

**2023 NATIONAL ENERGY AND SUSTAINABILITY
MOOT COURT COMPETITION
WEST VIRGINIA UNIVERSITY COLLEGE OF LAW
MARCH 2-4, 2023**

OFFICIAL RULES

I. THE NATIONAL ENERGY AND SUSTAINABILITY MOOT COURT COMPETITION

A. Prologue

1. West Virginia University is proud to host the National Energy and Sustainability Moot Court Competition, an annual inter-law school appellate moot court competition.
2. Year 2023 is the thirteenth year of competition.
3. The National Energy and Sustainability Moot Court Competition is coordinated by the *WVU Moot Court Board*, their faculty advisor, and the WVU College of Law Center for Energy and Sustainable Development.

B. Definitions

1. *Competition* means the WVU National Energy and Sustainability Moot Court Competition.
2. *The WVU Moot Court Board* is the student-organized coordinator of the *Competition*; it consists of certain West Virginia University College of Law students enrolled in WVU's J.D. program.
3. *Competition Chairs* are the WVU law student members of the *WVU Moot Court Board* who are in charge of the *Competition*, as advised by their faculty advisor and the Director for the Center for Energy and Sustainable Development.
4. *Team* refers to each team registered to compete in the *Competition*.
5. *Team Member* refers to a student member of each *Team* as defined herein.
6. *Team Number* refers to the number that the *Competition Chairs* randomly assign to each *Team*.

7. *Official Rules* or *Rules* refers to these official rules and any other supplemental rules promulgated by the *WVU Moot Court Board*. *Federal Rules of Appellate Procedure* or *Federal Rules* are those rules that govern procedure in the United States federal courts of appeal. The *Official Rules* are modeled in part after the *Federal Rules*, which are available on-line at <https://www.law.cornell.edu/rules/frap>.

C. Purpose

The *Competition*'s purpose is three-fold:

1. To develop expertise in energy law;
2. To stimulate greater awareness of the important issues of environmental impacts of energy production and sustainability; and
3. To promote appellate advocacy and to familiarize students with federal appellate practice.

II. TEAM COMPOSITION

A. Teams

1. Each law school may enter up to four *Teams*, subject to the limit on the overall number of *Teams* allowed in the *Competition* each year. As determined by the *Competition Chairs*, a limit of two *Teams* per school may be imposed to achieve broader participation in the *Competition*.
2. If more than one *Team* from a school is registered to compete, those *Teams* shall not work together prior to filing the brief. This *Rule* prohibits competing *Teams* (including *Teams* from different schools) from working together during the research, writing, and editing phases.
3. Notwithstanding *Official Rule* II.A.2, *Teams* from the same school may practice for oral argument together after the briefs from both *Teams* are filed.

B. Team Members

1. No *Team Member* may hold a law degree.
2. *Team Members* must be registered in a *Juris Doctor* program in the law school that they represent.
3. Each *Team* shall consist of two or three *Team Members*.
4. At least two team members must argue in all preliminary rounds.
5. No more than two *Team Members* may participate in each argument. If a *Team* has three *Team Members*, the *Team Member* who is not arguing in the round may not participate (i.e., may not communicate in any manner with

participating *Team Members* during the round).

6. There shall be no substitution or addition of *Team Members* after service of briefs, except upon the express written consent of the *Competition Chairs* in response to a written request by the *Team*. Consent will be granted only in exceptional circumstances and is within the unreviewable discretion of the *Competition Chairs*.

C. Coaches

1. Coaches may be students, faculty members, or outside legal advisors.
2. Coach selection is within the free choice of *Team Members*.
3. Coaches shall not, under any circumstances, assist *Team Members* with respect to the preparation or filing of the brief. In other words, ***Team Members may not receive assistance from coaches with research, writing, drafting, or any other aspect of brief preparation.***
4. Coaches may, however, assist with oral argument preparation.
5. Coaches are subject to these *Official Rules*, except as otherwise expressly stated.
6. Coaches may not interfere with any argument during the competition. If a coach speaks or disturbs in any way an active argument, the *Team* associated with that coach will be sanctioned. The level of the Penalty is at the discretion of the *Competition Chairs*.

D. Assistance

1. *Team Members* may not receive assistance from coaches, advisors, school writing centers, practitioners, faculty members, students, or anyone else while researching and writing the brief. **The brief is to be the work product solely of the *Team Members* without outside assistance.**
2. These *Official Rules* also prohibit anyone other than *Team Members* from editing the brief's legal content, organizational structure, or grammar.
3. *Teams* may receive assistance in oral argument preparation.

III. BRIEFS

A. Assignments

1. The *Competition Chairs*, or their agents, will randomly assign:
 - a. a *Team Number*; and
 - b. party name and status in the case (Petitioner/Appellant or Respondent/Appellee) to each *Team*.
2. The *Competition Chairs*, or their agents, will notify *Teams* via e-mail regarding

Team Number and party status for briefing purposes on or about the date the problem is released.

3. The assigned *Team Number* must appear on the lower right-hand corner of each page of each brief. To preserve anonymity, *Team Members'* names and the name of their law school must not appear anywhere on the brief.

B. Rules of Procedure

1. Authority

The brief's format shall comply with the *Federal Rules of Appellate Procedure* (available at <https://www.law.cornell.edu/rules/frap>) except as modified by these *Official Rules*.

2. The brief's contents

The contents of the brief for both parties should conform generally to FED. R. APP. PROC. 28(a), except as otherwise provided, and in any event should include, under appropriate headings the following:

- a. Cover
- b. Table of Contents
- c. Table of Authorities
- d. Jurisdictional Statement
- e. Statement of the Issues Presented
- f. Statement of the Case
- g. Summary of the Argument
- h. Argument
- i. Conclusion
- j. Certificate of Compliance (Brief) (to be submitted in an email separately from the brief)
- k. Certificate of Service

C. The Brief's Contents—Specific Matters (see also FED. R. APP. PROC. 32(a))

1. Cover (email submission of briefs only, no bound briefs)

- a. The brief's front cover must contain the following:
 - i. the case number
 - ii. court name
 - iii. caption
 - iv. nature of the proceeding
 - v. title of the brief, identifying the party or parties for whom the brief is filed;
 - vi. the *Team Number*.
- b. The brief may not contain the name of any *Team Member* or the *Team's* law school affiliation. Failure to comply with this rule may result in disqualification of the *Team*.

2. Tables

- a. Table of Contents must contain page references.
- b. Table of Authorities:
 - i. Must contain references to the brief pages where authority is cited; and
 - ii. Must include all authorities, including cases (arranged alphabetically), statutes, and other authorities.

3. Typically, under the *Federal Rules of Appellate Procedure*, the Jurisdictional Statement must contain:

- a. The basis for the district court's subject matter jurisdiction;
- b. The basis for the court of appeals' jurisdiction;
- c. The filing dates establishing timeliness of the appeal; and
- d. An assertion that the appeal is from a final order or information establishing the court of appeals' jurisdiction on some other basis.

4. Statement of the Case

As provided in the *Federal Rules*, the statement of the case is “a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record.”

5. Summary of the Argument

As provided in the *Federal Rules*, the summary of the argument “must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief,” and “must not merely repeat the argument headings.”

6. Argument

As provided in the *Federal Rules*, the argument must contain:

- a. the parties' "contentions and the reasons for them, with citations to the authorities and parts of the record on which the [party] relies"; and
- b. "for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues)."

7. Conclusion

As provided in the *Federal Rules*, the conclusion must be "short" and state "the precise relief sought."

8. Certificate of Compliance

- a. The Brief Certificate of Compliance must certify that the brief complies with these *Official Rules* and must provide a page count. The Brief Certificate of Compliance must be emailed separately from the brief. **A penalty will be deducted for failure to separately email the Brief Certificate of Compliance.**
- b. See Appendix A for the Brief Certificate of Compliance format.

9. Certificate of Service

See Official Rule IV.

10. Affirmation of Compliance with the Official Rules

- a. All *Teams* must submit an Affirmation of Compliance with the *Official Rules*.
- b. To preserve anonymity, the Affirmation of Compliance with the *Official Rules* may not be emailed with the brief. **A penalty will be imposed for failure to separately email the Affirmation of Compliance with the Official Rules.** The level of the penalty is at the discretion of the Competition Chairs.
- c. See Appendix C for the form of Affirmation of Compliance.

D. Brief Formatting

1. General

- a. All text, including footnote text, shall be in 12-point, Times New Roman type.
- b. All citations must conform to the latest edition of *The Bluebook: A*

Uniform System of Citation.

- c. Pages must be 8½ by 11 inches.
- d. Pages must contain one-inch margins on all sides.
- e. Pages must be double-spaced, except for headings, footnotes, and block quotations.
- f. The brief, excluding the cover page, table of contents, table of authorities, and appendices (i.e., Certificates of Service and Compliance) shall not exceed 30 pages.

2. Page Numbers

- a. Pages shall be single-sided.
- b. Page numbers for the body of the brief must be placed in the upper center margin. Page number 1 may be suppressed.
- c. Page numbers for the Table of Authorities and Table of Contents must be in lower case Roman numerals and placed in the center bottom margins.
- d. Page number for other content must be placed in the margins in an area left to the *Team's* discretion.
- e. No other text may appear in the margins except as herein provided. (*See, e.g., Official Rule III.A.3.*)

3. No binding required.

All briefs must be submitted electronically to
wvumoot@mail.wvu.edu

4. Penalty for Nonconformance

Failure to conform to the provisions of these *Official Rules* will result in a reduction of a *Team's* brief score, made at the discretion of the *Competition Chairs*.

IV. SERVICE OF BRIEFS

A. Electronic Copy of Briefs

1. An electronic copy (in PDF format) shall be e-mailed as an attachment to wvumoot@mail.wvu.edu by 1:00 p.m. Eastern time on Wednesday, February 1, 2023.
2. A Certificate of Service attesting the PDF version was timely served on the *WVU Moot Court Board*, must be attached to the brief. See Appendix B for certificate format.

3. *Competition Chairs*, or their agents, will assess a penalty for failure to include the Certificate of Service.
4. Briefs e-mailed after 1:00 p.m. Eastern time on Wednesday, February 1, 2023 will be considered one day late and will receive a deduction.
5. All briefs will be made available to competitors on the National Energy Moot Court Competition website by 1:00 p.m. Eastern time on Wednesday, February 8, 2023.

V. ORAL ARGUMENT

A. Generally Applicable Rules

1. Check-in

- a. All *Team Members* must arrive at the competition venue and check-in with the registration desk at least thirty (30) minutes before their first round is scheduled to begin that day.
- b. *Team Members* must be in the designated waiting area fifteen (15) minutes before each round is scheduled to begin. The bailiff for that round will provide further instructions at that time.
- c. A *Team* that arrives late, in violation of *Official Rule* V.A.1.a or V.A.1.b, will be assessed a penalty in the form of a deduction from the *Team's* oral argument time.

2. Oral Argument Time

- a. Oral arguments shall be limited to thirty (30) minutes for each *Team*.
- b. Each *Team* may divide this time between two members as it wishes, provided that each oralist argues at least ten minutes.
- c. A *Team Member's* failure to argue for at least ten minutes will result in a deduction from the *Team's* oral argument score.
- d. Oralists will be given ten-, five-, three-, and one-minute time card notifications by the bailiff.

3. Rebuttal

- a. Only the *Team* representing the Petitioner/Appellant may request rebuttal, and up to five (5) minutes may be reserved for rebuttal by notifying the bailiff/timekeeper before the judges enter the courtroom.
- b. Whichever *Team Member* representing the Petitioner/Appellant who argues first also must formally request rebuttal time from the judges at the beginning of that *Team's* argument.
- c. Failure to inform the timekeeper or the judges will be treated as a waiver of rebuttal.

- d. Rebuttal argument may be given by either *Team Member* representing the Petitioner/Appellant; **however, only one *Team Member* may argue on rebuttal.** Rebuttal time may be subtracted from either or both of the two arguing *Team Members'* time allotment.

4. **Anonymity**

- a. *Team Members* may not identify their school to any judge or timekeeper during the *Competition*.
- b. Intentional disclosure shall result in disqualification.
- c. *Competition Chairs* will consider what penalty to assess for other types of disclosure.

5. **Observing Oral Argument**

- a. Spectators may attend oral arguments if the timekeeper determines that there is sufficient space.
- b. Notwithstanding Official Rule V.A.5.a., no person affiliated with any *Team* may attend an argument in which that *Team* is not competing prior to that *Team's* elimination.

6. **Bans and Prohibitions**

- a. Videotaping and/or audiotaping of oral arguments is prohibited.
- b. The use of cell phones and other electronic devices is prohibited.
- c. Other than a very brief communication between the two *Team Members* who are arguing that round prior to rebuttal about the content of rebuttal, *Team Members* may not communicate with each other or any other person once the argument begins.
- d. *Teams* may not use props or visual aids during oral arguments.
- e. Other bans or prohibitions are within the unreviewable discretion of the *Competition Chairs*.

B. Preliminary Rounds

1. All *Teams* must argue in four preliminary rounds.
2. Each *Team* will notified during the evening preceding the start of the competition regarding the party it will be representing during the first preliminary round.
3. For the remaining rounds, the party assignments will be made such that each *Team* will argue two preliminary rounds on brief and two preliminary rounds off brief.

C. Advanced Rounds

1. In the advanced rounds for oral argument, *Competition Chairs* will assign party status (on-brief/off-brief) based on a coin toss. (*See Official Rule VII.B.*)
2. Party assignment is not appealable.

VI. SCORING

A. General Rules

1. All briefs shall be subject to uniform penalties for each type of violation according to standardized scoring sheets.
2. During all rounds, at least two judges will assess and score oral arguments.

B. Scoring Particulars

Total *Team* scores will be based on a combination of brief and oral argument scores according to the following rules:

1. Preliminary Rounds

- a. The brief score will count for forty percent (40%) of the total score.
- b. The average of the *Team's* oral argument scores during the four preliminary rounds will account for the remaining sixty percent (60%) of the total preliminary round score.

2. Subsequent Rounds (including the Final Round)

- a. Beginning with the Round of Sixteen, the competition in each "courtroom" will be "head-to-head," i.e., there will be a winning team and a losing team in each courtroom, and the losing team will be eliminated from the competition.
- b. The total score for each *Team* in a round will be used for purposes of seeding the *Teams* in the subsequent round. The total score for each round will be determined solely on the basis of the oral argument score. The brief score will be used only in the event of a tie in the process of seeding the *Teams* for the subsequent round. In the event that there is a tie in the brief score as well, *Competition Chairs* will use a coin flip to seed the tied teams.

3. Score Notification

- a. Scores, both for the briefs and the oral arguments, will not be released until the entire *Competition* is completed. Scores will be emailed to all teams within three weeks of the end of the Competition.

C. Objections

1. Any Team may submit an objection regarding a perceived relationship between any other Team and a judge.
2. All objections must be submitted in writing to the *Competition Chairs*.
3. All objections must be submitted as soon as the basis for the claimed inappropriate relationship is known.
4. Absent exceptional circumstances, objections not brought to the attention of the *Competition Chairs* prior to the start of an oral argument round shall be deemed waived.

VII. ADVANCED ROUNDS

A. The advanced rounds include:

1. **Round of Sixteen:** The top 16 *Teams* from the preliminary rounds will be ranked based upon their total score (i.e., brief score and scores from four preliminary rounds) and will compete based on a ranking system of *Teams* 1 v. 16, 2 v. 15, etc.
2. **Quarterfinals:** The winning *Teams* from each Round of Sixteen match-up (based on head to head) will be ranked based upon their total score from the Round of Sixteen and will compete based on a ranking system of *Teams* 1 v. 8, 2 v. 7, etc.
3. **Semifinals:** The winning *Teams* from each quarterfinal match-up will advance to the semifinals. The *Teams* will be ranked based upon their total score from the Quarterfinals and will compete based on a ranking system of *Teams* 1 v. 4, 2 v. 3.
4. **Final Round:** The winning *Teams* from each semifinal match-up will compete in the final round.

B. Party Status

1. A coin toss shall determine which side (Petitioner/Appellant or Respondent/Appellee) each *Team* will argue in the advanced rounds.
2. All advancing *Teams* shall participate in a coin toss immediately following the announcement of the advancing *Teams*.

C. Awards

1. Types

Awards will be given for

- a. The Championship *Team*;
- b. The Second Place *Team*;
- c. Best Brief; and
- d. Best Oralist.

2. Presentation

The winners of the Best Brief and Oralist awards will be announced at the Banquet on March 3, 2023. All other awards will be presented on March 4, 2023 immediately following completion of the final round.

VIII. PENALTY ASSESSMENT AND INTERPRETATION OF THE OFFICIAL RULES

1. The *WVU Moot Court Board* has sole discretion to assess penalties, including disqualification, that it considers reasonable and appropriate for failure to comply with these *Official Rules* or deadlines set under these *Official Rules*.
2. Penalties assessed shall be uniformly applied to all *Teams*.
3. The *WVU Moot Court Board* will maintain penalty records for up to six months after the brief's filing date.
4. The *Competition Chairs* will accept requests for interpretation of these *Official Rules* prior to the *Competition*. These inquiries must be e-mailed to wvumoot@mail.wvu.edu by 11:59 p.m. Eastern time, Wednesday, February 8, 2023. The *Competition Chairs* will respond to all *Teams* via e-mail. If any questions about the *Official Rules* arise during the *Competition*, they must be addressed to the *Competition Chairs*. All decisions made by the *Competition Chairs* are final and non-appealable.
5. The *Competition Chairs* will also accept questions concerning the fact pattern. All such inquiries must be e-mailed to wvumoot@mail.wvu.edu by 11:59 p.m. Eastern time, Sunday, January 22, 2023. Answers shall be e-mailed to all competing *Teams*. All decisions of the *Competition Chairs* are final and non-appealable.
6. The *Competition Chairs* will resolve any disputes that may arise during the *Competition*. All objections must be submitted in writing. All decisions of the *Competition Chairs* are final and non-appealable.
7. The *Competition Chairs* may, in their sole discretion, approve written refund requests on the basis of a *Team's* inability to participate. All decisions of the *Competition Chairs* are final and non-appealable.
8. All correspondence must be mailed or e-mailed to:

National Energy and Sustainability Moot Court Competition

Attn: Center for Energy and Sustainable Development

WVU College of Law

P.O. BOX 6130

Morgantown, WV 26506-6130

wvumoot@mail.wvu.edu

9. The *Competition Chairs* will resolve any conflicts with these *Official Rules* and the rules governed by a *Team's* law school.

IX. IMPORTANT DATES

1. The problem will be emailed to all teams (and posted to the competition website) on or about Wednesday, December 28, 2022.
2. *Team* briefs must be submitted no later than Wednesday, February 1, 2023 at 1:00 p.m. Eastern time.

X. SUPPLEMENTAL RULES

The *Competition Chairs* reserve the privilege to promulgate rules supplemental to these *Official Rules* during the *Competition*.

XI. FORMS

Appendix A

Certificate of Compliance (Brief)

Pursuant to *Official Rule* III.C.9, [Party Name] certifies that its brief contains [# of pages] pages in Times New Roman 12-point font.

We further certify that we have read and complied with the *Official Rules* of the National Energy Moot Court Competition at the West Virginia University College of Law. This brief is the product solely of the *Team Members* of *Team No.*____, and the *Team Members* of *Team No.*____ have not received any faculty or other assistance in the preparation of this brief.

Respectfully submitted,

Team No. _____

Appendix B

Certificate of Service

Pursuant to *Official Rule IV*, *Team Members* representing [Party Name] certify that our *Team* emailed the brief (PDF version) to the *West Virginia University Moot Court Board* in accordance with the *Official Rules* of the National Energy Moot Court Competition at the West Virginia University College of Law. The brief was emailed before 1:00 p.m. Eastern time, February 1, 2023.

Respectfully submitted,

Team No. _____

Appendix C

Affirmation of Compliance with Official Rules

Pursuant to *Official Rule III.C.11*, *Team Members* representing [Party Name] affirm that our *Team Members* have read the *Official Rules* of the National Energy Moot Court Competition at the West Virginia University College of Law and are in compliance with the spirit and the letter of the *Official Rules*.

Respectfully submitted,

Team No. _____

Law School Name

Team No.

Name: Competitor _____
Signature _____
Date

Name: Competitor _____
Signature _____
Date

Name: Competitor _____
Signature _____
Date

Name: Coach _____
Signature _____
Date

Name: Coach _____
Signature _____
Date