

Questions Concerning the Supplemental Evidence*

Question 1: During the evidentiary hearing, can two people present the evidence while a third person provides the closing for that round? Or does the closing need to be delivered by one of the two people who present the evidence?

Answer 1: The closing argument needs to be delivered by one of the two “attorneys” who present the evidence.

Question 2: Will Stetson provide copies of the exhibits for us to use or should we bring copies of our own?

Answer 2: See Rule D(10).

Question 3: Should we bring a case file with relevant cases for the judge to review?

Answer 3: That will not be necessary.

Question 4: Page 9 makes reference to opening statements, stating "opening statements where appropriate." When would opening statements be appropriate in the context of this competition and should we expect to present one for each round?

Answer 4: No, an “opening statement,” as it is understood in trial team competitions, will not occur during the evidentiary hearing. The judge could ask at the beginning of the round for any preliminary matters.

Question 5: During the evidentiary hearing, will making timely objections and responses to the objections be part of our score?

* Revision on Monday, September 21, 2015, included questions 1–6 and the “note.” Revision on Friday, September 25, 2015, included questions 7–13. Revision on Tuesday, September 29, 2015, included questions 14–16. Revision on Monday, October 5, 2015, included question 17.

Answer 5: During the evidentiary hearing, only the “attorney” doing the direct or the cross will be critiqued.

Question 6: The rules say plaintiff goes first for the motion argument and evidentiary hearing. In our case, the defendant is the moving party—does that change the order in which counsel will argue and present evidence?

Answer 6: That is correct; the Defendant will argue first in the motion argument and present first in the evidentiary hearing.

A note from the problem author: The evidence should be focused on whether or not Facebook service was reasonably likely to provide actual notice on Nellie Kickwood.

Questions and Answers provided on Friday, September 25, 2015:

Question 7: Regarding Exhibit 2—what is the actual date of the email supposed to be?

Answer 7: December 1, 2014

Question 8: Concerning line 26 on page 6 of Exhibit 7 (the Deposition of Ripley B. Lebernot), what is that line of testimony supposed to say?

Answer 8: The attorney is asking Mr. Lebernot whether he recognizes the text messages.

Question 9: The Declaration of Gisele Mavery and the accompanying Exhibit A—is this supposed to be Exhibit 8?

Answer 9: Individual teams need to determine how they can use the Declaration pursuant to the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

Question 10: Rule D(2)(b)—what does it mean that rebuttal must be 1 or 2 minutes, and not 30 seconds or a minute and a half? Does that mean that a team member must actually use that time? Or does that mean that a team member cannot reserve any time that is not 1 or 2 minutes?

Question 10: Oralists can reserve either 1 minute or 2 minutes for rebuttal. No, the oralists do not have to actually use that whole time.

Question 11: Regarding Rules D(3) and D(4)—how are we to handle a situation in which an opposing team makes impermissible inferences on direct or cross-examination and fails to remedy?

Answer 11: Any challenges or complaints based on conduct during the Competition, including the drawing of impermissible inferences, must be handled in accordance with the Competition Rules, Section H, sub-sections 2 through 5.

Specifically, in this situation, if the witness testifies to facts that do not appear in the Record, the advocate may at his or her discretion conduct an impeachment by omission.

Question 12: Regarding Rules F(1)(c)–(f): These rules state that in order for a competitor to be eligible for the listed awards, “the oralist must participate in both portions of the oral presentation—i.e., argue a motion and present evidence.” Does this rule suggest that an oralist is able to only participate in one portion of the oral argument? For example, is the following acceptable?

Team Avengers is composed of Iron Man, the Hulk, Thor, and Captain America. During the motion argument, Iron Man and the Hulk argue issues 1 and 2. During the evidentiary portion, Thor and Captain America perform all direct and cross-examinations, while Iron Man and the Hulk play the witnesses for direct examination. Once the examinations are complete, Thor performs the closing argument for Team Avengers.

Answer 12: For the oralist awards, a team member must have argued one of the issues in the motion argument and presented evidence (served as an attorney) during the evidentiary hearing.

Note that there is no requirement that team members perform both roles. Team Avengers could present the case as organized above; that is acceptable. However, on one on Team Avengers would be eligible for oralist awards.

Question 13: Regarding the Questions and Answers concerning the Motion Packet (numbers 5 and 9) and the Declaration of Peyton Brady, ¶ 6, which states, “I checked the conversion of the Kickwood service documents, and, in this case, the conversion was 89.9%; specifically, sometimes, “Kickwood” was spelled “Kirkwood” and some of the numbers/dates were off (i.e., 2015 was 2014 sometimes).

Paragraph 6 of Brady’s Declaration conflicts with the answers to questions 5 and 9. Does ¶ 6 of Brady’s Declaration supersede the answers to questions 5 and 9?

Answer 13: No. Paragraph 6 of Brady’s Declaration does not supersede the answers to questions 5 and 9.

The answers to question 5 and 9 relate to the problem materials (i.e., the complaint, answer, etc.). Brady’s Declaration speaks to the conversion of service documents.

Questions and Answers Provided on Tuesday, September 29, 2015:

Question 14: In CJ Kickwood's deposition, there is a contradiction between whether CJ told Peyton Brady about the phone call between his parents. On page 1:16–20, it states, “Q: Do you remember telling [Peyton] anything about the phone call that your father/mother received? A: Yes. And on page 2:35–38, it states, “Q: I'm curious then, why wouldn't you tell the process server about the call? A: I don't know. I've never dealt with a process server before, and she seemed all official.” Did CJ tell Peyton Brady about the phone call?

Answer 14: The advocates should deal with any inconsistencies in the evidence through cross-examination and impeachment.

Question 15: For the purposes of Gisele Mavery's statement, is she unavailable to testify at trial? If not, are the teams required to stipulate to the statement?

Answer 15: Advocates should consult the Federal Rules of Evidence and Civil Procedure to determine how to deal with this statement.

Question 16: There are no dates or times given for the depositions when the witnesses first saw certain exhibits. For the purposes of laying foundation, is it sufficient to ask the witness if the exhibit is in substantially the same condition as when they saw it at their deposition?

Answer 16: The advocates should consult the Federal Rules of Evidence and Civil Procedure to determine how to deal with exhibits.

Question and Answer Provided on Monday, October 5, 2015:

Question 17: Will the teams be able to ask the Court to take judicial notice under Federal Rule of Evidence 201(b)(2) and (c)(2)?

Answer 17: Teams are encouraged to take full advantage of the Federal Rules of Civil Procedure and the Federal Rules of Evidence to present their cases; this includes Federal Rule of Evidence 201, to the extent it is applicable.