

TAB 8: JUDICIAL



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OVERVIEW

The goal of the Judicial Program is to expose Missouri youth to the judicial process, from participation in trials as attorneys and witnesses, to developing leadership skills through mentoring and serving as Judges in those trials. The focus of the students' work during the fall is on learning and practicing the various parts of a trial, and developing the case you work on throughout the semester.

That way, when you come to the State Convention, you will be well prepared to try (and judge as the case may be) the case you have been working on during the semester, and also to prepare and try (or judge) a second case in a trial competition during the State Convention. This handbook provides you with an explanation of how the program works, an overview of the parts of a trial, and tips for preparing your case. Above all, our goal for you is to learn about the judicial process while having fun.

You will choose a partner and act in the role of Attorneys, preparing a case for a trial. You will try the case before a two or three judge panel against another team from your school. If for some reason you do not have enough students for this intramural trial, we will work it out so you try your case against another school. You also will need to secure two witnesses for your trial. You may choose other Judicial Program participants from your delegation or other YIG participants. You will try this case on the first afternoon or evening of Day 1 of the State Convention. Your Judges will render a written decision declaring the winner of the trial.

On the evening of Day 1 of the State Convention, materials will be distributed for a second case, to be tried in a trial competition on Days 2 and 3 of the State Convention. When you register for the program, you will have a choice regarding whether you want to be an attorney or a witness in this trial competition. If you choose the role of Attorney, you will be paired up with a partner from another participating school at the convention to prepare and try the second case in the trial competition to a two or three judge panel. If there are not enough students signed up to be witnesses, we may have to use you as a witness if you are a first year participant.

You will try the case two times against different opponents. Then, the Judges not participating in the trial competition as attorneys will choose four (4) teams to move on to the semi-final round. The Judges will choose the winners of the semi-final rounds, and those winners will then move on to the final round. The semi-final and final rounds will take place on Day 3 of the State Convention at the Missouri Supreme Court Building.

ROLES

The main role for all Judicial participants is that of an attorney. All program participants act in this role as they try the mock case on the first day of the State Convention. During the moot trial competition, students have an opportunity to take on the role of an attorney or a witness.

Students may also apply to serve as a judge. Selections are made by the Program Coordinators. Judges preside over the trials at the State Convention. A student selected as a judge must also prepare a trial brief and try a case as an attorney. In order to be eligible to apply to be a Judge, you must have one year of experience in the program. If you are a Judge, you may also participate as part of a trial team in the moot trial competition if you so choose.

The Judicial Program is led by a Chief Justice of the Supreme Court, who is selected at the previous State Convention by the student judges. The Chief Justice serves as a mentor to all judges and judicial participants.

For more detailed information on the qualifications, duties, and selection process for each position, please refer to the Tab 11: Student Leadership.

REQUIREMENTS

1. Participants must complete the Student Registration Form on the YIG website by the stated deadline to participate at the State Convention.
2. Students must work with a trial team in their delegation to prepare the proper trial brief.
3. Trial briefs must be filed by the stated deadline in the appropriate format.

JUDICIAL PROGRAM PREPARATION

PRIOR TO THE STATE CONVENTION

During the fall semester, you will learn about the parts of a trial and you will prepare a civil case for trial at the State Convention. Your preparation will consist of getting ready to try your case from a Pre-trial Conference through Closing Argument. Each part of the trial is explained in this handbook. In addition, you will write a short trial brief that will set out the issues for the Judge(s) to decide and what you expect the evidence will prove. How to prepare your trial brief is also explained in this section.

A civil case is a dispute between two or more people or businesses, where one party to the dispute, known as the Plaintiff, sues the other party to the dispute, known as the Defendant. The lawsuit can be for money damages, which is known as legal relief, and sometimes the Plaintiff asks the Judges to require or prohibit the defendant from taking some action, which is known as equitable relief.

In order for a Plaintiff to be able to bring a lawsuit seeking money damages against a Defendant, the dispute must be something over which the law allows a lawsuit to be brought. The law forming the basis of a lawsuit can be the United States and/or the Missouri Constitution, a federal or state statute, or what is known as the “common law”, which is law that has been developed over the centuries by Judges in written opinions (“case law”).

The case you are going to work on will be a case presented as a Judge trial in the Circuit Court of Yig County, Missouri. The state of Missouri is divided into judicial circuits. Judges hearing trials where there is more than \$25,000.00 in dispute are known as Circuit Judges. In Missouri, every citizen has a right to have a case for money damages decided by a jury of their peers. When a case is tried to a jury, the Judge presides over the case, deciding questions of law, and instructing the jury as factfinders to decide, based on the law as instructed by the Judge, which side they believe should win.

However, a claim for equitable relief is tried to a Judge. In addition, parties can give up their right to a jury trial, and that is called “waiving” the right to a jury trial. When the parties waive their right to a jury trial, the Judge acts as both the factfinder and also decides questions of law. In the Judicial Program, the Judges act as the factfinders and because of that we start with the premise that the parties have waived their right to a jury trial on the claim for money damages.

Once you have teamed up with a partner, you will need to decide among your delegation participants who you will go up against in the trial. You will then need to decide who will represent the Plaintiff and who will represent the Defendant. In the past, those who are in the program for the first year teamed up and tried their case against another team who are participating for the first year. Our goal is

to have a fair and fun competition. So, depending on the size and experience level of those in your group, you may want to have first years against first years, or you may want to team up someone with more experience and someone with less experience.

HOW TO PREPARE YOUR CASE FOR TRIAL

The first thing you will want to do is to print out the Judicial Case from the YIG website. Then, you will want to read the entire problem very carefully. You should read the case summary, the depositions, and review the exhibits. You should also read the pleadings, which are the Plaintiff's request for relief, known as the "Petition", and Defendant's statement of defenses, known as the "Answer". At the end of the problem, there are some suggested places to start researching the legal issues in the case. Those links should help get you started on figuring out the legal and factual issues in the case.

Once you have studied the case and related materials, you should get together with your partner and develop your case. What are the facts that support your claim? What are the facts that support the claim of the other side? From that, you should ask yourselves, what legal support is out there to support what we think are the good points of our case? What legal support is out there that goes against our position?

You and your teammate should divide up the questions that need to be researched. To do your research, you can go to a law library, or you can use the Internet to do your research. Law libraries can be found at law schools, and many law offices have library materials. Finally, you can use the Internet generally to guide you to the cases that impact this case. You will want to look at cases from the United States Supreme Court, the lower federal courts, and the cases in the state of Missouri. When you read an article that refers to a case, your attorney advisor can help you use the library or even possibly the Internet to find the case to read. When you read a case, it may reference another case that sounds like it may also deal with your issue. You can then get that case and read it.

Once you have researched the law, you should go back to your case, study the facts, and refine your issues and strengths and weaknesses of your case. At this point, you and your partner should develop the "theme" of your case, which is your central big picture theory of your case and why you should win.

At this point, you should be ready to prepare for the various parts of the trial, and to write your trial brief.

WRITING YOUR TRIAL BRIEF

The trial brief consists of two (2) sections:

1. An Introduction, where you will set out the claims being made by Plaintiff and any affirmative defenses raised by the Defendant; and
2. An Argument Section, where you will set forth the elements of Plaintiff's claim, the elements of any affirmative defenses, and where you explain what you expect the evidence in the case will show.

If you represent the Plaintiff, you should concentrate on what evidence will prove the elements of your case, and how the evidence will not support any affirmative defense raised by the Defendant. If you represent the Defendant, you should concentrate on how the evidence will not establish the elements of the Plaintiff's claims, and/or how the evidence will establish any affirmative defense raised by the Defendant.

Any statement you make in your trial brief must be fair and accurate. Remember that you are trying to convince the Judge of your position, so write a brief that is accurate, yet tells the story from your side's perspective.

Each team will submit a Trial Brief separately. The brief will be on 8 ½ x 11 paper, double spaced, stapled on the left hand corner, and contain a heading, called the "style" of the case. The style of the case can be found at the top of the Summary of the Facts. There is no minimum page limit to the brief, but it does need to contain each of the sections. Five pages should be sufficient to discuss the issues in the case. Longer briefs are fine, but it should not be more than 15 pages, which is the limit in many courts. At the end of the brief, you will put the name of your school, and the names of you and your partner. You will include a place for you and your partner to sign your brief. An example of this, which is known as your "signature block", is set forth below.

Respectfully Submitted,

YIG High School,

By _____
Judy Hunt

By _____
Jim Smith

Attorneys for Plaintiff McKenzie Dell

You also need to include, after the signature block, a “Certificate of Service”. This shows that you provided your opponents with a copy of the trial brief. You need to actually provide you opponents with a copy of your brief by the stated deadline. The form of the Certificate of Service, which needs to be signed by either you or your partner, is set forth below.

Certificate of Service

A copy of the trial brief was served on Joe Jones and Sally Hunter, Attorneys for Defendant Yig County R-VII School District, by hand-delivery, this ____ day of October, 2009.

Judy Hunt

PARTS OF A TRIAL

The mock trial at the State Convention will be conducted as follows:

1. Pre-trial Conference
2. Opening Statement
3. Plaintiff's Case, consisting of 2 Witnesses– Direct Examination by Plaintiff, Cross Examination by Defendant, and Re-direct if Necessary.
4. Defendant's Case, consisting of 2 Witnesses– Direct Examination by Defendant, Cross Examination by Plaintiff, and Re-direct if Necessary.
5. Closing Argument

You and your partner should divide responsibilities to include one person doing Opening Statement and the other doing Closing Argument, and each of you doing one direct examination of your witnesses, and one cross-examination of the opposing witnesses.

PRE-TRIAL CONFERENCE (4 MINUTES)

The purpose of the Pre-trial Conference is to bring any issues to the court that should be addressed before the trial actually begins. Sometimes, there are matters that you want to keep out of evidence because they are not relevant to any issue in the case but are inflammatory or will prejudice your client.

1. In the pre-trial conference you can ask the Judge to rule in advance that these matters not come into evidence at trial. This type of request is known as a "Motion in Limine".
2. In the Pre-trial conference, you can also discuss procedure or other matters of logistics, such as, how you are going to be warned that your time is about to end for an examination or argument, or, for example, to ask the court to exclude the witnesses from the courtroom unless they are testifying, so that their testimony wont be influenced by another witness.
3. Procedurally, the Pre-trial Conference will take place just before beginning the trial. The Judge(s) will call the attorneys for both sides of the trial to the Bench. The Judge(s) will first ask whether the Plaintiff has any pre-trial matters to take up with the court, and thereafter whether the Defendant has any pre-trial matters to take up with the court.
4. You should definitely have something prepared to take up with the Court. There are any number of facts contained in the case this year that you may want to try and exclude. And, there are always logistical issues. If there is only one matter to bring up to the Judge, it is okay for one person from your team to present it. If there is more than one matter, you should divide them up between you.

OPENING STATEMENT (5 MINUTES PER SIDE)

Opening Statement is your opportunity to tell the Judge your side of the story.

1. You should introduce yourself and your partner, and tell the Judge whom you represent.
2. You should then introduce your theme of the case, and then outline in an organized story that makes sense to the Judge what you expect will be the evidence in the case. Opening statement is important because it is your first opportunity to make an impression on the Judge.
3. While your opening statement should explain through your outline of the facts why you should win the case, your Opening statement should not contain any argument. For example, you should not say “Plaintiff cannot make her case”, or “Plaintiff’s testimony isn’t believable because...” or “Defendant violated Plaintiff’s 1st amendment rights.”
4. Instead, you should keep in mind the elements of your claim or defense as the case may be, and how you are going to prove it, and set it out for the court.
5. You should not overstate your case, or say anything that you are not absolutely sure you are going to be able to prove in your case; otherwise, the other side will be sure to point out to the Judge in Closing Argument that you did not prove what you said you would prove in Opening Statement.

DIRECT EXAMINATION (6 MINUTES PER WITNESS)

The purpose of direct examination is to give your witnesses the opportunity to testify to their knowledge and participation in the events giving rise to the lawsuit. This is the opportunity for you to tell your side of the story through the witness testimony.

1. You must ask direct, open-ended questions. Your questions should be short and direct.
2. You cannot lead your own witness, which means that you cannot give the witness the answer in the question. For example, a proper direct question is: “When did you first meet the Plaintiff?” An improper leading question is: “You first met Plaintiff when she was a freshman, correct?”
3. You should begin by identifying the witness, giving background information if necessary, and then getting directly into the important points you want to make in your case.

CROSS-EXAMINATION (4 MINUTES PER WITNESS)

Each party has the right to cross-examine the other party’s witness. In cross-examination, unlike direct examination, leading questions (questions that give the witness the answer), are allowed. In fact, almost always your questions should be leading.

1. You should always start strong and end strong. You should never be asking questions just to be asking questions. The material provides for plenty of avenues to explore on cross-examination, so you shouldn’t be at a loss on questions to ask.
2. If the witness is going to give you any testimony that will help your side of the case, you should get that testimony out of the witness. A party can make an admission against him or herself. A witness who is not a party may have testimony that favors your side of the case.

3. The other things to establish in cross-examination are to discredit the witness' direct testimony. This is called attacking the credibility of the witness. Credibility can be attacked by showing that the witness has made a statement during direct examination that is inconsistent with prior testimony or other statement; or by showing the bias of the witness, through, for example, having a financial interest in the outcome of the case, or having a personal bias for or against one of the parties.

RE-DIRECT EXAMINATION (1 MINUTE)

The party calling a witness may do a brief re-direct examination of the witness. Re-direct should be limited to clarify something that came out during cross, or to respond to a point made during cross. You cannot go into new matters.

CLOSING ARGUMENT (5 MINUTES PER SIDE)

Both sides give a Closing Argument after all of the evidence is in front of the Judge. Plaintiff goes first and then Defendant gives a Closing Argument.

1. Closing Argument is very important because it is the time in the trial for you to put together what you said you were going to prove in Opening Statement with the law and with the testimony and documentary evidence that came in during the trial. And, it is the only time during the trial that you actually get to argue your side of the case.
2. You should concentrate on the elements of your case and defense. You should tell the Judge what the elements of your case and defense are and explain how you have proven the elements of your case or defense. You should explain to the Judge how the other side has not proven the elements of its claim or defense.
3. And, you should argue why your case is the winner. If you have shown that a witness on the other side is not credible, you should explain that to the Judge. If the other side has admitted a certain fact or element of your case, you should point that out to the Judge.
4. If you are the Plaintiff, you should argue your client's damages and ask for what you want as equitable relief and money damages. If you are the Defendant, you should argue why the Plaintiff hasn't been damaged, and you should ask the Court to return a Judgment in your client's favor.
5. In Closing Argument, you can refer to documents, and you can use boards to write on if you like.

KEY COMPONENTS

DOCUMENTARY EVIDENCE

In addition to witness testimony, you will want to use “documentary evidence”, which means written documents, contracts, photographs, medical records, policies, and also any diagrams or summaries prepared. Plaintiff should mark any Exhibits as Exhibit 1, 2, 3, 4, etc. Defendant should mark any Exhibits as A, B, C, D, etc.

In order to get a document into evidence, you must have the document “authenticated.” This means that a witness must identify the document from personal knowledge of what it is or explain how it was prepared if necessary. There must be enough information to prove that it is an authentic document.

Once you have “laid the foundation” to show that the document is authentic, you offer it into evidence, by saying, “Your honor, (Plaintiff) or (Defendant) offers Exhibit (1) (A) etc. into evidence. The other side then has the option to object to the admission into evidence. Once admitted, you can ask a witness about the details of the contents of the Exhibit.

OBJECTIONS

An objection is a legal reason why a question of a witness is improper or why certain evidence should not be allowed in the case. Objections are probably the most challenging part of participating in a trial. Some of the most common objections are set out below.

1. **Relevance.** “Objection- Irrelevant.” Irrelevant means that the question asks for information that does not have anything to do with anything in the case.
2. **Leading questions.** “Objection. Counsel is leading the witness.” (Remember, this is only objectionable when done on direct examination.)
3. **Narrative question and/or response.** “Objection. Counsel’s question calls for a narrative.” Or “Objection. Witness is giving a narrative response.”
4. **Hearsay.** “Objection - Hearsay.” Hearsay, in general, refers to an out of court statement by a non-party offered for the truth of the matter. For example, this asks for hearsay. “What did the witness at the scene of the accident tell you about whether the stop light was red or green at the time Plaintiff entered the intersection?”
5. **Speculation.** “Objection - Speculation.” Speculation means that the question asks for the witness to guess or speculate about something that happened or something that someone else was thinking.
6. **Repeating Questions.** “Objection- Asked and Answered.” This means that the attorney is asking a question that has been previously asked and answered.

7. **Improper Opinion Evidence.** “Objection – The question calls for an opinion.” This means that a witness is being asked to give an opinion that is not a proper subject for opinion. Examples are when a witness is asked to give an opinion that invades the province of the factfinder or the Judge.
8. **Lack of foundation to give an opinion.** “Objection– Opinion without Foundation.” This means that a lay witness (non–expert) is being asked to give an expert opinion, or that an expert witness is being asked to give an opinion without being first properly qualified to give the opinion.
9. **Argumentative/badgering the witness.** “Objection. Counsel is arguing with the witness.” Or, “Objection. Counsel is badgering the witness.”

JUDICIAL OPINIONS

Judges will be expected to write an opinion for each case you decide.

1. If there are multiple Judges hearing a case, after the trial is completed, the Judges meet to discuss the facts and issues presented and to take a tentative vote.
2. One Judge will be chosen by the group to write the majority opinion and is then obligated to set down the views of the majority in the tentative vote.
3. After the majority opinion is written, the Judges meet again to review the opinion and take a final vote.
4. If the opinion gets a majority vote, it is "adopted" as the majority opinion. If not, the opinion goes back for further work and another draft.
5. If a Judge disagrees with the decision of the majority, she/he may write an opinion expressing her/his views (“Dissenting Opinion”).

The structure of an opinion written by a judge is as follows.

1. **The Claims**
Set forth the parties to the dispute, and summarize the claims made by the Plaintiff and any affirmative defenses raised by Defendant.
2. **The Facts**
Set forth the facts established by the testimony and relied on by the Court in making its decision.
3. **The Law**
Set forth the elements of Plaintiff’s Claim, citing to applicable Constitutional provisions, statutes and/or case law. Set forth the elements of any defenses to the Plaintiff’s claim, if any, and cites to applicable Constitutional provisions, statutes, and/or case law.
4. **Analysis**
Apply the law to the facts. Has the Plaintiff met her burden of proof (more likely than not) on each and every element of her claim? If yes, explain how and why, and if not, explain why not. Has the Defendant met its burden of proof (more likely than not) on each and every element of

any affirmative defenses to the Plaintiff's claims? If yes, explain how and why. If no, explain why not.

5. **Decision**

Finally, the opinion must resolve the issues before the Court by stating its decision or holding. The options available to a trial court are: (1) hold for the Plaintiff and make an award, (2) hold for the Defendant, (3) make a combination of (1) and (2) when there are multiple issues.

SAMPLE TRIAL BRIEF

IN THE CIRCUIT COURT OF YIG COUNTY

STATE OF MISSOURI

JAN JONES,)	
)	
Plaintiff,)	Case No. 07-CV-0002
)	
vs.)	
)	
YIG COUNTY REGIONAL)	
GROWTH ASSOCIATION, INC.)	
a Missouri Corporation,)	
)	
Defendant.)	

TRIAL BRIEF OF DEFENDANT

YIG COUNTY REGIONAL GROWTH ASSOCIATION, INC.

I. INTRODUCTION

Plaintiff Jan Jones has brought suit against Defendant Yig County Regional Growth Association, Inc., (“YCGA”) in two counts. Count I alleges breach of contract and concerns Plaintiff’s claim that YCGA agreed in 1997 to pay her a bonus in 1998. YCGA denies that there was any such agreement. Count II alleges that YCGA violated the Family Medical Leave Act (“FMLA”), by allegedly denying her a leave or absence. YCGA denies that it violated the FMLA.

II. ARGUMENT

A. Breach of Contract

In Count I, Plaintiff alleges breach of contract based on alleged oral promise in 1997 by her supervisor, Linda Smith, that Plaintiff would be eligible for an annual bonus in June 1998 in the amount of \$40,000.00. In order to prove that YCGA breach an agreement with Plaintiff to pay her a bonus, Plaintiff must show: (1) the making and existence of a valid contract; (2) a right of plaintiff and the

obligation of defendant; (3) a violation of the contract; and (4) resulting damages. Chase Electric Company v. Acme Battery Manufacturing Company, 798 S.W.2d 204, 208 (Mo.App. 1990). Plaintiff will not be able to prove that YCGA agreed to pay Plaintiff an annual bonus in June 1998 for \$40,000.00.

During her employment with YCGA, Plaintiff held the position of advertising sales representative for YCGA's monthly magazine, *Yig!* YCGA expects the believable evidence will show that Linda Smith never made any oral promise on behalf of the YCGA to pay Plaintiff a \$40,000.00 bonus in June 1998.

YCGA expects the evidence to show that Plaintiff's compensation was specifically outlined in a written offer letter that she received and signed on February 1, 1997, when she first became employed by YCGA. That letter set forth Plaintiff's salary and a written commission structure for advertising sales made by Plaintiff. The offer letter also outlined the potential for quarterly bonuses based on sales volume. The bonus Plaintiff claims Ms. Smith promised is over and above salary, commissions, and quarterly bonuses, and is not tied to any performance measures.

In addition, YCGA expects that the evidence will show that Plaintiff's breach of contract claim is an afterthought. Plaintiff never complained in 1998 that she did not receive a bonus to which she was entitled. In fact, Plaintiff never raised the issue with Ms. Smith or anyone at the YCGA until she was demoted for poor sales performance in 2004, some six (6) years later.

B. Family Medical Leave Act

In Count II of her Petition, Plaintiff claims that Defendant violated her rights under FMLA by denying her intermittent leave in connection with care for her father in 2003. Plaintiff will not be able to establish she is entitled to recover under FMLA.

Under FMLA, eligible employees are entitled to take up to twelve weeks of unpaid leave from work for certain family or medical reasons, including leave necessary due to the employee's own serious health condition or to care for a spouse, child or parent with a serious health condition. 29 U.S.C. § 2612(a)(1).

YCGA expects the evidence will show that Plaintiff was granted all the time off she requested or needed in order to care for her father in 2003. While the YCGA did not designate Plaintiff's time off as FMLA leave, Plaintiff took off all the time that she needed and requested to care for her father. In addition, Plaintiff continued to receive her salary during all of the time that she took off to care for her father, which is more than the FMLA requires. Accordingly, the evidence will show Plaintiff was not denied leave.

Respectfully submitted,
Kirkwood High School,

By _____
Judy Hunt

ATTORNEYS FOR DEFENDANT
YIG COUNTY REGIONAL
GROWTH ASSOCIATION, INC.

CERTIFICATE OF SERVICE

A copy of the trial brief was served on Joe Jones and Sally Hunter, Attorneys for Plaintiff Jan Jones, by hand-delivery, this ____ day of November, 2007.

Judy Hunt