2017-2018
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 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.

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. Note: 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 Qualifying and Competition Briefs.

5.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 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.

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.

**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.** 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 and no more than eight. 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.

**The Competition**

8. **Source Material.** Competitors will argue *International Union of Operating Engineers v. Schimel*, on writ of certiorari before the United States Supreme Court from the Court of Appeals for the Seventh Circuit.

8.A. **Scope.** 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) Whether the National Labor Relations Act preempts the state right to work law?

(2) Whether the state right to work law is an unconstitutional taking?

Competitors should study both the following District Court and Circuit Court opinions preceding certiorari:

(1) *International Union of Operating Engineers v. Schimel*, 863 F.3d 674 (7th Cir. 2017).


Competitors may cite to both the District and Circuit Court opinions, as well as the Seventh Circuit’s prior opinion on this issue, *Sweeney v. Pence*, 767 F.3d 654 (7th Cir.).

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, October 1, 2017 at 11:59 PM. Each competitor seeking Moot Court Board membership must indicate such intent on the form.

9.B. **Qualifying Briefs.** Qualifying Briefs are to be submitted to the Dean’s Cup Coordinators (deancup@law.duke.edu) by Sunday, November 5, 2017 at 11:59 p.m. in Microsoft Word format. Late submissions will not be accepted; any candidate that misses the brief submission deadline loses qualification for Board membership.

9.C. **Preliminary Rounds.** The Preliminary Rounds will occur from November 6, 2017 – November 14, 2017. All competitors must submit their block out dates and unavoidable conflicts by October 1, 2017. Except for the times noted on the block out form, competitors agree to be available at any time throughout the Preliminary Rounds.


9.E. **Finals.** The final round will occur on February 20, 2018.

10. Format.

10.A. **Preliminary Rounds.** These rounds consist of a written brief requirement (for competitors trying to qualify for the Moot Court Board) and oral arguments. Competitors argue individually.
10.A.i. **Qualifying Briefs.** Current Moot Court Board Members do not have to submit a brief, but all competitors seeking membership on the Moot Court Board must write a Qualifying Brief for the preliminary rounds. Moot Court Board Members (who are 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. The briefs will be graded name-blind. Qualifying Brief scores will be used in determining Moot Court Board qualifications, but they will not be used to determine advancement in the remainder of the competition. See accompanying Brief Guidelines for detailed requirements.

10.A.ii. **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 fifteen 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.iii. **Final Scoring.** Only the oral arguments score is considered for purposes of advancing in the competition. 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.iv. **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 may 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 compete in assigned teams based on the following power-matching: Competitors that placed 1st & 2nd, 7th & 8th, 9th & 10th, and 15th & 16th will be paired to represent the Petitioner. Competitors that placed 3rd & 4th, 5th & 6th, 11th & 12th, and 13th & 14th will be paired to represent the Respondent. 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 any such requests and finalized teams will be announced. Once finalized teams are officially announced, additional changes in teams will not be permitted without permission of the Coordinators.

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 Rounds**: Insert from 2017 Rules

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 thirty minutes; no individual may speak for more than eighteen minutes. One individual representing the Petition may present a rebuttal, but the Respondent may not present a subrebuttal.

10.C.iii. **Final Scoring**. The winner will be determined at the judges’ sole discretion. The judges may consider the quality of the briefs and oral advocacy.

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.