

Appellate Tips for Evaluators

CASE INFORMATION

This case involves the firing of James O'Callahan from Continental Catering Consolidated Company. O'Callahan claimed age discrimination and sought damages under the Age Discrimination in Employment Act. The trial court dismissed O'Callahan's claims, but the Court of Appeals for the 15th District of the State of Texas reversed this judgment and remanded the case for trial. The Supreme Court in the State of Texas granted Continental Catering Consolidated Company's subsequent petition for review.

The issues before the Court are:

1. Whether the summary judgment evidence raised a genuine issue of material fact concerning any direct evidence of age-related discrimination alleged by James O'Callahan; and
2. Whether the trial court was presented with legally sufficient circumstantial evidence to support O'Callahan's contention that the stated reasons for his termination were a pretext for age-related discrimination.

EVALUATORS AND SCORING

1. Youth and Government judicial alumni, law students, sitting or retired trial and appellate judges, and/or any licensed attorneys serve as evaluators. They will make decisions on team and judge scores.
2. Evaluators score the attorney team performances and the judge's performance. Each evaluator fills out a ballot for each attorney team and the judge. If there is more than one evaluator, the evaluators should not consult with one another during this process.
3. 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 Judicial section of the Texas YG program. Ballots should be returned to staff after the round has concluded and the winning team has been recorded. Score and comment sheets for a team will be copied and distributed to that team's coach after the competition is completed.
4. 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.

5. General scoring guidelines:
 - a. Please be sure to fill in your name and all the participants' names on the evaluation forms completely. The Bailiff in your room can help you with this task.
 - b. When scoring, start with a score of 3, and work your way up or down from there based on performance.
 - c. **Remember, these are high school students and not college or law school students. Therefore, please provide constructive and kindly worded critiques.**
 - d. PLEASE FILL OUT THE COMMENT FORM. We know we are asking you to juggle a lot. However, there is not always time for critiques following the trial, and your comments are so helpful to the attorney teams and judges as they prepare for their next rounds. If there is time, you may give oral feedback, but we ask that you ALWAYS provide some written feedback on your comment form.
 - e. Please return your evaluation packet to the judicial table promptly so the forms can be tabulated in a timely manner.

6. What we expect from the Attorney teams and Judges in each category of scoring:
 - a. Attorneys:
 - i. Knowledge and use of facts: Do they reference facts from the case?
 - ii. Knowledge and use of case law:
 1. Do they reference case law?
 2. Do they reference cases not on the list of case citations? Outside references are permitted, and attorneys are encouraged to do additional research.
 - iii. Effectiveness/persuasiveness of argument
 1. How strong is their argument?
 2. Does the argument make sense?
 3. Is the argument constructed logically?
 4. We recognize that some arguments in the case are weaker than others. Regardless of strength of argument, do the attorneys advocate for their client?
 5. Is their argument clear and concise?
 - iv. Ability to respond to questions:
 1. Are the attorneys able to respond to questions?
 2. Do their answers to questions make sense?
 3. Do they ask for clarification when they don't understand a question? This is OK!

4. Do they maintain focus when trying to get back their arguments? Or do they get lost?
- v. Demeanor/Presentation
 1. Do the attorneys rise when the judge enters the courtroom?
 2. Do the attorneys talk and whisper at the counsel table?
This is not OK!
 3. Are attorneys respectful of the judges?
 4. Are attorneys respectful of the other team?
 5. Does the way attorneys give their arguments suggest preparation?
- b. Judges:
 - i. As judges in the Court of Criminal Appeals, students are expected to be knowledgeable about the case. Knowledge should include the facts, issues, and relevant case law. They are also expected to be fair and impartial to the parties and to fulfill their duties as a judge in a dignified, professional manner.
 - ii. It is appropriate for judges to ask attorneys questions in order to clarify their points and arguments. Judges should NEVER harass or act disrespectfully toward the attorneys. While they are permitted and encouraged to interrupt the attorney's presentations to ask questions, common courtesy and decency mandate they ask questions in a respectful, dignified manner.
 - iii. As a judge, a student is expected and required to be fair and impartial. While the student may personally believe that one side's position has more merit, it is improper to make statements that give the appearance of impartiality.
7. Other basic rules:
 - a. For the purposes of this year's competition, the arguments are being presented to the Supreme Court in the State of Texas. Before each round begins, the judicial office will assign attorney teams to represent either the Appellant or the Appellee. The Appellant team presents its arguments first, followed by Appellee's arguments. The Appellant will then provide a brief rebuttal which will be presented by only one of the two attorneys for the Appellant's team.
 - b. Each team has a total of thirty minutes to present its argument. The team can divide the time in any manner it chooses, except that (1) each attorney must present at least five minutes of the argument, and (2) except to offer rebuttal, each lawyer may go to the podium only one time. In other words, one attorney cannot present two minutes of the argument, sit down and let his or her partner speak for five minutes, and then return to the podium to conclude the

argument [excluding rebuttal]. Texas YG suggests the following division of arguments:

- i. Appellant Lawyer #1 - 13 minutes; Appellant Lawyer #2 - 12 minutes
- ii. Appellee Lawyer #1 - 15 minutes; Appellee Lawyer #2 - 15 minutes
- iii. Appellant Rebuttal - 5 minutes
- c. Attorneys do not need to use all their time, but they should take advantage of their time and use a significant portion of it.
- d. During the course of the oral arguments, the justices should interrupt and ask the attorneys questions regarding their arguments. The attorney speaking should answer the question(s) and then return to his or her argument.
- e. While the attorneys can bring an outline or other materials with them to the lectern, reading an entire speech is really no more effective than having memorized the entire speech. Either approach leaves attorneys unable to answer questions or respond to points made by the other team. A certain amount of flexibility is required.

8. How the rounds are conducted:

- a. Evaluators are seated on the far right or left side of the bench. Before the round starts, students should provide you their names, team numbers, and which side they represent. The judges should provide the evaluators with their names and other information for the judge evaluation form.
- b. All attorneys must open their presentations with "May it please the Court" and identify themselves by name. They should begin their argument with "May it please the Court . . ." and then identify who they are and who they represent.
- c. The attorney should next tell the Court what issue they will address.
- d. The first Appellant speaker should offer to give the Court a brief overview of the facts. The judges may decline. The Appellee is not required to make this offer but may do so if the Appellee believes the Appellant omitted some important facts.

9. Competition format:

- a. Attorneys enter the courtroom and set up at the counsel tables. There will be someone at the bench keeping time. All attorneys will need to give the timekeeper and evaluators the following information:
 - i. Name
 - ii. Whether they are Appellant or Appellee
 - iii. Which speaker they will be (Appellant #1 or #2 or Appellee #1 or #2)
 - iv. How much time they will need for their presentation



- b. A Bailiff will announce the entry of the justices. The Bailiff may also serve as timekeeper.
- c. The justices will enter, sit down, and call the case.
- d. The Presiding Judge will ask, "Is the Appellant ready?"
- e. The Appellants will stand up completely. One team member (typically the first to speak) looks directly at the Presiding Judge and answers, "Appellant is ready, your honor." Appellants then sit down.
- f. The Presiding Judge will ask, "Is the Appellee ready?"
- g. The Appellees will stand up completely. One team member looks directly at the Presiding Judge and answers, "Appellee is ready, Your Honor." Appellees then sit down.
- h. The Presiding Judge will instruct the Appellants to proceed.
- i. Appellant #1 will approach the podium and begin speaking. As soon as Appellant #1 finishes, Appellant #2 will approach and begin his or her argument.
- j. Once both Appellants have made their argument, the first Appellee will approach the podium and begin. As soon as Appellee #1 finishes, Appellee #2 will approach and begin his or her argument.
- k. Once both Appellees complete their arguments, the Appellant (one speaker only) will approach the podium and make their rebuttal. **THE APPELLEE DOES NOT GET A REBUTTAL.**
- l. The Presiding Judge will announce that the judges will retire and make their decision.
- m. 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.
- n. As the justices return to render their decision, the Bailiff will ask everyone in the courtroom to please rise.
- o. The justices will give the parties their decision.
- p. **The evaluator may give the justices and attorney a critique of their performances. However, keep in mind that there are only about 15 minutes scheduled in between rounds, so be helpful but succinct.**