

2009
NATIONAL PRETRIAL COMPETITION
RULES and SCHEDULE



The Competition will be held October 1–3, 2009
at
Stetson University College of Law
Gulfport, Florida

IN COOPERATION WITH THE



Young Lawyer's Division
Florida Bar Association

and



Schedule

| | |
|---|--------------------|
| Problem distributed | August 14, 2009 |
| Briefs due 12:00 noon EST (must be received by this date)..... | September 11, 2009 |
| Supplemental Evidence released | September 14, 2009 |
| Initial sides will be chosen in the coaches meeting | October 1, 2009 |
| Registration (4:30–5:00 p.m.)..... | October 1, 2009 |
| Coaches Meeting (5:00 p.m.)..... | October 1, 2009 |
| Continental Breakfast (8:15–8:45 a.m.) | October 2, 2009 |
| First Round (9:00 a.m.–12:00 p.m.) | October 2, 2009 |
| Lunch (12:00–12:45 p.m.)..... | October 2, 2009 |
| Second Round (1:00–4:00 p.m.)..... | October 2, 2009 |
| Reception (4:30 p.m.)..... | October 2, 2009 |
| Banquet 5:15 p.m..... | October 2, 2009 |
| (Final four teams announced at the banquet) | |
| Continental Breakfast (7:45–8:15 a.m.) | October 3, 2009 |
| Semi-Final Rounds (8:30–11:30 a.m.) | October 3, 2009 |
| Lunch (11:30 a.m.–12:15 p.m.)..... | October 3, 2009 |
| Final Round (12:30–3:30 p.m.) | October 3, 2009 |
| Awards Ceremony at the completion of the Final Round | October 3, 2009 |

Check in will begin at 2:30 p.m. on October 1, and end at 3:00 p.m. The **mandatory first event**, an orientation meeting for coaches, will begin at **5:00 p.m. on October 1**. At least one coaching representative of each team must attend.

All teams are encouraged to attend the Awards Ceremony, as we will be giving many awards and also will have items for all participants and coaches.

****The problem will be made available on Stetson's Web site, at <http://www.law.stetson.edu/pretrial>.**

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A. COMPETITION COMMITTEE AND FORUM

1. “Competition Committee” Defined:

The Competition Committee is comprised of Professor Charles H. Rose III, Associate Dean Mark Bauer, Professor Stephanie Vaughan, Professor Brooke Bowman, and William Greiner, all of Stetson University College of Law. Other members may be appointed to serve on the Competition Committee. Members of the Competition Committee will not be actively affiliated with any team registered to participate in the Competition.

2. Powers of the Competition Committee:

- a. The Competition Committee has the sole discretion to enforce all Competition rules.
- b. The Competition Committee has the sole discretion to interpret the Competition rules. No interpretation of the Competition rules is valid unless obtained in writing from the Competition Committee.
- c. The Competition Committee has the sole discretion to answer questions about the Record and all other papers that constitute the problem.
- d. The Competition Committee has the sole power to resolve any dispute that may arise during the Competition.
- e. The Competition Committee has the power to change or supplement the Competition rules, should any changes or supplements become necessary. Changes and supplements will be communicated to participating teams as quickly as possible.

3. Participation of Competition Committee Members:

Unless each affected team consents, members of the Competition Committee will not judge briefs or oral arguments.

4. Questions and Inquiries:

Any questions or inquiries about the Competition should be directed to the Competition Committee **in writing**. To the extent a question or inquiry affects other teams, a copy of each written question and answer will be circulated to all participating teams.

5. Contact with the Competition Committee:

The Competition Committee may be reached as follows:

By mail: National Pretrial Competition 2009
Attn: Professor Charles H. Rose III
Stetson University College of Law
1401 61st Street South
Gulfport, Florida 33707

By fax: National Pretrial Competition 2009
Attn: Professor Charles Rose
727-343-9319

By e-mail: crose@law.stetson.edu

6. Forum:

The problem will be set in the Federal Court, Middle District of Tampa, Florida. To the extent that the Competition rules are silent, the Federal Rules of Civil Procedure and the local rules of the Federal Middle District of Florida will apply.

B. TEAM COMPOSITION

1. “Team” Defined:

- a. A “team” consists of four persons, each of whom satisfies the criteria listed in Section B(2) below.
- b. No person may be a member of more than one team.
- c. Only two team members may present arguments or otherwise participate in any particular round. (The other two members are expected to serve as witnesses. Team members may “flip” and argue both sides.).
- d. All team members may participate in any other aspect of the Competition, including practice rounds, research, and drafting.
- e. Only two team members may sit at counsel table during a round.

2. Qualifications of Team Members:

- a. No team member may hold a law degree from a United States law school.
- b. Each team member must be enrolled in a full-time or part-time Juris Doctorate or equivalent program in the law school they represent.
- c. Except as noted above, members may not hold or be enrolled in any graduate legal program, such as an LL.M. or S.J.D. program, or the equivalent.

3. Replacing Team Members:

No team member may be replaced after the team's briefs have been written or substantially written, except with the express written consent from the Competition Committee, which will require a showing of good cause.

4. Coaches and Advisors:

- a. Each team may have one or more coaches.
- b. Coaches may be present during the competition, but cannot communicate with participants *until after* that particular round is complete. A particular round is complete when the judges have provided their critiques, which will occur after the presentation of both the motions and the evidence.

C. SCORING AND AWARDS

1. Breakdown:

- a. Except for the Final Round, scores for each round will be determined by counting the team's brief score as one-third of the total and competition round score as two-thirds of the total.
- b. The competition round score will be determined by a panel of judges who will not have read the teams' briefs and will not know the teams' brief scores.
- c. In the Final Round, the winner will be determined based on the decision of the judges, who will not consider the brief score.

2. Awards:

- a. First Place
- b. Second Place
- c. Two semi-finalist teams
- d. Best Brief
- e. Best advocate preliminary round 1
- f. Best advocate preliminary round 2
- g. Best Overall advocate

D. BRIEFS

1. Sides:

- a. Each team must submit **both** a Plaintiff (Movant) brief and Defendant brief (Response).
- b. Teams will argue motions based upon the briefs at the beginning of the pretrial hearing.
- d. The team member that wrote the brief is not required to make the motions argument.

2. Problem:

- a. The hypothetical facts on which the Competition is based will be drafted by a person or group of persons knowledgeable in the field of pretrial practice.
- b. The person(s) who drafts the problem will also prepare—or supervise the preparation of—a bench brief that will be provided to those who judge the competition rounds.
- c. Supplemental evidence may be drafted to create factual inconsistencies prior to oral argument. The supplemental evidence will be distributed to participants on September 14, 2009.
- d. The bench brief will be provided to those who judge the brief. The competition judges will be different from the brief judges.

3. Format:

- a. The brief may not exceed **4,800 words** on 8-1/2 x 11-inch pages with one-inch margins at top, bottom, left, and right. **Footnotes DO count toward the word limit.** Note: Most word processing

programs can provide you with a word count.

- b. The brief must be typed, using 14-point, Times New Roman font and be double-spaced. A team does not violate the double-spacing requirement by including written material properly that is single spaced, such as a block quotation.
- c. Each brief must include the following sections, which **DO** count toward the word limit: statement of facts, summary of argument, argument with point headings, and conclusion.
- d. Each brief must also include the following sections, which **DO NOT** count toward the word limit: front and back cover pages, table of contents, questions presented, statement of jurisdiction, index of authorities, signature block, affidavit (see Addendum A), and appropriate appendices.

- (1) **Limit on Use of Authorities:** Teams may not use—in briefs or oral argument—any case issued on or after July 1, 2009.
- (2) **Citations:** All citations must conform to the most current version of **either** *The Bluebook: A Uniform System of Citation* or the *ALWD Citation Manual* (Aspen Publishers).
- (3) **Identification:** To facilitate anonymous grading, names of the team members and the school they represent may appear only on the affidavit **that must be submitted at the same time as the original brief (see Addendum A).** The affidavit should be clipped to the outside of the original brief; it should not be bound within the brief. **Do not include the names of team members or the affidavit in the copies of the briefs.** Names of team members and the school must not appear within the brief itself. **Each team will be assigned an identification number the week of August 31, 2009, that is to appear in the uppermost right-hand corner of the front brief cover.**

4. Number and Service on Competition Committee:

- a. Each team must submit a copy of their briefs directly to the Competition Committee either by e-mail or regular mail by the due date (see contact information above).
- b. **In addition, every team** must send a copy of the brief to

NPTC@law.stetson.edu as an e-mail attachment in Word format. The content of the e-mail attachment should not differ from the content of the hard copies submitted to the Competition Committee (however, the affidavit should not be attached). *Do not* send the brief in PDF.

- c. The briefs and e-mail attachments all must be **received** by the Competition Committee no later than 12:00 noon, Eastern Standard Time, on September 11, 2009. The Committee will post each brief on the Stetson web site (see web site location URL on page ii above).
- d. All briefs sent to the Competition Committee should be addressed to:

Mr. William Greiner
Assistant Director of Center for Excellence in Advocacy
National Pretrial Competition 2009
Stetson University College of Law
1401 61st Street South
Gulfport, Florida 33707

5. Service on Other Teams:

Teams should not send copies of their brief to any other team. As noted in paragraph (c) above, the Competition Committee will post each brief on the Stetson web site.

6. No Changes after Submission:

Once the briefs have been submitted to the Competition Committee, no revisions, supplements, or additions will be allowed. In addition, no written material outside the brief will be accepted.

7. Grading:

- a. Each brief will be scored by a panel of judges knowledgeable in the areas of pretrial practice and federal civil procedure.
- b. Individuals who judge the briefs will not judge the competition rounds.
- c. The scores will be averaged and that average will be the brief score used throughout the Competition. However, the brief score will not be used to determine the Final Round winner.

- d. Briefs will be graded for both content and style. The factors the brief judges will consider include, but are not limited to: legal substance; style; grammar; spelling; forum; use of authority and extent of research; issue analysis; logic and reasoning; clarity and organization; persuasiveness; thoroughness; and compliance with Competition rules.
- e. Brief scores will not be released until after the Competition is completed. At that point, the Competition Committee will release a list that reflects each school's ranking.
- f. The minimum score on any brief will be 60.

E. PRETRIAL MOTION ARGUMENT PROCEDURES

1. Time and Place:

- a. All motion hearings will be held on the Stetson University College of Law campus in Gulfport, Florida, on October 1–3, 2009.
- b. Courtroom assignments will be provided during breakfast on October 2.
- c. Two preliminary rounds will be held on October 2.
- d. The semi-final and final rounds will be held on October 3.

2. Time Per Team:

- a. Each round will be limited to 180 minutes; each team will have 90 minutes.
- b. The moving party will make initial arguments on the motion.
- c. The answering party will respond.
- d. The judge will control the flow and presentation of argument, to include rebuttal and sur-rebuttal if deemed necessary by the judge.
- e. If the judge is unable to rule based upon argument and response then the judge will inform counsel to call witnesses to settle disputed issues of fact.
- f. Each side will call two witnesses and conduct direct examination. Opposing counsel will conduct cross examination. Re-direct and re-cross will be permitted at the discretion of the judge.

- g. One counsel for each side will be allowed to make final arguments to the court.
- h. Nothing in this rule requires a 50/50 split of time between co-counsel.

3. Anonymity:

- a. Although counsel may introduce themselves to the court in the usual manner, the team's law-school affiliation may not be mentioned at any time before, during, or **after** the motion (because some judges may judge in more than one round).
- b. Further, all team members, coaches, advisors, and observers must refrain from identifying a team's school at any time and in any manner, including, but not limited to, wearing any identifying items, such as school clothing, patches, or pins, or carrying identifying material (such as a notebook with a school logo).
- c. Each team will be provided with a "Plaintiff" or "Defendant" table card that also contains the school's team number. The card should be placed on counsel table facing the judges at the beginning of the round and should remain on the table throughout the round.

4. Contact with Judges:

- a. All team members and individuals affiliated with a team are prohibited from speaking with the judges before a round.
- b. Also, since individuals may judge more than one round, until a team is eliminated from the Competition, team members and individuals affiliated with the team should not speak with judges about any substantive matters or teams' identifications.

5. Judges and Judging Criteria:

- a. Barring unforeseen circumstances, each round will be judged by at least three persons.
- b. Judges will be provided with a copy of the bench brief and the problem.
- c. Oral argument judges will NOT be provided with copies of the teams' briefs.

- d. Each judge will receive a score sheet outlining the factors to be considered during the judging process; the score sheet will also identify what excellent, good, and average scores should be in each category.
- e. The factors to be considered include, but are not limited to: poise and courtroom manner; analysis, organization, and clarity; thoroughness; control of argument; persuasiveness; professionalism; response to questions; and knowledge of facts and controlling law.
- f. Each judge will score each participating team member and the judge's scores will be added to determine that judge's score for each team. The scores of all judges will be averaged to determine the oral-argument portion of the team's score.

6. Critiques:

Each judge will be requested to provide a short oral critique at the end of each round. Judges' score sheets will not be released until after the Competition.

7. Announcements:

- a. During the Preliminary Rounds, the winner of each round will be announced at the conclusion of that round.
- b. After all Preliminary Rounds have been completed; the four teams advancing to the Semi-Final Rounds will be announced at the banquet. The best advocates for the Preliminary Rounds and the best brief award will be also be announced at the banquet.
- c. The winner of the Final Round, as well as the best overall advocate, will be announced during the Awards Reception after the final round.

8. Stetson's Participation:

- a. Stetson may not enter a team in the competition.
- b. If, however, a team should drop from the Competition, and leave an odd number of competing teams, or should an odd number of teams otherwise be registered and ready to compete, Stetson may also enter one or more bye teams in the Competition to ensure that an even number of teams is competing. A bye team may not advance past the Preliminary Rounds and its members will not be

eligible for any award. Bye teams will not write a brief; the brief score used for a bye team will be the average of all briefs submitted by teams in the Competition.

9. Visual Aids:

Visual aids and other similar devices **may not** be used during oral argument.

F. SEQUENCE OF ORAL ROUNDS/ADVANCEMENT

1. Preliminary Rounds:

- a. Two Preliminary Rounds will be held.
- b. Each team will argue in each Preliminary Round.
- c. Team match-ups will be determined by chance during the coaches' meeting on October 1.
- d. During the first two Preliminary Rounds, teams will argue once for each side.
- e. Each team will be scored on a combination of its average brief score and average oral score (see C(1)(a) above).
- f. Each team's score will be compared to its opponent's score in that round, and the differential will be determined.
- g. When determining which teams advance, overall scores from both rounds will be tabulated and ranked.
- h. Given that parameter, the teams with the best won-lost records will advance to the Final Round.
- i. In the event of a tie in won-loss records, the team winning the highest percentage of judges' ballots during the two Preliminary Rounds will advance.
- j. If a tie occurs on ballots, the team with the highest positive point differential over its opponents during the two Preliminary Rounds will advance.
- k. The Competition Committee will not change pairings simply because teams from the same school are scheduled to argue against one another.

2. Semi-Final Rounds:

Before the Semi-Final Rounds, teams will choose the side they wish to argue by rank order based upon their combined score from the preliminary rounds. The highest ranked team will choose their side and the fourth ranked team will take the opposing side for that round. Team two will then choose their side to argue and team three will take the opposing side.

3. Final Round:

- a. The winners of the Semi-Final Rounds will advance to the Final Round.
- b. The winner of the Final Round will be determined solely on the basis of oral presentation in the Final Round. The judges will caucus to determine the winning team and the best oralist in the Final Round. The judges are not obligated to use score sheets.
- c. The winner of the Final Round will be designated the winner of the Second National Pretrial Competition.

G. OUTSIDE ASSISTANCE

1. Assistance on Briefs:

- a. A team may receive only the following assistance on the brief:
 - (1) Team members may discuss with their coach and with others affiliated with their school (so long as other rules contained herein are not violated) general principles of Federal Civil Procedure. The coach may not dictate which Federal Rules of Civil Procedure apply.
 - (2) The coach may provide general guidance on the overall organization of the brief, but may not assist with the actual writing and may not edit the paper or correct citation format.
- b. A team may hold oral practice rounds before its brief is submitted to the Competition Committee.

2. Affidavit:

- a. Each team member must sign a copy of the enclosed affidavit, which must be submitted with the original brief to the Competition

Committee.

- b. By signing the affidavit and submitting the briefs to the Competition Committee, each team member certifies that the brief has been prepared in accordance with the Competition rules, and that it represents the work product solely of such team's members.
- c. A blank affidavit is attached as Addendum A.

3. Assistance on Oral Argument:

A team may be assisted in the preparation of its oral argument, except as limited by Section G(4) below.

4. No Collaboration with Other Teams:

- a. No member or coach of any team still eligible to participate or actually participating in the Competition may attend any practice or argument of another team or receive information from any person who has attended such practice or argument.
- b. In addition, while a team is still active in the Competition, no team member, coach, or other affiliated person may "scout" other active teams.
- c. If a school sends two teams, and one team is eliminated but the other is still active, both schools will then be treated as one team, for purposes of this rule only.

H. CHALLENGES AND DISPUTE RESOLUTION

1. Briefs and Pre-Oral Argument Challenges:

- a. Any brief or pre-oral argument complaint or challenge must be submitted in writing to the Competition Committee no later than 5:00 p.m. EST on September 25, 2009.
- b. Should the allegedly offensive conduct occur within one week of the first oral argument, the complaint should be submitted within 24 hours of its discovery.
- c. The complaint or challenge should be directed to the Competition Committee and should specify in as much detail as possible the nature of the complaint or challenge. No other person should be copied on the complaint or challenge.

- d. After reviewing the complaint or challenge, the Competition Committee will, if necessary, contact other affected teams and issue a ruling.
- e. The ruling of the Competition Committee will be final and may not be appealed.

2. Oral Arguments and Other Competition Challenges:

- a. Complaints or challenges concerning any oral argument or conduct during the Competition must be reported to the Competition Committee within 10 minutes of the conclusion of the round in which the allegedly offensive conduct occurs.
- b. Conclusion of the round, for purposes of this rule, will be the end of the Plaintiff's rebuttal period.
- c. Complaints or challenges that occur during the Competition that do not relate to a particular oral argument should be reported to the Competition Committee as soon as possible, but in no event later than 15 minutes before the next-scheduled oral argument round.

3. Conflicts of Interest:

A judge's alleged conflict of interest should be reported to the Competition Committee before that particular round commences. Otherwise, the conflict is deemed waived.

4. Penalties:

Penalties may range from warnings, to point deductions, to disqualification, depending on the nature and severity of the offense. Multiple offenses by a single team will warrant more severe penalties.

5. Waiver:

Failure to comply with the procedures in this section (Section H) will waive the complaint or challenge.

I. MISCELLANEOUS

1. Use of Problem:

- a. The problem for this Competition may not be used by any participating school, for any reason, including intra-school competitions, without the express written consent of the

Competition Committee.

- b. The Competition Committee will not grant any team permission to use the current year's problem to select that school's Competition team.

2. Scores:

Scores will not be made available, either orally or in writing, until the Competition is completed. After the Competition, the Competition Committee will provide scores and/or rankings to each school's designated representative.

3. Professionalism:

All teams should conduct themselves ethically and with professionalism.

4. Costs:

All costs associated with the Competition should be borne by the schools of individual team members or by individual team members. Stetson will not reimburse participants for costs associated with the Competition.

ADDENDUM A:

AFFIDAVIT

We have read the National Pretrial Competition Rules. Our submitted briefs were prepared in accordance with the Competition Rules, and we have not received any unauthorized assistance.

School: _____

Please print your names as you wish them to appear on a certificate

Team Members: _____

Coaches: _____

Signatures
of team
members: _____

Date: _____

Brief Number: _____

Movant brief
word count: _____

Respondent brief
word count: _____

Gulfport Campus

1401 61st Street South

Gulfport, Florida 33707-3299

(727) 562-7800

**From North:**

From Tampa, take I-275 traveling south over the Howard Frankland Bridge to St. Petersburg. Take Exit 19 (22nd Avenue South) and bear to the right onto 22nd Avenue South. Continue for 2.6 miles (street name will change to Gulfport Blvd.). Stetson Law is located on the right at 1401 61st Street South. Turn right on 61st Street South. The main campus is on your left and the Law Library is on the right with limited parking available next to the Law Library. The main entrance to the lobby is directly across from the Law Library through the horseshoe drive through.

Note: Do not take the 22nd Avenue North exit.

From South:

From Bradenton, take I-275 traveling north to St. Petersburg. Take Exit 18 (26th Avenue South). Ignore the sign for Stetson directing you to the right. Take a left off the exit ramp onto 26th Avenue South. Turn right at the first light onto 34th Street South (also called US 19). Turn left at the light onto 22nd Avenue South. Continue for 2.6 miles (street name will change to Gulfport Blvd.). Stetson Law is located on the right at 1401 61st Street South. Turn right on 61st Street South. The main parking lot and campus are on your left and the Law Library is on the right with limited parking available next to the Law Library. The main entrance to the lobby is directly across from the Law Library through the horseshoe drive through