2015 Wagner Competition

Frequently Asked Questions (“FAQ”)

**Question 1:**
In reading the rules, they did not seem to address whether this problem is open- or closed-packet. Could you please clarify?

**Answer 1:**
Open Universe.

**Question 2:**
Please clarify Rule II.5.i. on page 3. It states that: "All cases cited in the briefs must be reported opinions decided on or before December 31, 2014. Citation to unreported or forthcoming cases is prohibited." However, Rule 32.1 of the Federal Appellate rules states: "A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been: (i) designated as "unpublished," "not for publication," "nonprecedential," "not precedent," or the like; and (ii) issued on or after January 1, 2007." The Thirteenth Circuit cites to Kaplan, which is unreported in the Federal Appendix, but may be cited pursuant to the Federal Appellate rules.

**Answer 2:**
The use of the term "reported" in the Wagner rules was to ensure that competitors cite cases that can be easily pulled up using a legal research database. The only cases this rule is intended to prohibit are district court and state court opinions that may exist only in slip opinions and can only be accessed by physically going to the court clerk's office or accessing via Pacer. Citing to Kaplan is therefore permissible because even though it is designated as "unreported," it in fact has been reported in the Fed. Appx. - a reporter owned by Westlaw that only reports unpublished opinions.

**Question 3:**
The brief calls for an "opinions below" section as well as a procedural history portion included in the statement of the case. My team's understanding is that these two pieces would be pretty similar. They wanted to make sure they understood what was being asked for. Is there any way you could help clarify what you expect to be included in each section?

**Answer 3:**
Our brief rules comport with the SCOTUS unless specifically noted otherwise. The contents of each section is further explained on the SCOTUS website.

**Question 4:**
The rules indicate using Bluebook format for the brief. Bluebook suggests we should use the blue pages for citation format, but it seems that the fact pattern was drafted using the white pages (which are more for scholarly/journal writing as opposed to legal/brief writing). Can you please clarify whether the expectation is blue pages or white pages?
Answer 4:
Please note that all citations should conform with The Bluebook as it relates to citing authority within non-academic legal documents.

Question 5:
The issues are reversed between the district court and the appellate court decisions and the order of the questions are based on the order in the appellate court decision. Do you prefer to have the bankruptcy issue discussed first in the brief and oral argument?

Answer 5:
Teams should follow the order of the questions on cert to the Supreme Court.

Question 6:
Are we to consider the fact that the employees have only filed a proof of claim for back wages and have not proceeded with any other adversarial proceedings to seek relief?

Answer 6:
Teams are free to make any arguments that they feel will be most useful for their brief. However, we encourage the teams to stay as close to the facts as possible.

Question 7:
We understand that unpublished cases may not be used in the brief. May they be used in oral argument?

Answer 7:
Teams should not use unpublished cases for their oral arguments.