

2018-2019
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 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 offending competitors from the Dean's Cup Competition.

Eligibility and Use of Outside Resources

1. Eligibility for Competition. The competition is only open to students currently enrolled at Duke University School of Law. First-year students and students who have already earned a J.D. from a U.S. law school not eligible for the competition.

2. 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 capable of meeting all the obligations required to compete.

3. 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.

4. Assistance with 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. Competitors do not violate this policy if, in accordance with course policy, they seek outside help on their coursework for Appellate Practice.

5. Assistance with Competition and Briefs.

5.A. Outside Assistance Prohibited. 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. In particular, competitors may not view briefs filed by attorneys and may not access or use oral arguments (audio or transcripts) in any case concerning the subject matter argued in the course of the Dean's Cup.

Finalists are encouraged to seek whatever editing or advice they wish before submitting their briefs to the panel of Final Round Guest Judges. Competitors do not violate this policy if, in accordance with course policy, they seek outside help on their coursework for Appellate Practice.

5.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. In particular, competitors may not view briefs filed by attorneys and may not access or use oral arguments (audio or transcripts) in any case concerning the subject matter argued in the course of the Dean's Cup.

Moot Court Board Qualification

6. Weighing Briefs and Oral Advocacy. To determine which competitors will be invited to join the Moot Court Board, 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.

7. Selection of New Moot Court Board Members. New members will be invited to join the Board pursuant to Article III.B.1 of the Constitution of the Moot Court Board.

The Competition

8. Source Material. Competitors will argue *Rodriguez v. Swartz*, on writ of certiorari before the United States Supreme Court from the Court of Appeals for the Ninth Circuit.

8.A. Scope. During all Dean's Cup rounds, competitors will argue before the U.S. Supreme Court. In the Preliminary Rounds, competitors are to assume the grant of certiorari has been limited to two issues:

(1) Whether the Fourth Amendment protected J.A. (which concerns extraterritorial application of the Fourth Amendment to this foreign national).

(2) Assuming the Fourth Amendment's application here, whether (based on the facts alleged in the complaint) the defendant nonetheless is entitled to qualified immunity on that claim.

(3) *For the Semifinal Rounds Only:* Whether the plaintiff has a remedy under *Bivens*.

Competitors should study both the following Circuit Court opinions:

(1) *Rodriguez v. Swartz*, 899 F.3d 719 (9th Cir. 2018).

(2) *Hernandez v. Mesa*, 885 F.3d 811 (5th Cir. 2018)

9. Dates and Deadlines.

9.A. Entry. Entry is binding; competitors may not withdraw from the competition after submitting the entry form. All competitors must submit an online entry form by Sunday, September 30, 2018 at 11:59 PM. Each competitor seeking Moot Court Board membership must indicate such intent on the form.

9.B. Preliminary Rounds. The Preliminary Rounds will occur from November 1, 2018 – November 13, 2018. All competitors must submit their block out dates and unavoidable conflicts by October 1, 2018. Except for the times noted on the block out form, competitors agree to be available at any time throughout the Preliminary Rounds.

9.C. Semifinals. Semifinals will occur from January 26, 2019 – January 29, 2019.

9.D. Finals. The final round will occur on February 25, 2019.

10. Format.

10.A. Preliminary Rounds. These rounds consist of oral arguments. Competitors argue individually.

10.A.i. Oral Arguments. Competitors will argue three or four times, at least once on each side, depending on the total number of competitors. Arguments will last ten minutes per person. Competitors arguing for the Petitioner may present a rebuttal. A panel of two faculty or alumni judges will score oral arguments based on fluency, command of the legal issues, ability to answer questions, persuasiveness of argument, courtroom demeanor, and adherence to appropriate protocol.

10.A.ii. Final Scoring. All competitors' highest and lowest oral argument scores will be dropped, and the remaining scores from each oral argument will be totaled to obtain a competitor's final score for the Preliminary Rounds. The top sixteen competitors will advance to the Semifinal Rounds.

10.A.iii. Tiebreakers. In the case of a tie between competitors for either a spot in the Semifinal Rounds, or for a specific ranking entering the power matching of the Semifinals, comparisons between the tied competitors will be used to break the tie. Tiebreakers will progress in the following order until the teams are distinguished:

(1) If the tied competitors argued against each other during the Preliminary Rounds, their two scores from that round are compared, and the competitor with the higher total score advances.

(2) The tied competitors' highest scores are compared; the competitor with the higher score advances.

(3) The tied competitors' lowest scores are compared; the competitor with the higher score advances.

(4) If none of these tiebreakers distinguishes the competitors, a coin toss shall be used to determine the ranking of the competitors and/or which competitor advances.

10.B. Semifinal Rounds. All competitors who qualify for the semifinals are honor-code bound to compete barring exceptional extenuating circumstances. Competitors will be power-matched to create teams. After teams are matched, and in extraordinary circumstances only, semifinalists will have the opportunity to refuse up to one partner. Teams will be rearranged based on such requests and finalized teams will be announced. Once finalized teams are officially announced, additional changes in teams will only be permitted under exceptional circumstances with the Coordinators' approval.

10.B.i. Competition Briefs. Each team must submit a single Competition Brief. 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. Three members of the Duke Law faculty will each review the briefs and rank them from one to four (with one reflecting the superior brief). To reach their rankings, faculty will consider the briefs' persuasiveness, writing style, legal reasoning, logical organization, citation format, and adherence to the brief requirements.

10.B.ii. Oral Arguments. At this stage, teams will argue "on brief." Each team will argue four times; all teams for the Petitioner will argue against all teams for the Respondent. Teams will have twenty-five minutes to argue per round, but one person may not speak for more than fourteen minutes per round. One representative for the Petitioner may present a rebuttal. Each of the four total rounds is scored by a different three-judge panel, such that each panel will judge each team once. Panels rank the teams from one to four (with one reflecting the superior oral argument). To reach their rankings, judges will consider fluency, command of the legal issues, ability to answer questions, argument persuasiveness, courtroom demeanor, and adherence to appropriate protocol.

10.B.iii. Final Scoring. All rankings will be combined to reach the final score. The three Competition Brief rankings will be added to the twelve Oral Argument rankings. The lowest sums for each representative team (Petitioner and Respondent) will advance to the Finals.

10.B.iv. Tiebreakers. If separate teams on the same representative side reach a tie score, the following comparisons between the tied competitors will be used to

break the tie. Tiebreakers will progress in the following order until the teams are distinguished:

- (1) The teams' total Competition Brief rankings are compared; the team with the lowest Competition Brief sum advances.
- (2) Each team's three best Semifinals Oral Argument rankings are compared; the team with the lowest Oral Argument sum advances.
- (3) Each team's two worst Oral Argument rankings are compared; the team with the lowest sum advances.
- (4) Each team's worst Competition Brief ranking is compared; the team with the lowest number advances.
- (5) If the above methods fail to distinguish a team, the individual competitor's scores from the Preliminary Rounds shall be compared; the team with the highest Preliminary score will advance.

10.C. Final Round.

10.C.i. Competition Briefs. Teams may be required to edit their Competition Briefs prior to submission to the final judges.

10.C.ii. Oral Arguments. A panel of three judges will hear oral arguments. Each team will argue for twenty-five minutes; no individual may speak for more than fourteen minutes. One individual representing the Petition may present a rebuttal, but the Respondent may not present a subrebuttal.

10.C.iii. Final Scoring. The judges shall select (1) a "Winning Team" and (2) a "Best Oralist. The winner will be determined at the judges' sole discretion. The judges may consider the quality of the briefs and oral advocacy, but the titles shall be determined at the judges' sole discretion. The Best Oralist may be, but does not have to be, someone from the Winning Team.

10.C.iv. Tiebreakers. There are no set tiebreakers in the final rounds. The panel of three judges will determine the winner at their sole discretion.

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.