

Clarifications to the 2018 National Pretrial Competition Rules

October 8, 2018

Q1: The rule[s] and problem state that each side will have 20 minutes to argue the motion to dismiss, but as far as I can tell, the rules are silent on the amount of time that should be spent on the oral argument/closing argument on the motion to suppress. Should our advocates plan to spend 20 minutes per side on the arguments for the motion to suppress?

A1: Each team is allotted 70 minutes for its evidentiary presentation and second oral argument on the motion to suppress that it may use as it wishes. Each team should plan to use whatever amount of time it feels is sufficient to make its arguments, to respond to the opposing party's arguments, and to answer questions from the bench.

Q2: Can we assume that [Mr.] Mendoza is unavailable at the evidentiary hearing?

A2: Yes. Mr. Mendoza remains in custody pending trial and will not be transferred from the jail to the federal courthouse for this hearing.

Q3: The problem does not contain a stipulation of authenticity. Are the proposed exhibits authentic?

A3: Yes. Implicit in the parties' Joint Notice of Filing is the stipulation that all exhibits are authentic but not necessarily admissible.

Q4: Will the hot bench be conducted by one judge or will *multiple* judges ask questions?

A4: Multiple judges may ask advocates questions during the oral arguments on the motion to dismiss and motion to suppress. Only one judge will preside over the evidentiary presentation.

Q5: Will there be a hot bench [d]uring the Motion to Dismiss arguments?

Q5: To the extent this question assumes the term "hot bench" refers to a bench that may present the advocates with questions on the facts of the case and the applicable law, yes.

Q6: Can [advocates] ask for time to conclude if we go over time during arguments?

A6: Yes. Teams may ask for a reasonable amount of additional time to conclude its arguments should their time expire, but the decision to grant additional time is at the discretion of the presiding judge.

Q7: Are [advocates] required to use the podium during arguments, direct examination, and cross examination?

A7: All oral arguments should be conducted at the podium. Whether advocates may move freely about the well of the courtroom is at the discretion of the presiding judge.

Q8: Can Defense, on the Motion to Suppress, reserve all remaining time for rebuttal?

A8: Yes. During the second oral argument (addressing Defendant’s Motion to Suppress), Defendant’s counsel may reserve all remaining time for rebuttal.

Q9: Can you explain what “Rebuttal must be 1 or 2 minutes, if the Defendant chooses to do rebuttal, and not 30 seconds or a minute and a half” means? I.e. Does she or he have to speak for the entirety of 1 or 2 minutes or does that mean she or he can reserve 1 or 2 minutes and end up speaking for only 30 seconds or 1.5 minutes.

A9: Defendant’s counsel may only reserve 1 or 2 minutes for rebuttal during the first oral argument (addressing Defendant’s Motion to Dismiss). Advocates are not required to speak for the entirety of their reserved time.

Q10: What will be the scope of directs and crosses? Is it limited to facts relevant to the evidentiary hearing? Or will the scope be anything the witness has knowledge of?

A10: This is left to a team’s discretion and subject to evidentiary objections.

Q11: Does [M.D. Fla.] [L]ocal...[R]ule 5.03(13)—which prohibits the repeating of the witness in the next question—mean the looping technique is not allowed? E.g. “we arrived on September 26th” “what time did you arrive on September 26th?” or “I was with my brother playing video games” “while you were playing video games, did anything unusual happen?”

A11: Advocates will not be prohibited from using the “looping technique,” but advocates should not testify during examinations.

Q12: Because this is an Evidentiary Hearing on a Motion to Suppress, can we assume Daubert does not apply?

A12: This question calls for a legal ruling that will ultimately be made by the presiding judge.

Q13: The rules do not mention objections or admitting evidence as a point to be graded. Therefore, if we chose not to object or admit evidence, would it not affect our score?

A13: This will be left to the discretion of the scoring judges, all of whom received the Competition Problem and Rules in advance of the Competition.

Q14: Similarly, is the government expected to admit into evidence the text messages at issue? I.e. Would [a team] lose points for *not* trying to admit the text messages?

A14: This will be left to the discretion of the scoring judges, all of whom received the Competition Problem and Rules in advance of the Competition.

Q15: Are objections during oral arguments permitted and/or encouraged?

Q15: Objections are permitted, and “[t]he Federal Rules of Evidence will apply, to the extent practicable, at the evidentiary hearing.”