

**Associated Students Judicial Council
University of California Santa Barbara
Judicial Council Hearing Guide**

I. Before Coming to a Hearing

Before coming to a hearing it is important to make sure that you adhere to ALL deadlines. Failure to do so could result in a postponement or dismissal of your case. Seven copies of the case brief are to be filed **at least 24 hours** prior to the hearing. **RESPONDENTS AND PETITIONERS MUST SERVE EACH OTHER WITH THEIR OWN BRIEFS.** It is **not** the responsibility of the Judicial Council to serve the parties with the others brief.

II. General Procedure:

Judicial Council proceedings follow a basic trial procedure with an opening statement, witness examinations and a closing statement. The Petitioner always presents his side of the case first since he/she is the one making the case to the Council. The Petitioner makes the first opening statement and conducts his/her direct examinations first. After each direct examination the respondent has the chance to cross examine the witness. Once all the petitioner's witnesses have been called the respondent begins the direct examinations of his/her witnesses, who are cross examined by the petitioner. Once all the witnesses have been called and all the evidence has been entered into the record the petitioner makes his closing statement, followed by the respondent. Once the respondent is done with his statement the Council will move into executive session and dismiss all participants. A decision will be reached and an opinion issued no later than one week after the hearing

a) Opening Statements

An opening statement is a basic summary of the argument that you will make throughout the proceedings. This is, by no means, your full and complete argument, but it's a helpful road map of what you will show through your evidence and witnesses.

b) Direct Examinations

This is the technical term for asking questions of your own witnesses. The object here is to weave a story through the witnesses' testimony. The key part to this portion of the hearing is to ask open ended questions. Don't lead your witness and try to ask them questions and allow them to explain themselves. That being said it is also important to have foundation for their testimony (which might require a yes or no question, but if it does, make sure that it ISN'T leading!)

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c) Cross Examinations

This is where the opposing attorney gets to ask questions of your witness. (or you get to ask questions of their witness) The point of a cross examination is two fold, the first is to try and discredit the testimony of a witness. The second point is to get a witness to concede to (at least) the possibility that your argument is true. Having said this you must also keep in mind that the witness will probably not be willing to cooperate. It is vital that you keep your cool. The good cross examiner asks only leading questions and knows what he needs to ask to prove his point. The rule of thumb is that you never ask a question that you don't already know the answer to (but this might not be the case in this setting!)

d) Closing Statements

The closing statement resembles an opening statement in most respects, except that it involves more of the testimony that was heard during the hearing. Testimony and evidence not admitted in the hearing CANNOT be used in a closing statement. Any evidence addressed during a closing that was not brought up during the regular course of the hearing will be disregarded by the council.

III. Objections

The following is a list and explanation of objections that will be entertained by the Chair of the Judicial Council. Be familiar with these objections as you may be asked to explain why you are making it. Also if an objection is made by the opposing party you may ask to be heard, allowing you to make an argument as to why that particular objection should be overruled. A final note, don't overuse the objections, there is a line between making valid points and just making objections to slow things down.

a) Relevance

This is a simple enough objection to make. You use this objection when a question is not relevant to the issue at hand. Asking what a witness had for breakfast on Tuesday May 38th has no relevance in a case dealing with alleged Election tampering (unless the breakfast cereal as a partner in this crime.....)

b) Opinion/Speculation

. Opinions the witness's thoughts on an event or person, generally derived from their observations. Because of the nature of Judicial Council and Associated Students some opinions might be allowed into evidence, but this is

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determined by the issue at hand and the circumstances surrounding the issue. The difference between Opinion and Speculation is that an opinion is someone's feelings and thoughts while speculation is deriving a fact from someone's observation. An example of a valid opinion

c) Compound Question

Don't ask a question with an "and" or an "or" in it. These questions force the witness to confirm or deny two statements when there is a possibility that one may be true and one may be false. The easiest way to avoid this objection is to not use and/or in your questioning. If you need a witness to confirm two facts, ask two questions.

IV. Evidence

As much as we all would like, the Judicial Council can't go out and find everything. We have the AS legal Code to work with, but outside of that our decisions are based on the evidence that is provided to us (whether in the form of actually evidence or witness testimony) Judicial Council cannot consider anything that was not entered into evidence.

An important note about witnesses: If a witness cannot attend a hearing for any reason that witness may submit a typed and signed statement to the Judicial Council. These statements must be handed by the witness to a member of the Judicial Council or their designate. This is to establish a chain of evidence for the testimony as well as to establish the veracity of the written statements. Failure to follow this procedure will result in the exclusion of the statement from the hearing, thus preventing it from being entered into evidence.

A final note, even if evidence is attached to a Petition to hear a case, the evidence must formally be admitted into evidence during the hearing. To do this simply label the evidence, Identify it to the Council and ask that it be entered into evidence. Petitioners should label their evidence with letters (such as Exhibit A, Exhibit B, etc...) and respondents should label their evidence with numbers (Exhibit 1, Exhibit 2, etc...)

V. Motions

The list of acceptable motions to make is found in *The By-laws of the Associated Students*, Article VII § 3 Subsection C part 6. Below is an explanation of the different motions and how they are used.

a) Motion to Dismiss

The Motion to Dismiss is, in essence, asking the council to dismiss the case due to a lack of evidence or to the absence of an infraction of the *Legal Code*.

Russell McMillan, Chair
Cerita Bickelmann, Igor Hiller, Chris Rogers, Andrew Trindle, Members

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The Motion to Dismiss is entered before either side beings presenting their case.

b) Motions in Lieu of Either Witnesses or Other Evidence

This is used when either evidence or witnesses cannot be preset at the hearing. If evidence is to be submitted, or witnesses on either the petitioner or respondent's side cannot be present for the hearing the council will evidence or a signed witnesses statement to be submitted at least 24 hours before the hearing AND attached to the case brief. If a witness statement is to be submitted, it must bear the signature of the witness and be submitted by the witness to a member of the council. The council will rule on the motion and show the evidence to both parties during the hearing. Any witness statements that are submitted and accepted will be read aloud during the hearing. There will be no cross-examination of the statement. The council can ask clarifying questions as needed.

c) Motion of Summary Judgments

A Motion of Summary Judgment basically asks the Council to render a judgment based on the evidence presented in the petition and the case briefs submitted. The Council will issue a tentative ruling if the motion is accepted, and then allow for comment before the final decision is rendered.

d) Motion of Continuances

The Motion of Continuances is basically asking the Council to postpone or continue the proceedings at a later time. Generally this motion is used to postpone a case for a period longer then a day. The most common reason for using this motion would be insufficient time to prepare. This motion must be filed in writing at least 24 hours before the hearing.

If you require a recess during the proceedings (of a time not exceeding 20 minutes) then you may ask for a recess during the proceedings at an appropriate time (after a witness has been dismissed, or an argument has been concluded)

e) Motions to Substitute

With submitting your briefs, the petitioner and respondent are establishing who and what will represent their case. A motion to substitute allows either party to charge, with council approval, representatives,, witnesses, or paperwork that the party believes would clarify and further the case. Credentials of the person substituting must be established to the court and there is no limit to how many times you can substitute information as long as there is consent from the council.

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f) Demurrers

This allows the opportunity to respond to a complaint filed, dropping the case altogether on the grounds that the complaint has no legal basis. The complaint itself can be true, and the court will decide whether the complaint has legal standing and should go to a hearing. Normally, even with a sustained demure, the council will give a period of revision, allowing the party to amend their statements and take the complaint to the council. Failure to amend the complaint to provide a legal basis, in a timely fashion (within 48 hours), will cause the court to dismiss the case entirely.

g) Other Administrative Matters?

Yes, it's a lot of information, but it's nothing too hard to remember. Close your eyes, take a deep breath and take a moment to think.

Good luck!