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# YMCA VIRTUAL NATIONWIDE JUDICIAL COMPETITION 2021 APPELLATE RULES AND PROCEDURES

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# OVERVIEW OF APPELLATE COURT PROGRAM

Welcome to the appeals competition for the YMCA VIRTUAL NATIONWIDE JUDICIAL COMPETITION (NJC).

Even if you have previously participated in an Appeals competition for Youth and Government on your state level, please review these instructions carefully as some information may be different. You are responsible for all the information in these Rules and Instructions. These instructions also provide a brief overview of the nature of appeals, forming an appeals team, and provide tips and tools for preparing for the competition.

Appellate attorneys at NJC will serve as BOTH attorney AND justice for the case provided. During each round, your team will either serve as attorneys or as justices, joining one or two teams and a chief justice on the bench.

You will work in teams of two attorneys. There are two issues in the case, and each team member will prepare one issue. You will argue both sides of the case during the competition. Teams must also be prepared to hear the case as a justice and be ready to engage in questioning of the attorneys during oral arguments.

The materials for this problem consist of:

- (1) the Summary of the Case;
- (2) the opinion of the United States Court of Appeals;
- (3) selected relevant case precedent

The facts of the case are set out in the majority and dissenting opinions. The legal principles governing this problem are those set out in the materials provided to you.

**The Appellate Case is a CLOSED CASE. When preparing your arguments, you are limited to the information provided. No other materials may be used and no outside research is permitted. See guidelines below for further explanation.**

# CLOSED CASE GUIDELINES

## Permitted

The following sources may be referenced in oral argument:

- Any information in the case packet, including in the fact pattern, relevant legislation and case law.
- Any section of the Constitution, including its amendments.
- A direct quotation, rephrasing or summary of a court case not included in the case packet, as long as that quotation, rephrasing or summary appears in the case packet.
- “Common knowledge,” defined as information that reasonably intelligent high school senior with no legal expertise would know.”

## Prohibited

Any other sources may not be referenced in oral argument. These include:

- An excerpt of any legislation or case included in the case packet, if that excerpt is not included in the case packet.
- A concurring or dissenting opinion of a case included in the case packet, if that opinion is not included in the case packet.
- A direct quotation, rephrasing or summary of a court case not included in the case packet, if that quotation, rephrasing or summary does not appear in the case packet.

The Supreme Court generally considers legal issues only, not factual issues. The facts of a case are decided at the trial level, either by a judge or a jury. If there is an appeal from a trial court’s decision, the appellate courts defer to the facts as found by the trial court judge or jury and consider only whether the law was properly applied to those facts. In this case, the relevant facts were decided by the trial judge.

For purposes of this case, you should assume that the district court adopted as findings of fact all of the facts set out in the Stipulated Facts and any additional facts found in the Circuit Court’s opinion and the summary of expert testimony.

While you may not argue that the trial judge was wrong about the facts, you may argue that the facts as found by the trial judge do not support the trial judge’s legal conclusion or the legal conclusion of the Circuit Court. If there are facts in the record that you believe are important but were not mentioned in the Circuit Court’s opinion, you are free to argue that those facts support your position. You may not, however, base your argument on facts that do not appear in these materials.

# I. WHAT IS APPELLATE COURT, AND HOW DOES IT WORK?

1. The appellate competition involves the presentation of a fictitious case to an appellate court. The appellate competition differs greatly from the trial of the case with which the general public is more familiar. This section will familiarize you with the basic appeals process.
2. What is an appeal?
  - A. The appeal process is an integral part of our legal system. Following a trial, the losing party can challenge the result in a higher court. This is done by presenting specific challenges to the rulings of the trial court (example: the exclusion of evidence or witnesses) or to the manner in which the lower court interpreted the law in reaching the result that it did (example: did the trial court follow the law). These challenges are supported by precedent, decisions of other courts in similar cases.
3. In the federal system, a case usually will go from the Federal District Court to a Circuit Court of Appeals and then to the United States Supreme Court.
4. 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. The attorneys for the parties make oral presentations to the appeals court detailing the reasons why their respective clients should prevail. The justices of the appellate court may interrupt the attorneys at any point and ask questions about their arguments.
5. 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 justice disagrees with the holding of the Court, he or she may file a "dissenting opinion."
6. For the purposes of the National Judicial Competition participants will compete only through Oral arguments
  - A. Oral Arguments consist of attorneys making arguments of their position in the case to the appellate court. During oral arguments, the attorneys will be interrupted and asked questions by the appellate justices. These questions will help the appellate justices make a decision of how to rule in the case. The attorneys structure their oral arguments using only the legal precedents to support their case. In some cases, both sides of a case may cite the same case to support their opposing arguments. Most cases include a dissent, or include legal theory that could be used to support two different arguments if a skilled appeals attorney is able to argue why the case at hand is different from the one decided in a previous case.

7. The decision of the appellate court is then written in the form of an opinion that is sent to the attorneys and is sometimes published for use as precedent in later cases.

## **II. TEAM COMPOSITION**

1. For the National Competition, an appellate team will consist of two (2) members. There are two issues in the case, and each student attorney will represent one issue.
2. Attorneys will introduce themselves and inform the justices which issue they will represent. "My name is (name) and I will be arguing Issue One; my co-counsel (name) will be arguing Issue Two."
3. Each side will be given 20 minutes to present their argument. Each attorney must argue at least five minutes, but once an attorney has spoken during their argument they may not speak again.
4. Additionally, the Petitioner has the right to reserve up to 5 minutes for rebuttal, which is deducted from their 20 minutes total. It is the Petitioner's duty to announce this before the oral argument begins.
5. The parties must tell the Judge & Evaluator prior to the start of the competition how they will divide their time.
6. The attorney team may keep time for themselves.
7. The Evaluator or Justices will signal when time is up.

## **III. BRIEFS**

1. Briefs will not be required from NJC teams, although attorneys are encouraged to use the format for writing a brief to help guide their preparation.

## **IV. ATTORNEY ORAL ARGUMENTS**

1. Your score during the oral arguments will be used to determine rankings. Sample scoring sheets have been attached. Please review these scoring sheets to determine the various categories on which you will be scored.

## **V. RULES**

1. For the purposes of the competition, the arguments are being presented to the United States Supreme Court. Before each round begins, teams will be assigned to represent either the Petitioner or Respondent. The Petitioner team presents its arguments first, and is then followed by Respondent's arguments. The Petitioner will then have the opportunity to provide a brief rebuttal, which will be presented by only one of the two attorneys for Petitioner's team.

2. Each team has a total of twenty minutes to present their argument. 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]. A suggested time division of the arguments is as follows:
  - A. Petitioner Lawyer #1 - 9 minutes; Petitioner Lawyer #2 - 8 minutes
  - B. Respondent Lawyer #1 - 10 minutes; Respondent Lawyer #2 - 10 minutes
  - C. Petitioner Rebuttal - 3 minutes
3. The Chief Justice will ask the first question during oral arguments. (This is out of respect to the petitioners, to allow them to properly begin their presentation before responding to a barrage of questions.) Student justices may ask questions after the Chief Justice has presented the first question.
4. During the course of the oral arguments, the justices may interrupt and ask questions about the argument. Attorneys should answer the justice's questions, and then return to the argument.
5. Attorneys cannot communicate with their partners while presenting their oral arguments. Once an attorney goes to the podium, he/ she must remain there until the conclusion of the argument.
6. Attorneys may take notes, cases or a summary to the podium.
7. Attorneys should not point or look at opponents during oral argument. Oral arguments must be directed at the Court. Attorneys should refrain from making any personal remarks about or attacks upon opposing counsel.
8. When a justice begins asking a question, attorneys should stop speaking immediately. (It is considered disrespectful for the attorney to attempt to talk over the justice.)
9. If an attorney runs out of time while arguing, he/she should stop immediately, and request permission from the Court to conclude the sentence. If the Court grants permission to conclude, the attorney must promptly conclude.

## **VI. JUSTICES**

1. Student justices will sit with 4 - 6 other student justices.
2. There will be a separately assigned Chief Justice
3. Youth justices are expected to be knowledgeable of the case, including the facts, the issues, and the relevant case law. The justices are also expected to be fair and impartial to the parties, and fulfill their duties as a justice in a dignified, professional manner.

4. Questions to the attorneys are appropriate and expected for seeking clarification of oral arguments. While it is improper for the justices to harass or be disrespectful to the attorneys, a certain amount of back and forth question and answering that may occasionally be adversarial is normal. While the justices are permitted and encouraged to interrupt the attorney's presentation to ask a question, common courtesy and decency mandates that questions be asked in a respectful, dignified manner.
5. The justices are expected and required to be fair and impartial. While they may personally believe that one side's position has more merit, it is improper to make statements that give the appearance that a justice is clearly supportive of one side over the other.
6. It is within the Chief Justice's sole discretion to provide an attorney an extra 30-60 seconds to complete a thought or to answer a question from the bench.
7. Justices will be scored according to the designated rubric. To be posted on VJC Website.

## **VII. FORMAT OF THE COMPETITION**

1. Attorneys enter the courtroom and set up at the counsel tables. There will be someone at the bench keeping time. Each attorney will need to give the timekeeper the following information:
  - A. Their name
  - B. Whether they are Petitioner or Respondent
  - C. Which speaker they will be (Petitioner #1 or #2 or Respondent #1 or #2)  
How much time they will need for their presentation
2. The Chief will announce the first case on the calendar, that of \_\_\_\_\_.
3. The Chief Justice will ask: "Is the Petitioner ready?"
4. The Petitioners will stand. One team member (typically the first to speak) looks directly at the Chief Justice and answers: "Petitioner is ready your honor" (Petitioners then sit down)
5. The Respondents will stand. One team member looks directly at the Chief Justice and answers: "Respondent is ready, Your Honor." (Respondents then sit down).
6. The Chief Justice will instruct the Petitioners that they may proceed.
7. The Petitioner first speaker will approach the podium and begin. As soon as the Petitioner #1 finishes, Petitioner #2 will approach and begin their argument.
8. Once both Petitioners have made their argument, the first Respondent will approach the podium and begin. As soon as the Respondent #1 finishes, Respondent #2 will approach and begin their argument.
9. Once both Respondents complete their argument, the Petitioner (one speaker only) will approach the podium and make their rebuttal.

## VIII. THE COMPETITION

1. The number of competition rounds each team gets will depend on the number of teams in the competition, but time permitting, every team should have the opportunity to present their Petitioner argument once and their Respondent argument once, along with serving as a Justice for one round.
2. Violations of any of the above rules may result in point deductions. This deduction is at the discretion of the individual evaluator. Egregious violations may be brought to the attention of Appellate Committee Chair within one hour of the round's completion. Conference staff has the ultimate authority to deduct points and/or disqualify teams.
3. During oral arguments, attorneys and Justices will be scored by evaluators who are law students, attorneys or other professionals with Appellate or Moot Court knowledge.
4. Evaluators score individual and team performances. Evaluator fills out an individual ballot, and evaluators should not consult with one another during this process. Justices should not instruct evaluators on scoring decisions.
5. The criteria for scoring is provided to evaluators; each evaluator will receive instructions on these criteria prior to each round.
6. NO COMPLETED BALLOTS ARE TO BE VIEWED BY ANY TEAM MEMBER OR ANY OTHER PERSON DURING THE COMPETITION, in compliance with the educational goals of the Virtual Judicial Competition. These are to be returned to the tournament staff after the round has been concluded. Score and comment sheets for a team will be copied and distributed to that team's coach after the competition is completed.
7. Conference staff will check evaluator ballots for complete scoring and for improper scores. Whenever possible, evaluators will be asked to make any necessary corrections. When an evaluator cannot be located, or other circumstances prevent timely consultation with the evaluator concerning the ballot, conference staff will correct improper entries before the ballot is totaled, or take other appropriate action.
8. Evaluator's ballots are used to determine which individual students will advance to the final rounds of the competition. The average score for each student is used to determine the attorneys and justices that will advance to the final round.
9. In order to meet the educational and youth development goals of this competition, the following factors are taken into consideration when building the competition pairings. Factors include, but are not limited to:
  - a. Limit number of times teams from the same state play one another.
  - b. Limit number of times teams are matched with the same opponent.
  - c. Ensure teams have opportunities to present both the plaintiff and respondent side of the appeal.