



# MINNESOTA YMCA

## YOUTH IN GOVERNMENT

### COURT OF APPEALS INTRO

## WHAT IS THE APPELLATE COURT?

Acting as the 'error correcting' court, the Court of Appeals determines whether or not the law was applied correctly in the trial court or other lower tribunal. The Court of Appeals generally consists of 3-5 judges with no jury. They also review all final decisions in trial courts, state agencies and/or local governments. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws, and cases decided by the U.S. Court of International Trade and the U.S. Court of Federal Claims. You will be tasked to write a 'Case Analysis' in which you will be writing on the appellant/appellee <sup>1</sup> and respondent's<sup>2</sup> view. Your Case Analysis will include; the issues facing your 'clients', a highlight of facts, written statements regarding the applicable law in the given case, arguments (for both sides) and a list of questions that you would ask and respond to.

## COURT PROCESS

You will be presenting your case in front of a panel of about 3-5 judges. Before presenting your case you will have written a document of your argument called a Case Analysis sheet. After submitting your analysis, you will begin to prepare your Oral Presentation of the argument: this is also called an Oral Argument.

## WHAT IS AN ORAL ARGUMENT?

At Model Assembly, you will have a chance to argue your case to a 3-5 judge panel. This short speech (usually about 15 minutes) will be used to persuade the judges that you should win the case, but how do you do that? The best way to do this is to know your stuff. You need to prepare for anything the judges may ask you, address the other side's argument, and focus the court on the three or four things that should decide the case in your favor.

## WHAT IS A PRECEDENT?

A precedent (otherwise known as an 'authority') is essentially any act or decision that serves as a guide/reference for future similar cases. **Judicial opinions** are probably the most **frequently** cited category of legal material, on par with **statutory law** (statutes and codes enacted by legislative bodies). They are a reference that merely directs the reader to a decision of the U.S. Supreme Court and no more has a greater likelihood of frustrating than persuading. In the context of legal citation, judicial opinions are commonly referred to as "cases" and organized collections of opinions are called "law reports" or "case reports."

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<sup>1</sup> The party who appeals a court decision

<sup>2</sup> On an appeal, the party who must respond to an appeal by the losing party in the trial court, is called "appellant" or a "respondent" in the appeals court.

## AN INTRODUCTION TO COURT OF APPEALS

### CASE ANALYSIS & TIPS

#### THE LAW

The question presented should include a reference to the governing law. For example, the issue might begin, "Whether the First Amendment prohibits....". It can be helpful to put the reference to the law early in the question, for context. You will be required to write how the law applies to your case and related materials.

#### THE FACTS

Facts, of course, make a decision easier as the role of a judge is to make an unbiased decision of law. Facts should be persuasive as well as definitive. However, don't overload your analysis with facts, it can potentially make your case harder to understand and be unpersuasive. An account of the facts that is accurate, complete, compelling, and subtly persuasive are your best bet of having the decision ruled in your favor. Material facts should be **COMPLETE** and **ACCURATE**. Choose your facts based on importance and quality, which ones best help your case.

- Do the facts support your theory/story, and show the impossibility of your opponent's?
- Are there any facts in the Statement (argument) that are redundant or otherwise unnecessary?
- Is the Statement of Facts sufficiently accurate and objective to qualify for adopting by the court as the facts portion of a judicial opinion (precedent)?

**\*\* USE THEM TO YOUR ADVANTAGE\*\***

#### SUMMARY

The summary of argument provides a narrative synopsis of the most persuasive parts of the argument". The summary allows for better "subtle" connections between the points in the argument.

- Make it as **APPEALING** as possible
- **DON'T** just repeat what you have already said
- Do the summaries **connect** the individual arguments?
- Do the summaries give you a good sense of what the parties are arguing?
- Do the summaries persuade?

#### THE ARGUMENT

The argument is your base, it is the entirety of the case and needs to be a **clear, clean, logical** analysis of the applicable law. Be mindful of the **TONE** in your argument, you don't want to blatantly say that your side is completely and absolutely right. Appearing overly biased can hurt your argument and can determine the outcome of the decision. As a delegate, you will be asked to write an argument for both sides, keep in mind your client's wants and/or needs.

## AN INTRODUCTION TO COURT OF APPEALS

### QUESTIONS TO ANSWER/REVIEW WHEN WRITING YOUR COURT ANALYSIS

- Are the issues well chosen: Do they raise reversible error? Are they outcome determinative? Do they avoid diluting strong issues with weak ones?
- Are the issues stated concretely and cleanly? (No run on sentences or too many questions- Can the court understand the issues without further reading?)
- Are the issues stated persuasively? Do the questions suggest their answers without being argumentative? (No blunt- that is wrong, this is right)

### TIPS FOR PERSUASION IN YOUR ANALYSIS

- **Be subtle.** Remember that you should maintain an objective tone in your facts. A judge should find your statement of the facts candid and reliable. In persuading, rely on organization, writing, careful selection and juxtaposition of facts and detail, and storytelling.
- **Have a theme.** Make sure your statement of the facts always reflects your theory of the case.
- **Tell a story.** Your facts should read like a novel or short story. The story should have a clear beginning, middle and end. Instead of summarizing trial testimony or exhibits in the order in which they were entered, it should focus on the underlying story.
- **Organize your facts to maximize persuasion.** Often, but not always a chronological organization is effective. It is often useful to begin even a chronological account with a short introduction that summarizes the key facts, or highlights a particularly explosive fact that favors your side.
- **Include details that advance your theory.** Details, especially vivid or sensory ones, will help the reader understand, feel and remember your story. Details enable you to show, rather than tell, and allow your reader to reach his or her own conclusions.
- **Emphasize favorable facts.** It goes without saying that the facts that favor your side should be emphasized. You can do this by placing favorable facts in prominent locations and by providing details about them. As in any writing, there are certain places in the structure where information receives the greater emphasis. Syntax is important! You should point out and emphasize any absent facts that favor your side.
- **De-emphasize unfavorable facts.** Avoid unimportant or unfavorable detail. While you must include all determinative facts, you need not include all detail. Edit out detail that is not important or distracting. Any detail you include will be presumptively considered important by the reader.
- **Avoid sarcasm, hyperbole, and argument.** You don't want to sound unprofessional, it is extremely important that you maintain an intriguing and professional style, judges will NOT take you seriously if you use sarcasm, hyperboles and an argumentative style.

## AN INTRODUCTION TO COURT OF APPEALS

### TIPS ON PRESENTING

1. The number one thing to remember while presenting your case is to be **confident**. With confidence comes smooth, well-worded arguments.
2. Be **prepared** - nothing looks worse to a panel of judges than a delegate scrambling through notes to answer a question.
3. Be a **master** of the case. If you know the case inside and out, upside and down, you will be beyond ready to adjust to your opponent, answer questions and win.
4. Know as much as you can about both sides of the argument, even if one partner is "specializing" on either side. **Questions that are asked can be answered by either member of your team**, meaning that if one person does not know how to answer, the other might.
5. **Persuade yourself**. At Model Assembly each team is required to argue both sides of a case, even if you don't agree with one side. This means that you need to convince yourself that what you are saying is **100% correct, just and legal**, even if in reality you do not. By doing this, you will not only convince yourself that you are right, but the judges as well.
6. Cut to the chase. Just because an argument is long, often this can distract 'readers' from the central and most important part of your case. You are limited in speaking time so everything you say should have meaning. Cut out the fluff, get to the point and hit it hard.
7. **Relax**. This is supposed to be fun!