

## 2008-09 Rules of the McGee National Civil Rights Moot Court Competition (Revised as of 11/14/08)

### Rule 1. ELIGIBILITY.

**Rule 1.01.** A law school must be accredited by the ABA to participate in the competition.

**Rule 1.02.** All team members shall be full or part-time students at the law school that they represent. No team member shall hold a U. S. Juris Doctor degree.

### Rule 2. TEAMS.

**Rule 2.01.** Each participating law school may enter one or two teams.

**Rule 2.03.** Each team may consist of two or three members.

**Rule 2.04.** All team members must argue in the competition, but only two members may argue in any single round.

**Subd. 1.** If a team consists of two people, those two people will argue in each round.

**Subd. 2.** If a team consists of three people, that team will be responsible for dividing its oral argument so that each team member will argue at least once during the three preliminary rounds. Violation of this subdivision will result in the forfeiture of that team's last Preliminary Round victory.

**Subd. 3** During the advanced rounds, a three person team may choose which two team members will argue in each round.

**Rule 2.05.** There shall be no substitution of team members after submission of the briefs, except for good cause and with the prior approval of the competition administration.

### Rule 3. SELECTION OF SIDES.

**Rule 3.01.** Except when a law school is sending two teams to the competition, it is the prerogative of each team to choose whether to present its brief on behalf of either the Petitioner/Appellant or the

Respondent/Appellee. A team may not submit a brief on behalf of both parties.

**Rule 3.02.** When a law school sends two teams to the competition, one team must submit its brief on behalf of the Petitioner/Appellant and the other team must present its brief on behalf of the Respondent/Appellee. Violation of Rule 3.02 shall result in the deduction of one (1) point from the final brief score of each team of that law school.

**Rule 3.03.** Each team will be required to change sides in arguing the questions presented at least once during the preliminary oral rounds. Depending upon the outcome of the draw, see Rule 9.04, Subd. 7, each team may be required to change sides one or more times during the advanced oral rounds.

### Rule 4. FACULTY OR OTHER OUTSIDE ASSISTANCE.

**Rule 4.01 Accessing/Viewing Materials From the Actual Trial or Appeal is Prohibited.** Except as may be provided otherwise pursuant to Rule 5.02, Subd. 2, competitors may not obtain, access or view the trial or appeal materials, including but not limited to the pleadings, statements, exhibits, transcripts, verbatim or other reports of any testimony, oral arguments, memoranda, briefs or petitions for review/certiorari of the actual parties or amici from the cited competition case(s).

**Rule 4.02. Accessing/Viewing Materials Provided to Judges is Prohibited.** With the exception of the scoring sheets contained in the appendices to these rules, participants may not obtain, seek to obtain nor inquire concerning the content of any materials that are provided to the judges by the competition administration to assist them in presiding over the written or oral arguments, including but not limited to the bench memo. Violation of this rule may result in sanctions including but not limited to disqualification.

**Rule 4.03 Pre-Brief Discussions.** Prior to commencing writing the brief members of the faculty (including library faculty and staff), members of the administration and/or non-faculty coaches may have

discussions with team members regarding the issues in the case, research sources and/or general drafting principles. However, such involvement must not include to any extent assistance in research for or the writing, proofreading, critiquing, cite-checking or editing of the brief.

**Rule 4.04. Assistance in Writing/Editing Brief Prohibited.** A team may not seek or receive assistance in writing or editing its brief.

**Subd. 1.** Only a team member may assist another member of the same team in writing or editing the brief.

**Subd. 2.** Review of the brief by any person other than a team member (including review for typographical errors, citation checking or “general flow”) is prohibited.

**Subd. 3.** If two teams represent a single school, the members of one team may not assist the members of the other team in writing or reviewing its brief.

**Rule 4.05. Permitted and Prohibited Assistance Regarding Oral Arguments.** Except as stated herein, a team may not seek or receive assistance in developing or revising its oral arguments.

**Subd. 1.** The members of a team may hold practice oral argument sessions before filing their brief, but may only use their own team members as judges for such sessions. Faculty, coaches, and other non-team members may not be present at these “pre-brief filing” practice arguments.

**Subd. 2.** If two teams represent a single school, the members of one team may not assist the members of the other team in developing or revising their oral arguments. However, such teams may participate in practice oral arguments against one another once their briefs have been filed.

**Subd. 3.** Once a team has filed its brief, members of the faculty (including library faculty and staff), members of the administration, non-faculty coaches and volunteer judges may preside

over and critique the team’s practice oral arguments.

a. Such critiques may include analysis and evaluations of the effectiveness of the substantive arguments and their organizational components as well as suggestions regarding principals of effective oral advocacy and style.

b. Such assistance, however, must not comprise developing or constructing an argument for the team or any of its members.

**Subd. 4.** Critiques or suggestions given by competition judges as feedback for oral arguments over which they preside shall not be considered outside assistance in violation of Rule 4.

**Rule 4.06. Affidavits of Compliance.**

**Subd. 1.** Each team member must sign the affidavit in Appendix G, which certifies that they and, to the best of their knowledge, their teammates have not obtained, accessed or viewed the trial or appeal materials of the actual parties or amici from the cited competition case(s) contrary to Rule 4.01, and have not received any assistance in the preparation of their brief that is contrary to Rules 4.03 and 4.04. Executed and notarized Appendix G affidavits for each team member must be submitted along with the team’s brief when it is filed.

**Subd. 2.** Upon registration at the competition on March 5, 2009, each team member must submit a signed and notarized Appendix J affidavit certifying that they and, to the best of their knowledge, their teammates have not received any assistance in the preparation of their oral argument that is contrary to the provisions of Rule 4.05 and that they and, to the best of their knowledge, their teammates have not obtained, accessed or viewed the trial or appeal materials of the actual parties or amici from the cited competition case(s) contrary to Rule 4.01.

**Rule 4.07. Penalties for violations.**

**Subd. 1.** Violation of Rules 4.01 – 4.05 may result in sanctions which, depending upon nature, circumstances, severity of the violation(s) could result in penalties ranging from 5 to 10 points for each violation off of the team’s final brief score to possible disqualification.

**Subd. 2.** A team’s brief will not be considered until executed and notarized Appendix G affidavits have been received for each team member pursuant to Rule 4.06 Subd. 1. The late submission of executed and notarized Appendix G affidavits shall result in a one half (.5) point penalty per day for each affidavit that is late for a maximum penalty of ten (10) points off of a team’s final brief score. The failure to submit Appendix G affidavits for each team member within twenty (20) days of the brief filing deadline shall result in the disqualification of the team.

**Subd. 3.** A team will not be permitted to participate in the oral arguments at the competition until executed and notarized Appendix J affidavits have been received for each team member pursuant to Rule 4.06 Subd. 2. Each argument that a team misses because a team member has not submitted an Appendix J affidavit shall be considered a forfeit by that team.

**Rule 5. THE FACT RECORD.**

**Rule 5.01. Definitions.**

**Subd. 1. Adjudicative facts.** “Adjudicative facts” are facts pertaining to the immediate parties to the action.

a. “Adjudicative facts” are facts concerning the immediate parties with regard to such matters as who did what, where, when, how, under what circumstances and/or background conditions and with what motive or intent.

b. “Adjudicative facts” are those facts that cannot be raised upon appeal unless they were admitted into evidence during the proceedings

below and, as a result, were available to the trier of fact as part of the record.

**Subd. 2. Legislative Facts.** “Legislative facts” are general facts that do not concern the immediate parties. They are the type of facts that an appellate court might receive through judicial notice to inform it as to how it should develop the law.<sup>1</sup> Examples of legislative facts include: science, empirical studies, social and psychological theory, social science research, history, including legislative history, and current events.<sup>2</sup>

**Rule 5.02. Permissible and Impermissible Use of Facts.** The fact record designated by the competition’s administration is the complete exclusive adjudicative fact record of the competition problem.

**Subd. 1.** If the competition problem is based upon an actual case, the competition administration, within its discretion, may designate a record that includes all or only some of the adjudicative facts that were available as part of the record to the trier of fact in the actual case.

**Subd. 2.** At its discretion, the competition administration may supplement the adjudicative facts that are contained in the designated fact record with additional facts at any time prior to the due date of the brief. Such facts might include, but not necessarily be limited to, facts contained in unpublished decisions, transcripts of testimony, trial exhibits, brief appendices, studies or other pertinent documents. They might also be contained in a supplemental synthesized statement

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<sup>1</sup> For the purpose of this competition, teams are not required to formally request that Judicial Notice be taken of legislative facts.

<sup>2</sup> For additional discussion concerning the distinction between adjudicative and legislative facts, see "Beyond Brandeis: Exploring the Uses of Non-Legal Materials in Appellate Briefs", Elie Margolis, University of San Francisco Law Review, Winter 2000, 34 U.S.F.L. Rev. 197 and Kenneth Culp Davis, Judicial Notice, 55 Colum. L. Rev. 945,95 (1955).

of actual facts involved in the case or a fictionalized account of appropriate additional facts. Facts designated by the competition administration as supplemental facts are considered a part of the official record of the case and need not be attached to a competitor's brief as an appendix.

**Subd. 3. Limitations concerning use of adjudicative facts.** Competitors may not cite adjudicative facts that are not contained in the designated record or in additional facts identified as supplementing that record, as facts pertinent to the competition case.

- a. Use of adjudicative facts that are not part of the designated fact record or supplemental fact record will result in a 10-point technical penalty off of the brief score.
- b. This prohibition includes the use of facts contained in testimony, exhibits or other evidence from the actual case that has not been designated by the competition administration as being part of the record for the purpose of the competition.

**Subd. 4. Use of Legislative Facts and Other Resources.**

- a. Competitors may use legislative facts, if relevant, when making a policy argument or when arguing about the effect of the law, policy or practice in question or what the law, policy or practice should be.
- b. Competitors may use any lower court opinions involving the case.
- c. Competitors are free to rely upon precedent, statutes, rules, regulations, legislative history, scholarly works and other such resources in crafting their arguments.

**Subd. 5.** Except as otherwise provided herein, each violation of Rule 5 shall result in a 10-point technical penalty off of the offending competitor's brief score.

## **Rule 6. BRIEF TECHNICAL REQUIREMENTS.**

### **Rule 6.01. Anonymity.**

**Subd. 1.** Except as otherwise provided herein, the brief shall not in any way reveal the identity of the team's school or the individual team members or include any information from which such might be surmised.

**Subd. 2. Team identifying brief letter.** Each team will be assigned brief identifying letter(s) from the alphabet. The letter(s) will be the **ONLY** reference to the team on the cover of or at any place in the brief.<sup>3</sup> The identifying letter(s) shall be included on the brief cover in a manner consistent with Rule 6.03 Subd. 3. The identifying letter(s) shall be assigned by a completely random drawing held by the competition administration. These identifying letters will be mailed and/or e-mailed and posted in the private Team Information area of the Website on or before December 12, 2008.

**Subd. 3.** A violation of Rule 6.01 shall result in a deduction of three (3) points from the final brief score.

### **Rule 6.02. Brief Parameters.**

#### **Subd. 1. Page limit.**

- a. The brief shall consist of not more than thirty-five (35) printed or typewritten pages.
- b. The thirty-five (35) page limitation does not include pages devoted to the cover, Questions Presented, Table of Contents, Table of Authorities, Opinions Below, Statement of Jurisdiction<sup>4</sup>, Constitutional Provisions and Statutes Involved or Appendices.
- c. All other aspects of the brief, including but not limited to the Statement of the Case,

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<sup>3</sup> This rule does not prohibit using the name of the school in the return address on the envelope in which the brief is mailed.

<sup>4</sup> As provided in Rule 6.04 Subd. 2, a formal Statement of Jurisdiction is optional.

Summary of the Argument, Argument and Conclusion shall be counted toward the page limitation.

d. In computing overall brief length, each inch of single-spaced footnotes and quotations, shall be counted as two inches of text. Any partially filled page shall be deemed a full page.

e. Increasing the amount of text by using condensed or thinner typefaces or by reducing the space between letters or lines is strictly prohibited.

**Subd. 2. Paper, text field, print and spacing.**

a. The paper used shall be unglazed, opaque, white paper measuring 8 1/2 by 11 inches.

b. The text field, including footnotes and page number, shall not exceed 6 1/2 by 9 1/2 inches.

c. Margins shall be not less than 1 inch excluding page numbers. Because word processor margin settings do not always guarantee that the document will print with the exact margins that were set, a team will not be penalized for a margin violation if its margins are close to one inch and it has complied with the text field requirements of Rule 6.02, Subd. 2 b.

d. The printing or typewriting process used must produce a clear black image.

e. Except as indicated in Rule 6.03 Subd. 4, the font used shall be Times New Roman.<sup>5</sup> Increasing the amount of text by condensing the space between letters is strictly prohibited.

f. Except as indicated in Rule 6.03 Subd. 4, the type size for text shall be no smaller than 12 point. The type size for footnotes,

including superscripted footnote numbers shall be no smaller than 10 point.

g. Except with regard to headings and indented quotations, the main text<sup>6</sup> shall be double-spaced. Footnotes may be single-spaced.

**Subd. 3. Penalties.**

a. Violation of the Rule 6.02 Subd. 1 page limit restriction shall result in a deduction of three (3) points from the final brief score.

b. Violations of Rule 6.02 Subd. 2 a and c shall each result in a deduction of one (1) point from the final brief score. Violation of Rule 6.02 Subd. 2 e shall result in a deduction of two (2) points. Violations of Rule 6.02 Subd. 2 b, f and g shall each result in a deduction of three (3) points.

c. The purpose of this rule is to promote uniformity and to prevent teams from gaining an advantage in the length of its argument by manipulating its word processing parameters. The Administration reserves the right to excuse Rule 6.02 Subd. 2 e and f errors that are isolated and have *de minimus* effect in light of the purpose of this rule.

**Rule 6.03. The Brief Cover.**

**Subd. 1. Weight of cover.** The original and each copy of the brief that is filed shall have a suitable cover consisting of card stock. A team must submit covers for each original and copy even those that are unbound.

**Subd. 2. Color of cover.** The cover of a Petitioner's brief shall be light blue. The cover of a Respondent's brief shall be light red.

**Subd. 3. Content of cover.** The brief shall bear on its cover, in the order indicated, from the top of the page:

a. the docket number of the case;

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<sup>5</sup> If a team does not have access to Times New Roman, it must contact the Administrative Directors and request permission to use a different font.

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<sup>6</sup> "main text", includes the statement of the case, the summary of the argument, the argument and conclusion.

- b. the name of the Court that is presiding over the appeal, e.g. the Supreme Court of the United States ;
- c. the caption of the case;
- d. the nature of the proceeding and the name of the court from which the action is brought (e.g., “On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth circuit”; or, for a merits brief, “on Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit”);
- e. the title of the document (e.g., “Brief for Respondent”);
- f. the team-identifying letter(s) (see Rule 6.01 Subd. 2).

See sample cover page attached as Appendix K.

**Subd. 4.** A team, at its discretion, may vary the font and size of the type that it uses on the cover of its brief.

**Subd. 5. Penalties.**

- a. Violation of Rule 6.03 Subd. 1 or 2 shall result in a deduction of two (2) points from the final brief score.
- b. Each violation of Rule 6.03 Subd. 3 shall result in a deduction of one (1) point from the final brief score.

**Rule 6.04. Content and Order of Required Brief Sections.**

**Subd. 1.** Petitioner and respondents’ briefs shall contain the following sections in the following order:

- a. The questions presented for review. The questions shall be set out on the first page following the cover, and no other information may appear on that page;
- b. A table of contents;

- c. A table of cited authorities;
- d. Citation(s) to the opinion(s) below;
- e. The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out word for word, i.e. no ellipses, with appropriate citation. If the provisions involved are lengthy, their citation alone suffices at this point, and their pertinent text shall be set out in an appendix to the brief;
- f. A concise statement of the case entitled “Statement of the Case”, setting out the procedural history and the facts material to the consideration of the questions presented.
- g. A summary of the argument, suitably paragraphed. The summary should be a clear and concise condensation of the argument made in the body of the brief; mere repetition of the headings under which the argument is arranged is not sufficient;
- h. The argument, exhibiting clearly the points of fact and of law presented and citing the authorities and statutes relied on;
- i. A conclusion specifying with particularity the relief the party seeks.
- j. The signature block at the close of the brief shall indicate simply:

Respectfully submitted,

Petitioner

or

Respectfully submitted,

Respondent

- k. A team, at its option, may include its team-identifying letter in the signature block (see Rule 6.01).

**Subd. 2.** A team, at its option may include a concise statement of the basis for jurisdiction in the court that is presiding over the appeal, including the statutory provisions and time factors on which jurisdiction rests, after the table of cited authorities and before listing of constitutional provisions, treatise, statutes, etc. A jurisdictional statement, however, is not required.

**Subd. 3.** The failure to include a required section in the brief shall result in a deduction of three (3) points from the final brief score. The failure to put the required sections in the order specified above shall result in a deduction of one (1) point from the final brief score.

**Rule 6.05. Form of Citations.**

**Subd. 1.** Except with regard to brief headings, all citations contained in the table of authorities, the section that sets forth constitutional provisions, treaties, statutes, ordinances, and regulations, the section that sets forth citation(s) to the opinion(s) below, the statement of the case, the summary of the argument, the argument and/or the conclusion shall be in the form prescribed by the **Eighteenth Edition** of The Bluebook: A Uniform System of Citation (hereinafter, “The Bluebook”).

**Subd. 2.** Where the Practitioner’s Notes contained in The Bluebook differ from the rules of citation and style contained in other sections of The Bluebook, the Practitioner’s Notes must be followed.

**Subd. 3.** Each team is responsible for citing accurately in accordance with The Bluebook. Relying on inaccurate citations contained in other sources such as court opinions, law review articles, or even materials provided by the competition administration does not exempt a team from accruing the penalties set forth in Rule 8.01 Subd. 2.

**Rule 6.06. Appendix to the Brief.**

**Subd. 1.** A team, at its discretion, may include with its brief an appendix containing materials

that are relevant to their argument. Teams are cautioned not to include in an appendix arguments or citations that properly belong in the body of the brief.

**Subd. 2.** It is not necessary for a team to include as part of an appendix fact statements, decisions or other documents that are already included in the designated record of the competition or a supplement to that record.

**Rule 6.07. Binding.** Except for the two (2) copies of the brief that are to remain unbound, see Rule 7.01, Subd. 3, each copy of the brief that is filed or served shall be bound firmly along the left margin in a manner that permits easy opening. No part of the text should be obscured by the binding. Glued on edge (e.g. Perfect), fastback, spine bound, Velo or SureBinding, plastic spiral (e.g. GBC), metal or wire spiral binding may be used.<sup>7</sup> **Stapled edges are not acceptable** and will result in a two (2) point penalty deducted from the final brief score.

**Rule 6.08. Copies Identical to Original.** Except as otherwise described in Rule 7.01 Subdivisions 3 and 4 the copies of the brief that are filed and served shall be identical reproductions of the original.

**Rule 6.09. Unspecified Technical Error Penalties.** Any violations of Rule 6 for which there is not a specified penalty will result in a one-point penalty per violation which shall be deducted from the final brief score.

**Rule 7. FILING AND SERVICE OF BRIEFS.**

**Rule 7.01. Filing of Brief.**

**Subd. 1. Filing deadline.** Each team shall file the following materials with the competition office by **First Class Certified mail return receipt requested** or by expedited delivery service, **postmarked or with an express receipt dated on or before January 20, 2009.**

- two (2) unbound copies of its brief (including covers);

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<sup>7</sup> A team may seek permission to use a binding that is not listed..

- six (6) bound copies of its brief; and
- one (1) copy of brief on a virus free<sup>8</sup> floppy disk, CD or USB storage device (“memory storage medium”). See Rule 7.02 Subd. 1 for format information.
- a signed and notarized Appendix G affidavit for each team member

The filed materials shall be addressed to:

Attention: Prof. Carl M. Warren  
 Wm. E. McGee National Civil Rights  
 Moot Court Competition  
 190 Mondale Hall  
 229 19th Avenue South  
 Minneapolis, MN 55455

**Subd. 2. Filing deadline penalty.** The failure of a team to file the hard copies of its brief with the competition administration in a timely manner shall result in a two (2) point penalty per day for a maximum penalty of twenty (20) points off of the final brief score.

**Subd. 3. Two copies unbound.** Two (2) of the eight (8) copies of the brief shall be unbound but held together by non-intrusive means, e.g. binder clip, rubber bands, string, etc. Covers must be included with the unbound copies.

**Subd. 4. Other copies bound.** Six (6) of the eight (8) copies that are filed shall each be bound firmly along the left margin so as to permit easy opening. See Rule 6.07 regarding type of binding that may be used.

**Subd. 5. No revisions after filing.** No team shall revise or correct its brief after it has been filed with the competition administration. Corrected briefs will not be accepted.

**Rule 7.02. Electronic Service of Brief.** Service of hard copies of briefs via the U.S. Mail on other teams will not be utilized. Teams will accomplish service by the procedures set forth below.

**Subd. 1. Service Deadline.** On or before **January 20, 2009**, each team shall submit one (1) copy of its brief as an attachment to a virus free<sup>9</sup> e-mail message directed to [warre001@umn.edu](mailto:warre001@umn.edu). The copy submitted as an e-mail attachment shall be in Adobe Acrobat [pdf] format. If a team does not have access to Adobe Acrobat writing software, it may submit the e-mailed and memory storage medium copies in Word or, if a team does not have access to Word, in Word Perfect format. A team must receive prior approval of the competition administration to submit these copies in a format other than Adobe Acrobat [pdf] format, Word or Word Perfect. The copy of the brief submitted via floppy disk, CD or USB storage device (see Rule 7.01 Subd. 1) must be in Word format, or if the team does not have access to Word, Word Perfect format. Adobe Acrobat should not be used for the floppy disk, CD or USB storage device copy. The file name of the electronic copies should include “Team” followed by the team’s assigned a brief identifying letter(s), e.g. “Team A”. The name of the school should not be included in the file name.

**Subd. 2. E-mailed and memory storage medium copy deadline penalties.** Failure to submit the e-mailed copy of the brief in a timely manner shall result in a one (1) point penalty per day for a maximum penalty of ten (10) points off of the final brief score. Failure to submit the floppy disk, CD or USB storage copy of the brief in a timely manner shall result in a one (1) point penalty. If a team fails to submit a viable e-mailed copy of their brief, the receipt of a viable memory storage medium copy of the brief will toll further accumulation of penalty points for the failed e-mailed copy as of the date that the floppy disk, CD or USB storage device is received.

**Subd. 3. Briefs posted on Website.** The e-mailed or memory storage medium copies of briefs submitted pursuant to Rules 7.01 and 7.02 will be posted in the private Team Information

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<sup>8</sup> No effort will be made to retrieve data from a disk with a virus.

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<sup>9</sup> No effort will be made to retrieve the data from an e-mail message or an attachment or a floppy disk, CD or USB storage device that appear to have a virus.

area on the Website where they will be accessible to all teams by January 22, 2009.

0 - 6 citation errors	=	no penalty
7 -13 citation errors	=	2 penalty points
14-20 citation errors	=	4 penalty points
21+ citation errors	=	6 penalty points

**Rule 7.03. Unspecified Filing and Service Penalties.** Any violations of Rule 7 for which there is not a specified penalty will result in a one-point penalty per violation that will be deducted from the final brief score.

c. Any penalty for citation errors will be deducted from the final brief score.

**Rule 8. JUDGING THE BRIEF.**

**Rule 8.01 Technical And Citation Error Checking.**

**Subd. 1.** The unbound copies of the brief shall be used by the competition administration to judge compliance with the competition’s technical and citation requirements.

**Subd. 2.** Members of the University of Minnesota Law Review, Journal of Law and Inequality, Intellectual Property Review, Journal of Global Trade and/or other qualified designees of the competition administration shall check each brief for citation errors.

a. These individuals shall not know the identity of the school submitting any brief.

b. A brief containing citation errors<sup>10</sup> shall be penalized according to the following scale:

**Rule 8.02. Challenging Procedural, Technical Or Substantive Aspects Of Other Teams’ Briefs.**

**Subd. 1.** A team that wishes to bring to the competition administration’s attention a procedural, technical or substantive error concerning a brief submitted by another team, must do so in writing by fax (612-624-5771), e-mail (warre001@umn.edu) or mail directed to the faculty advisor of the competition at the address set forth in Rule 7.01, Subd. 1 in a manner so that it will be received no later than 4:30 p.m. (CST) February 2, 2009. Challenges of the procedural, technical or substantive aspects of another team’s brief will not be accepted or considered if received after 4:30 p.m. (CST) February 2, 2009. The competition administration will confirm receipt of challenges via e-mail. It is the responsibility of the team submitting a challenge to make sure that its challenge has been received by the competition administration.

**Subd. 3.** A challenge of the procedural, technical or substantive aspects of another team’s brief must include but not necessarily be limited to:

- a. a citation to the rule that applies;
- b. an explanation as to the basis of the challenge; and

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<sup>10</sup> Citation Errors will be calculated as follows:

- a. The same Bluebook/citation error that is repeated throughout the brief will only be counted as one citation error. For example, if the following citation error was repeated throughout the brief, it would only be counted as one error (i.e. the reporter is incorrectly cited):

The Supreme Court has held that the Tenth Amendment limits congressional power. See United States v. New York, Vol. 505 U.S. 144 (1992). The Court has also held that there are limits on the Commerce Clause. See United States v. Lopez, Vol. 514 U.S. 549 (1995). The Court noted that federalism is an important concept. See New York, Vol. 505 U.S. at 168.

- b. Unless a different result is required pursuant to paragraph a above, if there are multiple errors in the same citation, each error will be counted separately. For example, the following citation sentence would be counted as two errors although they are in the same citation (i.e. abbreviating a state’s name, and citing to the reporter incorrectly):

See United States v. N.Y., Vol. 505 U.S. 144 (1992).

c. where applicable, a description of the exact location of the challenged material in the brief in question.

**Subd. 4.** The identity of the challenging team will be kept confidential.

**Subd. 5.** If the competition administration finds that a challenge has merit, it will take the information into account in its own analysis of the technical compliance of the brief in question. The competition administration's decision as to whether or not a challenge of another team's brief has merit is final and non-appealable.

### **Rule 8.03 Challenging Technical And Citation Error Penalties Concerning Your Own Brief.**

**Subd. 1.** The competition administration will post each team's Technical Score Sheet (see Appendix B) including references to the page and line of each citation error notation in the private Team Information area of the Website by February 6, 2009.

**Subd. 2.** Any and all challenges to the Technical Score Sheet or citation error marks of a team's own brief must be received by the faculty advisor to the competition, Carl Warren, preferably by fax, directed to fax number 612-624-5771 or by e-mail directed to [warre001@umn.edu](mailto:warre001@umn.edu) or U.S. Mail directed to the address set forth in Rule 7.01, Subd. 1 no later than 4:30 p.m. (CST) February 13, 2009. The competition administration will confirm receipt of challenges via e-mail. It is the responsibility of the team submitting a challenge to make sure that its challenge has been received by the competition administration.

**Subd. 3.** A challenge of a Technical Score Sheet mark must clearly identify the mark in question and include a detailed explanation of the basis for the challenge including pertinent documentation, if any.

**Subd. 4.** Each challenge of a citation error mark must contain:

a. reference to the page and line that contains the error in question;

b. a citation to the Blue Book rule and/or competition rule that applies; and

c. an explanation as to the basis of the challenge.

**Subd. 5.** The competition administration will review each challenge and make a determination. The competition administration will post each team's final Technical Score Sheet and final brief score in the private Team Information area of the Website by February 20, 2009. This determination will be final and non-appealable.

**Subd. 6.** The failure to submit a challenge so that it is received by the faculty advisor to the competition no later than 4:30 p.m. (CST) February 13, 2009 or to include the documentation and information required in Rule 8.03, Subd. 3 and 4 will void the challenge and the original Technical Score Sheet and/or citation error determinations will stand. Challenges of the Technical Score Sheet or citation error marks will not be accepted or considered if received after 4:30 p.m. (CST) February 13, 2009.

### **Rule 8.04. Brief Review Judges.**

**Subd. 1.** Five of the bound copies of each team's brief will be distributed to the brief review judges.

**Subd. 2.** Five judges<sup>11</sup> will read each brief, and score them on a scale of zero (0) to one hundred (100). See Appendix A for scoring criteria.

**Subd. 3.** The raw brief score will be determined by excluding the highest and lowest scores, and averaging the remaining three scores. The final brief score will be determined by deducting the

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<sup>11</sup> The brief judges will be chosen by the competition administration and will hold J.D. degrees. Or law degrees comparable to a J.D. degree.

technical and citation error penalty points from the raw score. See Appendix C.

**Rule 8.05. Best Brief Award.** The Best Brief Award will be given to the team that has the brief with the highest final score. It will be announced and presented at the Awards Ceremony and Reception following the final round of the competition on Saturday, March 7, 2009.

**Rule 9. ORAL ROUNDS' FORMAT.** The preliminary and advanced oral argument rounds will be held at the University of Minnesota Law School March 5, 6 and 7, 2008 at the times and locations to be designated by the competition administration. See Appendices D and E.

**Rule 9.01. Distribution Of Teams Into The Preliminary Round Oral Argument Brackets Based On Final Brief Score.**

**Subd. 1.** There will be Preliminary Round oral argument brackets of the number and size set forth in Appendix D, For the purpose of the Preliminary Rounds, a team will compete only against other teams in its own bracket. See Appendix D.

**Subd. 2.** The assignment of teams to the Preliminary Round oral argument brackets will be determined by their final brief score. The team with the highest final brief score will be assigned to Bracket A. The team with the next highest final brief score will be assigned to Bracket B, the next to Bracket C and so on and so forth until a team has been assigned to each bracket. The next team will be assigned to Bracket A and the process will repeat until all teams have been distributed.

- a. No effort will be made to either separate or group together two teams representing a single school.
- b. In the event of ties with regard to the final brief score, the team with the higher brief score before the deduction of any citation error penalty points and technical error penalty points shall be the distributed to

the brackets first. In the event that there is still a tie, the tie will be broken using a random draw of the tied teams to determine the order of distribution.

**Subd. 3.** Once the brackets are determined, a random draw will be used to assign an identification number to each team. This number will determine each team's adversaries and the side it will argue during each Preliminary Round. The bracket and team number assignments will be e-mailed and/or posted in the private Team Information area of the Website by February 25, 2009.

**Rule 9.02. General Meeting.** All teams and team members shall be present in Room 25 of the University of Minnesota Law School at 8:00 A.M. on Thursday, March 5, 2009, for a general meeting.

**Rule 9.03. Preliminary Rounds.**

**Subd. 1.** There shall be three Preliminary Rounds during which each team will argue against a different team within its bracket determined by the random drawing referred to in Rule 9.01 Subd. 3.

**Subd. 2.** Each team will argue the side that is assigned to them according to their team number. See Appendix D. No team shall argue the same side of the case in all three Preliminary Rounds.

**Subd. 3.** In the event that the number of competing teams changes prior to the distribution of teams to the brackets, the competition administration reserves the right to revise the preliminary round pairings or system or implement other measures to ensure that each team will argue against three different teams and on both sides of the questions during the preliminary rounds. If after the distribution of teams to the brackets, a team fails to compete in any Preliminary Round, its adversary will be determined the winner of that that round by forfeit.

**Rule 9.04. Round Of Sixteen, Quarterfinal, Semifinal, Third Place And Final Rounds.**

**Subd. 1.** There will be four advanced rounds after the Preliminary Rounds, i.e. the Round of Sixteen, Quarterfinal Round, Semifinal Round and Final Round. These rounds will be tournament style, i.e. single-elimination with the winning team advancing to the next round until a winner of the competition is determined. See Appendices E and I.

**Subd. 2.** There will also be a Third Place Round that will match the two Semifinal teams that do not advance to the Final Round in order to determine the winner of the Third Place Award.

**Subd. 3.** The sixteen teams with the best records at the culmination of the Preliminary Rounds will advance to the Round of Sixteen. The determination regarding which teams have the best records will be made by first comparing relative won/loss records and then applying the tie-breakers set forth in Rule 10.08, Subd. 10. This method will also determine the respective seeding of the advancing teams.

**Subd. 4.** Advancing teams will keep the same number that was assigned to them for the preliminary round throughout the advanced rounds. See Appendix E.

**Subd. 5.** The announcement of the sixteen teams that will advance to the Round of Sixteen, their respective seeds and pairings will be made in Room 25 at 5:00 P.M. on Friday, March 6, 2009. All teams must be represented at this meeting. At that time, a drawing will be conducted in accordance with the procedure set forth in Rule 9.04 Subd.7 to determine the side that each advancing team will argue.

**Subd. 6.** The drawings to determine which sides the teams in subsequent advanced rounds will argue will take place following each completed round in Room 25 in accordance with the procedures set forth in Rule 9.04 Subd. 7. Representatives from each advancing team must attend.

**Subd. 7. Determining sides during advanced rounds.** Which team shall argue Petitioner and which team shall argue Respondent in each advanced round pairing will be determined by a drawing. The competition administration shall present a box containing a "P" card for Petitioner and an "R" card for Respondent and a blank card. Each advancing team shall choose one person to draw. A coin shall be flipped to determine which team shall draw first. If a team draws the blank card, it shall be assigned the opposite side as the team drawing either "P" or "R".

**Subd. 7.** The First, Second, Third, Best Brief, Best Oral Advocate overall and Best Oral Advocate of the Preliminary Rounds awards will be announced and presented at the Awards Ceremony and Reception following the final round of the competition on Saturday, March 7, 2009.

**Rule 9.05. Oral Argument Panels.** Each preliminary round, Round of Sixteen, Quarterfinal, Semifinal and Third Place oral argument will be heard by a minimum of two or a maximum of 3 judges.<sup>12</sup> Information regarding the number of judges who will hear the Final Round will be available at the March 5, 2009 General Meeting.

**Rule 9.06. Closed and Open Courtrooms.**

**Subd. 1.** The Preliminary Rounds, Round of Sixteen and Quarterfinal Round courtrooms are closed to the public. Only members of the teams that are arguing in a particular courtroom, coaches affiliated with those teams, presiding judges and competition personnel may be present in that

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<sup>12</sup> The oral argument judges will be chosen by the competition administration and will hold J.D. degrees or law degrees comparable to a J.D. degree.

courtroom. Exceptions will be granted only if all members of each team agree.

**Subd. 2.** The Semifinal Round is open to the public and to all competition participants except persons affiliated with a team that is arguing in the other courtroom unless a school has teams arguing in both courtrooms. But see Rule 10.03, Subd. 2. The Third Place and Final Round oral arguments are open to the public and to all competition participants.

## **Rule 10. ORAL ARGUMENT PROCEDURE.**

### **Rule 10.01. Permissible Interaction With Judges.**

While at the competition, no participant may have knowing prior interaction with persons who are scheduled to hear their oral arguments.

### **Rule 10.02. Judge Conflicts.**

**Subd. 1.** No participant shall be allowed to argue before a judge whom he or she knows i.e. has reason to believe that the judge either has knowledge as to their identity or school affiliation. A check for potential judge conflicts shall take place at the March 5, 2009 General Meeting.

**Subd. 2.** If at any time during the Competition, a participant discovers that a panel that is scheduled to preside over their argument includes a judge whom he or she knows, i.e. has reason to believe that the judge either has knowledge as to their identity or school affiliation, he or she shall immediately notify the bailiff or competition administration so that appropriate action may be taken to remedy the potential conflict.

**Subd. 3.** If at any time during the Competition, a Coach or faculty advisor discovers that a panel that is scheduled to preside over the argument of their team includes a judge whom he or she knows, i.e. has reason to believe that the judge either has knowledge as to their identity or school affiliation, he or she shall either sit in a location in the courtroom that will not reveal the team to which they are affiliated, remove themselves from the courtroom or immediately notify the bailiff or

competition administration so that appropriate action may be taken to remedy the potential conflict.

### **Rule 10.03. Role Of Coaches And Faculty Advisors At Oral Arguments.**

**Subd. 1.** Coaches and faculty advisors attending the competition may attend the oral arguments of their team(s) and may, outside the courtroom, provide analysis and evaluations of the effectiveness of the substantive arguments and their organizational components as well as suggestions regarding principals of effective oral advocacy and style

**Subd. 2.** A coach or faculty advisor who has two teams arguing in separate courtrooms at the same time must choose which argument he or she will attend. He or she may not move from one courtroom to the other during the arguments.

**Subd. 3.** Coaches and faculty advisors may not communicate with their team while a round is in progress.

### **Rule 10.04. Seating and Permissible Courtroom Interaction.**

**Subd. 1.** The bailiff will identify the location of the bench, counsel table and the area of the courtroom reserved for the audience if their location is unclear.

**Subd. 2.** All team members who intend to participate in an oral argument must be seated at counsel table during the oral argument when they are not engaged in argument at the podium.

**Subd. 3.** Only team members who will be participating in an oral argument may be seated at counsel table during the oral argument. If a team has three members, the team member who is not participating in a particular oral argument may attend the argument but must sit in the area designated for the audience, not at counsel table. Such team member may not offer any oral or written suggestions or comments to or communicate in anyway with his/her team mates once the argument is underway.

**Subd. 4.** Team members who are participating in an oral argument may confer with each other during the oral argument, but may only do so while both are seated at counsel table. A team member seated at counsel table may not communicate with a team member while that team member is engaged in argument at the podium.

**Subd. 5.** Coaches, faculty advisors, non-arguing team members and non-team members who are permitted to attend an oral argument must be seated in the area reserved for the audience. Such individuals may not communicate in any way with participating teams while the oral argument is in progress.

**Rule 10.05. Identifying Team and Team Members.**

**Subd. 1.** At the beginning of each team's argument, the team member who leads off shall announce their team number, the party or parties that they represent, the name of each team member who will argue and the issue(s) that they each will address.

**Subd. 2.** At the beginning of each individual's argument, they shall state and spell their name.<sup>13</sup>

**Subd. 3.** At no time, either during an argument or otherwise, shall a team member reveal the name of their law school to a judge, even if requested to do so by a judge.

**Rule 10.06. Allotted Time.** Each team shall be allotted thirty (30) minutes for argument in each round. The judges may, at their sole discretion, interrupt the arguments to ask questions. No team member shall argue more than twenty (20) minutes of the allotted thirty (30) minutes. Petitioner's team may reserve up to five (5) minutes of their time for rebuttal.

**Rule 10.07. Allocation of Time.**

**Subd. 1.** In advance of each argument, team members shall notify the bailiff of the manner in which the two team members wish to divide their thirty (30) minutes.

**Subd. 2.** The bailiff shall use flash cards to notify each team member when five (5) minutes remain, when two (2) minutes remain, when one (1) minute remains, and when to stop.

**Subd. 3.** If the first team member argues beyond his or her allotted time, such time will be subtracted from the team's total allotted time of thirty (30) minutes.

**Subd. 4.** A judge may, at his or her sole discretion, allow the second team member an extension of time beyond the total thirty (30) minutes. This extension of time shall not exceed five (5) minutes. In such an instance, the bailiff shall notify the second team member when the five (5) minute extension has ended.<sup>14</sup>

**Rule 10.08. Scoring.**

**Subd. 1.** Each team shall be scored on a scale of zero (0) to one hundred (100) points of which zero (0) to fifty (50) points shall be allocated to each team member. See Appendix F for oral argument judging criteria.

**Subd. 2. Weight of brief score.** A team's final brief score will constitute thirty-five percent (35%) of the total oral argument score for each Preliminary Round, twenty-five percent (25%) of the total oral argument score for the Round of 16 and Quarterfinal Round and fifteen percent (15%) of the total oral argument score for the Semifinal, Third Place and Final Rounds.

**Subd. 3.** In scoring the oral argument, the judges shall not take into consideration the merits of the case but shall consider only the effectiveness of each team's argument and oral advocacy skills.

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<sup>13</sup> This is to ensure that the judges can accurately complete the Oral Argument Score sheets.

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<sup>14</sup> The judges presiding over the oral arguments will be aware of these times restrictions. A joint effort by judges and participants is necessary to stay on schedule.

**Subd. 4.** Each judge's score shall be entered on the appropriate form, placed in a sealed envelope, and delivered to the bailiff.

**Subd. 5.** While the scores are tallied, the judges may comment on the performance of the teams. Teams are not penalized should judges make comments or suggestions, during these conversations, regarding the substantive aspects of their arguments.

**Subd. 6.** The bailiff shall deliver the forms to the official scorekeeper.

**Subd. 7.** The scorekeeper will determine the total oral argument score by calculating the weighted average for all of the judge's scores and the brief score.<sup>15</sup> The winner of the oral argument shall be the team with the higher total oral argument score.

**Subd. 8. Tie-breakers for determining winners of oral argument rounds.** In the event of a tie in determining the winner of an oral argument round, the team with the higher brief score before the deduction of any citation error penalty points

and technical error penalty points shall be the winner. In the event that there is still a tie, the team with the higher brief score after the deduction of any citation error penalty points and technical error penalty points shall be the winner. In the event that there is still a tie, the cumulative average oral argument score for each team shall be calculated by adding their total oral argument scores from all prior rounds and dividing the sum by the number of prior rounds. The team with the highest cumulative average oral argument score shall be the winner. In the event that there is still a tie, the team with the best overall won/loss record prior to that round shall be the winner. In the event that there is still a tie, the tie shall be broken by a coin toss with the winner of the coin toss winning the round except in the case of the Third Place Round and Final Round. If after applying all other tiebreakers there is still a tie between the participants in either the Third Place or Final Round, the argument shall be considered a tie and the two teams shall be declared co-winners of the round.

**Subd. 9.** The official scorekeeper shall indicate the winner of the oral argument on the appropriate form, place it in a sealed envelope, and deliver it to the bailiff. The official scorekeeper shall retain the judges' score sheets.<sup>16</sup> The bailiff shall deliver the form to the judges. One judge shall then announce the winner of that argument. In the event that there is a tie that must be broken by a coin toss, the coin toss shall take place before the judges and representatives of the teams.

**Subd. 10. Tie-breakers for determining which teams advance to the Round of Sixteen.** In the event that there is a tie in determining which teams advance to the Round of Sixteen or receive particular seeds, see Rule 9.04, Subd. 3, the team(s) with the higher brief score(s) before the deduction of any citation error penalty points and technical error penalty points shall advance or receive the better seed(s). In the event that there is still a tie, where possible, a team that beat another

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<sup>15</sup> For example, if there are 2 judges, Judge A and Judge B, for a Preliminary round in which the brief score constitutes 35% of the total oral argument score, then the weighted average would be calculated as follows:

$$\text{Weighted Avg.} = (65/2)\% \text{ of score from Judge A} + (65/2)\% \text{ of score from Judge B} + 35\% \text{ of Brief Score.}$$

If there are three judges then the weighted average would be calculated as follows:

$$\text{Weighted Avg.} = (65/3)\% \text{ of score from Judge A} + (65/3)\% \text{ of score from Judge B} + (65/3)\% \text{ of score from Judge C} + 35\% \text{ of Brief Score.}$$

The number 65 is obtained by removing the brief score weight from the total weight, that is,  $100 - 35 = 65$ .

The number 2 or 3 dividing 65 is the number of judges. This is done to give equal weight to all the judge scores.

The same approach will be used in calculating the weighted averages for the Round of Sixteen and Quarterfinal Rounds in which the brief will constitute 25% of the total oral argument score and the Semifinal, Third Place and Final Rounds in which the brief will constitute 15% of the total score.

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<sup>16</sup> These score sheets will be made available for review by teams at various intervals throughout the Competition.

team during one of the preliminary rounds shall advance before or receive a better seed than the team that it beat.<sup>17</sup> In the event that there is still a tie, the team(s) with the higher brief score(s) after the deduction of any citation error penalty points and technical error penalty points shall advance or receive the better seed(s). In the event that there is still a tie, the cumulative average oral argument score for each team shall be calculated by adding their total oral argument scores<sup>18</sup> from all prior rounds and dividing the sum by the number of prior rounds. The team with the highest cumulative average oral argument score shall advance or receive the better seed(s). In the event that there is still a tie, the tie shall be broken by coin toss with the winner(s) of the coin toss advancing or receiving the better seed(s).

Members of teams that advance to the Quarterfinal Round or beyond are eligible to be considered for both the Best Oral Advocate of the Preliminary Rounds and the overall Best Oral Advocate awards.

**Rule 11.02. Method for Determining the Best Oral Advocates.**

**Subd. 1.** The Best Oral Advocate of the Preliminary Rounds award is based upon scores that are achieved during the first four rounds, i.e. the three Preliminary Rounds and the Round of Sixteen. The Best Oral Advocate award is based upon scores that are achieved during all rounds of the competition as long as the individual's team has advanced at least to the Quarterfinal Round.

**Subd. 2.** The scorekeeper shall rank the four individuals who argue in a particular round 1, 2, 3, or 4, corresponding with the individual total oral scores<sup>20</sup> that they received from each judge, with one (1) being the highest ranking and four (4) being the lowest. If two (2) or more individuals receive the same individual total oral score from a judge, they will each receive the same ranking from that judge. If such a tie occurs, the next rank(s) will be skipped. For example, if there is a tie for second, then the third place rank will be skipped and the remaining individual will be ranked fourth. If there is a three way tie for first, then the second and third place ranks will be skipped and the remaining individual will be ranked fourth.

**Subd. 3.** With regard to both awards, the winner shall be determined by calculating each individual's per judge average ranking, i.e. adding each individual's rankings and dividing that sum by the number of judges that the individual appeared before.<sup>21</sup> See Appendix H. The

**Rule 11. Best Oral Advocate Competition.**

**Rule 11.01. Eligibility.** Individual members of participating teams may compete for two Best Oral Advocate awards, **Best Oral Advocate of the Preliminary Rounds** and the overall **Best Oral Advocate**.

**Subd. 1.** To be considered for the Best Oral Advocate of the Preliminary Rounds award, a participant must argue at least three times during the first four rounds. The first four rounds consist of Preliminary Rounds one, two and three and the Round of Sixteen.<sup>19</sup> The participant's team need not advance to the Round of Sixteen to be eligible as long as he or she has argued three times.

**Subd. 2.** To be considered for the overall Best Oral Advocate award, a participant must be a member of a team that advances at least to the Quarterfinal Round. If the participant is the member of a three-person team, the participant must argue at least four times to be eligible.

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<sup>17</sup> It will not be possible to use this tie-breaker if, for example, there are three teams that are tied, each of which have beaten a different one of the other two.

<sup>18</sup> See Rule 10.08 Subd. 7.

<sup>19</sup> For the sole purpose of calculating the Best Oral Advocate of the Preliminary Rounds award, the Round of Sixteen will be treated as a preliminary round.

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<sup>20</sup> This is the oral score only. It does not include the brief score.

<sup>21</sup> For example, "Jane Smith" argued 3 times during the first three rounds and received oral argument rankings of 3, 2, 3, 1, 1, and 2 from the 2 judge panels during those rounds. In the round of sixteen, her team was eliminated but Ms. Smith was ranked 3 and a 1 by that 2

participant with the lowest per judge average ranking wins.

**Subd. 4.** For both awards, individuals who score within .10 or better of the winning score shall receive Honorable Mention.

**Subd. 5.** Both the Best Oral Advocate of the Preliminary Rounds and overall Best Oral Advocate awards shall be announced and awarded during the Award Ceremony and Reception following the final round of the competition on Saturday, March 7, 2009.

oral argument rounds that will affect the determination as to which team advances must be made immediately. Once a team in question commences argument in the next round, the result in the round in question stands.

**GOOD LUCK!**

## **Rule 12. INTERPRETATION OF THE RULES.**

**Rule 12.01.** All requests for interpretation of the rules or the problem prior to or during the competition shall be made directly to the Administrative Directors of the Civil Rights Moot Court or the Faculty Advisor. Unless otherwise stated herein, the Faculty Advisor's interpretation and/or application of the rules may be appealed to the Associate Dean of Administration of the University of Minnesota Law School or his/her designee who will make a determination based upon information provided by the Faculty Advisor and any other interested party but without knowledge as to the identity of the school(s) involved. The decision of the Associate Dean or his/her designee shall be final. Requests for interpretation of and/or application of the rules and appeals of decisions which stem from such requests must be made with due diligence and in a timely manner. What constitutes due diligence and timeliness shall be determined by the urgency of the circumstances. For example, a request for an interpretation or application of the rules during the

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judge panel. Her per judge average ranking would be 2, i.e. [(3+2+3+1+1+2+3+1) divided by 8, the number of judges that she appeared before]. Ms. Smith would be eligible to be considered for the Best Oral Advocate of the Preliminary Rounds award. If her team had continued to advance to the quarterfinal round or beyond, Ms. Smith's other score[s] would be added on and then divided by the appropriate number of judges and she would be eligible to also be considered for the overall Best Oral Advocate award.