



23rd ANNUAL UVALDO HERRERA MOOT COURT COMPETITION DISPUTE SETTLEMENT BODY

DECISIONS 2018

1. **Question:** *One of my professors presented and lectured on the Masterpiece Cakeshop case. Would it be a violation of the rules to have a copy of the PowerPoint used in the presentation? Though it doesn't contain any verbatim reports, filings, briefs, transcripts, or oral arguments – it does reference the substance of the arguments, of course.*

Decision: They are absolutely precluded from accessing/reviewing the power point. And, the same also would apply to even talking about the case with the professor.

2. **Question:** *My partner and I are seeking clarification on whether and to what extent we can read/rely on the briefings of the actual parties/amici in the case on which the problem is based. There seem to be two conflicting rules about whether we will be able to reference them at oral argument:*

“8. Team members may not, in their briefs or oral arguments, rely on any briefs and/or pleadings filed with any trial or appellate court by the actual parties or amici on which the moot court problem is based.”

“11. However, at oral argument, team members are not prohibited from citing the case upon which the moot court problem is based, and similarly, there is no prohibition on citing trial court and appellate decisions leading up to the case on which the moot court problem is based. Competition judges will be advised that questions relating to the case on which the moot court problem is based will be acceptable during oral argument.”

Decision: After carefully reading the dispute, the HNBA Dispute Settlement Body (DSB) believes the real question posed by Team members is whether and to what extent can they read/rely on the briefings of the actual parties/amici in the actual Supreme Court case on which the problem is based. The clear answer is that, under HNBA Moot Court Rules and Procedures Rule D(8), Team Members cannot rely on any “any briefs and/or pleadings filed with any trial or appellate court by the actual parties or amici on which the moot court problem is based.” This would inherently include reading of those briefs. This Rule is consistent with one of the main goals of the HNBA Moot Court Competition, which is for the students to learn, draft and argue their own arguments. Were we to permit reliance on the brief or pleadings below, that educational goal would be lost.

In addition, Rule D(11) is not in conflict with Rule 8. Rule 11 allows any of the parties to cite both “the case upon which the moot court problem is based” and to cite to “trial court and appellate decisions leading up to the case on which the moot court problem is based.” In other words, Team Members can read the District Court, states courts and Circuit Appellate Court decisions leading up to the case before the Supreme Court as well as any

caselaw related to the issue before the Supreme Court. They just can't read or rely upon the briefs of the parties or amici.

3. **Question:** *For purposes of brief scoring, does changing the order of the two arguments lower the score? In other words, starting the brief with artistic expression and then talking about the free exercise clause hurt the brief scoring?*

Decision:

As a general rule, the order of the arguments is not, in and of itself, a determinative factor in the scoring.

4. **Question:** *Rule D.4 states that briefs must be bound or fastened with staples. This gives me the impression that we must submit a physical copy of the brief; however, D.7 and E.1 only mention electronic filing. Are we supposed to submit a physical copy or just the two electronic copies mentioned in the rules?*

Decision: Please disregard the last sentence of Rule D.4 to the extent it implies paper copies are to be submitted. Only electronic copies are required.

5. **Question:** *Should these [Section J] rules be construed as prohibiting any and all outside discussion of the moot court problem? E.g., discussing the legal analysis with a law school friend not in the competition? Or do they instead only limit requesting assistance with written work? E.g., asking that friend to look at written legal analysis in a brief?*

Decision: With respect to the instant Dispute/Clarification, the HNBA Moot Court Rules and Procedures ("Rules") appear clear on their prohibition of any outside consultation or discussion by the Team members in preparing their briefs. On Section D, Subdivision 2, the Rules specify that by signing and submitting their Briefs, the Team "certifies... THAT IT REPRESENTS THE WORK PRODUCT OF TEAM MEMBERS ONLY (SEE SECTION J BELOW);" Section J, Subsection 1, provides in pertinent part that "Teams may not receive any assistance from anyone, including faculty or other members of the bar, in preparing their brief. The brief must be the sole work product of team members." Based on these Rules, the DSB concludes that they prohibit any outside discussion of the Moot Court problem and the briefs prior to submission; neither of the two suggested scenarios are permitted.

However, it should be also noted that "nothing shall prohibit faculty and members of the bar from critiquing a Team's practice oral argument after the Team has submitted its brief and before commencement of the Competition." Thus, the Rules do not prohibit Team members from receiving assistance and practicing their oral arguments in front of faculty, attorneys or their law school friends following their submissions in preparation for the Moot Court Competition.

6. **Question:** *Under Rule D8 and D9, it says that team members may not rely on any briefs and/or pleadings filed by actual parties or amici. Does that mean that the team members*

may READ the briefs and pleadings but cannot cite to them? Or does that mean that we cannot even access and review these briefs and pleadings?

Decision: They may absolutely NOT access, read or review those briefs and pleadings.

7. **Question:** *Per the rules, the students cannot receive any outside assistance in preparing the brief. May we hold one or two generic brief writing training sessions for the potential team? If coaches use only generic information and teaching for their moot court competitors and would not assist, in any way, with the specifics of their competition brief, is that permitted?*

Decision: Generic brief writing session is fine before the team starts to write briefs, but they may not proofread or edit any actual briefs.