

2023 National Trial League – General Rules



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1. Team Composition

A. There is no limit to the number of students participating on a team. They must, however, attend the same participating law school. Team members may be added/dropped at any point during the Fall semester. Team members competing in the playoffs and championship rounds must have been added to the team during the Fall semester and participated as an advocate in at least two rounds of competition during the Fall semester.

For the purposes of these rules, a law student is a person enrolled during the semester or quarter of the competition and is performing the role of attorney or witness in any round. Only candidates for a J.D. may participate in the National Trial League. LLM students are not eligible.

B. Any of the registered team members can serve as an attorney or be a witness for each trial. The team members serving as attorneys or witnesses can rotate for each trial throughout the semester. Meaning each team member can serve in either role or roles can be designated by each time.

C. In every trial, two team members will serve as attorneys. Teams may use other team members, or other non-team member law students as witnesses, i.e., only candidates for a J.D. at the same sponsoring institution may be serve as witnesses.

In cases in which each team may call only one witness, each student attorney must perform one direct examination or one cross examination, and one speech (either opening or closing)

In cases in which a team calls more than one witness: (1) Each student attorney on the team presenting the witnesses must conduct at least one direct examination. (2) With respect to the opposing team, each team member must conduct at least one cross-examination. When teams present multiple witnesses, as is the case when teams present only one witness, each student attorney must also conduct one speech (either opening or closing).

An attorney may only object to a witness examination if she is also examining that witness and may only object to a speech if she is performing the opposing speech (e.g., only the person crossing the defendant may object to the defendant direct, and only the attorney who opens for the defense may object to the prosecution opening).

D. Each team may designate one of their team members as a trial technician responsible for technology needs, such as display of exhibits.

E. Subject to these rules, participating teams determine which team members perform the specific roles in each round, and those determinations may change from trial to trial.

F. Each participating law school shall have an advisor/coach with a J.D. available from the coaches meeting until the conclusion of all trials. Should a team not comply with this requirement, the team will be permitted to compete, but will automatically forfeit all rounds, will not be permitted to advance to the playoffs, and will not be permitted to protest or defend a protest.

G. Each team will receive a unique identification number. Teams should use their number, and never their school name, when identifying themselves to judges.

H. Before the tournament, teams will announce the gender pronouns of their witnesses and those identifications will be provided to all teams.

2. Schedule

A. We will announce the dates and times of the bi-weekly trial competitions. Following the coach's meeting the schedule reflecting each team's weekly opponent will be posted on the team website. For the 2023 season, all trials will take place every other Tuesday night starting the week of August 29th, 2023 and conclude the week of November 7th, 2023. Trials are scheduled to begin at 6:00pm, New York time. The date and time of given trial may be change, subject to League approval.

B. The initial case problem will be released in early August of 2023. The remaining problems will be released approximately at least a month before the date in which that problem will be used in the competition.

C. For each case problem, please report case errors or questions to Todd A. Berger (taberger@law.syr.edu), no later the Friday prior to that specific case problem trial competition. After reviewing the errors and questions for each case problem we will release a revised version of the case. In an effort to provide finality to all teams as they prepare, issues raised after the deadline stated above are unlikely to be addressed.

D. At the coach's meeting, teams will be assigned their conferences. Teams will select their conference when their team is selected based on the random spin of a wheel. Teams not present will be automatically assigned to the opposite conference. Each team is guaranteed that it will serve in the Plaintiff/Prosecution and Criminal/Civil Defense role at least three times throughout the semester. In the week 7 matchup, the higher ranked team will pick which side they wish to argue either Plaintiff/Prosecution or Criminal/Civil Defense. See Section 5 (A).

3. Case Problems

A. The case problems used for this trial league are copyrighted and may not be used for purposes other than its intended use without the express written consent of the author. Teams may not download any portion of this case problem to any website without the express written approval of the author.

B. The case problems will be distributed via email and posted on the National Trial League Website.

C. The persons, organizations, and events depicted in these problems are fictional and were prepared solely for the educational exercise of this tournament. Any resemblance to actual persons, living or deceased, is unintentional and purely coincidental.

D. The Federal Rules of Evidence and the Federal Rules of Criminal and Civil Procedure will control unless stated in the problem or otherwise modified by the rules. Otherwise, no legal authorities may be cited during trial except those included in the case problems.

E. All case materials will be treated as originals and authentic. All handwriting and signatures should be considered authentic. All documents that appear to have been sent to, or by, a witness are to be considered as having been sent or received by that witness. Witnesses must authenticate exhibits and materials with which they are familiar.

F. The case will include housekeeping instructions and a pretrial order.

4. Judges/Evaluators

A. Members of the bench and bar will serve as presiding judges and evaluators.

B. The host committee guarantees at least one evaluator per round. If trial has two evaluators, their scores will be averaged. In the event this creates a tie, the presiding judge's ballot will break the tie with an additional point.

C. Evaluators will assign a score of 1-10, with 10 being best, to each of four performances: opening statement, one direct examination, one cross-examination, and closing argument. Each team can score a maximum of 40 points per trial. To resolve any ties, evaluators will be asked to identify the team that had superior advocacy skills. Their answer to that question will count if and only if the ballot is otherwise tied.

D. The evaluator orientation will be conducted online, and a recording will be made available to all teams upon request

E. Each judge will also select a Best Advocate for each round of the competition.

5. Conduct of Trials

A. Unless otherwise modified by the fact pattern or allowed following a specific request being made to the presiding judge, each party shall have 45 minutes to present its case. This limit includes time spent on examining witnesses, presenting an opening statement or closing argument, and reading deposition testimony or other evidence into the record. It does not include time spent arguing objections; the clock stops for objections. Only 5 minutes, separate from the 45 minutes, will be given to each team in the beginning for housekeeping and making and responding to motions. Any other motions made may not exceed 5 minutes total. The presiding judge in his/her discretion may call for a limited response.

B. Zoom Rules

1. The host committee will coordinate all trials by Zoom.

a. The host committee will provide a bailiff for each trial.

b. To the extent teams choose to meet-and-confer before trial, the host does not coordinate such conferences, though the Host will make teams' contact information available. Teams should avoid using the Zoom courtrooms for any pretrial conferences, as judges and evaluators may arrive early.

2. Teams' Setup

a. Witnesses must be seated unless given permission by the presiding judge to stand.

b. Teams may not have on screen (1) anything that identifies their school, state, region, or demonstrates any affiliation to an organization (whether or not associated with a school), or (2) trophies or any other indicia of competition success.

3. Signing in to Zoom

a. Teams will receive a Zoom link to their trials. All team members must sign in at least 10 minutes before trial.

b. The host committee will create YouTube links for each round of the competition and those links will be provided to each team. Teams may provide that YouTube link to family, friends, and classmates so that they may observe the trials in which their team is participating, but observers should not be given the Zoom link- they can watch via YouTube. Only trial team members competing that night may enter through the Zoom link.

4. Naming

a. Attorneys' screen names must identify their party, team number, and name. For example, the screen name is "Pros-106-Jones."

b. Witness screen names must identify only the party and the *witness character's* name. For example, if Steve Carell plays defense witness Michael Scott, his screen would be, "Def-Scott."

c. If teams have a team member acting as a trial technician, that student should never appear on screen. Just in case, though, that student's screen name must state their role and party: for example, "Def-Tech."

d. Observers will never appear in the Zoom room because all rounds can be watched on YouTube. If in the event of technical difficulties on YouTube and an observer is admitted into the Zoom room in an abundance of caution an observer's screen name should identify themselves as an "Observer" and then indicate the person's name. For example, "Observer - Dan."

5. Audio and Video

a. Attorneys must mute their audio except when performing. For example, a prosecutor should mute her audio during the defense opening and during the defendant's direct examination.

b. During appearances, housekeeping, and motions, the presiding judge and all attorneys generally will be visible.

c. During opening statement and closing argument, the attorney speaking will be visible, unless an objection is raised, in which case the presiding judge and the objecting attorney will also be made visible for the duration of any discussion of the objection.

d. During examination of a witness, the presiding judge, the testifying witness, and the two attorneys who will examine the witness will be visible.

e. Team members acting as trial technicians should mute their audio and disable their video at all times.

6. Technical Difficulties

a. Internet interruptions are inevitable. For momentary lapses or lags, remedies are unnecessary.

b. If a team has a significant technical problem, please pause the trial and notify the bailiff immediately. If the bailiff is unable to resolve the issue, or if the bailiff is having a technical difficulty, contact the host immediately.

c. Judges will be asked not to submit their ballots if, for whatever reason (including problems with their Internet), they have not had a meaningful ability to evaluate each scored function of the trial.

7. Recording/Live-streaming

a. Teams may not record their trials.

b. The host committee plans to livestream all trial competitions to YouTube.

c. No video or audio recording by teams or spectators are permitted. A student's decision to participate in the tournament constitutes consent to be recorded on videotape or in photographs. As a condition of publication and for no monetary compensation, this consent grants the host committee, and all of its law schools, the nonexclusive worldwide rights to reproduce, distribute, and sell any visual material in connection with the student's participation, in whole or in part, in any media, as part of a course book or any other publication and to license these rights to others. Consent also grants the host committee, and all of its law schools, the right to use a student's name, voice and image in connection with the published tournament materials.

C. Course of the Trial

1. Depending on the case problem, the trial will be treated as either a bench or jury trial. The presiding judge shall rule on all issues throughout the trial, but there will be no ruling by the presiding judge that precludes the trial from being presented to conclusion.

2. The case problems may include charges and jury instructions. Teams may not amend, object to, or propose changes to the charges or jury instructions during trial unless otherwise stated in the specific fact pattern.

3. Trial will proceed as follows ("prosecution" and "plaintiff" are interchangeable):

a. The presiding judge and the scoring evaluators will enter the room, and a bailiff will open court and confirm that judges have no conflicts.

b. The attorneys state appearances.

c. Motions in Limine will be heard if brought by a team.

d. The prosecution opens, and then the defense opens.

e. The prosecution will call their witness.

f. The court recesses. The parties may not seek a recess longer than five minutes.

- g.** The defense will call their witness.
 - h.** Unless provided for by stipulation, no party may present a rebuttal case.
 - i.** The court recesses. Recess time is five minutes, unless given more time by the presiding judge.
 - j.** The prosecution closes, the defense closes, and the prosecution may give a rebuttal if time permits. Rebuttal is limited to the scope of the defense closing. The prosecution need not ask to reserve rebuttal time; it has the whatever time remains, up to three minutes.
 - j.** The evaluators complete and submit their ballots.
 - k.** Once the host has confirmed that the ballots have been received, the evaluators provide brief feedback.
- 4.** The bailiff will track time for both teams. If for some reason a bailiff is unavailable, the bailiff's responsibilities will be assumed by the presiding judge.

D. Evidence and Demonstrative Aides

- 1.** The only items that may be offered into evidence during trial are the exhibits and materials included in the case problem.
- 2.** The presiding judge will have an electronic notebook of all case materials. Teams should not assume that the other evaluators will have access to such materials. If teams want jurors to see something, they must display it on camera or via screen share. Teams may not present documents to judges in any other manner (e.g., email).
- 3.** Teams may use any demonstrative aids they wish as long as the demonstrative aids are shown electronically and disclosed to the opponent at least 30 minutes before trial. For example, teams may use PowerPoint slides that display a timeline or a photograph of a generic pair of boots. They may not, however, hold up a pair of actual boots on screen.

Additionally, teams may use demonstrative aides created for use during closing argument that are based on the actual trial testimony. Of course, those aids cannot be created before trial because they are based on the witness's testimony at trial itself. However, to ensure the rules regarding team created exhibits are consistent, those exhibits must be shown to opposing counsel (in a break-out room or via email) prior to the start of closing arguments.

E. Communication

1. During trial, team members may only communicate with each other, the opposing team, the judges/evaluators, and tournament officials. Teams may only communicate with their coaches during a recess.
2. Once trial begins, students performing as attorneys may not communicate with witnesses except during recesses (and publicly, of course while the witness is testifying).
3. This communication restriction applies from the moment the judges appear on screen until the end of the trial. If the teams confer with one another before trial, the coach-communication restriction begins then.

F. Witness Testimony

1. Necessary Inference Rule: direct examination, a witness is limited to the material facts contained in her witness statement, any matters judicially noticeable under Federal Rule of Evidence 201, *and any necessary inferences*. A witness statement is the witness's affidavit, expert report, deposition, custodial interrogation transcript, etc. A necessary inference is a fact which must be true if the facts in the witness statement are true. This is much more limited than a "reasonable inference rule." Judges will be instructed to heavily penalize attorneys who engage in material invention of fact. The Necessary Inference Rule will be strictly enforced. Violators run the risk of having points deducted, ballots lost or rounds forfeited.

Example # 1: If a witness is a police officer, it is a necessary inference that s/he attended a police academy, however, the witness cannot state that they graduated at the top of their class at the academy (unless the witness states that in the fact pattern), as that may enhance the credibility of the witness and/or otherwise presents testimony not contained in the fact pattern.

Example # 2: An eye witness states, "I saw a 1965 Ford Mustang heading north on Summit Avenue, run the red light, and T-bone a 2018 Acura heading west through the intersection." Necessary inferences would include the witness having the knowledge and ability to identify the make and model of the cars, and testifying that the front of the Mustang hit the driver side of the Acura. On the other hand, while reasonable inferences, the witness could not testify that the Mustang did not brake or slow, that it was a bright, sunny day; or that the witness called 911.

Often, questions arise as to whether a cross-examiner may question a witness about non-events that are based on the fact pattern materials. For example, if a witness is a police officer, who stated that s/he conducted an examination of a vehicle, and the record is completely silent on whether the officer found any blood or DNA, the cross-examiner is permitted to question the police officer on his/her failure to observe/collect blood or DNA samples from the car. Under these circumstances, it

would be proper to ask, “you never observed any blood” or “you never collected any DNA samples.” In response to those questions, the witness is not permitted to invent facts by saying s/he did observe blood or s/he did collect DNA. Instead, the witness should respond by saying, “no I did not” or “I don’t recall.” Please note that this rule does not give license to a cross-examiner to question the witness about technical details or statistical analysis that is not contained in the fact pattern, such as the reliability of DNA, the scientific theory of DNA, etc. In this example, it is not permissible to ask the police officer, “you’re aware that a margin of error for DNA tests can be as high as five percent.” No objections shall be made that the opposing team is going “outside the record,” except during closing arguments. Instead, any breach of the Necessary Inference Rule shall be addressed by means of Impeachment (see below). The presiding judge should NOT entertain the objection that the question calls for information “outside the record.” An answer to a question is not objectionable on the ground that it is outside the scope of the record.

2. Impeachment: Impeachment is permissible when a witness changes or alters any prior statement they made. The term “statement” includes depositions, grand jury testimony, affidavits, affirmations, statements, and/or reports the witness prepared. In addition, impeachment is permissible when a witness testifies to a fact outside of the record. This is known as impeachment by omission. Should a witness be impeached by omission, the witness **MUST** admit, if asked, that the facts they have testified to are not in their statement. It is impermissible for a witness to say that they were not asked about those facts in their statement. If asked, the witness should simply answer, “I did not say that in my deposition.” If the witness fails to do so, it is a **VIOLATION** of the rules. The judges will be instructed concerning the significance of this form of impeachment in the mock trial context, and they are likely to account for unfair additions to the record when scoring of the witness’ team.

3. On cross examination, witnesses must be responsive to the questions and respectful of their opponent’s time limit. *Where the truthful answer to a question is simply yes or no, that should be the answer.* Excessively long answers are bad faith behavior, and judges will be instructed to penalize teams with “advocate witnesses.”

4. Because witnesses cannot be recalled, cross-examination is not limited to the testimony on direct examination. This rule does not include re-cross examination.

5. Redirect examination is permitted.

6. Re-cross is permitted only if (a) to impeach the witness as to a contradiction or invention testified to on redirect examination and (b) the attorney seeking to re-cross first obtains leave to do so from the presiding judge upon an offer of proof.

7. Other than what is supplied in the problem itself, there is nothing about the background information of any witnesses that would bolster or detract from their

credibility. Teams may not use the characteristics of the students portraying the witnesses to bolster their cases (e.g., “You saw how small the defendant is. Could she really have moved that 250-pound body?”).

8. Witnesses may NOT take any papers or other aids with them on the witness stand. This does not preclude an advocate from refreshing the recollection of a witness or using exhibits, insofar as the same is consistent with the rules of evidence.

9. Objections and objection responses shall be BRIEF, limited to the legal basis, and applied to the specific facts of the case. Advocates should not make frivolous objections or use excessive time to argue or respond to objections. While the time consumed by objections is not charged against either team, the presiding judge, in his/her sole discretion, may order time charged against any team that makes frivolous objections or uses excessive time to respond to objections. The presiding judge and evaluators shall be instructed that they can deduct points from anyone that they deem to be making frivolous and/or excessive objections and/or motions. Beyond the record shall not be entertained as an objection.

6. Protests

A. Protests are a last resort and discouraged. Teams must attempt to resolve the dispute during the trial with their opponent before lodging a protest.

B. All protests should be lodged as soon as possible and may be lodged no later than ten minutes after the conclusion of the trial in question. All protests must be lodged by coaches. The conclusion of the trial means the moment the judges dismiss the competitors. Notification should be made by text message or phone call to ensure timely notification. Before each trial begins, teams will be given the name and contact information of the person(s) with whom they must lodge any protests.

C. The protest committee will evaluate if any offense has been committed and, if so, the appropriate remedy. The protest committee, which may consist of a single protest judge, will be put together by the host school and will avoid conflicts of interest.

7. Teams Conferences/Advancing to Playoffs

A. Teams will be divided into conferences (a red and blue conference). Within each conference, teams will compete in a round-robin format. Accordingly, each team will compete once against every team in their conference. As a result, five of a team’s seven rounds will take place against teams from the same conference.

Each team may compete against a team from the other conference. One cross-conference match will be drawn at random and may occur at any point during the semester of competition.

B. In week 7, the higher ranked team will be choose their side of the problem.

C. Following the conclusion of week seven matches, teams will once again be ranked 1-12 based on win/loss record and then applicable tie breakers. The top four overall seeds advance to the playoffs.

D. For the purposes of determining conference standings, and overall ranking, teams will ranked using the following criteria, [A] win/loss record [B] Point Deferential; and [D] Total Points

E. At the conclusion of the season, a regular season champion will be crowned. Additionally, the highest ranked team that is not the regular season champion will be crowned champion of their respective conference.

F. A League MVP will be awarded. This reward is given to the student who received the highest number of best advocate votes during the regular season.

G. The playoffs are a four-team round robin. In the first round of the playoffs, the team with the highest overall rank will decide which party it wants to represent.

The two highest ranked teams, using the same scoring criteria used during the regular season, will advance to the championship round. The preliminary rounds of the playoffs may feature one judge per round but may feature more. The championship round will consist of more than one judge.