

## MOOT COURT PROCEDURES FOR ORAL ARGUMENT

### **I. Participant's Goal**

Your primary goal as a participant is to present an oral argument that embodies your main points in a logical, clear and persuasive manner.

### **II. The Players**

Each participant will be assigned a time and room for their oral argument at registration on the day of oral argument. There will be two participants in each courtroom, one participant representing each side of the case. In addition, there will be four to five judges and a bailiff in each courtroom.

### **III. Courtroom Procedure**

The tournament is designed to mimic a proceeding before the Supreme Court. Accordingly, the procedures that you will be expected to follow are quite formal. We will attempt to sketch them for you below.

- A. Judges enter the room as the bailiff says, "All rise." If no bailiff is present you should still stand.
- B. You may be seated after the judges have been seated. The Chief Judge will then call the case.
- C. The Petitioner will argue first, then the Respondent.
- D. Participants should approach the podium and take a moment to situate themselves. Bring as little as possible with you to the podium. Normally, participants just bring an outline of their arguments. Participants should wait until all Judges look up and indicate that they are ready to begin. Participants should then properly introduce themselves (see **Introduction** below).
- E. The Bailiff will inform the participants and the bench when 5, 3, and 1 minute(s) remain in the participants allotted time, through the use of time cards.
- F. When the arguments are completed, the bailiff asks everyone to rise and participants will be asked to leave the room. Judges will independently fill out the score sheets. Participants are free to go at this time.

### **IV. The Argument**

- A. **Introduction:** You must present an introduction that sounds something like this:  
"May it please the Court, my name is \_\_\_\_\_, counsel for the Petitioner/Respondent,  
\_\_\_\_\_."
- B. **Thesis Statement:** In one or two sentences, tell the Court what it is you are seeking and why they should rule in your favor. If it helps, you may incorporate the decision(s) of the lower court(s).
- C. **Roadmap:** There is no hard and fast rule regarding how this should be done. Essentially, the roadmap tells the court what the two or three areas of analysis are that

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you will argue to support your position. Some judges like it if you frame the areas of analysis in a way that is favorable to your client. This is helpful particularly if you run out of time and do not get to cover all your intended points, because the court knows where you stand on the issue.

- D. Statement of the Case:** Before beginning to argue in your first area of analysis, ask, “Would the Court like a statement of the facts?” If the judges indicate that they would so like, give them a brief recitation of the facts, slanted as much as possible to favor your position. If the judges state they do not need a statement of the facts, proceed into your argument. (Respondents should only ask if the Court would like a statement of facts if the Petitioner did not do so).
  
- E. Argument:** Because you only have twelve (12) minutes to argue, some prefer to argue their strongest points first, because depending upon the judge’s questions, you may not get past your first point. Some find it more effective to argue their strongest point last. Many have found it helpful to structure their arguments in the order most appropriate to analyzing the issue; called the outside in approach. Again, there are no hard and fast rules on how to structure your argument; use whatever works best for you. Extensive case citation is discouraged. However, be familiar with all cases on which you and your opponent rely and refer to cases where appropriate.
  
- F. Conclusion:** You should take a minute to conclude by summarizing your main arguments. The conclusion should be short, but sweet. Remember to include your prayer for relief (e.g. “The Petitioner/Respondent respectfully requests that this Court reverse/affirm the decision of the lower court”). If you run out of time before you get a chance to argue all of your points, ask the Court, “I see my time has come to a close, may I quickly conclude?” If the Court so allows, then state your conclusion.

### **V. Helpful Hints**

- A.** The key to success is preparation. When preparing for your oral argument, consider the following:
  - 1. Knowledge:** Know the facts completely and thoroughly. You should also know the law (favorable and unfavorable) relevant to your case.
  - 2. Outline:** Outline your arguments; do not write them out. Stick to the key words, phrases and issues (truly great oral arguments have a discernible theme), and be prepared to speak for approximately 8 minutes of your 12-minute presentation, so as to have time to answer questions.
  - 3. Mooting:** Practice aloud before others, by yourself, in front of a pet, or mate. Practice answering questions while in the middle of your argument and then returning to the point you were making.
  - 4. Anticipate the Court’s questions:** Know where the weaknesses are in the position you are advocating and be able to distinguish damaging precedent.

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5. **It's not a speech!:** Do not read or memorize a speech. Think of your oral argument as a conversation with the judges about the problems they may have finding for your side of the case, and this is your chance to answer their questions.
- B. Delivering your argument and responding to questions:**
1. Speak slowly and confidently.
  2. Listen carefully and respond directly to questions; a momentary pause before answering is a good technique to use. Answer the judge's questions directly even if it is not favorable to your position (you may then try and distinguish it). Some judges like to pose hypotheticals. Be aware that not all the questions that judges ask are against your position; some questions are actually intended to shore up your position.
  3. Some judges may ask questions that you feel are irrelevant to your argument or are not on point. However, it is your responsibility to answer their question in such a way that you can direct their attention back to the point you are trying to make. It is never appropriate to refuse to answer a question.
  4. Be aware of the time that remains and adjust your argument accordingly. You should begin to conclude at the one (1) minute mark. When your time has expired, you should not proceed without first asking permission of the Court. If permission is given, then quickly conclude. If you finish with time to spare, then sit down.
  5. Address judges as "Justice ", "Judge", or "Your Honor." When addressing the panel of judges as a whole, refer to them as "Your Honors". Address opposing counsel as "Counsel for Petitioner/Respondent."
  6. Never say, "I believe" or "I assert", instead directly assert the law you are going to use to support your point. What you think or what your client thinks should not be the focus, the law should. You may, however, refer to your client and say "Petitioner/Respondent believes" or "Petitioner and Respondent asserts", if necessary.
  7. Do not respond to judges' questions with a question. However, asking them to clarify their question is permissible.
  8. Never tell a judge the answer to his/her question will be given later.
  9. Never interrupt a judge.

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### **C. Demeanor**

#### YOU SHOULD:

1. Exhibit enthusiasm – it convinces the judges that you really believe what you are advocating.
2. Show respect for the judges and opposing counsel.
3. Use short, precise and understandable terms.
4. Dress professionally (preferably in a suit); err on the side of conservative; avoid distracting jewelry.
5. Stand solidly on both feet (don't cross your feet, nor shift your weight) and be aware of any hand gestures you may make (it may be helpful to hold on to the podium in front of you).

#### YOU SHOULD NOT:

1. Be defensive.
2. Be overly dramatic.
3. Be disruptive while a participant is arguing. For example, writing your notes loudly.
4. Engage in nervous gesturing (i.e. rocking back and forth, shuffling papers at the podium, jingling change, playing with jewelry, etc.).