

COMPETITION RULES

35th ANNUAL JOHN W. DAVIS MOOT COURT COMPETITION, FALL 2014

I. HONOR SYSTEM

THE WASHINGTON AND LEE HONOR SYSTEM IS FULLY APPLICABLE TO ALL ASPECTS OF THIS COMPETITION.

II. MOOT COURT ADMINISTRATORS

The Administrators of the 2014 John W. Davis Moot Court Competition are Elliott Harding (harding.e@law.wlu.edu) and Krystal Swendsboe (swendsboe.k@law.wlu.edu)

III. QUESTIONS ABOUT THE COMPETITION

All questions regarding the problem or rules should be directed to one of the Administrators. Competitors may e-mail either of the Administrators. After the informational meeting, questions about the competition should only be submitted by this method.

IV. SIGN-UPS

All competitors must sign up for the Davis Moot Court Competition by 5 P.M. on Thursday, Sept. 4, 2014. The sign-up sheet will be available via a Google doc link that will be distributed via email. Competitors wishing to work in pairs must sign up as pairs on the sign-up sheet.

V. IMPORTANT DATES

Competition Sign-up: Wednesday, September 3 to Thursday, September 4

Problem Distributed: Friday, September 5

Appellate Advocacy Primer: Wednesday, September 3

Briefs Due: Sunday, September 21

Preliminary Round I (On-Brief) Begins: Monday, September 22

Preliminary Round II (Off-Brief) Begins: Monday, September 29

Quarterfinal Round Begins: Thursday, October 9

Semifinal Round Begins: Thursday, October 16

Final Round: Tuesday, October 21 at 5:30pm

VI. SCORING

A. Each participant or team will be sent a competition number by a Moot Court Executive Board administrator. The competition numbers are used during the competition to protect each participant's anonymity during brief scoring. As a reminder, participants may only work in teams on the brief writing section of the

competition. All oral argument rounds will be done individually. See the Rules for Brief Submissions for further details.

- B. Each participant will receive an individual brief score that will comprise 30% of the score used in determining advancement from Preliminary Rounds One and Two to the Quarterfinals. Oral argument scores will comprise 70% of the score used in determining advancement from Preliminary Rounds One and Two to the Quarterfinals.
- C. Oral Argument Scores alone will determine rankings in the Quarterfinals and Semifinals. In the event of a tie, brief scores will be used as a tie breaker.
- D. Oral Argument Scores alone will determine rankings in the Final Round.

VII. JUDGES

The Moot Court Administrators will be the Chief Judges for the Preliminary Rounds of the competition, as well as the Quarterfinal Round. The remaining judges for these rounds have been drawn from the members of the Moot Court Board. A panel of professors will judge the Semifinal Round (as well as the Best Brief Semifinalists and four Best Brief Finalists), and judges from the Federal Court System will preside over the Final Round.

VIII. AWARDS

The Moot Court Board and a Panel of Faculty will give the Best Brief Award (First Place) and First Runner-Up to the individuals or teams that submit the two most outstanding briefs. In the Final Round, the judges will select the individual who will receive the Best Oralist Award (First Place) and the First Runner-Up. The winners of the Best Brief and Best Oralist awards will be announced following the completion of the Final Round.

IX. QUALIFICATIONS FOR NATIONAL COMPETITIONS

- A. Davis Finalists, Semifinalists, and Quarterfinalists will be eligible to participate in the national moot court competitions held in the fall of 2014 and spring of 2015. Eligible students who desire to enter interschool moot court competitions apply shortly after the Davis Appellate Advocacy Competition is concluded, and teams for each competition are selected by the Moot Court Board member(s) coaching the competition.
- B. Members of national moot court teams may receive one (1) un-graded academic credit for their participation in a national competition.
- C. Students **must** complete the Davis Competition in order to participate in any external appellate advocacy competition.

X. DISCLAIMER

The Moot Court Board reserves the right to make any alterations, amendments, additions, deletions, or other changes to these guidelines as the Board deems necessary and proper. Notice of any changes will be posted on the Moot Court web site as soon as they are made.

XI. GRIEVANCES

The actions of the Moot Court competitors and the Moot Court Administrators will be governed by the Moot Court Board's Grievance Procedures at all times during the 2014 Moot Court Competition. These procedures may be found on the bulletin board outside the Moot Court Boardroom and on the web site. As described in these Procedures, Moot Court Board decisions are final.

RESEARCH RULES

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II. RESEARCH RULES

- A. Competitors are free to refer to any judicial decisions, treatises, law reviews, journals, casebooks, other legal materials available in the law library, news articles, or official statements by the President on the issues.
- B. The issues to be addressed will be provided in the Questions Presented. **No other issues are to be discussed.** If you have any concern over whether or not an issue needs to be raised, please contact the Davis Administrators.
- C. Competitors may freely discuss the substantive issues of the problem with one another and with other Washington and Lee law students, excluding Moot Court Executive Board Members. Participants are **strictly prohibited** from discussing the problem with any person who is **not** a Washington and Lee law student. Such persons include, but are not limited to, faculty members, attorneys, students at other law schools, and faculty at other law schools and other institutions.
- D. LEXIS and Westlaw may be used to research this problem. Participants should comply with library regulations involving computer research.
- E. **Individual or team participants must do their own written work. Team participants may only consult with their designated partners regarding the written work.** Once competitors begin writing individually or as a team, they are not allowed to submit briefs in any other capacity.
- F. Any questions concerning ambiguities in the problem or rules must be addressed only to the Davis Administrators. See the procedures described in **Competition Rules, III, Questions About The Competition.**
- G. By submitting a brief, each participant automatically pledges to employ **good faith and professionalism** in brief submissions and oral arguments.
- H. Use of WestCheck or any other computerized program designed to check for citation errors is **strictly prohibited.** Use of a grammar check program is acceptable so long as the program is part of a spell-check program on a word processor.

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RULES FOR BRIEF SUBMISSIONS

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II. BRIEF ASSIGNMENTS

- A. Admission into the Davis Moot Court requires the completion and submission of a brief for judging. Briefs may be completed individually or in teams of two.
- B. **Participants may not drop out of the competition after the Davis Case Problem is distributed without demonstrating a compelling reason to the Davis Administrators, such as serious illness.**
- C. Anyone who wishes to participate in the competition but failed to sign up by 5 P.M. on Thursday, Sept. 4, 2014 must request permission from the Davis Administrators.
- D. No team switching or side switching will be allowed after 5 P.M. on Thursday, Sept. 4, 2014.
- E. Individual and team participants may discuss the problem with other participants and share research results, but each participant or team is wholly responsible for writing the brief that they will submit.
- F. Each participant or team should collect a single competition number. **When submitting a brief, each participant or team must be identified only by that single competition number.** Briefs submitted with more than one competition number so that it is apparent that they worked together as a team will lose points for breach of anonymity. Briefs may not contain names or any other means of identifying the participant. The competition number should appear on the cover page and at the end of the brief (e.g. - Respectfully submitted, 123). The Moot Court Administrators reserve the right to assess penalty points in accordance with Section VI, *infra*, and/or disqualify any competitor that has irreparably compromised his/her anonymity.

III. CONTENT REQUIREMENTS

A. Content Restriction

Participants should limit the arguments in both their briefs and oral arguments to **ONLY** those issues highlighted in the Questions Presented and the Case Problem. Failure to do so will result in a lower score.

B. **Required sections of the brief:**

1. Cover page (including the participant's competition number)
2. Question(s) Presented
3. Table of Contents
4. Table of Authorities
5. Statement of the Case
6. Summary of the Argument
7. Argument
8. Conclusion

Helpful Resources: Generally, briefs should follow the format prescribed for briefs presented in the United States Supreme Court. ***Supreme Court Practice is a good reference.*** This book, the current Supreme Court rules, and other recommended resources will be available on reserve after September 5, 2014. Competitors may also access the current Supreme Court rules online at <http://law.wlu.edu/deptimages/moot%20court/2013RulesoftheCourt.pdf>. Copies of the Best Briefs from past Davis competitions may be downloaded from the Moot Court website. The brief scoring ballot is also available on the Moot Court website.

- C. Briefs may NOT include an appendix.
- D. All citations must be complete, and must conform to the Practitioner's Notes found in the 19th edition of *A Uniform System of Citation* (the "Blue Book").

IV. **TECHNICAL REQUIREMENTS**

- A. Only 8.5" x 11" white paper is acceptable.
- B. Top, bottom, right, and left margins must be 1" each.
- C. Briefs must be typed, double-spaced. The font must be Times New Roman. The font size must be 12 point. NO other font or font size is permitted.
- D. The brief may be a **maximum of 15 pages long**. Participants are not required to write 15 pages. (Note: This page limit includes the Statement of the Case, Summary of the Argument, and the Conclusion. It **does NOT include** the Cover Page, Questions Presented, Table of Contents and Table of Authorities.)
- E. With the exception of lengthy law review or social study citations, all citations must be included in the text of the brief. Footnote citations must be in 12 point type.
- F. Laser or ink jet printers must be used. Dot matrix printers are not permitted.

- G. When citing Supreme Court decisions, cite to the United States Reports unless the case has not yet been reported in that series. If the decision is not reported in United States Reports, cite ONLY to West's Supreme Court Reporter (e.g. – S. Ct.).

V. SUBMISSION OF BRIEFS

A. Final Drafts

1. Each participant should submit **three** copies of his/her brief by **5:00 p.m. on Sunday, September 21, 2014**. Briefs should be turned in at the Old Moot Court Board Room on the Fourth Floor (Room 409). Each copy should be securely stapled in the upper left-hand corner. A large stapler is available in the law library for stapling.
2. Each participant should **upload a copy** of his/her brief by 5:00 p.m. on Sunday, September 21, 2014 to Sakai. Instructions on how to upload a document to Sakai will be distributed to participants.
3. The clock outside the Moot Court Board Room will be the official clock for determining whether a brief was submitted on time. Should the clock be unavailable, the Moot Court Administrators will make the final decision as to the appropriate deadline time.

B. Deadlines for Submission

1. Both the hard copies and uploaded copy of the brief should be delivered by **5:00 p.m. on Sunday, September 21, 2014**.
2. Failure to submit the hard copies or upload a copy of the brief by the deadline will result in a penalty.
3. Failure to submit the hard copies or upload a copy of the brief by **Sunday, September 21, 2014 at 11:59 p.m.** will result in disqualification.

VI. BRIEF SCORING

- A. Briefs will be graded by members of the Moot Court Board.
- B. Each participant will be given a brief score out of a total possible 100 points. The participant's score will be based on three components: content and organization, blue booking, and grammar.
- C. Briefs will be scored based on the ballot used for the American Bar Association's National Appellate Advocacy Competition. This ballot can be found on the Moot Court website.

- D. The brief penalty points listed on the ballot may be deducted from the participant's overall brief score at the discretion of the Moot Court Administrators.

VII. RESULTS

- A. The Moot Court Board will nominate eight briefs for the Semifinal Round of the Best Brief Award. These nominations will be based solely on the participant's brief score. A panel of professors will select the top four finalists and winner of "Best Brief" from the briefs nominated by the Moot Court Board.
- B. The names of the finalists for the Best Brief Award will be announced at the same time that the names of the Finalists are announced.

VIII. DISCLAIMER

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ORAL ARGUMENT RULES

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I. HONOR SYSTEM

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II. All competitors will compete individually at oral arguments.

III. Parties should dress in the manner customary for attorneys appearing before the Supreme Court.

IV. THE PROCESS

A. Scheduling of rounds.

1. Oral argument schedules for the Preliminary Rounds (On-Brief and Off-Brief Rounds) will be posted on the Moot Court Board bulletin board in the Brief Stop at 9:00 a.m. on Monday, September 8, 2014. The posting will allow competitors to sign-up for the date and time of their oral argument. Competitors will have until 5:00 p.m. on Friday, September 12, 2014, to select their argument times for the Preliminary Rounds. Each competitor will sign up for ONE slot for their On-Brief Argument and ONE slot for their Off-Brief Argument. (i.e. If a competitor wrote her brief for the Petitioner, she will sign up to argue for Petitioner for the On-Brief Round and for Respondent for the Off-Brief Round.)
2. If any participant has a scheduling conflict, such participant may trade times with another participant who has been assigned to the same side.
3. **Trading of times will only be honored if a written note regarding the change is emailed to both Davis Competition Administrators at least twenty-four hours in advance of both scheduled arguments.** This rule will not apply to those arguments scheduled for the first two days of On-Brief Arguments.
4. If scheduling conflicts cannot be resolved, notify the Administrators of the conflict as soon as possible. The Administrators will try to accommodate requests for changes in the event of exigent circumstances, but reserve the right to enforce the schedule.

B. During the first week of oral arguments (September 22), each participant will, if possible, argue the side that was argued in his or her brief. During the second week of oral arguments (September 29), each participant will argue the opposing

side. However, the Moot Court Administrators reserve the right to assign an individual to an alternate side of the argument if necessary.

- C. The names of advancing participants will be announced as soon as possible after the completion of each round of arguments.
- D. The number of participants advancing past the Preliminary Rounds will depend on the overall number of participants.

V. THE ARGUMENTS

- A. As noted above, only arguments concerning the questions presented with the case problem will be entertained.
- B. **Oral arguments are limited to a total of 15 minutes per person.** This time limit includes the introduction, the time spent on questioning by the judges, and the time spent for each participant's responses to the judges' questions.
- C. **Petitioners may reserve time for rebuttal.** Rebuttal time is limited to a **maximum of five minutes** and is subtracted from the total time allowed to the petitioner. Each individual Petitioner may choose how much time is to be allowed for rebuttal. The rebuttal must be reserved in advance of the petitioner's oral argument by asking the Chief Justice (e.g., "Your Honor, Petitioner respectfully request to reserve three minutes of my time for rebuttal.").
- D. Participants must observe the following rules of decorum when arguing:
 - 1. Facing the bench, Petitioners are seated on the right (closest to the jury box) and the Respondents are seated on the left.
 - 2. Participants are asked to stand up when the judges enter the courtroom and sit when the Chief Justice so indicates.
 - 3. When the Chief Justice asks if each side is ready, participants are to stand up and say, "Yes, Your Honor, the Petitioner is ready," or "Yes, Your Honor, the Respondent is ready."
 - 4. Participants should address each judge as "Your Honor."
 - 5. Participants should open arguments with, "Mister/Madam Chief Justice and may it please the court. I represent [PARTY], the Petitioner/Respondent in this matter. Your Honors, . . ."
 - 6. Participants should always refer to cases as "Party AGAINST Party" and not as "Party versus Party" or "Party v. Party."
 - 7. **Participants should stop immediately when they see the "STOP" card,**

and should ask for more time if they wish to continue. Granting of additional time is completely within the discretion of the judges. If additional time is granted, participants should complete their argument as quickly as possible. Failure to adhere to the STOP card may result in a deduction of your oral argument score.

8. Participants should include a conclusion of their arguments during the time allotted and thank the Court for its time at the completion of their conclusion.
- E. **During each week of rounds, no participant who has already argued may discuss his or her round in any way with a participant who has not yet argued.**
- F. The Preliminary Rounds and Quarterfinals are closed to observers. The Semifinals and the Final Round will be open to the public.
- G. Videotapes will be made of each round and placed on reserve at the circulation desk. **Participants are not permitted to view any videotapes of a particular argument until the entire round of arguments at that level has been completed**, except that a participant may view the videotape of his or her own oral arguments of any round at any time. Once a round has been completed, any person may view any videotape of any oral argument from that round.
- H. Davis Appellate Advocacy rounds from previous years are on reserve with Law Media. We encourage participants to watch these in preparation for their oral arguments.

VI. SCORING

- A. No score sheets will be returned to any participant after the competition. **Moot Court judges will provide each participant with a non-substantive oral critique of their argument at the end of each round.**
- B. **Within each individual round, the two participants will NOT be graded against each other.** No participant will “win” or “lose” a round. Each person receives an independent score, which will be compared with the scores of all other participants at that level of the competition to determine who will advance to the next level of competition.
- C. The judges before whom each participant is arguing do not have the arguing participant’s briefs before them and will not knowingly have read the participants’ briefs. (Some of the judges are grading briefs and may have read a participant’s anonymous brief). **Each participant is not limited to the arguments that were presented in the participant’s brief, but the rules that limited the issues that could be argued in the briefs remain applicable.**

- D. Each participant's oral argument score will be comprised of two equally weighted scores, **one for the content** of the participant's argument and **one for the form** in which it was presented.
- E. In grading the content of each participant's argument, the judges will be considering the quality of the participant's argument based on the following guidelines. For additional guidance, see the oral argument ballot on the Moot Court website.
1. Communication of the argument:
 - a. Did the participant simplify and explain the issues and arguments in the case?
 - b. Did the participant use simple and comprehensible sentences?
 - c. Did the participant reach the heart of the case quickly?
 2. Organization:
 - a. Did the participant craft his or her argument persuasively?
 - b. Did the participant make persuasive use of authority?
 - c. Did the participant employ sound reasoning?
 - d. Was the progression of the participant's argument logical?
 3. Control of the Argument:
 - a. Did the participant unnecessarily concede points?
 - b. Did the participant answer quickly and concisely?
 - c. Did the participant quickly and smoothly continue argument following questioning?
 4. Responsiveness:
 - a. Was the participant evasive?
 - b. Did the participant respond to questions with a question?
 - c. Was the participant asked the same question several times before giving a satisfactory answer?
 5. Accuracy:
 - a. Did the participant make arguments based on facts not in the case?
 - b. Was the participant honest in her statement of the facts and case law?
- F. In grading the form of each participant's argument, the judges will be considering the quality of the participant's presentation based on the following guidelines. For additional guidance, please see the oral argument ballot on the Moot Court website.

1. Decorum:
 - a. Did the participant address the judges as “Mr./Ms. Justice” or “Your Honor”?
 - b. Did the participant properly state case names (“Party against Party”)?
 - c. Did the participant respond immediately to the stop card?
 - d. Did the participant provide a clear and simple opening statement?

2. Deference:
 - a. Was the participant deferential and courteous to the judges?
 - b. Did the participant interrupt the judges or refuse to stop for the judges’ questioning?
 - c. Did the participant postpone answers to questions?

3. Speech:
 - a. Did the participant frequently use oral pauses?
 - b. Did the participant effectively use the microphone?
 - c. Was the participant’s volume too loud or too soft?
 - d. Was the participant’s tone varied?
 - e. Was the participant’s speed too fast or too slow?

4. Style:
 - a. Was the participant overly argumentative or confrontational?
 - b. Was the participant overly dramatic?
 - c. Did the participant make improper emotional appeals?
 - d. Did the participant appear confident?
 - e. Did the participant appear sincere?
 - f. Did the participant appear too stiff or too casual?
 - g. Did the participant maintain composure when faced with difficult questions?
 - h. Was the participant able to deal with an absence of questions?

5. Appearance:
 - a. Did the participant use distracting mannerisms or exaggerated gesturing?
 - b. Did the participant maintain eye contact?
 - c. Did the participant bring minimal paper to the podium?
 - d. Did the participant read extensively from the material?

6. Extra points will be deducted for gross disregard of the above guidelines.