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# TEXAS YOUTH & GOVERNMENT

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## ATTACHMENT 1

### 2016-2017 APPELLATE RULES AND INSTRUCTIONS

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## INSTRUCTIONS FOR PARTICIPANTS IN THE APPEALS COMPETITION FOR 2016-2017

Welcome to the appeals competition for the YMCA Texas Youth & Government program! **Even if you have previously participated in the Appeals competition, please review these instructions carefully as some information may have changed. 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 research tips and tools for preparing your briefs and oral arguments.

### I. Specific instructions for this year's competition:

- A. This year's case is a Criminal Case. The issues involve whether the Defendant's confession to police should have been suppressed and whether the Defendant, a 15 year old child, was properly certified to stand trial as an adult. The name of the case is:

**Jenny Smith, Appellant**

v.

**The State of Texas, Appellee**

The Youth and Government appellate case this year involves a criminal appeal in the Court of Criminal Appeals. The trial of the case was held in the 1st Criminal District Court for Coco County, Texas. The intermediate appeal was to the 15<sup>th</sup> Court of Appeals. Ms. Smith lost at both the trial and intermediate appeal levels so she has now appealed to the Court of Criminal Appeals. (See section II below for an explanation of how appeals work)

In both the district and state competition, you will be making your arguments to the Texas Court of Criminal Appeals. You will be required to prepare briefs and present oral arguments for both Appellant and Appellee.

- B. Attached to this packet are copies of the case materials for the case. This case and the materials used are different from those used in the trial competition. The case materials include:
1. Cover Page and Table of Contents
  2. Attachment 1 – Rules and Instructions (this section)
  3. Attachment 2 – Appellate Case
  4. Attachment 3 – Legal Authority
  5. Attachment 4 – Supplemental Materials

**If you do not receive all of the foregoing materials, it is your responsibility to contact your YMCA advisor or district director.**

- C. Appellate teams may consist of 2-4 members; however only two team members will argue in a given round. More advanced appeals teams are encouraged to only use 2 members but it is a suggestion and not a requirement.
- D. **NOTE: A TEAM THAT IS SENT FROM A DISTRICT TO COMPETE AT THE STATE CONFERENCE IN APPEALS MUST HAVE SUBSTANTIALLY THE SAME MAKEUP AS IT DID COMPETING AT THE DISTRICT CONFERENCE. ANY TEAM THAT CANNOT SATISFY THIS RULE MUST CONTACT THE JUDICIAL SECTION LEADER DIRECTLY AS SOON AS IT BECOMES CLEAR THAT THIS IS A PROBLEM BUT NO LATER THAN 1 WEEK PRIOR TO THE STATE CONFERENCE TO DISCUSS OPTIONS.**
- E. In Attachment 2 (Appeals Case materials), you have been given a partial copy of the trial record. However, these are not the only documents in the trial case that you may be able to glean information from. The other documents in the complete trial case will give you insight into the Defendant and her crime. Reading them can only help you in preparing your case. You can access the complete trial case on the Texas Youth and Government website.
- F. **Laptops or other electronic media may not be used in the courtroom at counsel table or at the lectern for oral argument**
- G. **You are permitted to submit any questions regarding the case, trial rules and procedures and simplified rules of evidence. Such questions should be submitted via e-mail to [txyq@austinyymca.org](mailto:txyq@austinyymca.org) by October 21<sup>st</sup>, 2016. An official response by the Judicial Section leaders will be e-mailed to all District Directors for distribution no later than November 4<sup>th</sup>, 2016.**

## II. **What is Appellate and How Does it Work**

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.

### A. **What is an appeal?**

1. 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.

2. 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.”
3. The appellate court will consider the precedents (prior cases that have already been decided on the subject) and arguments presented by the losing party (Petitioner) to determine if the judgment of the lower court was wrong. The appellate court will also consider counter-arguments by the winning party (Respondent) as to why the trial court ruled correctly. These arguments and counter-arguments are submitted to the appellate court by a written brief and sometimes by oral arguments in front of the Court.
4. 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 judges. These questions will help the appellate judges make a decision of how to rule in the case.
5. After hearing the arguments of the parties, the appellate court may do one of three things:
  - a. If the appellate court finds that the trial court ruled in error (was wrong), the appellate court may:
    - i. Reverse the decision of the lower court and remand the case for a new trial; or
    - ii. Render the judgment that it believes the trial court should have rendered under a proper interpretation of the law.
  - b. If the appellate court determines that the trial court did not rule in error, it will affirm the judgment of the trial court.

6. 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.

### **B. Who is the ideal appellate competitor?**

There is no one thing that makes an ideal appellate competitor. Questions you might ask are:

1. Do you like to argue?
2. Do you enjoy a good debate?
3. Are you interested in the law?
4. Do you like public speaking?
5. Can you write?
6. Are you quick on your feet?

It is not necessary that you answer all of these items with “yes,” though it could be helpful. Some people are very skilled at writing and less so with public speaking. Others excel at public speaking and are less skilled at writing. Then, there are those who excel at both. Everyone has a place in appellate and an opportunity to succeed in appellate. What is most important is that you have fun

### **C. What are the benefits of appellate?**

1. You only need a two person attorney team or if you cannot find a partner, you can sign up to be a judge
2. Appellate is a small program so you are more likely to be guaranteed an appellate spot at State if you compete in appellate at District.

## **III. Briefs:**

Prior to the beginning of the state competition, you and your partner will be required to submit two briefs – one for the Appellant (Jenny Smith) and one for the Appellee (The State of Texas)

### **A. Submitting a Brief for District**

1. You will not be scored on your brief at District.

### **B. Submitting a Brief for State**

1. Your Appellant brief is due no later than **December 16, 2016**.
2. Your Judge or Appellee brief will be due no later than **January 6, 2017**.
3. **PLEASE SUBMIT YOUR BRIEFS IN WORD FORMAT (NOT PDF)**

4. In order to be timely, your briefs **MUST** be e-mailed to [txyq@austinyymca.org](mailto:txyq@austinyymca.org)  
You may also be prompted to upload a brief when you register for the state competition; however, this is not a substitute for e-mailing the brief. Once the brief is received, you will be sent an e-mail confirmation in reply. If for some reason your e-mail does not go through or bounces back or if you do not get an e-mail confirmation of receipt, contact your District Director immediately.
5. Late briefs will have five points deducted from the overall score.
6. Briefs that are not turned in by the start of the first day of the competition will be given a score of zero.
1. **If more than one team from a school or YMCA branch participates in appeals, you are encouraged to work together on your oral arguments and briefs but MAY NOT turn in identical briefs for each team. The brief should reflect your own writing skills and identical briefs WILL NOT BE ACCEPTED and you will be asked to resubmit your brief, which will likely cause a point deduction if it is after the brief deadline.**
2. **In the past, brief scores have made the difference between advancing to the showcase or not. The points for the brief do make a difference.**

**C. Format of Briefs:**

1. Please note that this year's competition takes place in the Texas Court of Criminal Appeals. A sample of the cover to be used for the Appellant's brief for this year's case is attached in the case materials (Attachment 2); the Appellee's brief would have a similar cover, but would be entitled "Appellee's Brief" just as the Judge's bench brief will have a similar cover titled "Bench Brief."
2. Briefs that are longer than allowed or are not in the proper format will have points deducted. Each brief should be:
  - a. One to eight pages in length, exclusive of the cover.
  - b. Double spaced
  - c. Have one inch margins on each side
3. The brief should consist of the following parts:
  - a. Attorneys
    - i. Cover page (this page does not count toward your page limit)
    - ii. Introduction (statement of who the brief is directed to)
    - iii. Statement of the Case (two to five sentences)
    - iv. Statement of Facts (one to two paragraphs)

- v. Issues on appeal (there are two issues and they are clearly stated in your case materials)
- vi. Argument (this is the bulk of your brief. It is an overview of your oral arguments and should cite any cases on which you rely.)
- vii. Conclusion (one to two paragraphs)
- viii. Prayer (tell the court what you want it to do – reverse the lower court or uphold the decision of the lower court)
- ix. At the end of the brief, please state your name, and your YMCA affiliation or School. You must also sign your brief, and your electronic signature (this can be just your typed in name) serves as verification that you personally wrote your own brief.

b. Judges

- i. Cover page (this page does not count toward your page limit)
- ii. A summary of the relevant facts (approx. one page)
- iii. The issues and applicable law (cite any cases on which you rely)
- iv. 5 important questions that you may pose to the Appellant; and
- v. 5 important questions that you may pose to the Appellee.
- vi. At the end of the brief, please state your name, and your YMCA affiliation or School. You must also sign your brief, and your signature serves as verification that you personally wrote your own brief.

**D. Researching and Writing the Brief:**

1. You are permitted to seek the assistance of attorneys or adults to assist in the preparation of your briefs; however you and your partner must do the actual writing. The briefs must be electronically signed (this can be your typed in name), and your signature represents your verification that the writing of the briefs was done solely by you and your partner.
2. While copies of cases are being provided, you are permitted and encouraged to perform your own research in preparing your briefs. If your brief reflects additional, independent research, your brief score may reflect that.
3. Citations to cases, statutes, rules, ordinances and law review articles in your briefs
  - a. **In Attachment 3 (page i), you are given a list of all the cases provided to you as part of the case materials. This list has the correct citation to every case or other authority provided to you as part of the appellate materials.**  
The general rule of thumb for citing cases and authorities in your brief is:
    - i. The first time you cite a case or other authority, give the full cite. For example: *Shuttelworth v. City of Birmingham*, 394 U.S. 147 (1969).

- ii. If your very next sentence is a cite from the same case, you can just cite the case as: *Id.* Note, you can only use “Id” when the cite comes from the very same source used in the previous sentence.
  - iii. Unless you are using “Id” as described above, after the first time you give the full cite of a case, you can shorten the cite every time thereafter: For example, after the first time you would cite *Shuttlesworth* as: *Shuttlesworth*, 394 U.S. at 147.
  - iv. For purposes of the Youth and Government briefs, you are not required to cite to the exact page number in a case that you are quoting from. It is sufficient for you to cite to the first page of the case as given on your table of authorities.
- b. References to published cases are referred to as “citations.” A sample citation is listed as follows: *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995).
- i. The portion in italics is the name of the case. The first party listed is the party who lost below and appealed the case.
  - ii. The numbers that follow the name of the case allow you to locate the case in the reporters. The first set of numbers in the above example, “515,” refers to the volume number. “US” refers to the United States Reporter, while the following number, “819,” refers to the page number of the beginning of the case. If you see “F.3d,” the citation is referring to a federal case contained in the third series of the Federal Reporter. The abbreviation “S.Ct.” also refers to a Supreme Court reporter. The abbreviation “S.W.2d” or “S.W.3d” refers to the Southwestern Reporter Series.
  - iii. The court and year of the decision is contained in the parenthesis. In the example above, you do not need to list the court that heard the case because the reporter “US” identifies the case as having been heard by the US Supreme Court. If however, the reporter had been “F3d,” or “S.W.2d” you would have had to list the court that had heard the case.
    - a. For example, in that instance, your citation might have read:
      - a. Federal Case: *Bender v. Williamsport Area School\_District*, 741 F.2d 538 (3d Cir. 1985); or
      - b. Texas Court of Appeals: *Schalk v. State*, 767 S.W.2d 441 (Tex.App.—Dallas 1988, pet. denied);or
      - c. Texas Court of Criminal Appeals: *Robinson v. State*, 851 S.W.2d 216 (Tex.Crim.App. 1991)

c. Some of the court abbreviations you might come across are listed as follows:

- i. "Tex.": Texas Supreme Court
- ii. "Tex. Crim. App.": Texas Court of Criminal Appeals
- iii. "Tex. App.": one of the Texas Courts of Appeal
- iv. "5th Cir.": the U.S. Fifth Circuit Court of Appeals
- v. "US" or "S.Ct.": the United States Supreme Court

#### **E. Scoring the briefs**

1. The score on your two briefs (the Appellant's brief and the Appellee's brief) will be averaged, and that average will comprise twenty five percent (25%) percent of your overall score to be used to determine the rankings. Samples of the scoring sheet are contained in Attachment 4 and set forth the various categories on which your brief will be scored.
2. As noted above, briefs must be filed for both sides of the argument. The final score will be the average of the individual scores for each of the two briefs. For this reason, if a team only files a brief for the Appellant, but fails to file a brief for the Appellee, the score for the Appellant's brief will be averaged against a "zero" score for the Appellee's brief that should have been filed.
3. Briefs received after the beginning of the first round of oral arguments will not be accepted. Briefs that are received prior to that time, but after the due date, will be assessed a five-point penalty per brief.

#### **IV. Research Tips:**

You have been provided with some cases on the subject matter of the Youth and Government appellate case. For some of the cases you may have only been provided the portion of the case that deals with that issue or you may have been provided with a copy of the entire case. Some parts of the case considered to be helpful are highlighted; however you are not limited to using only those parts of the case. Also, you are also permitted to conduct your own legal research.

Other references you might use are:

- A. Case law: Opinions of appellate courts are routinely published in books referred to as "reporters." For example, the opinions of the Texas appellate courts are published in the Southwestern Reporter, while opinions of the Federal Courts of

Appeals are published in the Federal Reporter. Typically, most county courthouses and local law schools will have law libraries that contain these books.

- B. Digests: When conducting your own research, at the beginning of published cases, you will find “keynotes” that refer to the various topics of law discussed in the opinion. These keynotes assist in researching other cases that address the same topics, which are contained in sets of books referred to as the Texas Digest (for Texas cases) and the Federal Digest (for federal cases). Example: If one of the keynotes to the case is entitled “Judges 11(2),” you can look up the subject “Judges” in the digest, go to the same sub-topic, 11(2), and find other cases that address the same subject.
  
- C. 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. In addition, they may be willing to allow you to use their library for doing research.
  - 1. Every major city has a bar association. You can contact the local bar association or the local chapter of the Texas Young Lawyers Association to see if they will send out an e-mail requesting that one of their members volunteer to assist you. You can also go to the state bar website at [texasbar.com](http://texasbar.com) and under the “find an attorney button” select “advanced search” and you can search for attorneys by city. You might be able to send an e-mail to local attorneys to request help.
  - 2. If you are unable to find an attorney to help you, you may contact [txyq@austinymlca.org](mailto:txyq@austinymlca.org) to try to find an attorney to work with you.
  
- D. The Internet: Several websites are helpful in legal research:
  - 1. [www.supreme.courts.state.tx.us](http://www.supreme.courts.state.tx.us) - - This is the website for the Texas Supreme Court. It has a limited search engine that allows searches for case topics, but unfortunately does not presently have the full text of Court opinions prior to 1997.
  - 2. [www.cca.courts.state.tx.us](http://www.cca.courts.state.tx.us) - - This is the website of the Texas Court of Criminal Appeals.
  - 3. [www.findlaw.com](http://www.findlaw.com) - - This website is an excellent source for other sites to assist in research. On the home page, look for the sub-directory entitled “Laws: Cases & Codes.” Under this heading, you can access various websites pertaining to the United States Supreme Court, including sites that can be used to search for its cases. You can also click onto “states,” and then “Texas,” which will bring up a page with the websites for various Texas courts, both state and federal.

4. [www.gksoft.com/govt/en/us.html](http://www.gksoft.com/govt/en/us.html) - - This website contains links to hundreds of governmental departments, agencies, and courts.
5. [www.mytexasbar.com](http://www.mytexasbar.com) - - Attorneys who are licensed in Texas are permitted to use this website to conduct free legal research. The website has an excellent search engine for Texas cases and is easy to use. For this reason, you may want to seek out an attorney in your area who may be willing to permit you to access this system through their password.
6. [www.lexis.com](http://www.lexis.com) and [www.westlaw.com](http://www.westlaw.com) - - these are password sites that many attorneys and some libraries have access to. You may be able to find an attorney who will allow you to use their access
7. [www.google.com](http://www.google.com) - - many of the cases you have been given are lengthy and may be difficult to wade through. You can use google to find summaries of the cases to get you started.

## V. Constructing Your Argument

- A. The outline of your basic argument can be found in the opinions of the lower courts (the District Court and the Court of Appeals). Remember that you will be required to argue both sides of the case and to refute all arguments presented by your opposition. The opinions below will present a pattern of argument in support of both positions. The opinions provide the students with a basic understanding of the case and should lead to a close study of the precedents.
- B. There are two issues in this case. They are set out in Attachment 2 of your case materials.
- C. Once the students have grasped the issues through a thorough understanding of the fictitious case, their attention should shift to the precedent cases. These must be completely understood before individual arguments can be drafted and refined. At this point students can profit from learning the process of dissecting a court's opinion into a case brief.
  1. A case brief contains several major sections: the procedural history of the case, the relevant facts of the case, each issue addressed by the court writing the opinion, the holding or decision of the court on each issue, and the reasoning of the court which supports each holding. Once the case brief is completed, each issue in the precedent cases can be compared to the issues presented by the fictitious case to support or refute the position espoused.

- D. With basic preparation completed, the students may then begin to construct effective arguments on each side of the case. The arguments presented in the problem case can be expanded and refined and new arguments developed. The precedent cases must be woven into these arguments to make them persuasive in court. In the successful argument, the process of using precedent cases must include not only quoting some applicable phrase, but also comparing and contrasting the facts, holding and reasoning of the court to the issues at hand. The constructed arguments must also have some flexibility; because the students do not know what structure their opponents may use to defeat them.

## **VI. Attorney Oral Arguments:**

- A. Your score during the oral arguments will comprise seventy-five percent (75%) of your overall score that 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.
- B. Basic Rules:
  - 1. For the purposes of this year's competition, the arguments are being presented to the Texas Court of Criminal Appeals. Before each round begins, your team will be assigned to represent either the Appellant or the Appellee. The Appellant team presents its arguments first, and is then followed by Appellee's arguments. The Appellant will then have the opportunity to provide a brief rebuttal, which will be presented by only one of the two attorneys for Appellant's team.
  - 2. Each team has a total of thirty 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. Appellant Lawyer #1 - 13 minutes; Appellant Lawyer #2 - 12 minutes
    - b. Appellee Lawyer #1 - 15 minutes; Appellee Lawyer #2 - 15 minutes
    - c. Appellant Rebuttal - 5 minutes
  - 3. During the course of the oral arguments, the justices may interrupt and ask you questions regarding your argument. You should answer their questions, and then return to your argument.

C. Suggested Outline for Oral Arguments

1. A single, memorized presentation will succeed no more in the Youth and Government competition than it would in the actual presentation of a case to a real appellate court. The presentation will be interrupted by questioning from the court and it is critical to success that these questions be clearly addressed, turned to the advantage of the advocate and then used as a transition back into the argument that the speaker wishes to make. This is the flexibility that must be built into the initial presentation.
2. A successful competitor should be so well prepared that he need not take a bundle of papers and notes to the podium when it is time to speak. The universal suggestion is that no more than a single file folder for Appellant and a single file folder for Appellee be taken to the podium. As a practical matter, with the limited time frame given to each speaker, there is not much time for a speaker to be shuffling through notes and trying to find case references and answers to questions. If you practice the basic outlines of your presentation beforehand, you should be ready for any question that comes your way and you will not need to rely heavily on your notes.
3. In the event that you represent the Appellant, your team will need to reserve time for rebuttal. All attorneys must open their presentations with "May it please the Court," and identify themselves by name. You should begin your argument with "May it please the Court . . ." and then identify who you are, and who you represent.
  - a. "May it please the Court. My name is \_\_\_\_\_, and along with my co-counsel, \_\_\_\_\_, we represent the Appellant in this case, Jenny Smith.
  - b. Or if you are the second speaker on your team: "May it please the Court. My name is \_\_\_\_\_, and I too represent the Appellant in this case.
4. Next tell the Court what issue you will be addressing:
  - a. "In my time before the Court, I will demonstrate that \_\_\_\_\_ My co-counsel will demonstrate that the trial court erred by \_\_\_\_\_."
  - b. Or if you are the second speaker on your team: "As my co-counsel has just demonstrated, the lower court erred by \_\_\_\_\_. In my time before the Court, I will demonstrate that \_\_\_\_\_"
5. Offer to give the Court a brief overview of the facts
  - a. If you are the Appellant, this is an opportunity to spin the facts to your advantage. But, you have limited time for your arguments so be brief. You

should first ask the court if they would like a brief recitation of the facts. If the court says no, move on to your argument. If the court says yes then keep it short but use the facts most beneficial to you.

- b. If you are the Appellee, it is not necessary for you to give a statement of facts. However, if the Appellant gave wrong facts or left out facts that you believe are important, then before you start your argument, you might say “before I begin my argument, I would like to clarify the following facts that the Appellant did not give you.”
6. Next should be your argument.
- a. Roadmap: When you begin your argument, you may wish to clearly set out the various points that you intend to make during your. For example, say “I will make three points \_\_\_\_\_.”
  - b. Be clear and concise. Be assertive. Do not use words and phrases like “I believe” or “I feel.” What you believe or feel is not important and those phrases weaken your argument.
  - c. Keep your presentation organized
  - d. Argue the heart of the matter adequately and be selective in discussing issues
  - e. Emphasize the important issues
  - f. Use case law to support your arguments
  - g. Use the facts from the trial case to support your arguments
  - h. Tie your case law and the facts of the trial case together. Distinguish cases that are different from your facts. Draw comparisons with cases that are similar to your facts
  - i. When you are the Appellee, respond to the Appellant’s argument during your time. Do not just stick to a canned speech
7. When you conclude your argument make sure you tell the court what you want it to do.
- a. For example: “For these reasons, your honors, we respectfully request that you find in favor of the Appellant and reverse the decision of the court of appeals.”
  - b. Or if you are Appellee, “For these reasons we respectfully request that you uphold the decision of the court of appeals and find in favor of the Appellee

D. Suggested Pointers and Courtroom Demeanor

1. Always rise when the justices enter and exit the courtroom. Remain standing until you are permitted to sit.

2. Try to avoid talking with your partner while sitting at the counsel table. You may communicate by exchanging notes, but do not be distracting.
3. Keep your counsel table neat. Shuffling papers can also be distracting to the judges.
4. You cannot communicate with your partner while you are presenting your oral argument. Once you go up to the podium, you stay until the conclusion of your argument.
5. 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.
6. 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.
7. When a judge begins asking you a question, stop speaking immediately. It is considered disrespectful for the attorney to attempt to talk over the judge.
8. 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.
9. 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.
10. Try to set up your arguments in a logical, easy-to-follow manner. Practicing your argument before your partner, team members, friends, teachers or attorneys will vastly improve your ability in the competition.
11. Keep your voice loud enough to be heard, and remain confident of your position.
12. The evaluator's impression of the competitors is formed from the moment that they enter the courtroom. Remember that even before the judges enter the

room and while the judges are out deliberating, the evaluator may be in the courtroom and evaluating you on your demeanor.

13. Dress appropriately. Business-like attire is appropriate. Blue jeans, tennis shoes, or shirts with rolled up sleeves fail to demonstrate sufficient respect for the court.
14. Be respectful to the court. Do not begin speaking until signaled by the court to do so.
15. Think about the question you are being asked by the judge. If a question requires a "yes or no" answer, the speaker should answer in that manner and then explain further if indicated.
16. Don't get distracted by the judges' questions. One of the most difficult parts of appellate is the ability to stop your argument to answer a question from the judge and to then return to your presentation of a cohesive argument. You have to be flexible in your presentation but you must also know your argument well in order to do this.
17. You have been given a lot of authorities to reference and your judges or opposing attorneys may do additional research. You may be asked a question about a case you did not read or are not aware of. Be prepared for this to happen and have a ready explanation:
  - a. For example: "Your honor, I'm not familiar with that case, but the case of \_\_\_\_\_ is on point and states \_\_\_\_\_"; or
  - b. "Your honor, I'm not familiar with that case but would be happy to provide a supplemental brief to the court."
    - i. You do not actually have to provide a supplemental brief, but this is a good pat answer to use during oral arguments.

## **VII. Judges**

- A. As a justice in the Court of Appeals, 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.
- B. 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.

- C. 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.
- D. 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.

## **VIII. Bailiffs**

- A. At the state conference, the appellant team is responsible for providing a bailiff for a round
- B. Teams with more than 2 members should use the team member not participating in a round as a bailiff
- C. Teams with only 2 members should provide a parent, coach or advisor to serve as a bailiff
- D. Any student, parent, coach or advisor that is expected to serve as a bailiff must attend a brief training on the Thursday night of the state conference. The time of the training will be noted in the conference schedule
- E. The bailiff will serve as the bailiff for the entire round keeping time for both sides (appellant and appellee)
- F. The bailiff will call the courtroom to order and call for the participants to rise as the judges enter the room by saying
  - 1. All rise. The Honorable Chief Justice and the Associate Justices of the Texas Court of Criminal Appeals presiding. Oyez, Oyez, Oyez. All persons having business before the Texas Court of Criminal Appeals are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court! (*judges sit down*). You may be seated.

The first case on the calendar, that of Jenny Smith, Appellant v. The State of Texas, Appellee."

- G. The bailiff will signal the participants to rise at the end of the trial so the judges can leave the room to deliberate by saying:
  - 1. "All rise."
  
- H. The bailiff will signal the participants to rise at the end of the trial after the judges have made their ruling by saying
  - 1. "All rise, this court is now in recess."
  
- I. The bailiff will be provided with the following tools:
  - 1. Time cards to signal the attorneys as to how much time they have left
  - 2. A stopwatch
  - 3. A tally sheet to aid in keeping track of time

## **IX. Format of the Competition**

- A. 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:
  - 1. Their name
  - 2. Whether they are Appellant or Appellee
  - 3. Which speaker they will be (Appellant #1 or #2 or Appellee #1 or #2)
  - 4. How much time they will need for their presentation
  - 5. A Bailiff will announce the entry of the judges. The timekeeper may also be the Bailiff. The Bailiff will say:
    - i. "Oyez! Oyez! Oyez! All persons having business before the Honorable, the Texas Court of Criminal Appeals, are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"
  - 6. The Judges will come in and sit down and the Baliff will state: "Please be seated. The first case on the calendar, that of Jenny Smith, Appellant v. The State of Texas, Appellee."
  - 7. The Chief Justice will ask: "Is the Appellant ready"
  - 8. The Appellants will stand completely up. One team member (typically the first to speak) looks directly at the Chief Justice and answers: "Appellant is ready, your honor." (Appellants then sit down)
  - 9. The Chief Justice will ask: "Is the Appellee ready"
  - 10. The Appellees will stand completely up; one team member looks directly at the Chief Justice and answers: "Appellee is ready, Your Honor." (Appellees then sit down).
  - 11. The chief justice will instruct the Appellants that they may proceed
  - 12. The Appellant first speaker will approach the podium and begin. As soon as the Appellant #1 finishes, Appellant #2 will approach and begin their argument

13. Once both Appellants have made their argument, the first Appellee will approach the podium and begin. As soon as the Appellee #1 finishes, Appellee #2 will approach and begin their argument.
14. Once both Appellees complete their argument, the Appellant (one speaker only) will approach the podium and make their rebuttal. THE APPELLEE DOES NOT GET A REBUTTAL.
15. The chief justice will announce that the judges will retire and make their decision.
16. As the justices rise to leave, the Bailiff will ask everyone in the courtroom to please rise. Once the justices leave, everyone can sit down
17. As the justices return to render their decision, the Bailiff will ask everyone in the courtroom to please rise.
18. The justices will give the parties their decision.
19. The evaluator may give the judges and attorney a critique of their performance

## **X. The Competition**

- A. 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 Appellant argument twice and their Appellee argument twice
- B. Your oral argument presentation will make up 75% of your final score; your brief score will make up 25% of your final score
- C. During oral arguments, you will be scored by an evaluator. The evaluator score is the score that counts. However, 1 additional point will be given to the team that wins the judge's vote.
- D. **On the second day of the competition, there will be a showcase round. The two teams to compete in the showcase round will be the two teams with the highest overall points at the end of the preliminary rounds (with brief scores factored in). This year the showcase round will be a competition round. You will be evaluated by the judges and the scores from the showcase round alone (75%) plus your brief scores (25%) will determine which team is first and which team is second. The winning team will not be announced until the awards ceremony on Saturday evening.**
- E. **After the showcase round, the student justices will convene at the hotel to vote and to prepare a short written opinion which will be published in the final newspaper of the conference (space permitting).**

## **XI. Post-Trial Information**

- A. At the State Conference, the complete rankings of teams and judges will be posted outside the judicial office no later than 10:00 p.m. on the Saturday night of the conference.
- B. The rankings of all teams will be e-mailed to the District Directors no later than the Monday after the conference.
- C. Any challenges to or concerns about score sheets, evaluators and/or rankings should be brought as soon as possible to the attention of the Judicial Section leaders or by emailing [txyg@austinyca.org](mailto:txyg@austinyca.org)