

**ABA SECTION OF LABOR AND EMPLOYMENT LAW  
STUDENT EMPLOYMENT TRIAL ADVOCACY COMPETITION  
STRUCTURE AND RULES**

**1. Structure of Competition**

- 1.1. Subject to the availability of the necessary number of teams, during preliminary round(s) each team will represent plaintiff and defendant at least once.
- 1.2. In subsequent rounds, teams will sue or defend as follows: if the teams have met before, teams will switch sides; otherwise a coin toss will determine the assignment of sides. The team with the higher total score will call the coin toss.
- 1.3. Four teams with the highest score progress to semi-final round.
- 1.4. The winner of each semi-final round will meet in the championship round.

**2. Length of Trials**

- 2.1. Each trial will last three hours, with each team allowed 90 minutes. The trial will be followed by approximately 30 minutes of comments by the judge and evaluators.

**3. Composition of Teams**

- 3.1. Teams must consist of four law students who are enrolled, in good standing, currently attending the law school which they represent, and working towards a J.D. degree or its equivalent.
  - 3.1.1. In the event that a team member cannot participate because of an emergency or other unforeseen circumstance, the regional co-chairs may determine whether to permit substitutions.
- 3.2. Certification of current registration in law school for each team member must be included in each team's Entry Form.
- 3.3. The signature of a member of the law school faculty is required on the Entry Form.
- 3.4. Teams may be accompanied by a coach and/or a faculty advisor.
  - 3.4.1. Coaches may only observe trials at which their teams are participating.
  - 3.4.2. Coaches may not communicate with their team members at any point during the trial.
- 3.5. Teams will not identify the school they are representing to the evaluators or judges.
  - 3.5.1. Each student advocate will wear a number, and judges/evaluators will use the number in their evaluations.

- 3.5.2. Students may introduce themselves by name, and to refer to each other by name throughout the trial, but scores should be awarded to the identification number the student wears.
- 3.6. In each trial round, two students will be advocates and two students will be witnesses for their own trial team.
  - 3.6.1. Two student advocates who represent plaintiff will be witnesses when their team represents defendant.
  - 3.6.2. Two students who are plaintiff's witnesses will be defense counsel when the team represents defendant.
  - 3.6.3. Each team member in the role of an advocate must perform a direct and cross examination of different witnesses during the trial.
  - 3.6.4. One advocate on a team shall make the opening statement and the other advocate shall make the closing argument.
  - 3.6.5. The genders of the roles outlined in the fact pattern may be altered in accordance with the directions included in the fact pattern.
  - 3.6.6. Which students on a team represent plaintiff or defendant will be decided by each team.
  - 3.6.7. Each advocate will remain on his or her respective sides and will not be asked or allowed to switch throughout the Competition from the advocate and witness roles selected in the opening round.

#### **4. Scoring**

- 4.1. The overall performance of a student will be evaluated including scores for:
  - 4.1.1. Opening Statement
  - 4.1.2. Closing Argument
  - 4.1.3. Direct Examination
  - 4.1.4. Cross Examination
  - 4.1.5. Objections
  - 4.1.6. Foundations
  - 4.1.7. Use of Exhibits
  - 4.1.8. Style, Demeanor, and Professionalism
- 4.2. In scoring judges should consider:
  - 4.2.1. Effective presentation of witnesses and exhibits
  - 4.2.2. Coherence and clarity of presentation
  - 4.2.3. Effectiveness of delivery
  - 4.2.4. Poise and demeanor

- 4.2.5. Focus on relevant issues
- 4.2.6. Use of most persuasive evidence
- 4.2.7. Logical ordering of evidence and effective use of time
- 4.2.8. Originality and creativity
- 4.2.9. Effectiveness in responding to opposing evidence, arguments, and surprises
- 4.3. Evaluations should not be affected by personal views of the merits of the case, but should focus on the persuasiveness of the presentations.

**5. Presentation of Evidence**

- 5.1. Plaintiff will present the direct examination of two witnesses.
  - 5.1.1. Following direct examination, defendant may cross examine plaintiff's witnesses.
  - 5.1.2. Plaintiff may briefly redirect each of plaintiff's witnesses. Not to exceed 3 minutes.
  - 5.1.3. There is no re-cross
- 5.2. Defendant will present the direct examination of two witnesses.
  - 5.2.1. Following direct examination, plaintiff may cross examine defendant's witnesses.
  - 5.2.2. Defendant may briefly redirect each of defendant's witnesses. Not to exceed 3 minutes.
  - 5.2.3. There is no re-cross
- 5.3. Witnesses may refer to exhibits or have their recollection refreshed with their depositions, but they may not bring materials to the stand.
- 5.4. During cross examination exhibits may be introduced without prejudice to any argument or position a party may take.
- 5.5. No evidence or exhibits may be offered into evidence or shown to a witness other than the material contained in the case file.
  - 5.5.1. Enlargements of exhibits in the file are permitted, and "pull-outs" or enlargement of portions of an Exhibit are allowed.
  - 5.5.2. Advocates may not use A/V equipment.
- 5.6. There may be no additional evidence presented by Plaintiff's counsel after Defense counsel has completed its case.
- 5.7. The pleadings are not evidence.
  - 5.7.1. The pleadings may not be amended.
- 5.8. The depositions are complete and accurate.

- 5.8.1. A witness should not stray from the deposition. The Reasonable Inference rule applies.
- 5.8.2. The only background information about the witnesses is provided in the fact pattern, depositions and exhibits. Witnesses may be humanized, but may not introduce material facts that would bear on the witnesses' credibility, veracity, or overall demeanor.
- 5.8.3. Advocates may impeach by omission.
- 5.8.4. It is NOT an appropriate response for a witness to say that the examining attorney never asked a question which would have otherwise produced the impeachable testimony.
- 5.8.5. If material facts are presented by a team during the trial that are not contained in the record, "Outside the record" is not a proper objection.
  - 5.8.5.1. If a witness introduces non-record material evidence during direct examination, advocates should impeach the witness by omission on cross-examination. If the witness introduces material facts during redirect examination, a team may lodge a complaint at the completion of the round.
  - 5.8.5.2. Evaluators will be instructed to deduct points from advocates/witnesses who add material facts and surpass a necessary inference from the facts.
- 5.9. All of the evidence contained in the case file is authentic.
  - 5.9.1. Advocates may speak to each other regarding the exhibits prior to the start of the trial.
- 5.10. Any Statement of Undisputed Facts is deemed stipulated to by the parties and portions may be read to the jury.
- 5.11. Teams may not enter into any additional stipulations other than what has already been stipulated in the problem.
- 5.12. The Statement of the Case is only background information and is not evidence.

## **6. Governing Law**

- 6.1. The Federal Rules of Civil Procedure and Federal Rules of Evidence govern in all respects and reliance upon and reference to those Rules is proper in argument.
- 6.2. The jury instructions are the exclusive source of substantive law in the case. Jury instructions are not subject to modification.

## **7. Pre-Trial and Trial Motions**

- 7.1.1. Each team will be afforded 5 minutes for motions in limine in addition to the 90 minutes they will be allowed for the presentation of their case.

7.1.2. Motions for judgment at the close of plaintiff's case and at the close of all evidence are permitted.

**8. Closing Argument**

- 8.1. Each side will have an opportunity to present closing argument so long as the team has time left in its total allotment of 90 minutes.
- 8.2. Plaintiff will present the first closing argument, followed immediately by defendant's closing.
- 8.3. Following the defense closing, as long as a plaintiff has time remaining, plaintiff may present a rebuttal argument. Rebuttal shall not be precluded because plaintiff did not explicitly request time for rebuttal, but plaintiff's total time cannot exceed 90 minutes.
- 8.4. Advocates may use exhibits and the instructions during their closing, including enlargements. Demonstrative exhibits created by advocates throughout the trial (during witness examination, opening, or closing) may also be used.
- 8.5. Demonstrative evidence may only be created during the trial.
- 8.6. Arguments should not discuss facts outside of the exhibits and testimony, and should not comment on witnesses who did not testify.
- 8.7. The trial is bifurcated. No arguments shall be made as to the amount of damages. However, the Plaintiff should argue the issue of damages as needed to establish the essential elements of the claim.