

# Chapter Six – The Judicial Program

*Note: Refer to the separate Judicial handbook located in the Judicial Program Folder on the Handbook disc specifically for examples of Briefs and required student submitted brief requirements.*

## GENERAL DESCRIPTION

The Judicial Program of the New York State YMCA Youth & Government Program is designed to give a participant an opportunity to experience the Judicial Branch of our government. We will be simulating the Appeals Division Courts at the State Conference in Albany. The District Judicial Program is open to all students wishing to participate, but only a few selected delegates will have the honor of participating within the State Judicial Branch.

The Court of Appeals decides cases appealed from lower courts. It hears testimony and has no juries. An appellate court receives a record of everything done in the lower court, receives briefs written by competing attorneys, and hears oral arguments. Then, the Judges must decide whether the lower court was correct or incorrect in its judgments, based upon the arguments of the attorneys.

## OBJECTIVES

1. To learn and practice citizenship roles as participants in the judicial process – gaining insight into law careers.
2. To illustrate the use, value and limits of legal precedents.
3. To develop appreciation for the laws, judges, attorneys and other officials of the State of New York.
4. To enable the participants to apply the fundamental principles of the Constitution of the United State and the State of New York to real situations.
5. Develop knowledge of the jurisdiction of the NYS courts and court procedures.
6. Develop a familiarity with the rules of the court of appeals.
7. Nurture their ability to speak clearly and to the point in public.
8. The ability to do research independently and to write a legal brief

## Identifying ATTORNEYS:

These positions should be filled by freshmen, sophomores, juniors and seniors. These students need strong writing and speaking skills. Remember in appellate argument it is not enough to memorize a speech. During the presentation of that speech judges will ask questions that will pull the student in many different directions. They are trained to do this on purpose. Students that already have two years as practicing lawyers should seek to become a judge or pursue opportunities outside the judicial branch. At a certain point all lawyers will burn out, just as real ones do. Two years as a lawyer is generally optimal for learning the skills. When encouraging students to be lawyers, those who can think on their feet quickly tend to be the most successful.

As an attorney in the Appellate Division Courts or the Court of Appeals, s/he will be trying to prove that in the interpretation of the law that his/her side is correct. The attorney on the side of the appellant will attempt to prove that the case was ruled incorrectly in the lower court and that the decision should be overturned. The side of the respondent will try to prove that the case ruled properly in the lower court and that the decision should be reaffirmed. (The "winner" from the lower court is the respondent; the "loser" is the appellant)

An attorney will work as a team of two partners. Together they will write a brief in proper form and prepare an argument for presentation in court. It sounds simple enough, but the teen must be prepared to do independent research, have the ability to work and interact with others, and they must also have the ability to debate. It is a challenging position that is well worth the effort that can assist in building practical legal knowledge, helpful in the study of law in college, can strengthen the leadership skills and positive cooperative aptitudes.

An attorney must be prepared to analyze case authorities and apply analysis to the specific facts of the case to be argued. These authorities are other cases that may have been decided on similar facts, or of different facts that are however, analogous. The purpose of an attorney is to convince the Court to decide the legal issues in their client's favor on the basis of legal authorities that they will cite to the Court.

All of the case problems have been designed to give both sides of the case a chance to win. Since this format change went into effect, every year litigants from both sides of the case have won at least one argument. The case problem consists of two parts. First, is a fact pattern which the students can use to their advantage when framing the issues. (See **Appendix A**) Second, are the cited cases which will allow the students to use past precedents to attempt to persuade the judges in their favor. Commonly students will receive 4-5 cases to use in both their written and oral arguments. (See **Appendix B**)

When forming a team remember these students will work closely together for an extended period of time in a pressured atmosphere. They will also need to work from each others arguments when it is their turn during the conference. Teams should ideally consist of two students, but three can also be accommodated. Usually the third student will be a freshman who gives a very small part of the argument. If you have an odd student that cannot fit on a team, then have them participate in some other aspect of the program.

**Attorney General and Public Defender:** These elected attorney's will showcase their argument before the entire conference. These case problems are difficult and the pressure of performing before six hundred students is intense. Note that the Attorney General and Public Defender will be working independently without a second team member serving as our two most important judicial team members after the Chief Justice.

**Associate Justices:** These students must have a minimum of one year experience as a lawyer. Justice positions are attained through work: first recognition by the Judicial

Advisor team secondly demonstrated leadership qualities within your district. If as an advisor you believe a student who did not receive recognition would be a good judge recommend them. Know first however that if you have a choice, the student with recognition has already proven themselves. Judges have the most difficult job at the State Conference. They will decide 6-7 cases and are responsible for drafting legal opinions explaining how cases were decided in favor of one of the parties. These students work long hours and miss most, if not all, of the social activities. If you have a student that does not want to make these sacrifices then they should seek other opportunities at the conference. Judicial candidates should be the best students in your program. It requires that they research all the cases to be debated in Albany. It will be necessary for them to do a great deal of pre-conference work, work in conjunction with the Chief Justice being responsible for training their district. Remember a judge cannot just be an intelligent student or even an experienced student. To function at this level they have to be your best student who possesses good communication skills in conjunction with academic skills.

### **QUALIFICATION CRITERIA**

- Have a general knowledge of the NY State constitution and laws
- Have a general knowledge of the United States Constitution and laws
- Knowledge of the jurisdiction of the NYS courts and court procedures
- Familiarity with the rules of the court of appeals.
- The ability to speak clearly and to the point in public.
- The ability to do research independently and to write a legal brief .
- Must have attended a previous YMCA Youth & Government Albany conference as a judicial delegate. Must have intimate knowledge of the jurisdiction of the courts, parliamentary procedure, and court procedures.
- Must have the ability to write a formal decision on a case.
- Should be identified as a Judicial Exemplar or have served as a Justice the previous year.

### **CHIEF JUSTICE**

At the end of the Albany Conference, there will be the opportunity for participants who have had at least two years in the Judicial Program to run for Chief Justice. Because the person filling this position will be in-charge of his/her district judicial program and the entire state's judicial program, this position requires a great deal of time, effort and ability. S/he will be a Senior Presiding Officer of the Albany Conference and the head officer in the Judicial branch.

This officer's work responsibilities are on par with that of Governor. S/he will be responsible for training all Justices' at a November training session in consultation with a Judicial Advisor.

### **QUALIFICATIONS**

1. **CANNOT RUN DURING THEIR FIRST YEAR AS A DELEGATE**
2. Must be elected at the state conference by a majority of the members of the judicial branch.

3. Recognized leadership in their school, community or YMCA.
4. Must have attended at least two previous YMCA Youth & Government Albany Conferences as a Judicial Branch delegate, preferably serving one year as a Justice. (Must have 2 years of judicial experience).
5. Must have intimate knowledge of the State constitution and laws.
6. Must have intimate knowledge of the jurisdiction of the courts, parliamentary procedure and court procedures.
7. Must have intimate knowledge with the rules of the Court of Appeals, State of New York.
8. Must have intimate knowledge of the current problems facing the judicial branch of the government of the State of New York.
9. Must have the ability to research independently and to write a legal brief
10. Must have the ability to speak clearly and to the point in public.
11. Recommended that they have been recognized as a Best or Exemplar Judicial program participant.
12. Must understand how to write a decision.

#### **DUTIES - Chief Justice**

- Organized with good leadership skills.
- Coordinate the distribution of program team cases assignments to district principal Justices under the guidance of the judicial program director Joe Depadilla.
- Must attend all State Steering Committee meetings as the Judicial Branch's official representative.
- Must assist in the training attorneys, clerks and associate justices before district conferences.
- At Albany: preside at all ceremonies of the judicial program; install the Youth Governor and the other senior officers of NYS YMCA Youth & Government in the opening ceremonies.
- In Albany preside at all sessions of the court of appeals and conferences of the judges at which decisions on the appeals are to be reached;
- Coordinate the presentation of the Attorney General's cases before the conference writing the case decision for the same.

#### **Obtaining a case assignment**

Through years of experience we have found the only way to manage this process is to have a single point of contact between the districts and the judicial program. That is always the Chief Justice for the current conference. Prior to the case assignment period beginning you will be given a quota by the district director on how many cases you can request as a district. These are filled as they are received. There are several requirements that must be fulfilled to receive what you want.

The first requirement committed students supply names, years of experience as a lawyer, and year in school freshman – senior

The second requirement is requesting an experience appropriate case. Each year four cases will be used which are denoted Case A, B, C, D in ascending difficulty. Case A is

designed for freshmen or sophomores who are first year lawyers. Case B is designed for exceptional freshman, sophomores with one year experience or new juniors. Case C is designed for exception sophomores with one year experience, juniors with one year experience or new seniors. Case D is for Seniors with at least one year experience and juniors with two years.

So for example if you request a Case A and listed two seniors as lawyers, this request will not be fulfilled. Similarly if you request a Case D with two freshmen, this will not be fulfilled.

We have quotas to make sure our judges have a surmountable case load during the conference. Too many teams and we will not be able to finish all of the arguments. Judicial is not like the legislature, every case must be heard, and they are all heard twice under the current format. If your district requests cases and then later returns them you end up damaging the program in two ways. First some districts always want more cases for their districts, we will not assign the extra cases. This means students are turned away from the program. Second the returned cases wreak havoc with the docket so it is difficult to make sure every student argues. We are cognizant that sometimes students just drop out due to a series of issues leaving their partners understandably reluctant to continue, but request conservatively so you know you will be able to cover your commitment. Sometimes such circumstances afford the opportunity to adjust your teams where a team of three can become a team of two, but in doing this teens need to be prepared where such expectations may be reviewed at your introductory meeting.

Also sometimes we run out of the type of case you want, or the number of cases you want. There are always 56 teams at the beginning of the year, 14 A, 14 B, 14 C, and 14D. When we run out of a type of case, we will always try to give you the next highest case. So if we are out of A's you will probably get at B, unless we are out of them all. Please share all of the appendices with your students as a guide for writing this year's briefs. Helpful hints have been included in the briefs to give you direction in advising your students. Hints are always in italics and should not be included in your student's brief. Remember each team in your district receives a unique **TEAM Number**. **Please include this number on the written submissions, and make your students memorize the number for Albany.** When students do not include this number it becomes difficult to give them credit.

A brief always consists of several sections that all should be included in your student's briefs. The most important section is always the argument. This is the location where the students try and convince the judges in their clients favor. Each case problem has been designed to elicit two or three major issues. The better written briefs outline the issue first and then use the precedent cases to support the argument. Commonly the brief should be four to five pages double spaced.

### **Performing the Oral Argument**

Once the brief is written the students have performed half of the task. The other half is much more difficult. In preparing your students for Albany, the best preparation is creating moot courts to test the student's knowledge of the subject matter. Below are a

few basic questions to get you started. **(Appendix D)** The most important concepts knowing what relief you are seeking, how the precedent cases support your position, and finally how the facts of the case can be argued in your favor.

Each side of a case will be given approximately 10 minutes total to represent their oral argument. Each side will in order present their opening. The remaining time will be used for rebuttal. The attorneys may ask for a certain block of time to be reserved for their rebuttal. They must address the judges, not their opponents directly.

- Petitioner opens the argument (they are the side bringing the appeal – losing side at the first trial)
- Respondent then makes argument. (side answering the appeal – winning side at the first trial)
- Petitioner uses remainder of the 10 minutes to present his rebuttal and conclusion.
- Respondent uses remainder of the 10 minutes to present his rebuttal and conclusion.
- Judge(s) may interrupt at any time to ask for a restatement of the facts, a clarification or a question of law. They may not ask a question of fact.

**Joe DePadilla final note:** If you are not a practicing lawyer, then the skills and concepts are unfamiliar. My first suggestion is to seek help. Regardless of where your school or club is located there are legal resources at your disposal that can lessen the burden. Almost all bar associations have pro-bono committees. These are lawyers who choose to volunteer some of their time assisting in the community. Some lawyers on these types of committees would probably jump at the chance to assist high school students in their pursuit of understanding the law. The key is to get legal help familiar with the appellate process. In law school the skill that your students will be performing is called moot court. This is the term you should use when explaining to program to prospective lawyers you wish to recruit. Additionally many prosecutorial agencies also have community outreach programs. Specifically the District Attorney for New York County (Manhattan) has a very large staff of lawyers who would probably be willing to help student lawyers write briefs and get ready for the conference.

### Possible Schedule for Training

#### September

- Introduce newcomers to the judicial program.
- Distribute literature about the judicial program, including a past case used at Albany, "How to write a Brief," and a model brief.
- Instruct the participants in what to look for in a case (points of law rather than question of fact).
- Ask groups of participants to try a practice brief on the past Albany Case.
- Collect these briefs for reference.

#### October

- Bring students to a law library (either public or private).

- Instruct them on the proper method of searching for information in the law books (symbols, abbreviations, number, what they correlate to). Ask a professional (lawyer, law student, law librarian, and judge) to speak with the students about the judicial system in New York State (the importance and order of the courts, what they do in their profession, etc ... ).
- Use the Appendix material in teaching lawyers how to identify case points, how to write a brief.
- Case assignments will be ready for distribution from your Principal Justice from the Chief Justice in late October.
- Before an assignment may be made, attorneys must be in teams with a specific case type requested.

#### November

- Give them a due date for an individually written brief on the case that they have been working on.
- Return the briefs with corrections so that the participants know what they are doing incorrectly

#### December

- Begin to use oral argument worksheet and brief in development of case argument.

#### January

- Bring in a professional (lawyer or judge) in the field of law to explain the purpose and methodology of debate in an appellate case. Have the participants do a mock argument presentations.
- Again, instruct them in what they are doing correctly and incorrectly.

#### February – March

- Continue to refine case presentations with teen judges where both team members hone their skills.

### **AWARDS**

#### **Best Attorney**

- Qualities needed for the award should be pre-conference preparation, the quality of the brief, the ability to interact with others, knowledge of court procedure and clarity in the expression of ideas and persuasiveness in the presentation of the case. The Justices will evaluate each attorney based on a scaled system (see attached attorney evaluation sheet)
- Decided by secret ballot and majority vote in the judicial branch.
- One award for Best Attorney will be awarded in each courtroom.
- Award winners will be given the opportunity to attend the Spring Leadership Conference.

#### **Best Brief**

- The selection for the best brief will be made from those submitted prior to the Albany Conference.
- The Chief Justice, Associate Justices, and judicial conference staff will make the decision.
- The decision will be kept confidential until the award is presented.

- Criteria for selection would include, but not necessarily limited to
  - (a) structure of the document,
  - (b) objectivity and clarity, and
  - (c) persuasiveness.

## How to Write a Case Brief

### *See sample brief below*

Each attorney team will be responsible for preparing a brief that illustrates the work you have prepared for representation of their client. Below is the actual format used by the New York State Appellate courts.

This packet also contains the 2004 Attorney General case briefed for both sides. **(Appendix C)**. Please share all of the appendices with your students as a guide for writing this year's briefs. Helpful hints have been included in the briefs to give you direction in advising your students. Hints are always in italics and should not be included in your student's brief. Remember each team in your district receives a unique **TEAM Number**. Please include this number on the written submissions, and make your students memorize the number for Albany.

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### Oral Argument Worksheet

Title of Case:

Attorney:     \_\_\_ Appellant           \_\_\_ Respondent

Seven suggestions for proper presentation

1. Decide which issue to stress in your appeal, but use your strongest argument first
2. Anticipate all arguments to be raised by your adversary and answer them
3. Highlight the facts in your brief that might help you
4. If necessary, summarize your opponent's argument for purposes of attack
5. Research closely related cases and use them as precedents to make your argument stronger
6. Know your facts well and understand them
7. Close by stating what you want the court to decide

Facts:

Constitutional Issues:

Strongest Arguments:

<u>Precedent Cases</u>	<u>Basic Legal Issue</u>	<u>Strongest Argument</u>
<u>Decided</u> (if necessary for your argument)		

Closing Statements:

## ATTORNEY EVALUATION WORKSHEET

This form is to be used by the Justices when evaluating the oral presentations of attorneys and will be used in the determination of Best Attorney Candidates. The attorneys will be evaluated under two categories: STYLE and CONTENT. There are 5 levels of criteria for each category and will be scored on the following scale:

**1 = Development need; 2 = Developmental opportunity; 3 = Fully acceptable ability; 4 = Excellent ability; 5 = Exceptional strength**

Name: \_\_\_\_\_

Client: \_\_\_\_\_

District: \_\_\_\_\_

### STYLE

Categories	Points	
Appearance		
Respectful demeanor		
Proper etiquette		
Poise		
Diction		
<b>TOTAL</b>		

Comments:

### CONTENT

Categories	Points	
Persuasion		
Cited Authority		
Ability to answer questions		
Stayed within facts of case		
Asked for relief		
<b>TOTAL</b>		

Comment: