

# RULES OF THE 43rd ANNUAL NATIONAL TRIAL COMPETITION



Sponsored by:

Texas Young Lawyers Association  
and  
American College of Trial Lawyers

Austin, Texas  
April 4-8, 2018

© 2013 TEXAS YOUNG LAWYERS ASSOCIATION

## **Article I. General**

- 1.1 The National Trial Competition (NTC) was created to stimulate student interest in developing trial advocacy skills and to encourage law schools to teach trial advocacy skills.
- 1.2 The NTC is sponsored by the Texas Young Lawyers Association (TYLA) and the American College of Trial Lawyers (ACTL).
- 1.3 Competition Rules
  - A. These competition rules apply to the NTC regional competitions and the national competition.
  - B. Requests for interpretation of these rules should be sent in writing to the NTC Coordinator, Bree Trevino, at [btrevino@texasbar.com](mailto:btrevino@texasbar.com). The TYLA will issue a written response to each inquiry. All participating teams will receive a copy of the question and the response.
  - C. The NTC chair(s) and the NTC rules sub-committee, in their sole discretion, will interpret these competition rules, and their decisions are final.
  - D. Supplemental Rules - The NTC chairs(s) and the NTC rules sub-committee, in their sole discretion, may create additional rules to address situations not presently covered by these competition rules.
- 1.4 Professional Conduct - The conduct of all participants in the competition, including team members and coaches, will be governed by the standards set out in the ABA-Model Code of Professional Responsibility and the ABA-Model Rules of Professional Conduct. One team competing in the national competition may be awarded with a professionalism award.

## **Article II. Administration**

TYLA will administer the regional competitions and the national competition through the NTC regional hosts, the NTC committee, and other designee(s).

## **Article III. Teams**

- 3.1 A team must consist of two or three law students attending the same ABA-accredited law school. For the purpose of these rules, a law student is a person enrolled in law school during the semester or quarter of the regional competition. Only students who are candidates for a J.D. or L.L.B. degree may compete.
- 3.2 As directed by TYLA, each team entering the competition must send an entry form and the applicable entry fee to the TYLA's office on or before November 17, 2017. Entries received after November 17, 2017 will be accepted only with the written approval of the TYLA and the NTC chair(s).
- 3.3 Each ABA-accredited law school may enter one or two teams in the regional competition. Law schools must compete in their respective regions unless otherwise directed by the TYLA and the NTC chair(s). The TYLA and the NTC chair(s) reserve the right to reassign schools to different region in order to equalize the number of participating teams in each region.
- 3.4 Team members may not be substituted, except for exigent circumstances, such as death, severe illness, or other uncontrollable and unforeseeable circumstance, and two members must participate in each trial (*see* Section 7.1). A team must obtain written approval of the TYLA to substitute a team member after the regional competition.

- 3.5 Each team will be randomly assigned a number prior to the beginning of the regional and national competitions. This will be the sole method of identifying a team during the competitions. Participants and coaches may not divulge the names of their law school directly or indirectly to the judges or witnesses.

#### **Article IV. Competition Problems**

- 4.1 The TYLA will distribute a regional competition problem and a national competition problem. The problems may include pleadings, witness instructions, witness statements, and other information, discovery, and materials that the TYLA may deem appropriate.
- 4.2 The Federal Rules of Evidence and either the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure will apply to the regional problem and the national problem unless otherwise stated in the problems or otherwise modified by the NTC chair(s). In addition, teams may argue case law to support their motions and evidentiary issues.
- 4.3 All witness statements, depositions, photographs, diagrams, and other material included as part of the problems shall be deemed as originals and authentic. In addition, all signatures are authentic, and 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. However, nothing in this rule precludes the problems from including different instructions.
- 4.4 Counsel may use only those exhibits provided in the problems. No other evidence or audiovisual aids, other than demonstrative evidence, will be allowed. If a regional host decides to enlarge two exhibits, the exhibits chosen shall be voted on by the participating schools in the region. Jury instructions may be enlarged as one of the two exhibits, if so chosen by the participating schools. Two exhibits will be enlarged for the national competition. Teams may not enlarge additional exhibits for either the regional competition or the national competition. Teams may mark on enlarged exhibits only if: (1) any marking can be removed easily, e.g., dry erase markers; (2) the team marking on the exhibit is willing, upon request by the opposing team, to erase any markings made; and (3) the marking team agrees not to offer the marked exhibit for admission into evidence.
- 4.5 The current regional problem and national problem are copyrighted by the TYLA and may not be used for purposes other than their intended use without the express written consent of the TYLA.

#### **Article V. Regional Competition**

- 5.1 The TYLA will assign law schools to a particular region and will designate a regional host law school. If a law school in a region does not volunteer to serve as the regional host, the TYLA may choose a regional host, or the teams in the region may not be able to compete in a regional competition.
- 5.2 A regional host, in consultation with the TYLA, will determine the dates and place for the regional competition and will notify each participating law school of the selected dates and other relevant information.
- 5.3 The regional competition may be a double elimination or a preliminary-break competition as determined by the regional host after consultation with the TYLA. The regional host, in consultation with the TYLA, must determine the competition format and it must be communicated to all teams prior to the first preliminary round. The advancement and seeding of teams from preliminary rounds to advanced rounds shall be determined as follows: (1) win-loss record, (2) number of ballots won, (3) total point differential, and (4) total points.
- 5.4 The regional host shall determine pairings and byes, if any, by lot. Two teams from the same law school may not compete directly against one another unless they are the only two teams remaining in the regional competition.

- 5.5 All witnesses and bailiffs should be supplied by the regional host. Witnesses made available for each team will be selected by lot from the witness pool. Nothing prohibits the regional host from using witnesses from other schools, but nothing in this rule compels the use of witnesses from other schools.
- 5.6 The top two teams in the regional competition will be invited to participate in the national competition.
- 5.7 A Regional Host Handbook and Appendix will be provided to each regional host in order to provide additional guidance for the regional competition.

## **Article VI. National Competition**

- 6.1 The national competition will be held in Austin, Texas, April 4-8, 2018.
- 6.2 Each team will argue three preliminary rounds. The TYLA will assign sides and pairings for the first two preliminary rounds. The pairings for the third preliminary round will be power-matched.
- 6.3 Eight (8) teams will advance to the quarterfinal round. All undefeated teams will automatically advance. Teams will be seeded as follows: 1) win-loss record, 2) number of ballots won, 3) total points differential, and 4) total points. Pairings for the quarterfinal round will be power-protected. The winning teams of the quarterfinal round will advance to the semifinal round; the winning teams of the semifinal round will advance to the final round; and the winning team of the final round will be declared the national champion.
- 6.4 Teams from the same law school will not compete directly against one another unless they are the only two remaining teams in the competition. In addition, and to the extent possible, the following circumstances will be considered when pairings are made. First, the same teams will not compete against each other during the three preliminary rounds. During the advanced rounds, the same teams will not compete against each other on the same side of a case. In other words, if team A and team F previously competed against each other and A was the defense, then A and F can compete again, but F must be the defense. Second, in those circumstances where a school has two teams at the national competition, teams should not face the second team from a school were the first team saw the same side of the case. The NTC committee reserves the right to alter or amend pairings, or not, or to take other actions to address these issues in the most equitable manner possible under the circumstances.
- 6.5 The TYLA will provide witnesses and bailiffs for the national competition.
- 6.6 Prior to the start of the national competition and at any point during the national competition, the TYLA reserves the right to make changes or additions to the national problem. The participating teams will be furnished copies of changes in advance of the start of the round.

## **Article VII. Conduct of Trials**

- 7.1 Two members must participate in each trial. If a team has three members, the third may not sit at counsel table or communicate with the two participating team members during the course of a trial. One team member must make an opening statement and the other team member must make the closing argument. Each team member must conduct one direct examination and one cross examination. The team member conducting a direct examination will make objections to that witness's cross examination, and the team member who cross-examines a witness will make objections to the witness's direct examination. Team members are not allowed to waive any scored portion of the trial.

## 7.2 Time Limits

- A. Each team will be allocated 75 minutes, exclusive of time spent on motions and objections, to present and argue its case. The burden for the effective use of time is on each team.
- B. Each team will be allowed a total of 15 minutes to confer with its witnesses before the commencement of a trial, referred to as the “woodshed” session.
- C. Presentation and argument of pretrial motions shall be limited to a total time of 16 minutes divided equally between the parties as follows:
  - (i) the prosecution/plaintiff shall have four (4) minutes to present any pretrial motions;
  - (ii) the defense shall have four (4) minutes to respond to the prosecution's (plaintiff's) motion(s);
  - (iii) the defense shall have four (4) minutes to present any pretrial motions; and,
  - (iv) the prosecution/plaintiff shall have four (4) minutes to respond to the defense's motions(s).
- D. Teams may make motions after the opening statement, e.g., a motion for a judgment as a matter of law, but the total time for all motions may not exceed five (5) minutes. The presiding judge, in his/her sole discretion, may call for a limited response.

## 7.3 Motions

- A. Pretrial
  - (i) A Motion in Limine may be presented, but it must be made orally and not in writing. The presiding judge will be instructed that he/she may rule on any motion(s) or may defer a ruling on the motion(s).
  - (ii) An oral motion to exclude witnesses or "invoke the rule" may be offered. The presiding judge will rule on the motion, but in no event will any witness or other person be required to actually leave the courtroom.
  - (iii) The regional host or the NTC chair(s) may direct all participating schools to make no pretrial motions because of time considerations. The decision of the regional host or the NTC Chair(s) is final.
- B. During Trial - At the appropriate time during the trial, either party may move for a motion for judgment as a matter of law and may receive a response to the motion; however, the court must summarily deny the motion in all instances. Time limits are governed by section 7.2(D) above.

## 7.4 Witness Testimony

- A. Each team must call two witnesses. A witness may be called only by the directing team and may not be recalled by either side. Neither side may call a witness of the other party.
- B. A team may prepare written questions and answers to give to a witness during the woodshed session. All preparation materials must be collected from the witness at the end of the session. After woodshedding, the team members shall not confer with any witness at any other time for the purposes of preparing testimony with the exception of briefly (60 seconds or less) advising their witness of the effect, if any, of the Court's pretrial rulings

prior to opening statements. Advocates must obtain pre-approval from the Court to advise witnesses with regard to pretrial motions.

- C. Witnesses may testify as to reasonable inferences drawn from the case material on non-material facts, such as a witness's background. For example, it is reasonable for a witness playing a police officer to infer that he/she completed a police academy.
- D. During the presentation of their cases, team members and their witnesses may use only the facts contained in the problem, and team members are prohibited from enhancing their position by presenting testimony about material facts not contained in the problem. For example, if the record is silent, it is not a reasonable inference for a witness playing a police officer to testify that he/she finished at the top of his/her class at the police academy.

If during a direct examination a witness testifies to a material fact not contained in the case materials, the witness may be impeached during cross examination through impeachment by omission. A witness must admit that the fact was suggested by counsel or that the witness him/herself made up the material fact, if true.

- E. During cross examination, an advocate may question the witness about non-events that are reasonable inferences based on the problem materials. For example, if a police officer witness is testifying and the record is completely silent relating to DNA samples, it is reasonable to assume the police officer witness did not collect DNA samples from the crime scene. In this example, it is permissible to ask the police officer witness "You never collected any DNA samples, correct?"

However, an advocate may not invent facts or use outside resources in their questions to enhance the cross examination of a witness. For example, if a police officer witness is testifying and the record is completely silent relating to DNA samples, an advocate shall not reference topics outside of the problem materials such as; the reliability of DNA, the scientific theory of DNA, the process of DNA collection, etc. In this example, it is not permissible to ask the police officer witness, "You're aware that margin of error for DNA tests can be as high as five percent, correct?"

- F. The presiding judge may not entertain the objection that a particular question calls for information "outside the scope of the record." An answer to a question is not objectionable on the ground that it is outside the scope of the record.
- G. A witness may take any materials provided in the problem to the witness stand. In addition, a witness may highlight or underline the materials permitted to be taken to the witness stand, but may not write on or otherwise mark those materials, without prior approval from the regional host, a NTC chair, or a NTC committee member.

## 7.5 Objections

- A. Objections must be brief, limited to the legal basis, and applied to the specific facts at issue.
- B. Time consumed by objections is not charged against either team; however, the presiding judge, in the judge's sole discretion, may order time charged against any team that makes excessive objections or uses excessive time to argue or respond to objections.

## 7.6 Other Trial Information

- A. All trials will be conducted as if a jury were present. The presiding judge will make no ruling that precludes the trial from being presented to conclusion.
- B. The presiding judge may or may not direct counsel to approach the bench or seek leave of Court before introducing evidence.

- C. When questioning a witness, team members may either sit or stand. However, no comment should be given as to why one method or the other was chosen.
- D. To the extent that a chalkboard or easel is available in the courtroom, these aids may be used. Any writing on such aids may be done only by witness or team members during the trial.
- E. Handwritten summaries or charts to be used during a closing argument may not be prepared until after both sides have rested and the evidence is closed. However, materials created while examining a witness during a trial may be used during the closing argument of that same trial.
- F. A written charge will be provided to each team. No objection to the jury charge will be considered, and no additional jury instructions will be received from the parties.
- G. Prosecution's/plaintiff's closing rebuttal is limited to the scope of defendant's closing.
- H. Members of the bench and bar will serve as judges. Each panel should consist of at least three scoring judges, who will evaluate each team's performance using a 100 point scale. Each judge gets one vote, and the decision of a majority of the judges determines the winner of the round. One judge will be designated as the presiding judge.
- I. No team may receive advice or assistance from any faculty advisor, supervisor, personnel, alternate team member, or observers between the time a round commences (this includes witness preparation) and concludes. Faculty advisors, supervisor personnel, alternate team members, and observers may not talk to, signal, communicate with, or otherwise coach their teams during the trials.

## **Article VIII. Protests**

- 8.1 Protest Procedures - Violation of any rule governing the National Trial Competition may subject the offending team to disqualification. The spirit of the competition will be considered in determining whether a breach of the rules should result in disqualification from the competition. Taking into consideration that the regional competitions and the national competition are to be conducted as realistically as possible, would the breach of the spirit of the competition have resulted in a lawyer being held in contempt in an actual trial? If so, the spirit of the competition has been breached and would constitute grounds for disqualification.
- 8.2 All protests must be lodged to the regional host or a NTC Chair(s) within five (5) minutes of the conclusion of the trial in question.
- 8.3 Protest Procedure - Regional Competition
  - A. In the beginning of each regional competition, the regional host must designate five (5) (or an odd number if less than five) coaches or representatives of the participating schools to serve as the protest committee.
  - B. A protest (other than a protest concerning witness testimony, which will be handled in the manner described in section 8.5) must be lodged with the regional host, who will promptly convene the protest committee. Protest committee members who are coaches or representatives of the law school lodging the protest or of the law school against which the protest is lodged may not participate in deciding the protest. However, every protest must be decided by at least three (3) members of the protest committee.
  - C. If, by disqualification, unavailability or otherwise, less than three (3) members of the protest committee remain, an additional qualified member or members of the committee will be randomly selected by the regional host. If the regional host is still unable to convene a protest committee, the NTC chair(s) and selected NTC committee members will hear and decide the protest as soon as practicable.

- D. Protests may be considered and decided according to such procedures and standards as the protest committee may determine, subject to the following guidelines:
- (i) Protests are not intended to be and should not become part of the competitive process. They are a last resort. Accordingly, protests should be lodged only for an alleged *substantial* violation of the competition rules and relevant ethical standards.
  - (ii) Since uncertainty and surprise play a large role in many trials, the protest committee should give special weight to the question of whether the protesting team was able, or through the use of resourceful trial techniques should have been able, to neutralize the protested conduct.
  - (iii) Since questionable conduct is often self-defeating, the protest committee should consider whether the scores of the protested round reflected an appropriate penalty for the protested conduct. Similarly, the protest committee should deny a protest on the ground that, due to the disparity in scores, the objectionable conduct did not, or probably did not, affect the result of the protested round. The protest committee may also decline to decide a protest if allowance of the protest would not affect the outcome, that is, the determination of the winners of the regional competition.
  - (iv) The protest committee may consult with the judges of the protested round, the coaches of the involved teams, the team members, and the witnesses in the round in deciding the protest.
  - (v) Protests should be determined as soon as practicable.
  - (vi) The NTC chair(s) or its designee may be consulted by a regional protest committee as to any relevant matter including his/her reaction to the substance of the protests which have been resolved by other regions. However, the views of the NTC chair(s) or its designee are not binding on the regional protest committee.
  - (vii) A complete report of all protest committee proceedings must be furnished to the NTC chair(s) within five days of the protest hearing.
  - (viii) Appeal Process - Decisions of a regional protest committee may be appealed to the NTC chair(s). The NTC chair(s) have sole discretion as to whether and how the decision of a regional protest committee will be reviewed or reversed. The NTC chair(s) may reverse the decision of a protest committee only if the decision (a) is manifestly incorrect and (b) affected the outcome of the regional competition. Specifically, but in no way limiting the generality of the foregoing, the NTC chair(s) may not review or revise the decision of the regional protest committee on the grounds that the regional protest committee was improperly constituted or that different results were reached on the same or similar issues by protest committees in different regions. All decisions of the NTC chair(s) will be final.

8.4 Protest Procedure - National Competition. In the event a violation occurs during the national competition (other than a protest concerning witness testimony, which will be handled in the manner described in section 8.5), the team members, the faculty advisors, and the coaches involved will be given an opportunity to be present and heard at the session in which the alleged violation is considered by a NTC Protest Committee. In the event a violation is found to have occurred, any penalty will be determined by the NTC chair(s).

8.5 Protests - Evidence Outside the Record. The procedure for protests relating to alleged violations of section 7.4(D) and 7.4(E) will be as follows:

- A. Regional Competitions
  - 1. Rules 8.1, 8.2 and 8.3 (A) - (C) are incorporated by reference and shall apply to protests for alleged violations of Section 7.4 (D) and 7.4(E).
  - 2. After investigation, to the extent that the protest committee believes the team members have suggested material facts to their witnesses or used material facts made up by a witness during direct examination to enhance their position, they may take any of the actions described in Rule 8.5(C).
  
- B. National Competition
  - 1. Protests shall be decided by the NTC Chair(s).
  - 2. After investigation, to the extent that the NTC Chair(s) believes the team members have suggested material facts to their witnesses or used material facts made up by a witness during direct examination to enhance their position, they may take the actions described in Rule 8.5(C).
  
- C. Sanctions.
  - 1. If the scoring judges are available, indicate to the judges that a breach of the competition rules occurred, and that the offending team should be penalized according to the judges' discretion;
  - 2. If the scoring judges from the round are not present, the Protest committee will attempt to contact the scoring judges to exercise sanctions in accordance with 8.5(C)(1). If the Protest committee is unable to reach the scoring judges, the Protest committee may penalize the offending team by deducting points from the offending team's ballot in accordance with their discretion. Additionally, the Protest committee may penalize the offending team in a manner consistent with 8.5(C)(3).
  - 3. Regardless of the availability of the judges:
    - (i). Require the offending team to forfeit a ballot;
    - (ii). Require the offending team to forfeit the round; or
    - (iii). Disqualify the offending team from the competition. A decision to disqualify a team from a regional competition must consider the factors set out in sections 8.3(D).
  
- D. **Severity of Sanctions.** The severity of the sanction will depend on the nature of the offense. Protests under this procedure are not encouraged. Any complaints should be limited to substantial violations that are well grounded in fact. All participants are encouraged to act within the spirit and letter of the competition rules.

## **Article IX. Scouting**

- 9.1 Faculty advisors, coaches, and team members may only observe their own team and the opposing team in that particular trial. This rule does not apply after a team is eliminated from the competition unless the team is from a school that has a team still in the competition.
- 9.2 Participants from any law school that has two teams at a competition must refrain from any discussions of the rounds. This two-team scouting rule does not apply to conversations between members of a specific team or between a coach and a specific team as long as the coach does not

discuss in any manner what happened during a round in which the law school's other team participated.

- 9.3 While spectators are permitted in any round, spectators should not view trials for purposes of scouting. Accordingly, team members, faculty advisors and coaches should not obtain assistance from or discuss with anyone any trial not involving that team. By competing in NTC, each team member, faculty advisor, and coach specifically agrees that they will not discuss with anyone or receive any information regarding any trial not involving their particular team. This section applies from the beginning of the first preliminary round to the conclusion of the final round. This section does not prohibit any person from raising any issue or concern with the regional host, the TYLA chair(s), or a TYLA committee member.