Billings – Appellant
- Cotter – Respondent
- 562 – Volume of Reporter Case is Found
- A.2d – Reporter Case is Found
- 462 – First Page Case is Found in Reporter
- Pa. – Court (In this case, Pennsylvania Supreme Court)
- 1987 – Year of Decision

Here is an example of a Supreme Court case. Notice that the Court is not with the year. The reason is simple – “U.S.” signifies it is the United States Supreme Court. They have their own “reporter.” N. Y. Times Co. v. Sullivan, 376 U.S. 254, 256 (1964).

We know you are not lawyers yet, so do not spend too much time worrying over citations. However, you do need to make sure the judges can find your case – and where in the case you are citing. The information in both of the samples would provide that.

To ensure all citations are uniform – and our justices can find the cases – please follow these conventions when completing this page:

- Party 1 – the name of the first party in the case you are citing.
- Party 2 – the name of the second party in the case you are citing.
- Citation block – this is where you enter the first portion of the citation on the first page of each case. It should begin with a number (volume) followed by an abbreviation (reporter containing the case) and then another number (first page in the volume the case is in).
- Court block – this is where you enter the court that decided the case.
- Year block – the year the case was decided is entered here.

**Step 5 – Summary of Facts:** In this section, you will set forth a brief factual summary of the events that occurred which gave rise to litigation. This factual summary should set forth the facts in a light most favorable to your position. Do not distort facts or deliberately ignore facts that are not favorable. As an advocate, though, it is your job to put the most positive “spin” on the facts in the case.

**Step 6 – Summary of Arguments:** Now that you have written your arguments and factual summaries, it is time to reflect on your case. The summary of arguments, which should not be long, is the one to two pages the justices will re-read right before they go onto the bench. Consider this as an executive summary. Read the portion of the sample below:

Notice how it started out with a summary of the issue you want the Court to consider and then a general summary of the argument. It should not be much more extensive than that.

**Step 7 – Conclusion:** The conclusion is the last section of the brief. In it, you restate the fact summary in an even briefer form, and you include the rule of law that you argued in the body of the brief. The conclusion should also be one paragraph or perhaps two short paragraphs if you set forth two issues in your brief.

**Scoring:** The score on the brief will comprise **one-fourth of your overall score** to be used to determine the rankings. The briefs will be scored by a committee of legal professionals in the following categories:

- Interpretation of Facts
- Understanding of Legal Issue(s)
- Persuasiveness
- Evident Study and Understanding of Case Law
- Effective Analysis and Application of Case Law

- Lateness Deductions:
  - Up to 3 days late (-5 points)
  - Up to 7 days late (-10 points)
  - Up to 2 weeks late (-15 points)
  - Beyond 2 weeks late (-20 points)

Lateness deductions could be modified based on extenuating circumstances approved by the State YMCA office.

## **Oral Arguments**

Your score during the oral arguments will comprise two-third of your overall score that will be used to determine rankings at the end of each round. Please review the scoring information and sheet below to determine the various categories on which you will be scored.

### **(a) Basic Rules:**

- For the purposes of this year’s competition, the arguments are being presented to the **Pennsylvania Commonwealth Court** sitting as panels of two, three, or four judges. The finals on Sunday will be presented to the **Pennsylvania Supreme Court** sitting “en banc” (all of the justices together).
- Each team has a total of fifteen minutes to present their argument in the first three “rounds” of the tournament. This time can be divided in any manner chosen by the team, except that (1) each lawyer of the team must present at least 5 minutes of the argument, and (2) except for rebuttal, each lawyer may go to the podium only one time; in other words, one attorney of a team cannot give 2 minutes of the argument, sit down and let his or her partner speak for 5 minutes, and then return to the podium to conclude the argument [excluding rebuttal]. Additionally, this is not a tag-team effort.

As the example below demonstrates, you should only trade off once (this is only an example):

Appellants	Lawyer #1	7 minutes
	Lawyer #2	6 minutes
Appellee	Lawyer #1	8 minutes
	Lawyer #2	7 minutes
Appellant Rebuttal:		2 minutes

- During the course of the oral arguments, the justices **will** interrupt and ask you questions regarding your argument. You should answer their questions, and then return to your argument. (*Tip: When answering, always begin by stating “yes” or “no” – justices want a yes or no answer, and then explanation!*)
- During the final rounds, each side will receive twenty minutes.

### **(b) Scoring and Moving-on in the Oral Argument Tournament**

Each team will be scored in part based on the oral argument and in part based on their brief (as discussed previously). The scoring for the performance during the oral argument will be a weighted average score of the judges presiding with a maximum of 100 points divided equally between both speakers.

The areas in which the justices will be evaluating are:

- Interpretation and Use of Facts
- Understanding of Legal Issue(s)
- Knowledge and Successful Use of Case Law
- Effectiveness and Persuasiveness of Argument
- Overall Demeanor and Ability to Completely Respond to Questions

Based on the score at the end of each round, the teams will be ranked creating the next round of competition. The specifics are explained below.

### **(c) Structure of Tournament**

- **First Round:** For the preliminary round of the tournament, each appellant will be ranked against an appellee based on brief scores.
- **Second Round:** The teams will be seeded based on the first round scores. The highest ranked team would play the lowest ranked.
- **Third Round:** The teams will be seeded based on the first two rounds. No team can face a team previously faced.
- **Finals:** Based on the first three rounds and brief performance, the best overall appellant will face the best overall appellee in the championship. The second best appellant will face the second best appellee in the consolation match to determine third place.

### **(d) Suggested Outline for Arguments:**

This guideline is a suggestion for preparing your oral arguments. In the event that you represent the Appellants, your team will need to reserve time for rebuttal. You should begin your argument with “May it please the Court, ...” and then identify who you are, and who you represent. Example:

[Appellant, Speaker #1]:

*“May it please the Court, my name is \_\_\_\_\_, and along with my co-counsel, \_\_\_\_\_, we represent the Appellants \_\_\_\_\_.”*

At this point, you can give a brief statement of the facts or nature of the case, summarized in one or two sentences – if you can find a common theme for the entire argument, this would be a great place to lay out your theme, as well. Remember: use this opportunity to show the justice’s your ability to interpret the given factual summary to your case’s advantage.

You can then inform the Court about the issues that you and your partner are going to present. In other words, present an outline of the points you will hit, and your partner will hit.

*”In my time before the Court, I will demonstrate that the evidence was legally and factually insufficient to support the trial court’s \_\_\_\_\_. My co-counsel will demonstrate that \_\_\_\_\_.”*

No matter how you structure your opening, when you begin your argument, you should clearly set out the various points that your team intends to make during its presentation. Remember that the justices may not be as familiar with the case; do not assume that the justices know the facts of the case or the controlling law as well as you. When you conclude your presentation, you need to remind the Court what you want them to decide:

*“For these reasons, your honors, we respectfully request that you reverse [or affirm] the order of the trial court below, and \_\_\_\_\_.”*

You will need to decide what to fill in the last blank. Are you requesting that the case be sent back, or “remanded,” to the trial court for a new hearing, or will you be requesting that the Superior Court to simply decide the issues in your favor?

The Respondent’s attorneys can use the foregoing format, with some modifications. First, all attorneys must open their presentations with “May it please the Court,” and identify themselves by name. However, another statement of the facts may not be necessary, unless your issue involves facts that were not addressed by the earlier attorneys. All attorneys should identify the particular issue(s) that they will be addressing during their presentation.

**(e) Suggested pointers and courtroom demeanor:**

- Always rise when the justices enter and exit the courtroom. Remain standing until you are permitted to sit.
- Try to avoid talking with your partner while sitting at the counsel table. You may communicate by exchanging notes, but do not be distracting.
- Keep your counsel table neat. Shuffling papers can also be distracting to the judges.
- You should not communicate with your partner while you are presenting your oral argument unless absolutely necessary. Once you go up to the podium, you should stay there until the conclusion of your argument. Communication with your partner could be signs of being unprepared and could adversely affect your score.
- You can take notes, cases or your summary to the podium. However, the less paper that you carry to the podium, the more likely that you are going to be able to give an effective presentation. Having too many notes or documents only increases the likelihood that you are going to simply read from them, as opposed to maintaining good eye contact and a conversational tone to your presentation.

- Do not point or look to your opponents during oral argument. Your argument is to be strictly made to the Court. Refrain from making any personal remarks or attacks upon your opponent.
- When a justice begins asking you a question, stop speaking immediately. It is considered disrespectful for the attorney to attempt to talk over the judge. Additionally, always begin your answer with a “yes” or “no” – and then explain. If you are unsure of the answer, take a moment to think about the answer you give before you begin speaking.
- If you plan to use a case in your oral argument that you did not in your brief or that was not given with the case materials, be sure to give a copy to both the justices (ahead of time so they can read over it) and your opposing legal team (when the match-ups are announced or soon afterwards).
- Be mindful of the time limitations. Depending upon the number of questions that you may be required to answer during the round, you may not actually be able to give your entire argument. Try to remember the key points of your argument, and attempt to make those points in responding to questions that may be relevant to them.
- If you run out of time while giving your argument, you should stop immediately, and request the Court to allow you to conclude your sentence. If the Court grants you permission to conclude, you must promptly conclude that sentence only.
- Try to set up your arguments in a logical, easy-to-follow manner. Once again, the Court may not share your level of knowledge regarding the facts of the case, the issues, or the relevant case law. Practicing your argument before your partner, team members, friends, teachers or attorneys will vastly improve your ability in the competition.
- Keep your voice loud enough to be heard, and remain confident of your position.

## **Justices**

As a justice in the Superior Court and Supreme Court, you are expected to be knowledgeable of the case, including the facts, the issues, and the relevant case law. You are also expected to be fair and impartial to the parties, and fulfill your duties as a justice in a dignified, professional manner. As the American Bar Association’s Model Code of Judicial Conduct writes:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

Importantly, justices need to adhere to Code’s Second Canon:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

**(a) Bench Brief:**

You will be required to file a "bench brief" by the same deadline as the attorney briefs. The brief must be **less than three typed pages**, and contain the following:

- (1) A summary of the relevant facts
- (2) The issues and applicable case law
- (3) 5 important questions that you may pose to the Appellants; and
- (4) 5 important questions that you may pose to the Respondents.

**(b) Requirements and Pointers:**

- Questions to the attorneys are appropriate for seeking clarification of their arguments. It is extremely improper to be harassing or disrespectful to the attorneys. While you are permitted to interrupt the attorney's presentation to ask a question, common courtesy and decency mandates that questions be asked in a respectful, dignified manner.
- As a judge, you are expected and required to be fair and impartial. While you may personally believe that one side's position has more merit, it is improper to make statements that give the appearance of impartiality to one of the parties.
- In the first three rounds, a justice must recuse him/herself from scoring any argument in which a team from the justice's home delegation is participating. Additionally, if a justice's score of their delegation's attorneys are significantly different in the finals, the Chief Justice and Judicial Coordinator can invalidate the score.
- You may be permitted to give a brief critique to the attorneys after the round. However, please keep your comments brief. You may discuss the strengths and weaknesses of the parties' arguments, but should refrain from giving "legal advice" or your own opinions on how they should be presenting their cases.
- You should make an extra copy of your bench brief for your own personal reference during the competition. You are permitted to share your bench brief with the other justices, but are not permitted to allow any of the attorney teams to view the bench briefs.

## **Judicial Review**

In 1800 the Federalists and their candidate, President John Adams, lost the election to Thomas Jefferson. Early in 1801 the lame-duck Federalist Congress enacted a controversial Judiciary Act that created 58 new judgeships, including 42 justiceships of the peace, for Adams to appoint. Jefferson complained that the Federalists "have retired into the judiciary as a stronghold." On the night March 3, 1801, John Marshall, acting as secretary of state, affixed the official seal to the commissions for the justices of the peace. He did not, however, deliver the commissions. The next day, after Thomas Jefferson was inaugurated, he directed the new secretary of state, James Madison, to withhold delivery of 17 of the 42 commissions, including that of William Marbury. William Marbury sued for a writ of mandamus to require Madison to hand over his commission.

The decision in Marbury's case, written by Chief Justice John Marshall (the very same John Marshall who affixed the seal to Marbury's commission--talk about a conflict of interest!) established and justified the power of judicial review. It is the first case read by virtually every first-year law student and is generally considered the greatest of all landmark cases. Marshall strained to reach his result. The plain words of Section 13 of the Judiciary Act indicate that Marbury went to the wrong court or invoked the wrong statute (or both), but Marshall proceeded as if the suit were authorized by Section 13 and then declared the statute unconstitutional on the grounds that it purported to expand the Court's original jurisdiction in violation of Article III. Marbury's suit was dismissed for lack of jurisdiction. Marshall's decision--brilliant in its conception--allowed the Court to brand Jefferson a violator of civil rights without issuing an order that the President could have ignored.

The Constitution does not expressly provide for this style of "judicial review" of the meaning of the legislation. What should be made of this fact? Does it suggest that the framers did not intend to give the courts such a power? Not necessarily, although that is one explanation for its absence. It is also possible that the framers thought the power of judicial review was sufficiently clear from the structure of government that it need not be expressly stated. A third possibility is that the framers didn't think that the issue would ever come up, because Congress would never pass legislation outside of its enumerated powers.

Only 11 of the 55 delegates to the Constitutional Convention, according to Madison's notes, expressed an opinion on the desirability of judicial review. Of those that did so, nine generally supported the idea and two opposed. One delegate, James Wilson, argued that the courts should have the even broader power to strike down any unjust federal or state legislation. It may also be worth noting that over half of the thirteen original states gave their own judges some power of judicial review.

The program weekend will open with a discussion of the role of judicial review and the judiciary in Pennsylvania and the federal government.

## **Final Thoughts:**

Local attorneys: You may be able to find a local attorney who is willing to donate his or her time to assist in providing pointers. Also, they may be willing to allow you to use their library for doing research. If you need help contacting a local attorney, contact your local bar association. They will

be glad to help you find an attorney in your area to help you out. Attorneys really enjoy these activities.

The Internet: You will be able to find a number of good, free links for legal research from our judicial page at <http://www.ymcapa.org/Judicial.html>.