

# 2016 DUKE LAW DEAN'S CUP COMPETITION OFFICIAL RULES AND REGULATIONS

## General Rules

**Honor Code.** The Duke University School of Law Honor Code governs all intramural moot court competitions, including the 2016 Dean's Cup. Violation of these Official Rules, including withdrawal after the competition has begun, may amount to a violation of the Duke Law Honor Code. The Dean's Cup Coordinators (hereinafter "the Coordinators") may refer alleged violations to the Office of Student Affairs for disciplinary action and may disqualify the offending competitor from the Dean's Cup Competition.

## The Competition

1. **Case for Competition.** The case to be argued is *United States v. Texas*, on writ of certiorari before the United States Supreme Court from the Court of Appeals for the Fifth Circuit.
  - 1.A. **Preliminary Round, Semifinals Round, and Finals.** During all Dean's Cup rounds, competitors will argue before the U.S. Supreme Court. Competitors are to assume the grant of certiorari has been limited to two issues: (1) Do Plaintiffs have Article III standing to challenge the deferred-action guidance issued by the Secretary of the Department of Homeland Security on November 20, 2014, based on Texas's cost of issuing drivers' licenses to deferred-action recipients? and (2) In light of 5 U.S.C. § 701(a) and *Heckler v. Chaney*, 470 U.S. 821 (1985), is the Secretary's November 20, 2014 deferred-action guidance judicially reviewable agency action? Competitors may study both the District Court and Circuit Court opinions preceding certiorari. Those decision are: (1) *Texas v. United States*, 86 F.Supp.3d 591 (S.D. Tex. 2015) and (2) *Texas v. United States*, 787 F.3d 733 (5th Cir. 2015). Competitors may cite to both the District and Circuit Court opinions, as well as the Fifth Circuit's Opinion on the Merits (Dean's Cup Problem Packet pg. 66) and any materials from the Modified Record on Appeal (Dean's Cup Problem Packet pg. 69).
2. **Dates.**
  - 2.A. **Entry.** All competitors must submit an entry form by Saturday, October 10, 2015 at 11:59 PM. Each competitor seeking Moot Court Board membership must indicate this intent on the form. Once a competitor has submitted the form, that competitor may not withdraw from the competition or change whether the competitor is attempting to join the Moot Court Board. Forms must be submitted online.
  - 2.B. **Preliminary Round.** Qualifying Briefs are to be submitted to the Dean's Cup Coordinators ([deanscup2015@gmail.com](mailto:deanscup2015@gmail.com)) by Sunday, November 8, 2015 at 11:59 p.m. in Microsoft Word format. Late submissions will not be considered for Board membership. The Preliminary Rounds is scheduled for the weeks of November 9, 2015 and November 16, 2015.
  - 2.C. **Moot Court Board Members.** New Members and Semifinalists will be determined at the end of November based on scores from the Preliminary Round.
  - 2.D. **Round-Robin Semifinals.** Dates will be announced before the end of the fall semester if possible, but will be no earlier than January 10, 2016.
  - 2.E. **Finals.** Dates will be announced before the end of the fall semester if possible.

### 3. Format.

**3.A. Preliminary Round.** The Preliminary Round is an individual competition. It consists of a written brief requirement (for competitors trying to qualify for the Moot Court Board) and oral arguments.

**3.A.I. Brief Requirement.** All competitors seeking membership on the Moot Court Board must write a Qualifying Brief for the preliminary round. Members of the Moot Court Board not competing in the Dean's Cup will judge briefs based on persuasiveness, writing style, legal reasoning, logical organization, citation format, and adherence to the brief requirements. Briefs will be graded name-blind. See accompanying Brief Guidelines for detailed requirements. Existing Moot Court Board members not seeking to satisfy their Board requirements do not need to submit a brief at this time.

**3.A.II. Oral arguments.** Competitors will argue three (3) or four (4) times, at least once on each side, depending on the total number of competitors. Arguments will last fifteen (15) minutes per person. A competitor arguing for the Petitioner may present a rebuttal; a competitor arguing for the Respondent may not present a surrebuttal. Competitors will be judged by a panel of two (2) faculty or alumni judges. Oral advocacy will be scored on fluency, command of the legal issues, ability to answer questions, persuasiveness of argument, courtroom demeanor, and adherence to appropriate protocol.

**3.A.III. Scoring.** The scores from each oral argument shall be totaled to obtain a competitor's final score for the Preliminary Round, with the highest and lowest scores being dropped for each competitor. The top sixteen (16) competitors will advance to the Round-Robin Semifinal Round.

**3.A.IV. Tiebreaker.** In the case of a tie between competitors for either a spot in the Round-Robin Semifinals or for a specific ranking entering the power matching of the Round-Robin Semifinals, the tiebreakers shall be, in the following order:

**3.A.IV.a.** If the competitors argued against each other during the Preliminary Round, their two scores from the round are totaled, and the competitor with the higher total score advances.

**3.A.IV.b.** The total of the best two scores of each competitor are compared; the competitor with the higher total advances.

**3.A.IV.c.** The total of the worst two scores of each competitor are compared; the competitor with the higher total advances.

**3.A.IV.d.** The total of the highest score and lowest score of each competitor are compared; the competitor with the higher total advances.

**3.A.IV.e.** If none of these tiebreakers distinguishes the competitors, a coin toss shall determine the ranking of the competitors and/or which competitor advances.

### 3.B. Round-Robin Semifinals.

**3.B.I. Team Assignment: Power Matching.** Competitors advancing to the Semifinals will then be power-matched into the following teams and groups:

**3.B.I.a. Group A.** Group A will represent the Petitioner United States. The teams in Group A will consist of the following competitors, paired as teams: 1 & 2; 15 & 16; 7 & 8; 9 & 10.

**3.B.I.b. Group B.** Group B will represent the Respondent Texas. The teams in Group B will consist of the following competitors, paired as teams: 3 & 4; 13 & 14; 5 & 6; 11 & 12.

**3.B.I.c. Right to Refuse One Partner.** Upon seeing the list of semifinalists, each quarterfinalist may provide the Dean's Cup Coordinators with the name of one fellow semifinalist with whom that person does not want to be paired. All such requests and communications will be kept private and confidential. The Coordinators will attempt to honor all such requests, but the honoring of a request may mean that the requesting semifinalist will be paired with a lower-seeded competitor than the one with whom that semifinalist otherwise would be paired.

**3.B.I.d. Advancement.** All competitors who qualify for the semifinals are honor-code bound to compete barring exceptional extenuating circumstances.

**3.B.I.e. Announcement of Teams.** Once the competitors for the semifinals have been determined, teams will be announced. No changes in teams will be permitted after this time, except in event of extraordinary circumstances by permission of the Coordinators.

**3.B.II. Brief Requirement.** Each team shall submit a Competition Brief for its side. This Brief Requirement applies even if one or both team members are already members of the Moot Court Board. See the Brief Guidelines for detailed requirements.

**3.B.III. Format of Oral Arguments.** In the Round-Robin Semifinals, each team will argue four (4) times, once against each team from the other group. Each time, the team will argue the side of the case for which it wrote its brief.

**3.B.IV. Scoring.**

**3.B.IV.a. Briefs.** Competition Briefs will be graded by three (3) members of the Duke Law Faculty. Graders will judge briefs based on persuasiveness, writing style, legal reasoning, logical organization, citation format, and adherence to the brief requirements. Briefs will be randomly assigned to groups and graded name-blind. Each grader will rank the briefs from each group 1, 2, 3, or 4, with 1 reflecting the best brief, and 4 the worst brief.

**3.B.IV.b. Oral arguments.** Arguments will be judged by a panel of three (3) judges. Arguments will be twenty-five (25) minutes per side. One person may not speak for more than a total of fourteen (14) minutes per round. One team member from a team arguing for the Petitioner may present a rebuttal; a team arguing for the Respondent may not present a surrebuttal. Each of the four rounds of the Round-Robin Quarterfinals will be judged by a different panel of judges, with each panel judging the entire round, so each panel will judge each team once. Oral advocacy will be scored on fluency, command of the legal issues, ability to answer questions, persuasiveness of argument, courtroom demeanor, and adherence to appropriate protocol. At the conclusion of each round, each judge will rank the teams from each group 1, 2, 3, or 4, with 1 reflecting the best team and 4 reflecting the worst team in that group.

**3.B.IV.c. Total score.** The total score for each team in the Round-Robin Semifinals will comprise the three (3) Competition Brief scores and twelve (12) oral argument scores each, for a total of fifteen (15) separate scores constituting the final score. The team with the lowest final score from each group will advance to the Finals. Subject to the Coordinators' discretion, the team with the highest (worst) brief score may be disqualified from advancing to the finals.

**3.B.IV.c.1. Tie Breaker.** In the case of a tie between two teams, tiebreakers shall be the following, in this order:

- 3.B.IV.c.1.i.** The total of the Competition Brief scores are compared; the team with the lower total advances.
- 3.B.IV.c.1.ii.** The total of each team's best three Semifinals oral argument scores are compared; the team with the lower total advances.
- 3.B.IV.c.1.iii.** The total of each team's worst two Semifinal oral argument scores are compared; the team with the lower total advances.
- 3.B.IV.c.1.iv.** Comparing each team's worst Competition Brief score, the team with the lower score advances.
- 3.B.IV.c.1.v.** If none of these tiebreakers distinguishes the competitors, each team's ranking after the Preliminary Round shall determine which team advances to the Finals.

### **3.C. Finals.**

- 3.C.I. Judges.** A panel of three (3) judges for the Finals shall be selected by the Dean of the Law School.
- 3.C.II. Briefs.** The teams advancing to the Finals may be required to edit their briefs before briefs are sent to the judges of the Finals.
- 3.C.III. Oral Arguments.** Arguments will be judged by a panel of three (3) judges. Arguments will be thirty (30) minutes per side. One person may not speak for more than a total of eighteen (18) minutes. One member of the team arguing for the Petitioner may present a rebuttal; the team arguing for the Respondent may not present a surrebuttal.
- 3.C.IV. Scoring.** The winner of the final round will be determined at the judges' sole discretion. The judges may take account of the quality of the finalists' briefs and the quality of oral advocacy.

## **Rules Governing Competitors**

- 4. Eligibility for Competition.** To be eligible to compete in the 2016 Dean's Cup, a student must be a non-first-year student enrolled at the Duke University School of Law for the 2015-16 academic year. This includes students currently cross-enrolled at another division of the Duke University and students carrying a part-time course load, including LLM students (but not including students who have already earned a J.D. from a U.S. law school).
- 5. Students studying away from Duke University.** A student studying at Duke Programs away from the main campus (e.g. Duke in DC) or studying away at another institution may be eligible to compete in the Dean's Cup. To be eligible, the student must otherwise be eligible and the Coordinators must determine that the student is capable of meeting all of the obligations required to compete. The Coordinators will make such determinations on a case-by-case basis.

6. **Oral Arguments.** Competitors may use notes or any printed materials during oral argument, but they may not use laptops during oral argument. The Coordinators may make exceptions to this Rule to accommodate disabilities, special needs, or exceptional circumstances.
7. **Restrictions on Mooting.** Competitors may practice their arguments with other students, fellow competitors, and members of the Moot Court Board. Competitors may not practice their arguments with any member of the faculty or any person serving as a guest judge without the express permission of the Coordinators. Note: Competitors do not violate this policy if, in accordance with course policy, they seek outside help on their *coursework* for Appellate Practice.
8. **Qualifying and Competition Briefs.**
  - 8.A. **Outside Assistance Prohibited.** All competitors seeking Moot Court Board membership must write and edit the preliminary briefs on their own. They may not seek advice or assistance on any written product from anyone, including faculty (at Duke or another law school), other law students (at Duke or another law school), or practicing attorneys. Each Semifinalist team must write and edit its own competition brief. Team members can seek advice on general structure and argument, but they may not seek advice or assistance on any written product from anyone outside of their team, including faculty (at Duke or another law school), other law students (at Duke or another law school), and practicing attorneys. Finalists are free to and encouraged to seek whatever editing or advice they wish before submitting their briefs to the panel of Final Round Guest Judges. Note: Competitors do not violate this policy if, in accordance with course policy, they seek outside help on their *coursework* for Appellate Practice.
  - 8.B. **Permissible Research Resources.** Competitors may consult any legal research resources that are reasonably available to all competitors. Should a dispute arise as to the propriety of a research resource, the Coordinators will judge whether a resource is permissible.

### **Moot Court Board Qualification**

9. **Weighting of Briefs and Oral Advocacy.** To determine which competitors will be invited to join the Moot Court Board, a competitor's oral advocacy scores from the Preliminary Round will constitute sixty percent (60%) of the total score, and competitor's Qualifying Brief score will constitute forty percent (40%) of the total score.
10. **Selection of New Moot Court Board Members.** Consistent with Article III.B.1 of the Constitution of the Moot Court Board, at the conclusion of the Preliminary Round the eligible competitors with total scores in the highest thirty-five percent (35%) of all eligible competitors will be selected for Board membership, except that the number of members selected shall not be fewer than four (4) or more than eight (8). However, if there is a tie for the final spot, every competitor so tied will be invited to join the Board. Members chosen through the Dean's Cup are required to comply with all existing and future Board responsibilities should they choose to accept the Board's invitation. For purposes of determining new Moot Court Board members, "eligible competitors" are all those competitors in the Preliminary Round who are not members of the Board but seek membership through their performance in the Dean's Cup.

### **Rules Governing Disputes**

11. **Coordinators to Serve as Arbiters.** The Coordinators, or their designees, shall, during the term of the competition, serve as final arbiters of any questions arising from the competition.