HAFS Moot Court Competition

Oral Argument Protocol and Procedure

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Oral Argument

Oral argument is not really an "argument." Rather it is more like a high-powered conversation between the justices and the attorneys. The attorneys have an opportunity to add to the arguments contained in their written pleadings (written arguments submitted to the court before oral argument). Oral argument also lets the attorneys clear up misconceptions or questions raised by their briefs.

Because the petitioner or appellant is the party bringing the action to the appellate court, he or she argues first. The petitioner can also reserve some time for rebuttal of the respondent's argument. The respondent or appellee argues second and has no opportunity for rebuttal. In effective rebuttal, the petitioner answers points raised by the respondent's argument and addresses any points that seemed to concern the justices during the respondent's argument. Thus, an effective oral argument also involves effective listening. The attorney will be interrupted by questions by the justices. This is normal procedure in appeals courts throughout the nation. In an effective oral argument, the attorney will listen carefully to the questions and answer them as completely as possible. A justice will rarely raise an issue unless it is important to him or her. Thus, an attorney should not evade a question. In addition, the attorney has an ethical duty to be honest and forthright with the court. He or she cannot misrepresent facts or law to the court.

If the justices ask lots of questions, it is referred to as a "hot panel." The attorney should listen carefully to the questions to decide whether the court is leaning in his or her favor. Sometimes a justice will ask a "friendly" question that will permit the attorney to make a key point. In contrast, a justice may ask a pointed or "hostile" question that may indicate support for the other side's argument. However, it may be difficult to determine a justice's viewpoint from the questions asked. Sometimes questions are asked to test the validity of a party's position.

WHAT DO JUDGES LOOK FOR IN A MOOT COURT ORAL ARGUMENT?

Knowledge of Subject Matter

1. Does the competitor give a broad, but brief, overview of the argument (i.e., roadmap) in the beginning?
   A. The first speaker should:
      i. Introduce himself/herself and his/her partner (co-counsel)
      ii. ii. State whom the team represents, using the proper designation (appellant)
      iii. State the issue each speaker will be addressing (a strict division of issues is often written into the problem)
      iv. Reserve rebuttal time (appellant only). A maximum of two minutes is advised. Never use rebuttal time to reiterate arguments, but as an opportunity to refute or clarify arguments made by the opposing party. If you have no important points to make on rebuttal, waive the time.
      Remember, if no rebuttal time is reserved, it is deemed waived.
   B. The second speaker for each side should introduce only himself/herself, not co-counsel, who would have already spoken.
2. Is the competitor's presentation well-organized, with the organization clearly expressed?
3. Does the competitor have a thorough knowledge of the record? Can the speaker direct you to important language in the record?
   Wise use of specific record citations is advised.
4. Does the competitor emphasize the important issue(s)?
5. Does the competitor argue the heart of the matter adequately, and is he/she selective in discussing issues?
6. Does the competitor use a variety of types or arguments, i.e., precedents, logic, policy, etc.?
   A. A competitor should be familiar with relevant case law. However, in the unfortunate occasion that he/she is unfamiliar with a case cited by the judge, he/she should request a brief recitation of the facts so that he/she may apply the facts to his/her case.
7. Are the competitor's arguments clear and direct?
   A. The issues and desired resolution should be firmly fixed in the Court's mind when the competitor finishes.
8. Does the competitor make judicious use of his/her time?
   A. The statement of the facts should be very brief. Assume that the Court is well prepared, especially with the facts of the case, so don't waste time with an extensive recapitulation of the facts. The best use of record facts is incorporated within the arguments where relevant.

B. Points are sometimes deducted for finishing too early and are definitely deducted if a competitor speaks over his/her allotted time. Competitors should be prepared to argument at least half of their time during a cold panel.
C. When the competitor sees that his/her time has expired, he/she should cease to speak immediately, and request an opportunity to *briefly* conclude (in 30 seconds or less). However, if a judge asks a question which the judge knows places a competitor past the time limit, the competitor should answer the question briefly and directly, and sit down without interjecting his/her own canned conclusion.
D. If time still remains at the end of the presentation, wait a moment to see, or even ask, if the Court has any other questions before sitting down.

Response to Questioning

1. Is the speaker responsive to questions rather than evasive or repeatedly unable to give an answer?
    a. Each competitor must be fully prepared on his/her partner's argument. Rather than refuse to answer a question regarding his/her partner's argument, he/she should answer the question to the best of his/her ability and the other team member should adjust his/her presentation to address the question in more detail when and if he/she has the opportunity to address the Court.
2. Is the competitor able to answer a question with authority using case names?
    a. Pronounce the word "versus" instead of saying "v" when referring to cases
3. Is the competitor able to fit relevant questions into his/her overall analysis and presentation?
4. Is the competitor able to resume the thread of his/her argument after answering a question?
    a. Questions from the Court should be clearly addressed, turned to the advantage of the advocate, and then used as a transition back into the argument that the competitor desires to make.
    b. A competitor's manner should anticipate and appear to welcome the Court's questions.
5. Is the competitor candid about the weak points in his/her arguments?
    a. Be able to distinguish the cases that disfavor your position.

Forensic Skills

1. Does the competitor use timely emphasis and effective pauses?
2. Does the competitor's voice have proper volume and good inflection?
3. Is the competitor's voice clear and easy to understand?
4. Does the competitor use "ahs," "uhms," or "ers" that are distracting?
5. Does the competitor use gestures effectively and appropriately?
    a. Distracting hand movements, swaying, walking away from the podium, overbroad gestures, finger pointing, or nervous gestures are highly discouraged. However, it is better to act normal, using minimal hand movements, etc., than to look stiff and robotic.
6. Does the competitor exhibit a professional stance at the podium (stands straight, avoids distracting mannerisms, etc.)

Courtroom Demeanor

1. Does the competitor appear to be helpful to the Court?
2. Does the competitor project an image of professional sincerity toward his/her client?
    A. Be careful not to refer to the parties as "my client." Use their proper name or party designation.
3. Is the competitor forceful without being overbearing?
    A. Don't disregard the importance of deference to the court. Deference to the Court always garners positive points.
4. Does the competitor talk to and look at the judges in a conversational manner without unobtrusive notes?
    A. It is suggested that a competitor utilize a single file folder with arguments attached to the inside folds.
5. Is the competitor courteous rather than sarcastic, condescending, or resentful?
    A. A competitor should not begin speaking until signaled by the Court to do so, and begin with "Thank you, Your Honor, and may it please the Court?"
        i. Note: Some judges may not be accepting of the opening "thank you," but points should not be deducted for this.
    B. Answering a question with "with all due respect, your honor," or "respectfully, your honor," is discouraged.
    C. If the question lends itself to a "yes" or "no" answer, the competitor should answer in that manner and then explain further if indicated. Be sure to be responsive because the judge may frequently follow-up his/her question with another before an explanation is completed.

D. During the argument, the competitor should cease to speak whenever the judge is speaking. A competitor should never try to speak over the Court or appear irritated at a judge's interruption.

6. Is the competitor poised and at ease rather than stiff or jittery?
   A. Tone should be relaxed, confident, reasonable, and believable.
7. Does the competitor display a proper amount of confidence?
8. Does the competitor use all of his/her time without exceeding the time limits?
9. Does each competitor exhibit a professional demeanor both while speaking and sitting at
10. the counsel table?
    A. Competitors should sit listening attentively to other arguments with their feet flat on the floor. Conversation between team members while the opposition speaks is inappropriate; if necessary, notes should be passed between competitors discreetly.

Protocol and Pre-argument Considerations

1. When you appear in court you should be dressed as a professional
2. Your written outline should be contained within a notebook. Review the instructions for oral arguments above several times.
3. Write out your opening statement. Make certain you start by asking the Court to "reverse" or "affirm" the lower court's ruling.
4. Outline your entire argument, stating main points to cover, and citable cases.
5. If you are junior attorney (the second attorney to speak), make certain your final thoughts or conclusions is written out.
6. Do not use "I" or "in my opinion" in your written outline. The court is not interested in your opinion. They are looking for a logical legal argument.
7. Avoid generalizations! If a generalization is cited it must be followed with a specific example.

Procedure

1. The attorneys who will be arguing will be seated at the tables. Appellant attorneys will be seated on left facing the bench. Respondent attorneys will be seated on the right facing the bench.
2. When the Judges enter the courtroom, all stand and remain standing until instructed to sit.
3. The judges should sit on the bench.
4. The Chief Justice will then ask: Be seated. The Court calls the case of _____.
5. The Chief Justice will then ask: Are the parties ready?
6. Parties stand and reply: Yes, your honor.
7. Appellant approaches the bench and says: May it please the Court.
8. The Chief Justice will say: Yes. The Court is familiar with the facts of the case so please proceed with your legal argument.
9. At this point, the attorneys for the appellant will argue the case. (Lead appellant & Junior appellant) These are important things to consider when preparing for the argument and while giving the argument:
    A. The appellant attorneys may request that maximum of two of the nine minutes allowed for argument be reserved for rebuttal. This should be done at the beginning of the argument. If not requested at the beginning, the appellant attorney can use the time remaining for the rebuttal.
    B. In preparing for the argument, each attorney should prepare an outline of arguments that could last for his/her entire nine or six minutes. Since the judges will be asking questions, it is important to state the most important points immediately. DO NOT give a statement of facts. The court is familiar with the facts of the case.
    C. When addressing a Justice refer to them as "your honor." Attorneys should never use phrases like, "In my opinion…" or "I believe…"

10. The justices should allow about two minutes to pass before asking questions, but then the justices may and should interrupt with questions during the attorneys' speeches. In response, attorneys should never say, "Wait a minute," or "I am getting to that," or "I do not see how that is relevant to this case." They may say, "I do not know," or "Will you please repeat your question," or "I am not sure I understand the question." The justices should also allow about 1 minute for the lawyer to wrap up his/her argument when the time is up during the attorney's speech.
11. At eight or five minutes, the time keeper will raise the time card that indicates the attorney has one minute remaining.
12. When time is up and the time keeper raises the time card that indicates the time has elapsed, stop speaking immediately unless a justice says, finish your thought and then finish it quickly. You may be allowed up to 1 minute to wrap up.
13. Respondent approaches the bench and asks: May it please the Court.
14. The Chief Justice will say: Yes.
15. Respondent (Lead respondent & Junior respondent) will argue the case. End by asking the court to affirm the lower court's decision.
16. Lead appellant comes up for the rebuttal (if time is saved). Appellant asks, May it please the Court. The rebuttal addresses Respondent's argument. End by asking the court to reverse the lower court.