



**FOR YOUTH DEVELOPMENT
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY**

2020

**Kentucky Youth Assembly
Model Supreme Court
Program Guide**

Program Guide Table of Contents

Welcome Letter.....	3
Introduction to the KY Court System.....	4-5
The Appeals Process	5-8
Legal Precedent and Citations.....	8
How to Prepare Your Oral Argument.....	9-12
Current Case Summary.....	13-16
Tips for Justices and Clerk.....	16-18
Ranking, Awards, & Elections Guidelines.....	19-20
Sample Justice Scoring Guides.....	21-22
Sample Justice Questions.....	23
Sample Oral Argument Outline.....	24-26
Glossary of Legal Terms.....	27-28

Attachments and Resources

2020 KYA Model Supreme Court Case (Case Record)
2020 Supporting Case Documents
Sample Case Outline and Guidelines

Advocates,

It is my honor to welcome you to the Kentucky Youth Assembly Model Supreme Court Program! This program allows students to act as advocates (attorneys) in a court of appeal. I congratulate you on embracing one of the most intellectually challenging yet fulfilling aspect of the Kentucky YMCA programs. It is my hope that you will walk away with a clearer understanding of our Appellate Court system in Kentucky, along with the opportunity to strengthen your communication and improvisation skills. To those who are participating for the first time, I offer a special welcome and easy accessibility should you have any questions. For those of you who are veterans, you will notice a few changes from last year's program, so be sure to read this guide in full and do not miss the Judicial meeting at 3pm on the first day of KYA!

On the first night of KYA, no arguments will be presented. Advocate teams will have the opportunity to get guidance on and perfect oral arguments with professionals and the student justice panel. On the second day, advocate teams will present oral arguments in front of student justices, as well as in front of law professionals. Advocate teams will **present a total of three times-** once to the student justices in Frankfort and twice to professional attorneys and judges in Louisville.

In alignment with the seven-justice KY Supreme Court, the current KYA Justices will select (1) advocate to serve as Chief Justice for the next year, while the Attorney General will work with the officer team to select (1) Attorney General from among participants. The Chief Justice and Attorney General will serve a full-year term, similar to the Governor (and will be expected to attend at least one leadership conference). All other Justice positions will be filled in the through an application process. Additionally, all advocates who receive an award (Outstanding Advocate or Outstanding Advocate Team) will be given an invitation to apply for the National Judicial Program, a national appellate court competition held by Y-USA and the American Bar Association in Chicago, IL.

As per the usual, one case is being argued. This is to ensure an even playing field for all advocates. This also allows the Justices to know the case thoroughly so they can truly assess the creativity and substance of the arguments. Please note that all advocate teams will be provided with an approved selection of resources (known as 'the record'). *Advocates may use only these approved resources.*

Outside resources will not be permitted for use in the written outlines or oral arguments.

Attached you will find the court guidelines, resources, scoring guide, and the case summary. Each are critical to your success. I would like to acknowledge attorney and Judge Rebekkah Rechter for providing the court guidelines, the case, guidelines, and the approved resources. She has been an invaluable asset to the growth of this program.

Sincerely,
Jim Recktenwald

Model Supreme Court Program Director
West Region Director of Program Outreach Kentucky YMCA Youth Association
jim@kymca.org

Introduction to the Appellate Court System

Have you ever watched news coverage of a highly publicized criminal trial? Inside the courtroom, you may see lots of reporters, family members, lawyers and jurors. Everyone anxiously awaits the jury's verdict. When it is announced that the defendant is guilty, you might see the reporter interview the defendant's lawyer, who emphatically cries, "We will appeal this decision!" What does that really mean?



Most any trial – whether it is a controversy between two private citizens (a civil case) or a criminal charge against a person (a criminal case) – results in a jury verdict. In a civil case, the losing party can appeal the judgment. In a criminal case, only the defendant can appeal *if* he or she has been found guilty of a crime. (If the defendant is found "not guilty" by the jury, the state cannot appeal the verdict. The case is finished.)

What is an appeal?

An appeal is a case in which one party (referred to as the "Appellant") asks a higher court to review the trial proceedings. The Appellant cannot simply argue that she does not *like* the trial court's judgment – she must make a legal argument. Generally, the Appellant can make two basic arguments:



(1) the trial court applied the incorrect law to the proceedings, or (2) the trial court applied the correct law to the proceedings, but reached the wrong result. The party who opposes the appeal (in other words, the party who won in the trial court, called the "Appellee") must then rebut the Appellant's argument. In Kentucky, everyone has the legal right to have an appellate court review the judgment. There are two different courts that might consider that appeal: the Court of Appeals

or the Kentucky Supreme Court. If the Court of Appeals considers the case, the Kentucky Supreme Court may review the decision.

Kentucky's Four-Tiered Court System:

District Court: The District Court is the first level of the court system in Kentucky. Trials are held before a single judge. Among other things, District Courts handle traffic offenses, misdemeanors, juvenile offenses, probate matters and civil cases involving less than \$5000. Decisions of the District Court can be appealed to the Circuit Court.

□

Circuit Court: The Circuit Court is the second level of the Kentucky court system, and it handles all felony matters, civil cases involving more than \$5000, and family law matters like divorce and child custody. It also handles appeals from the District Court. There is a single judge in each circuit courtroom. Circuit Court decisions are appealed to either the Court of Appeals or the Supreme Court, depending on the nature of the judgment.

□

Court of Appeals: The Court of Appeals of Kentucky is the first level of Kentucky's appellate system. Anyone adversely affected by a Circuit Court decision has a *legal right* to at least one appeal, and most of those appeals are handled by the Court of Appeals. All civil matters are appealed to the Court of Appeals. Only criminal cases in which the defendant was sentenced to *less than* 20 years imprisonment are appealed to the Court of Appeals. The Court of Appeals is comprised of 14 Judges (two from each of Kentucky's seven Supreme Court Districts). However, the majority of cases are decided by a three-judge panel of the Court of Appeals.

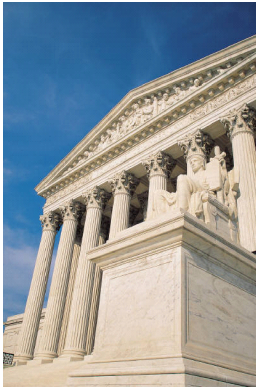
□

Kentucky Supreme Court: The Kentucky Supreme Court is the highest level of the court system in Kentucky. The Supreme Court is the "court of last resort" in Kentucky, and has ultimate authority to declare the law in Kentucky. The Supreme Court does not automatically consider appeals from the Court of Appeals. Instead, the party seeking

review must ask the Supreme Court to consider their appeal – and the Supreme Court denies that request in about 85% of the cases. However, there are some appeals that the Supreme Court automatically takes: criminal cases in which the defendant received a sentence of *more than 20 years* imprisonment or the death penalty.

The Appeals Process

After the verdict and final judgment are handed down in the trial court, the appealing party must notify the court of their intention to appeal. This is called a “notice of appeal”. It must be filed within 30 days of the trial court’s judgment. If no “notice of appeal” is filed, the trial court’s judgment is final and enforceable.



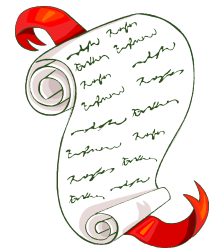
The Appellant must then file a written “brief” in the court that will be considering the appeal – either the Court of Appeals or the Kentucky Supreme Court – and also send a copy of the brief to the Appellee. The brief is a legal document in which the Appellant states the reasons for the appeal, and explains why the judgment of the lower court should be *reversed (or, overturned)*. The Appellee then has the opportunity to file its own brief, called a “response”. In that brief, the Appellee explains to the court why the judgment of the lower court should be *affirmed (or, upheld)*. Finally, the Appellant has the chance to address the arguments made in the Appellee’s brief. This final brief is called a “reply brief”. The reply brief is very short, and typically is limited to five pages.

Almost every appeal is determined based on the briefs alone. Only some cases are chosen for oral argument, which is discussed below. When no oral argument is conducted, the attorneys never have the opportunity to actually speak to the appellate judges considering the case, or answer questions about the case. For this reason, it is imperative that the briefs are thorough, clear, well-written, and fully explain the case to the judges. Even when an oral

argument is being held, the brief is still the most important way for the attorneys to state their case to the court.

Understanding Legal Authority and Precedent

Because an appellate brief must involve legal arguments, you must cite legal authority in your brief. For purposes of the KYA Supreme Court program, the “body” of legal authority will be limited to the United States and Kentucky Constitutions, U.S. Supreme Court cases, Kentucky Supreme Court cases, Kentucky Court of Appeals cases, Kentucky statutes, and some cases from other states. In preparing your legal arguments (both in the brief and for the oral argument), remember that some legal authority carries more “weight” than others. Also, remember that you are writing a brief for the Kentucky Supreme Court. The order of authority is as follows:



- The **United States Supreme Court** has the ultimate authority to say what the U.S. Constitution means, and their rulings apply to the entire country. Therefore, U.S. Supreme Court cases are the highest level of legal authority and must be followed.
- The **Kentucky Supreme Court** has the ultimate authority to say what the Kentucky Constitution means. Therefore, Kentucky Supreme Court cases are binding on all Kentucky Courts. Also, the Kentucky Supreme Court has the authority to determine whether or not a state statute is constitutional under the Kentucky Constitution.
- **Kentucky Court of Appeals** opinions are considered “persuasive” authority. However, the Kentucky Supreme Court is not *required* to follow Court of Appeals cases. For this reason, Court of Appeals cases are referred to as “not binding precedent.”
- **Cases from other states** are not binding on the Kentucky Supreme Court. However, they may be cited and discussed at oral argument.

Often, the Court is interested to know how other states have handled similar situations.

Understanding Legal Citations



Whenever you refer to a case in your written brief, you must include a legal citation. What is a legal citation? Imagine that all of the cases in the entire country – from every single state - are contained in a giant football arena, and each case is a “seat”. The legal citation refers to exactly where you could find that law, much like your ticket would read “Section 10, Row J, Seat 3”.

There is a common system of legal citations used by all attorneys, in all U.S. courts. Instead of “sections”, “rows” and “seat numbers”, attorneys use “case names”, “reporters”, and “volumes” to locate a specific case. Example case citations are below. Follow this format in your written brief.

U.S. Supreme Court cases: *Upjohn v. U.S.*, 449 U.S. 231, 240 (1983)

Kentucky Supreme Ct. Cases: *Commonwealth v. Brakes*, 334 S.W.2d 423 (Ky. 1970)

Kentucky Court of Appeals Cases: *Carter v. Joseph*, 128 S.W.2d 1031 (Ky. App. 1990)

Look at the example U.S. Supreme Court case above. *Upjohn v. U.S.* is the case name, and it must always be italicized. “449” refers to the volume number. “U.S.” refers to the reporting series in which the case appears – United States Supreme Court cases appear in the United States Reporter series, abbreviated as “U.S.”. (Kentucky cases appear in the Southwest

Reporter series, of which there are 3 volumes; e.g. "S.W.", "S.W.2d" or "S.W.3d").

The Oral Argument

After the written brief is submitted to the appeals court, an oral argument is sometimes conducted. The oral argument is when attorneys discuss their case before the appeals court. In the Kentucky Court of Appeals, there will typically be three judges hearing the case. In the Kentucky Supreme Court, there will be seven judges (called "Justices" instead of "Judge") hearing the case. Attorneys for both the Appellant and the Appellee have an opportunity to present their case to the court.

At KYA, we don't require advocates to write a brief, merely an argument outline. Though they both contain your points and cited cases, an outline has much more brevity and is not as formal as a brief might be.



Procedure Followed During the Oral Argument

All courtrooms are very formal venues, and specific protocols and traditions are enforced. An appeals courtroom is the most formal of all courts. A very specific routine is followed, and all participants (attorneys, judges, spectators) are expected to act with dignity and respect. The KYA Supreme Court Program operates like a typical appellate courtroom, according to the following schedule:

- Call to Order by the Clerk of the Court (all attorneys and spectators rise)
- Judges enter the courtroom (all attorneys and spectators remain standing)
- Opening of Court by the Clerk of the Court (all present may be seated after the opening of court is concluded)
- The Chief Judge or Justice will call the case and ask if the attorneys are ready to present their arguments. The Chief Judge or Justice will then ask the Attorney for the Appellant if he or she would like to reserve a portion of their allotted time for rebuttal. If there is more than one attorney presenting the argument, the attorneys should inform the court at this time.

- The Attorney for the Appellant begins first, and is given **fifteen minutes** (minus any time reserved for rebuttal).
- The Attorney for the Appellee is given **fifteen minutes** to respond.
- The Attorney for the Appellant is permitted to use **any reserved time** for rebuttal. (*Note: There may be no more than 5 minutes reserved for the rebuttal.*)
- The Clerk closes court (all attorneys and spectators rise while the judges exit).

How to Prepare Your Oral Argument

The most important goal of your oral argument is to be clear, logical, and to-the-point. This is your opportunity to state your case to the court. Your object is to be persuasive and to help the judges understand your arguments.

In preparing your oral argument, it is best to remember what the oral argument is NOT. It is not a speech contest. During your argument, expect the judges to ask you questions about your argument and, sometimes, to interrupt you. For this reason, consider the oral argument a *conversation* with the court, rather than a chance to deliver a prepared speech. Prepare notes and an outline of your argument, instead of a word-for-word speech. The judges want to see that you can discuss the case with them – not that you can memorize and deliver a rehearsed presentation.



The oral argument is also NOT an opening or closing argument. If you have ever watched a trial on TV or in a movie, you know that attorneys often make dramatic and theatrical opening and closing arguments to the jury. The attorney might tell a little story to make a point, or hold up a picture of a victim. In an oral argument, you are not talking to jurors. You are addressing judges. An oral argument is not a time for story-telling or dramatic displays. Make your arguments based on legal principals. Convince the judges that you thoroughly understand the legal issues presented in the case.

Because an oral argument is a conversation with the court, imagine in advance what types of questions the judges might ask you. Often, the judges will ask you questions about the weaknesses in your position. They want to see how you can defend your side of the case. The most successful attorneys are the ones who can anticipate these questions, and prepare logical responses based on the law. Be prepared to distinguish cases upon which your opposing counsel relies.

Oral Argument Do's and Don'ts

During your oral argument presentation, **DO**:

- Decide in advance how you will divide the fifteen minutes. If you are the Appellant, how much time will you reserve for rebuttal (up to 5 minutes possible)? For both sides, how will you divide the argument between you and your co-counsel? Who will speak first, and for how long, and on what topics?
- Always stand whenever you address the Court.
- Start your initial argument with, "May it please the Court."
- Address the judges as "Your Honor" or "Justice Jones". Address co-counsel and opposing counsel as "Mr. Dodd" or "Ms. Perkins".
- *Briefly* discuss the facts underlying the case, if you are the Appellant. However, keep in mind that the Justices are familiar with the basic circumstances of the case. You do not need to give them a "blow-by-blow" of every detail of the case.
- Skip straight to your argument if you are the Appellee. The Appellant has the advantage of rebuttal time. But the Appellee has the advantage of going second in the oral argument – so you do not need to repeat the facts of the case to the Court, unless you think that the Appellant has misrepresented an important detail.
- Stop talking immediately when a Justice interrupts you with a question (even if you were in the middle of making a point!).
- Answer the Justices' questions clearly and directly. Often, it is best to begin your response with a simple "yes" or "no", and then explain why.
- Nearing the end of your time, you may not to have had the opportunity to argue every point due to questioning from your justices- having a brief summation statement (no longer than 15 seconds) might be beneficial to end your argument with, asking the court to affirm or reverse the decision of the lower court as necessary.

During your oral argument, **DON'T**:

- Be rude, disrespectful, condescending or uncivil to opposing counsel. Personal attacks have NO place in an oral argument, and will only serve to undermine your credibility with the court.

- Get flustered when the Justices interrupt you. Expect that you will be interrupted while you are speaking. It is best to use your limited time to answer their specific questions.
- Forget to watch the clock! The Chief Justice will give you a one-minute “warning” when your time is about to expire.
- Ignore cases that don’t support your argument. Instead, briefly acknowledge those cases, and then carefully explain to the court why they are distinguishable from your client’s case.
- Don’t be afraid of silence! It is perfectly fine to take a moment or two to gather your thoughts before answering one of the judge’s questions.
- Forget to listen carefully to your opposing counsel’s argument. Take notes during their presentation. A good lawyer will directly respond to arguments made by the other side.

An Introduction to *Family Dollar, et al v. Baytos*

This year's case is *Family Dollar v Baytos*, a workers' compensation case. For those teams that have participated in the Judicial Program before, this case is a little different! For one, this case is a real case that was recently argued before the Kentucky Supreme Courts. The documents you have to work with are the actual decisions and briefs prepared by the attorneys and judges as this case was litigated. Also, workers' compensation is a unique area of the law. When a worker gets injured on the job, he or she is entitled to compensation to cover their medical care, their lost wages, and the loss of any future earning capacity. Because there are many on-the-job injuries every day, there is a special statutory scheme (or, set of laws) for the court system to handle these cases. In other words, workers' compensation cases go to a special "mini court system" so that they do not clog up Kentucky's district and circuit courts. The judges in the workers' compensation system handle only workers' compensation claims, and are specialists in this unique area of law.



A workers' compensation claim is a case where a person alleges they were injured as a result of their job duties, and are asking their employer for compensation for the injury. The types of claims vary greatly, from workers involved in accidents at work, to workers who contract diseases as a result of the work environment, such as black lung. Workers' compensation claims do not go through the normal tiered court system, explained on page 5. Instead, the case is initially heard before an Administrative Law Judge (often referred to simply as "the ALJ"). If one of the parties wants to appeal the decision of the Administrative Law Judge, that party appeals to the Workers' Compensation Board. If a party is still displeased with the ruling, the case then can be appealed to the Kentucky Court of Appeals, and on to the Kentucky Supreme Court. The Kentucky Supreme Court is the final word in all Workers' Compensation matters. In *Family Dollar v. Baytos*, you will be arguing the case as if you were before the Kentucky Supreme Court.

Now, on to the specifics of *Family Dollar v. Baytos*. Stephen Baytos suffered a serious injury while working as a manager at Family Dollar. He was lifting boxes, and felt chest pain, which was ultimately determined to be a torn

thoracic aorta. He filed a workers' compensation claim, asking for Family Dollar to pay for his medical care, and for his lost wages. The ALJ first determined that the injury was, in fact, actually caused by his work activities. After it was determined that Family Dollar is liable for Baytos' injuries, Family Dollar tried to settle with Baytos as to the amount of compensation he would receive. Baytos agreed, and a settlement agreement was executed.

Sadly, Mr. Baytos died several years later as a result of the torn thoracic aorta. Normally, when a worker dies as a result of their job duties (for example, a fatal on-the-job accident), his or her dependents are entitled to receive compensation for their death. Therefore, Mr. Baytos' widow, Mamie Baytos, filed a motion to reopen his workers' compensation claim, and she asked for compensation for his death. Family Dollar objected, arguing that Mr. Baytos had settled the claim and it could not be reopened.

The ALJ agreed with Mamie, and awarded her compensation for her husband's death. Family Dollar appealed, and the Workers' Compensation Board reversed the decision. The Board reasoned that the settlement agreement was final, and Mr. Baytos had waived his right to ever reopen the claim. This waiver was binding on his dependents. Mamie appealed, and was successful before the Court of Appeals. Now, the case will be heard by the Kentucky Supreme Court.

In this case, there is no dispute as to any material fact. Both sides agree as to all the relevant facts (that Mr. Baytos suffered a torn thoracic aorta, that he knowingly entered into the settlement agreement, and that he later died as a result of the injury). The only question before the court is whether Mrs. Baytos is entitled to reopen a claim that her husband settled before his death.

You are representing one of the parties before the Kentucky Supreme Court. **The main issue to address is whether Mrs. Baytos is entitled to reopen the claim even though her husband entered into a final settlement agreement before his death. Another way to think about the issue is: Even if Mr. Baytos settled *his* claims, is he entitled or capable of waiving *his wife's* rights to compensation?** The Appellants – Family Dollar – will argue that the settlement is final. It should emphasize that it is in the interest of public policy for settlement agreements to be final and not subject to endless litigation. The Appellee, Mamie Baytos, will argue that she has a right to compensation that is separate from her husband. Even if her

husband received compensation for his *injury*, she is still entitled to compensation for his *death*.

Where to Start:

You have several documents before you, collectively referred to as “the record”:

- **September 4, 2007 decision of ALJ Coleman:** In this decision, the ALJ determined that Mr. Baytos’ torn thoracic aorta occurred as a result of his work activities. (That issue is NOT in dispute!)
- **Settlement Agreement:** This is the agreement signed by Mr. Baytos’ and Family Dollar, where they agree on how much compensation he should receive as a result of the injury
- **Motion to Reopen:** This document was filed by Mamie’s attorney after Mr. Baytos’ death, asking the ALJ to reopen the claim so that she can receive compensation for his death.
- **Response to Motion to Reopen:** This document was filed by Family Dollar, and explains their position that Mamie is not entitled to reopen the case.
- **June 19, 2012 decision of ALJ Joiner:** In this decision, ALJ Joiner determines that Mamie may reopen the claim notwithstanding the settlement agreement.
- **June 2, 2014 decision of the Workers’ Compensation Board**
- **March 20, 2015 decision of the Kentucky Court of Appeals**

You also have the following supporting materials:

- Newburg v. Weaver
- Bell v. Consol of Kentucky, Inc.
- Richey v. Perry Arnold, Inc.
- Brashear v. Old Straight Creek Coal Corp.
- Duni v. United Technologies Corp.
- Kibble v. Weeks Dredging & Construction Co.
- KRS 342.750 & KRS 342.125

YOU MUST LIMIT YOURSELF TO ONLY THOSE CASES AND LAWS CONTAINED IN THE PACKET. DO NOT REFER TO OR USE OUTSIDE SOURCES! DO NOT CONDUCT INTERNET SEARCHES ON THE ISSUES

RAISED IN THIS CASE! YOU MUST REFER TO ALL SOURCES USED IN YOUR ORAL ARGUMENT OUTLINE.

Begin by reading through the documents contained in the record, starting with the 2007 decision of the ALJ. This will give you a good understanding of what happened in this case. Then read the case law you have been provided.

You might also consider the following questions in formulating your arguments:

- Are the rights of an injured worker different from the rights of the workers' family, or do the families' rights depend on the workers' rights?
- What exactly did Mr. Baytos agree to in the settlement agreement?
- Why is it important to Family Dollar, and other companies, to settle workers' compensation claims? What is Family Dollar's interest in having a "final" judgment?
- In creating the workers' compensation system, did the General Assembly promote the settling of claims through settlement agreements?

Oral Argument Outline:

You must submit your oral argument outline to the justices and your opposing counsels on the first night of KYA. So where does this outline come from? Your oral argument! It is simply a roadmap of the argument you plan to make, and the sources you will be using, in outline form (1-2 pages). Just state the individual arguments you intend to make, and reference the source for each. Details of your argument are not needed; just the main points and "record" sources used. *Sample included at end of this guide.*

Tips for Student Justices & Student Clerk

Preparation: As a student Justice, it is your duty to review the case materials and familiarize yourself with all of the supporting case law. However, Justices are prohibited from making up their mind before hearing the case. Do not decide in advance which side you favor. Be open-minded, and listen carefully to all of the arguments presented. Remember, you are deciding which student attorney is strongest – that is, which side presents the most persuasive and comprehensive argument. You are not deciding which side wins on the *legal* merits of the case.

Courtroom Procedure: When it appears that all student attorneys are present and ready to begin, the Student Clerk will call the Court to Order by saying, “All Rise”. The Student Justices will enter the room and remain standing. The Clerk will then open Court with the following:

Here ye, here ye. Silence is commanded for the Justices of the Model Supreme Court of Kentucky. This Court is now in session. You may be seated.

The Student Justices will take their seats, and the Chief Justice should address the student attorneys:

Today we will hear the case of Commonwealth v. Gaither. As you are aware, each side will be given 15 minutes to present their argument. I will signal you when you have one minute remaining. Attorneys for the Appellant, do you wish to reserve any time for rebuttal?

At this time, we ask the attorneys for the Appellant to introduce yourselves to the Court, and to inform us how you will be dividing your time between your co-counsel?

And, attorneys for the Appellee, please introduce yourselves and let us know how you will be dividing your time?

Okay. Are the parties ready to proceed? Miss/Mr. _____, you may begin.

Questions During Oral Argument: As you know, the student attorneys have worked hard to prepare the case, and are likely nervous to begin their presentation. Allow the student attorneys a few minutes to begin their argument before asking questions. If a student attorney seems flustered or appears to be faltering, ask some questions about the facts of the case to help

get them back on track. It is best to prepare your questions for each side in advance, so that they are clear and well-articulated and, therefore, easy for the student attorney to understand. Always use a respectful tone; do not be argumentative with the student attorneys, even when you disagree with the position they are taking.

Time Keeping: It is the duty of the Chief Justice to keep time. Be aware that the format of the program has changed this year, in conformity with the procedure of the Kentucky Court of Appeals and Kentucky Supreme Court. Each side will be given 15 minutes to present their argument. Each side (Appellant and Appellee) has up to three student attorneys, and the attorneys may divide this time between themselves however they see fit. Additionally, the Appellant has the right to reserve up to 5 minutes for rebuttal, which is deducted from their 15 minutes total. It is the Appellant's duty to announce this before the oral argument begins.

For example, if the Appellant reserves 3 minutes of time for rebuttal, the oral argument would proceed as follows:

Argument for Appellant: 12 minutes
Argument for Appellee: 15 minutes
Rebuttal by Appellant: 3 minutes

It is very important that the Chief Justice keeps track of the time carefully. Also, the Chief Justice should provide a non-distracting warning that the attorney has 1 minute remaining (quietly raise a finger). It is within the Chief Justice's sole discretion to provide an attorney an extra 30 seconds to complete a thought or to answer a question from the bench.

JUDICIAL AWARDS AND RANKING
Kentucky Youth Assembly
2016 Judicial Program

Ranking

To more closely model the YMCA National Judicial Program, this year teams will be ranked. Your team's rank is determined via the number of points your team accrues throughout the course of three (3) rounds of oral arguments, as determined by student Justices and Law Professionals. The total sum of your team's points will determine your ranking within the program (for point criteria, see scoring sheet). The two (2) top ranked teams will be announced at the Awards Ceremony. Your personal ranking will be listed in your score sheet packet to be picked up after the ceremony.

Outstanding Attorneys

The Top **four** (4) attorneys in the program will win Outstanding Attorney Awards. They will also be asked to participate in a final Showcase Round on the final morning. These four students are selected by having received the greatest number of nominations from student Justices and Law Professionals during their three (3) rounds of oral arguments.

Outstanding Attorney Showcase Case Winner

The winning team from the Showcase Round on the final morning will win the Outstanding Case Winner award. The winning team is to be determined by the cumulative score received from all student Justices and the Chief Justice during the Showcase on the final morning.

Outstanding Attorney Team

The most highly ranked team will win the Outstanding Attorney Team award on the basis of their cumulative scores, determined by Justices' scoring.

JUDICIAL ELECTIONS

Kentucky Youth Assembly Supreme Court Program

- Election of the Chief Justice will be conducted by secret ballot. Each justice will submit two (2) advocate nominations to the Chief Justice, who will then determine the top nomination for the position of Chief Justice. The pool may possibly come from within the current justice panel (if applicable), or from the participant pool at-large.

- o Chief Justice nominees must be in 11th grade.

- o The Chief Justice reserves the right to resolve a tie between two or more nominees.

- Appointment of the Attorney General will be made by the current Attorney General, based on one 11th grade advocate's exceptional performance in the Constitutionality Room.

- In an effort to continue our commitment to align the Kentucky Model Supreme Court Program with national Youth and Government best practices, the process for selecting Associate Justices the following year will now be moved to an application process. Selection will be based on strength of written application, previous performance in the program, and ability to complete program requirements.

- o Six associate justices will serve at each KYA to align with the actual KY Supreme Court.

- o Applications will be accepted from 11th and 12th grade advocates.

- o The Chief Justice reserves the right to resolve a tie between two or more applicants.

SUPREME COURT
Scoring Sheet: Oral Arguments

APPELLANT

Round: 1 2 3

Scorer: Justice / Professional (Circle One)

Advocate Name 1: _____ Advocate Name 2: _____
 Advocate Name 3: _____ Team School: _____

1-Poor 2-Below Average 3-Average 4-Above Average 5-Excellent

						Notes (Optional)
Knowledge and Use of Facts	1	2	3	4	5	
Knowledge & Use of Case Law	1	2	3	4	5	
Effectiveness / Persuasiveness	1	2	3	4	5	
Ability to Respond to Questions	1	2	3	4	5	
Demeanor / Presentation	1	2	3	4	5	
Total Score:						

Appellant Team Total <small>(Total Score Above)</small>			Opposing Team Total (Appellee)	
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Comprehensive Feedback:

Nomination for Outstanding Advocate:

*This is the **one advocate** which best exemplifies the above team criteria and that significantly stood out based on the above criteria. **You may nominate up to one per team per round.***
Note: You may not have a nomination if no advocate in the round qualifies.

SUPREME COURT

Scoring Sheet: Oral Arguments

APPELLEE

Round: 1 2 3

Scorer: Justice / Professional (Circle One)

Advocate Name 1: _____ Advocate Name 2: _____

Advocate Name 3: _____ Team School: _____

1-Poor 2-Below Average 3-Average 4-Above Average 5-Excellent

			Notes (Optional)
Knowledge and Use of Facts	1 2 3 4 5		
Knowledge & Use of Case Law	1 2 3 4 5		
Effectiveness / Persuasiveness	1 2 3 4 5		
Ability to Respond to Questions	1 2 3 4 5		
Demeanor / Presentation	1 2 3 4 5		
Total Score:			

Appellee Team Total <small>(Total Score Above)</small>			Opposing Team Total (Appellant)		
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Comprehensive Feedback:

Nomination for Outstanding Advocate:

*This is the **one advocate** which best exemplifies the above team criteria and that significantly stood out based on the above criteria. **You may nominate up to one per team per round.***
Note: You may not have a nomination if no advocate from the round qualifies.

SAMPLE JUSTICE QUESTIONS

Advocates, please note these are several sample, non-specific questions that the Justices are prepared to ask you regarding your case. These questions are meant to clarify your argument and make you articulate your thoughts before the Court. Please prepare accordingly.

- What case law or precedent (supporting materials) is there for your claim, Council?
- Council, based off of (insert fact from case), is it not reasonable to assume (claim contradictory to their argument)?
- Council, it has been stated in the fact pattern that (insert fact). How does this affect your claim?
- You stated that (X or Y) strengthens the judicial standpoint of your case. Please elaborate on your argument, Council.
- Council, how does the precedent of (insert precedent) apply to the case at bar?
- Council, is it not true that (insert precedent) would lead us to apply the law in this way? How does the knowledge of this case precedent (one that supports the opposing counsel) affect your argument?
- Council, could you please clarify your statement using specific precedent applied in the docket?
- Council, do you believe establishment of a new precedent is in order for the case at bar?
- Council, how do you justify this action by the (appellee or appellant) with specific precedent?
- Do you believe the actions of the (appellee or appellant) to be constitutional?
- Council, your opponent contends that (X) against your argument, how do you respond?
- Council, the case material (for a specific case) provided this information: (X-info). How do you respond the idea that this supporting evidence weakens your case?
- What is the limit/boundary to which we can extend this principle? Would this decision set a dangerous precedent?

- How does this difference in the case precedent and the case at hand affect your argument?

SAMPLE ORAL ARGUMENT OUTLINE

GENERAL ORAL ARGUMENT OUTLINE GUIDELINES

1. Advocate names and position (appellant/appellee)
2. General case facts/description of what happened, according to specific position (*no more than one paragraph*)
3. Brief outline of legal argument (roadmap of what oral argument will be)
4. Each part of legal argument supported with case law and provided materials
 - State an argument/point
 - Walk through thought process leading to the argument reasoning
 - Support argument with case law
5. Closing including recap of argument and stating whether the decision should be upheld or overturned

Advocate Names: ABC, XYZ (School)

Representing: Appellant (Malcom)

Case/Position Overview: In the matter of Malcom vs. Commonwealth of Kentucky, we will be arguing on behalf of Malcom in this case as it pertains to the First and Fourth Amendments. Malcom's son died in combat on March 3, 2011 while serving as a Marine. To honor his son, Malcom planned a **private** funeral. Since his son was widely respected among the community, a news segment featured him and his service. After seeing this, the Cowbird Baptist Church decided to picket this **private** funeral. The sight of the

picketers was inevitable to Malcom due to the one street available to reach the church. Due to hearing and seeing the protestors, Malcom has been diagnosed with severe depression and more intense existing health conditions.

Argument Outline:

1. The Commonwealth of Kentucky acted **unconstitutionally** in two ways:
 - a. The Commonwealth should have applied the Gertz Test due to the appellant being a private figure
 - b. The media used by the Cowbird Baptist Church related to matters of **private** concern
2. Argument pertaining to requirement of Commonwealth using the Gertz Test for a private figure:
 - a. Lower courts applied precedents from cases from public figures and vast variables on the spectrum among the canon of cases
 - b. For example, NYT v. Sullivan competing interests between the extension of free speech for criticism vs. claiming libel and receiving compensation for a **public figure**.
 - c. Fact pattern of NYT v. Sullivan (sullivan had public office, speech was print vs. spoken)

- d. Balancing Act: right to compensation versus the severity of falsehood inflicted for **private figures**.
 - e. Precedent would ensure more stringency and safety for private figures
3. Argument pertaining to media used by the Cowbird Baptist Church related to matters of **private** concern
- a. according to Commonwealth v Bridget (and subsequent law), a public controversy does not become one because they merely attract attention; instead, a public controversy is described as “A dispute that in fact has received public attention because its ramifications are felt by persons who are not direct participants.”
 - b. Court of Commonwealth states (*from case document*) states , “expressive conduct” was “intended to spark the debate in which the **defendants** are concerned.”
 - c. Therefore, the presence of this protest at a funeral is a matter of private concern because its motive is the violence inflicted by a Marine in a specific time and place unrelated to Kirkland, and not of spreading messages of public concern.
4. Overview/Conclusion (IF APPELLANT, this is your REBUTTAL)
- a. Gertz Test recap
 - b. Media Recap

c. For these reasons, we ask the court to reverse the decision of the lower court.

GLOSSARY OF COMMON LEGAL TERMS

- **Advocate/Attorney/Council/Counselor** — The person who is arguing; one who is representing their client before the court
- **Appeal** — A request to a higher court to review a lower court’s decision, put forth by the appellant in hopes of reversing the lower court’s decision.
- **Appellant** — The advocates/side that request an appeal.
- **Civil Case** — A case that usually involves private disputes between persons or entities, where the damage or dispute only pertains to the parties in question.
- **Criminal Case** — A case that usually involves a person or entity committing an illegal action that affects society as a whole, where the damage may pertain to multiple persons.
- **Co-Council** — Partners/Teammates of a counselor. A justice may say “As you co-council mentioned earlier,” when referring to something your teammate previously discussed.
- **KRS** — Short for “Kentucky Revised Statute,” it signifies a law passed by the Kentucky General Assembly, followed by a three-digit chapter number (signifying the broad area that many laws may fall under) and three digits specifying a specific law. If needed, sections and subsections will follow in parenthesis.
 - Example: ***KRS 212.230 (1) (c)*** refers to a Kentucky Revised Statute, falling in chapter 212 (laws dealing with Local Health Programs), specifically section 230 (enumerating the powers of city, county, and district Boards of Health), section 1 (defining powers) subsection (c), listing Boards’ power to make and enforce regulations.
- **Precedent** — An earlier action, case, or ruling from any court which may act as a guide to the current case. There are two types of precedent: binding, and non-binding.
 - Binding Precedent- cases and rulings which *must* be followed, enacted by the Supreme Court.
 - Non-Binding Precedent— Rulings held by other courts, usually within the same state, that possibility deal with similar situations or questions of law, but have different fact patterns, so the court may not necessarily have to follow ruling, but may use it as a guide in determining their decision.
- **Affirmed/reversed (overturned/upheld)** — When a higher court reviews a lower court’s decision, they will either affirm or reverse the decision. Affirming the decision means that the lower court’s ruling will stand. Reversing the decision means that the higher court believes the lower court reached an incorrect decision and sided with the wrong side, and therefore sides with the other party.
 - When finishing your argument, it is common practice to end with a statement similar to: “Due to X, Y, and Z, we respectfully request that this court affirm/reverse the decision of the lower court. Thank you.”
- **Bench** — Refers to the justice panel, set of officials, or other presiding persons that judge and hear a case. In the literal sense, if you “approach the bench,” you come forward before the justices to present your case.
- **Brief** — A document consisting of several pages that provides a complete and very thorough description of your argument, including all cases used with complete citations. Theoretically,

a judge could read the briefs of both side and come to a decision without ever hearing an oral argument.

- **Case Law** — The rulings, judgements, fact patterns, and all information pertaining to previously argued cases that helps build an argument.
- **Citation** — The specific manner in which all cases argued in the United States must be referred to within briefs and official documents
- **Claim** — An argument or point of contention made by an advocate, based upon facts and information.
- **Constitutionality** — Refers to the legality of a statute or ruling based upon *either* the United States Constitution or Kentucky Constitution. A statute or ruling in violation of the United States constitution is usually also in violation of the Kentucky Constitution.
- **Contention** — an assertion or argument maintained in debate. Usually referred to as a “point of contention.”
- **Docket** — Also known as “the record,” it refers to the cases, laws, facts that are to be utilized in the oral arguments.
- **Fact pattern** — The elements and facts of a case that distinguish it from all other cases. Cases may have similar fact patterns which allow the course to draw upon them for comparison.
- **Lower court/Higher court** — Lower courts are courts that have less power than the court above them. The case gets appealed to a higher court, such as the Kentucky Supreme Court or even the United States Supreme Court.
- **Outline** — Differs from a brief in that an outline is a short overview of all the major points and cases in your argument. It should not be a total word-for-word review of your argument, but it should cover your points well.
- **Rebuttal** — A response to your opponents argument, that may not be in your original outline. The appellant has time specially set aside for this, but the appellee may also utilize some of their time to respond to points their opponent has made.
- **Statute** — Synonymous with law, it is a piece of legislation passed by the general assembly or other legislative body that provides a rule for a specific topic. They are always binding.
- **Summary Judgment** — After the court has heard a case, they release a summary judgment, listing the reasons for their ruling. The justices that agreed with the finding report the majority opinion, and the justices who disagreed write the dissenting opinion, each providing their reasoning for their findings.
- **Test** — A test may be defined by a certain case to provide a definition. For example, the *Hollins test* lays out the requirements for an entity to be considered a religious institution. A test is usually defined by the summary opinion of a previously decided case.
 - **Balancing Test**— a test that ways two or more competing needs. A court may use a balancing test to weigh the Right of Free Speech with the Right to Privacy. It normally takes two previously mutually exclusive ideas and allows them to exist concurrently, in an effort to provide fairness in a question of law.
- **“At bar”** — Means that something is in question before the court. Most commonly heard in the saying “the case at bar,” meaning the case in question.