

# MISSOURI YMCA YOUTH AND GOVERNMENT JUDICIAL – APPELLATE PROGRAM

## APPELLATE PROGRAM GUIDE

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## APPELLATE COURT OVERVIEW

An appellate competition differs greatly from the trial of a case which the general public is more familiar. The appellate competition involves the presentation of a fictitious case to an appellate court. This overview will familiarize you with the basic appeals process.

### Appeal

The appeal process is an integral part of our legal system. Following a trial, the losing party can challenge the result in a higher court. This is done by presenting specific challenges to the rulings of the trial court (example: the exclusion of evidence or witnesses) or to the manner in which the lower court interpreted the law in reaching the result that it did (example: did the trial court follow the law). These challenges are supported by precedent, which are decisions of other courts in similar cases.

### Process

In an appeal, parties are initially required to file “**briefs**” setting forth their arguments and authorities. After the briefs are filed, the parties then present “**oral arguments**” to the appellate court. The attorneys for the parties make oral presentations to the appeals court detailing the reasons why their respective clients should prevail. The judges of the appellate court may interrupt the attorneys at any point and ask questions about their arguments.

### Oral Arguments

The attorneys structure their oral arguments using only the legal precedents to support their case. In some cases, both sides of a case may cite the same case to support their opposing arguments. Most cases include a dissent, or include legal theory that could be used to support two different arguments if a skilled appeals attorney is able to argue why the case at hand is different from the one decided in a previous case.

### Decision

After the oral arguments, the appellate court will issue its decision, usually accompanied by a written opinion setting forth its analysis on the issues. If a particular judge disagrees with the holding of the Court, he or she may file a dissenting opinion.

At Missouri YMCA Youth and Government, appellate judges will not issue an opinion immediately. Instead, judges will enter their decision on a form given to the Chief Judge. At the conclusion of the program, the Chief Judge will aggregate all

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decisions and declare an overall winner. For example, if there are 30 trials, and the Petitioner is declared the winner in 18 of those trials, then the Chief Judge will declare the Petitioner to be the overall winner.

## **Content of Argument**

An appellate court generally considers legal issues only, not factual issues. The facts of a case are decided at the trial level, either by a judge or a jury. If there is an appeal from a trial court's decision, the appellate courts defer to the facts as found by the trial court judge or jury and consider only whether the law was properly applied to those facts. In this case, the relevant facts were decided by the trial judge.

For purposes of this case, you should assume that the district court adopted as findings of fact all of the facts set out in the Stipulated Facts and any additional facts found in the Circuit Court's opinion and the summary of expert testimony.

While you may not argue that the trial judge was wrong about the facts, you may argue that the facts as found by the trial judge do not support the trial judge's legal conclusion or the legal conclusion of the Circuit Court. If there are facts in the record that you believe are important but were not mentioned in the Circuit Court's opinion, you are free to argue that those facts support your position. You may not, however, base your argument on facts that do not appear in these materials.

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## **APPELLATE COURT STRUCTURE**

### **Court Hearing Case**

For the purposes of this competition, the arguments are being presented to the United State Supreme Court.

### **Teams**

You will work in a team of two to four attorneys. This team will be the school team you have prepared with to try the first case. Only two attorneys will present each side of the case.

There are two issues in the case, as defined on the first page of statement of case. A different attorney will prepare for one issue for either the Petitioner or Respondent. The team roles could be divided as such for a team of four:

Attorney A: Petitioner 1<sup>st</sup> Issue  
Attorney B: Petitioner 2<sup>nd</sup> Issue  
Attorney C: Respondent 1<sup>st</sup> Issue  
Attorney D: Respondent 2<sup>nd</sup> Issue

If your team has fewer than four members, an attorney will have to try both sides of the case.

### **Judges**

A panel of two to three judges will hear each case. Judges are expected to be knowledgeable of the case, including the facts, issues, and relevant case law. The judges are also expected to be fair and impartial to the parties, and fulfill their duties as judge in a dignified and professional manner.

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## CONSTRUCTING AN ARGUMENT

The outline of your basic argument can actually be found in the appellate case materials. Remember that you will be required to argue both sides of the case and to refute all arguments presented by your opposition. The opinions present a pattern of argument in support of both positions. The opinions provide you with a basic understanding of the case and should lead to a close study of the precedents.

**The issues in this case are set out on the first page of the case.** Once you have grasped the issues through an understanding of the case, you should shift your attention to the precedent cases. These must be understood before individual arguments can be drafted and refined.

Next, you may begin to construct effective arguments on each side of the case. The arguments presented in the fictitious case can be expanded and refined and new arguments developed. The precedent cases must be woven into these arguments to make them persuasive in court. In the successful argument, the process of using precedent cases should include not only quoting some applicable phrase, but also comparing and contrasting the facts, holding and reasoning of the court to the issues at hand. The constructed arguments should also have some flexibility because the students do not know what structure their opponents may use to defeat them.

A single, memorized presentation will succeed no more in this program than it would in the actual presentation of a case to a real appellate court. The presentation will be interrupted by questioning from the court and it is critical to success that these questions be clearly addressed, turned to the advantage of the advocate and then used as a transition back into the argument that the speaker wishes to make. This is the flexibility that must be built into the initial presentation.

A successful attorney should be so well prepared that they need not take a bundle of papers and notes to the podium when it is time to speak. It is suggested that no more than a single file folder for Petitioner and a single file folder for Respondent be taken to the podium. As a practical matter, with the limited time frame given to each speaker, there is not much time to be shuffling through notes trying to find case references and answers to questions. If you practice the basic outlines of your presentation beforehand, you should be ready for any question that comes your way and you will not need to rely heavily on your notes.

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## STRUCTURE OF ARGUMENT

There are three main components to your argument: Statement of Facts, Main Argument, Conclusion.

### Statement of the Facts

At the beginning of your argument, you may wish to give a brief recitation of the facts. You may ask the court if they would like a brief recitation of the facts. If they say no, move on to your argument. If they say yes, keep it short and use the facts which are most beneficial to your argument.

1. As the Petitioner, this can be an opportunity to spin the facts to your advantage. Use the facts most beneficial to your argument to lay the groundwork for the trial.
2. If you are the Respondent, it is not necessary to provide a statement of the facts. However, if the Petitioner gave wrong facts or left out facts that you believe are important, then before you start your argument, you might say "Before I begin my argument, I would like to clarify the following facts that the Petitioner did not give you."

### Main Argument

You should lay out the roadmap for your argument at the beginning. When you begin, you may wish to clearly set out the various points that you intend to make during your argument. For example, say "I will make three points \_\_\_\_\_."

1. Be clear and concise. Be assertive. Do not use words and phrases like "I believe" or "I feel." What you believe or feel is not important and those phrases weaken your argument.
2. Keep your presentation organized. Argue the heart of the matter adequately and be selective in discussing issues. Emphasize the important issues to your argument.
3. Use case law to support your arguments, citing specific cases.
4. Use the facts from the trial case to support your arguments.
5. Tie your case law and the facts of the trial case together.
6. Distinguish cases that are different from your facts.

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7. Draw comparisons with cases that are similar to your facts.
8. When you are the Respondent, respond to the Petitioner’s argument during your time. Do not just stick to a canned speech.

## **Conclusion of Argument**

When you conclude your argument make sure you tell the court what you want it to do.

1. For example: “For these reasons, your honors, we respectfully request that you find in favor of the Petitioner and reverse the decision of the court of appeals.”
2. Or if you are Respondent, “For these reasons we respectfully request that you uphold the decision of the court of appeals and find in favor of the Respondent”

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## APPELLATE TRIAL FORMAT

### **Entrance**

Attorneys will enter the courtroom and set up at the counsel tables. The judges will enter the courtroom and sit at the judges' table. Everyone should stand as the judges enter the room.

### **Judge Introductions (1 minute)**

The lead judge will have the other judges introduce themselves to the attorneys. After this, the judge will ask the attorneys to please stand and introduce themselves, starting with the Petitioner.

### **Petitioner Introductions (1 minute)**

Attorneys for the Petitioner will introduce themselves and must tell the judge at this time if they plan to reserve time for a rebuttal. If so, up to 3 minutes will be deducted from their 15 minutes for oral arguments and reserved for rebuttal.

"My name is (name) and I will be presenting Issue 1 on behalf of the Petitioner. My co-counsel is (name) and will be presenting Issue 2. We wish to reserve time for a rebuttal."

### **Respondent Introductions (1 minute)**

Attorneys for the Respondent will introduce themselves to the judges.

"My name is (name) and I will be presenting Issue 1 on behalf of the Respondent. My co-counsel is (name) and will be presenting Issue 2."

### **Ready to Present (1 minute)**

The Judge will ask each side if they are ready to present. Each side stands when answering the judge.

Judge: "Is the Petitioner ready?"  
Petitioner: "Petitioner is ready, your honor." (Petitioner then sits down)

Judge: "Is the Respondent ready?"  
Respondent: "Respondent is ready, your honor." (Respondent then sits down)

Judge: "Petitioner, you may proceed."

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## **Petitioner Argument (12 - 15 minutes)**

Each Petitioner must speak for at least 4 minutes. A suggested time division for the arguments could be as follows:

Petitioner #1:	7 minutes
Petitioner #2:	6 minutes
Rebuttal:	2 minutes

While arguing, a Petitioner is not permitted to consult their co-counsel. The co-counsel (and other team members) are encouraged to be taking notes to aid in the rebuttal.

As soon as Petitioner #1 finishes speaking, Petitioner #2 should stand to begin their argument. When time has elapsed, the judge will let the Petitioner know. The judge may permit the Petitioner to finish their last sentence/though at the judge's discretion.

When speaking to the judges, attorneys should use the following script:

Petitioner #1: "May it please the Court. My name is (name), and along with my co-counsel, we represent the Petitioner. In my time before the Court, I will (insert points you wish to make regarding your issue)."

At conclusion of Petitioner #1, Petitioner #2 begins:

Petitioner #2: "May it please the Court. My name is (name), and I too represent the Petitioner. In my time before the Court, I will (insert points you wish to make related to your issue)."

## **Respondent Argument (15 minutes)**

Each Respondent must speak for at least 4 minutes. A suggested time division for the arguments could be as follows:

Respondent #1:	8 minutes
Respondent #2:	7 minutes

While arguing, a Respondent is not permitted to consult their co-counsel. The co-counsel (and other team members) are encouraged to be taking notes.

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As soon as Respondent #1 finishes speaking, Respondent #2 should stand to begin their argument. When time has elapsed, the judge will let the Respondent know. The judge may permit the Respondent to finish their last sentence/though at the judge's discretion.

When speaking to the judges, attorneys should use the following script:

Respondent #1: "May it please the Court. My name is (name), and along with my co-counsel, we represent the Respondent. In my time before the Court, I will (insert points you wish to make regarding your issue)."

At conclusion of Respondent #1, Respondent #2 begins:

Respondent #2: "May it please the Court. My name is (name), and I too represent the Respondent. In my time before the Court, I will (insert points you wish to make related to your issue)."

## **Petitioner Rebuttal (1-3 minutes)**

If the Petitioner reserved time at the beginning of the trial, they will now have an opportunity to speak again. At the conclusion of the Respondent argument, the judge will call upon the Petitioner.

Judge: "Petitioner, you may proceed with your rebuttal. You have \_\_\_ minutes."

Only one Petitioner is permitted to speak during the rebuttal.

## **Feedback (5 minutes)**

Upon the completion of the rebuttal, the judges will discuss for a few minutes. They will then provide critique and feedback to the attorneys.

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## RULES FOR APPELLATE TRIALS

1. The facts of the case are set out in the Statement of the Case. The legal principles governing this problem are those set out in the materials provided to you. When preparing your argument, you are limited to the information provided. Do not consult any other materials.
2. The Petitioner presents its arguments first, and is then followed by Respondent's arguments. The Petitioner will then have the opportunity to provide a brief rebuttal, which will be presented by only one attorney from the Petitioner's team.
3. Each team has a total of 15 minutes to present their argument. This time can be divided in any manner chosen by the team, with the following exceptions:
  - a. Each lawyer of the team must present at least 4 minutes of the argument
  - b. Excluding rebuttal, each lawyer may go to the podium only one time. One attorney cannot give 2 minutes of the argument, sit down and let his or her partner speak for 5 minutes, and then return to the podium to conclude the argument
4. The Chief Judge (or Lead Judge) will ask the first question, then the other judges will have the opportunity to ask questions. They may interrupt during the attorney's arguments and the attorney should answer the question then continue with their argument
5. When a judge begins asking a question, attorneys should stop speaking immediately. It is considered disrespectful for the attorney to attempt to talk over the judge.
6. Attorneys cannot communicate with their partners while presenting their oral arguments. Once an attorney goes to the podium, he/she must remain there until the conclusion of the argument.
7. Attorneys may take notes, cases or a summary to the podium.

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8. Attorneys should not point or look at opposing counsel during oral argument. Oral arguments must be directed at the judges. Speak to the judges only.
9. Attorneys should refrain from making any personal remarks about or attacks upon opposing counsel.
10. If an attorney runs out of time while arguing, he/she should stop immediately, and request permission from the Court to conclude the sentence. If the Court grants permission to conclude, the attorney must promptly conclude.

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## **RULES FOR JUDGES**

There will be 2-3 judges for each appellate trial. The following rules are expectations of all judges in the appellate trials.

### **Case Knowledge**

Judges are expected to be knowledgeable of the case including the facts, the issues, and the relevant case law. The judges are also expected to be fair and impartial to the parties, and fulfill their duties as a judge in a dignified, professional manner.

### **Questions to Attorneys**

Questions to the attorneys are appropriate and expected for seeking clarification of oral arguments. While it is improper for the judges to harass or be disrespectful to the attorneys, a certain amount of back and forth question and answering that may occasionally be adversarial is normal.

While the judges are permitted and encouraged to interrupt the attorney's presentation to ask a question, common courtesy and decency mandates that questions be asked in a respectful, dignified manner.

Also, judges should permit each side to complete at least two minutes of their argument before asking a question. This allows the attorneys to lay out their argument before the judges.

### **Fairness**

The judges are expected and required to be fair and impartial. While they may personally believe that one side's position has more merit, it is improper to make statements that give the appearance that a judge is clearly supportive of one side over the other.

### **Additional Time at Trial**

It is within the Lead Judge's sole discretion to provide an attorney with an additional 30-60 seconds to complete a thought or to answer a question from the bench.

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## TIPS FOR ATTORNEYS

1. Always rise when the justices enter and exit the courtroom. Remain standing until you are permitted to sit.
2. Try to avoid talking with your partner while sitting at the counsel table. You may communicate by exchanging notes, but do not be distracting.
3. Keep your counsel table neat. Shuffling papers can also be distracting to the judges.
4. You cannot communicate with your partner while you are presenting your oral argument. Once you go up to the podium, you stay until the conclusion of your argument.
5. You can take notes, cases, or your summary to the podium. However, the less paper that you carry to the podium, the more likely that you are going to be able to give an effective presentation. Having too many notes or documents only increases the likelihood that you are going to simply read from them, as opposed to maintaining good eye contact and a conversational tone to your presentation.
6. Do not point or look to your opponents during oral argument. Your argument is to be strictly made to the Court. Refrain from making any personal remarks or attacks upon your opponent.
7. When a judge begins asking you a question, stop speaking immediately. It is considered disrespectful for the attorney to attempt to talk over the judge.
8. Be mindful of the time limitations. Depending upon the number of questions that you may be required to answer during the round, you may not actually be able to give your entire argument. Try to remember the key points of your argument, and attempt to make those points in responding to questions that may be relevant to them.
9. If you run out of time while giving your argument, you should stop immediately, and request the Court to allow you to conclude your sentence. If the Court grants you permission to conclude, you must promptly conclude.
10. Try to set up your arguments in a logical, easy-to-follow manner. Practice your arguments before your trial.

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11. Keep your voice loud enough to be heard, and remain confident of your position.
12. Be respectful to the court. Do not begin speaking until signaled by the lead judge to do so.
13. Think about the question you are being asked by the judge. If a question requires a "yes or no" answer, you should answer in that manner and then explain further if indicated to do so by the judge.
14. Do not get distracted by the judges' questions. One of the most difficult parts of appellate is the ability to stop your argument to answer a question from the judge and to then return to your presentation of a cohesive argument. You have to be flexible in your presentation but you must also know your argument well in order to do this.