



- 5) This competition is an exercise in oral advocacy. Advancement to subsequent rounds of the competition will be determined solely on oral argument performance. **NO BRIEFS ARE REQUIRED.**
- 6) This is a closed research packet problem. Competitors are **NOT** permitted to do outside case research. Competitors may, however, read general materials to gain a better understanding of the area of law.
- 7) **Any research or case law used in oral argument outside the scope of the above-mentioned rules will result in immediate disqualification.** Concerns about competitor use of outside information during competition rounds should be brought to an Executive Board member's attention immediately. An Executive Board investigation and determination will be made in a timely manner. All Board decisions are final.
- 8) All materials provided within this packet shall be considered current and valid law for the purposes of this competition.

9) **Competitor time allotment per round:**

<b>Preliminary rounds:</b>	<b>10 minutes</b>
<b>Round of 16:</b>	<b>10 minutes</b>
<b>Quarterfinal Round:</b>	<b>15 minutes</b>
<b>Semifinal Round:</b>	<b>15 minutes</b>
<b>Final Round:</b>	<b>20 minutes</b>

- 10) Rebuttal time may be requested by the Petitioner at the beginning of his or her argument if so desired.

Petitioner rebuttal time allotment per round:

<b>Preliminary rounds:</b>	<b>3 minutes</b>
<b>Round of 16:</b>	<b>3 minutes</b>
<b>Quarterfinal Round:</b>	<b>4 minutes</b>
<b>Semifinal Round:</b>	<b>4 minutes</b>
<b>Final Round:</b>	<b>5 minutes</b>

- 11) **Advocates must be prepared to argue either position (Petitioner or Respondent) during any round of the competition.** Advancement to the next round and notice of which position the advocate will argue will be determined and competitors will be notified at least twenty-four (24) hours before each respective round for the first two rounds.
- 12) Head-to-head competition begins at the quarterfinal round; therefore, quarterfinal and semifinal round winners will be announced at the completion of their arguments. The position that the advancing advocates will argue will be

posted on the Moot Court Honor Society bulletin boards in the Law Building and Concord Hall twenty-four (24) hours before their next round. The DiBona Competition winner and finalist will be announced at the conclusion of the final round. Awards will be distributed to the finalists.

- 13) Feedback on your performance will be provided by the judges on the night of the competition rounds. Competitors will not have access to their scoring sheets. All advancement decisions made by the Executive Board are final and without review.
- 14) Any problems that arise before, during, or after a competition shall be brought to the attention of Kristopher Kachline (DiBona Chairperson/Vice President) or Jim Walsh (President) immediately. If Kristopher Kachline or Jim Walsh are not available, notify a Moot Court Executive Board member about the problem so that it may be rectified immediately. Failure to bring attention to any problems occurring during the competition will cause forfeiture of review by the Board.
- 15) All members of the Moot Court Honor Society are required, pursuant to the by-laws, to compete in *good faith*. “Good faith” is defined as: an honest or sincere intention to fulfill one’s obligation. A member who intentionally prevents him/herself from advancing beyond the preliminary round(s) of a competition will be deemed to have acted in bad faith and will receive a demerit from the Society pursuant to Section Nine of the by-laws. Furthermore, failure to compete in good faith may result in the Executive Board reviewing a member’s eligibility to receive academic credit for the semester.
- 16) **Attendance at the final round is mandatory for all Moot Court Society members.**
- 17) Any questions about the rules and responsibilities of this competition should be directed to Kristopher Kachline, Vice President – Judge G. Fred DiBona Competition. Phone: 570-575-3257. E-mail: KAKachline@mail.Widener.edu.

## PROBLEM GUIDELINES

The only issues for the purposes of this competition are clearly stated on the first page of the Record. Your argument must only address the issues covered by the Supreme Court's order granting certiorari.

For purposes of this competition, the standard of review for is *de novo*.

This is a closed packet problem. **Competitors may only use the following cases to formulate and support their arguments.** No outside research is permitted. Students may only cite to the following cases, cases cited in the lower court's opinion and any cases cited within the aforementioned cases. Cases cited within the cases in the list below may only be used for the narrow proposition for which the case is cited.

### CASES

- *Watson v. Jones*, 80 U.S. 679 (1872)
- *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94 (1952)
- *Jones v. Wolf*, 443 U.S. 595 (1979)
- *German Reformed Church v. Commonwealth ex rel. Seibert*, 3 Pa. 282 (Pa. 1846)
- *Presbytery of Beaver-Bulter of the United Presbyterian Church v. Middlesex Presbyterian Church*, 489 A.2d 1317 (Pa. 1985)
- *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005)
- *Vojtaseck v. Diocese of Allentown*, 916 A.2d 637 (Pa. Super. Ct. 2006)
- *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969)
- *Petruska v. Gannon Univ.*, 462 F.3d 294, 309-10 (3d Cir. 2006)
- *Klagsbrun v. Va'ad Harabonim of Greater Monsey*, 53 F.Supp.2d 732 (D.N.J. 1999)
- *Olson v. First Church of Nazarene*, 661 N.W.2d 254 (Minn. Ct. App. 2003)
- *Roman Catholic Diocese of Jackson v. Morrison*, 905 So.2d 1213, 1239 (Miss. 2005)
- *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940)
- *Duncan v. Peterson*, 835 N.E.2d 411, 422 (Ill. 2005)
- *Madsen v. Erwin*, 481 N.E.2d 1160, 1167 (Mass. 1985)
- *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976)
- *Hutchison v. Thomas*, 789 F.2d 392 (6th Cir. 1986)
- *Westbrook v. Penley*, 231 S.W.3d 389 (Tex. 2007)
- *Calvary Christian School, Inc. et al. v. Huffstuttler*, 238 S.W.3d 58 (Ark. 2006)
- *Bowie v. Murphy*, 624 S.E.2d 74 (Va. 2006)
- *Cha v. Korean Presbyterian*, 553 S.E.2d 511 (Va. 2001)
- *Schoenhals v. Mains*, 504 N.W.2d 233 (Minn. App. 1993)
- *McClure v. Salvation Army*, 460 F.2d 553 (5<sup>th</sup> Cir 1972)
- *Rasmussen v. Bennett*, 741 P.2d 755 (Mont. 1987)

It is up to you to decide which cases to use in support of your argument. You are responsible for knowing the general facts, holding, and any dissenting opinion for each

case. The bench **can and will** ask you to compare facts and law from the case at bar to those cases assigned. You will have to use your advocacy skill to analogize and distinguish cases while coming up with creative legal and policy arguments to advance your position. The lower court opinion may touch on some potential arguments, **but do not feel restricted by them and do not rely solely on those arguments.** Should you have any questions about any of the information provided, please contact Kristopher Kachline at 570-575-3257 or at [KAKachline@mail.Widener.edu](mailto:KAKachline@mail.Widener.edu) so that any ambiguities may be clarified for all the competitors.

\* This problem is based on a real case. The citation to that case is not provided and should **NOT** be identified by competitors. It will be disclosed in the program at the final round of the competition. The case name and citation are not provided to ensure that the competitors are formulating their own arguments.

## **ORAL ARGUMENT: EXPLANATION OF GRADING CRITERIA**

### **SALUTATION AND INTRODUCTION OF COUNSEL**

Each advocate is required to give a formal opening statement consisting of four (4) elements:

- (a) The advocate's name;
- (b) The side advocate represents (Petitioner or Respondent);
- (c) The name of person or entity the advocate represents; and
- (d) The issue(s) that the advocate(s) will be addressing.

If Petitioner wishes to reserve rebuttal time, the advocate must do so at the beginning of the argument.

### **STATEMENT OF ISSUES AND FACTS**

Issue(s) should be grounded in fact. Phrasing should be positive and persuasive. Petitioner must inquire as to whether the Court wishes to hear the facts of the case. (Petitioner may request rebuttal time after inquiry of the bench regarding recitation of the facts)

### **APPEARANCE**

The advocate should dress appropriately as though a practitioner before the United States Supreme Court.

### **EYE CONTACT/POSTURE**

Eye contact should be maintained with the members of the bench. Notes or references should be utilized minimally. Excessive review of notes or wandering glances become distracting to the bench.

### **AUDIBILITY**

The advocate should speak clearly and with enough amplification so that no member of the Court must ask the advocate to speak louder.

### **ABILITY TO COMMUNICATE**

Articulation of the argument(s) in a comprehensive manner is expected. Proper vocabulary and diction are essential. Eye contact should be maintained with all members of the bench.

### **ABILITY TO ANSWER QUESTIONS**

The advocate should respond to the question(s) asked. If the Court is satisfied with the response(s), the advocate should return to where the argument was interrupted and continue.

### **ARGUMENT OF THE LAW**

The advocate's proper use of case law should be evident during both the formal presentation and the questioning. The advocate is expected to be familiar with the facts, issues, and holding of any case cited during oral argument. Cites of cases must be available on request

#### PERSUASIVENESS

The advocate will be judged on his or her ability to convince the Court of the efficacy of the argument.

#### RESPECT FOR THE COURT

The advocate should be respectful and deferential to the Court at all times. The justices should be referred by title and name whenever possible.

#### APPOSING ARGUMENTS ADDRESSES

The advocate should address not only their side's argument, but also anticipate and counter potential arguments that the opposing side will make.

#### ADHERENCE TO TIME LIMIT

When the court indicates that the advocate's time is up, the advocate should stop immediately. If the advocate needs time for summation it can be requested, but the Court is under no obligation to grant extra time. Summations should be used to finish a thought or question posed.

#### REBUTTAL

If rebuttal time is requested and granted, the time should be used as intended; to rebut the respondent's argument. The time should not be used to repeat arguments made earlier or to present new arguments.

## ORAL ARGUMENT SCORE SHEET

Appellant/Appellee Name & Number:

Justice Name:

### Points Awarded:

- \_\_\_\_\_ (3) **Salutation and Introduction**  
Did the advocate identify herself/himself and the side she/he represents, the client(s) and the issues to be addressed?
- \_\_\_\_\_ (6) **Statement of Issues and Facts**  
Issues should be grounded in facts. Did Petitioner ask whether the court wanted a recitation of the facts? Did Respondent effectively use facts to rebut Petitioner?
- \_\_\_\_\_ (2) **Appearance**  
Advocate should be dressed appropriately.
- \_\_\_\_\_ (5) **Eye contact/Posture**  
Eye contact should be maintained with all members of the bench. Did advocate engage in distracting posture, or was she/he standing properly?
- \_\_\_\_\_ (3) **Audibility**  
Advocate should speak in a comfortable tone of voice, neither extremely loud, nor so quietly that Justices must ask her/him to speak up.
- \_\_\_\_\_ (6) **Ability to Communicate**  
Articulation of the argument in a comprehensive manner is expected.
- \_\_\_\_\_ (15) **Ability to Answer Questions**  
Advocate should respond to questions asked. Did advocate answer the question in a manner reflecting knowledge of case law, public policy, etc.?
- \_\_\_\_\_ (5) **Ability to Return to Argument**  
Did advocate answer questions and return to the point where the argument was interrupted?
- \_\_\_\_\_ (15) **Argument of Law**  
Advocate is expected to be familiar with the facts, issues, holdings and citations of the cases provided. Advocate is expected to argue using case law for support.
- \_\_\_\_\_ (3) **Organization**  
Was advocate organized in presenting his/her case and important issues, or was the argument hard to follow?

- \_\_\_\_\_ (5) **Preparation**  
Did advocate demonstrate that she/he was properly prepared, i.e. did she/he know case law, did she/he know the facts and issues in the case and the cases used for support?
- \_\_\_\_\_ (15) **Persuasiveness**  
Did advocate persuade with her/his argument?
- \_\_\_\_\_ (3) **Opposing Arguments Addressed**  
Did advocate address opposing counsel's argument? Did advocate handle dis-favorable case law by distinguishing it?
- \_\_\_\_\_ (5) **Respect for the Bench**  
Did advocate act deferentially to the court?
- \_\_\_\_\_ (4) **Adherence to Time Limits**  
Did advocate stop and request permission of the court to briefly summarize argument when bailiff indicated time had expired? If a rebuttal was done by Petitioner did she/he ask for rebuttal time?
- \_\_\_\_\_ (2) **Conclusion**  
Did advocate conclude?
- \_\_\_\_\_ (3) **Overall/Miscellaneous**  
Did advocate distinguish herself/himself in any way deserving of additional points?
- \_\_\_\_\_ **TOTAL (out of 100 possible points)**