

2009 NACDL CATHY BENNETT NATIONAL TRIAL COMPETITION RULES

I. OFFICIAL RULES

A. SELECTION OF PARTICIPATING LAW SCHOOLS

1. The previous year's two finalists will be invited back.
2. No other schools will be invited back two years in a row absent exigent circumstances (such as a last-minute withdrawal of a team). This is to ensure the widest possible participation in the competition from among qualified law schools.

B. GENERAL COMPETITION INFORMATION

3. Each school must enter a team of four students. Students should consider becoming NACDL members by the start of the competition. Membership information can be requested from NACDL by visiting their website at:
<http://www.nacdl.org/public.nsf/freeform/Membership?opendocument>
4. Each team must be accompanied by a Faculty Advisor or an attorney designated by their law school to act as the Faculty Advisor. Only the Faculty Advisor is to attend the Faculty Advisors' meeting on Thursday evening. Without a Faculty Advisor present, a school will not be permitted to compete. A student may not serve as the Faculty Advisor.
5. Each school is responsible for funding its team's travel, hotel and meals.
6. The students participating on the teams must be currently enrolled in a J.D. program. It is up to the individual schools how they pick their teams.
7. Professors Jerry MacDonald and John Scott and NACDL representative Natman Schaye will act as the NACDL Law School Committee. All controversies will be referred to this Committee for final resolution. Questions concerning the merits of the case will not be answered. Any questions that arise during trials should be brought to a Committee member by Faculty Advisors, not students.
8. The problem will be provided to all teams simultaneously via e-mail within the first week or so of September. Questions that arise from the case-file must be submitted by e-mail from Faculty Advisors to scottj@cooley.edu, or macdonag@cooley.edu NO LATER THAN a day and date to be determined when the current year's problem is available. We will respond to all questions submitted by replying to all advisors/coaches simultaneously BY E-MAIL within a few days of the deadline for submission of questions, or, as they say, as soon thereafter as counsel may be heard.

C. COMPETITION FORMAT

9. Each team will have a minimum of three trials. Three preliminary rounds, two on Thursday and one on Friday, will be held at the hotel serving as the location of the NACDL Fall Meeting.

The semi-final and final rounds will be single elimination. The finals will be held Sunday morning. The top four teams will advance into the semi-finals. The two teams prevailing in the semi-finals will advance to the final round.

10. The standings after three rounds will be based on number of wins first, number of judges' ballots second, followed by head-to-head result (if any) and, finally, strength of one's opponents as

revealed by their records.

11. Pairings in the three preliminary rounds will be at random, and will be announced at the Faculty Advisors' meeting on Thursday evening. Each team must represent the prosecution and the defense at least once. No two teams will compete against each other more than once during the preliminary rounds.
12. In the semi-final round the first ranked team will compete against the fourth ranked team, the second against the third.

If the paired teams in the semi-finals have already competed against each other they will switch sides from their previous meeting. If they have not competed against each other before, the first determining factor will be whether the teams have represented opposing sides twice already in the preliminary rounds. If they have, they will be assigned the side they have represented only once. If both teams have represented the same side twice in the preliminary rounds, they will flip a coin for the choice of sides.

13. The teams in the final round will represent different sides than they did in the semi-final round. If they both had the same side in the semi-final round they will flip a coin for sides.
14. Each team will have four members. Two students are to represent the prosecution and the other two the defense; each pair of students will act as the other pair's witnesses. This means that each of the four team members must participate as an advocate - either as a prosecuting attorney or as a defense attorney - in the competition. There are to be no "witness-only" participants.
15. All witnesses in the case-file are gender neutral. A separate sheet will be sent asking you to identify which team member will be what witness and whether they will testify as a male or female.

D. CONDUCT OF TRIALS

16. During a round each team member who is an advocate must participate in three of the six aspects of the trial. The opening and closing must be done by different students. Each student must do one direct examination and one cross examination. There will be NO rebuttal or recalling of witnesses.

Pre-trial motions will be oral, will be limited to five minutes total, and will be heard before the opening statements. Each issue brought up in pre-trial motions will be argued and responded to by one member of each team only. If there is more than one issue the other team member may raise that issue and the other member of the opposing team may respond.

Let's all try to remember that this is a TRIAL competition, not a moot court competition, and conduct ourselves in that spirit.

17. Objections will be made during direct examination by the opposing team member who is to cross-examine that witness and vice-versa. There is to be no double-teaming.
18. Objections during Opening and Closing, if necessary, will be made only by the team member handling that portion of the trial for the objecting team and the person raising the objection will be expected to argue it (again, no double-teaming). The person giving the Opening or Closing will be the team member who will respond to the objection.
19. Length of objections and argument is in the discretion of the judge and the clock will not be stopped, so it is imperative that objections be well thought out and as brief and to the point as possible.

20. Use of demonstrative evidence is limited to that which is provided in or with the problem. Teams may enlarge any portion they wish to use. Teams may diagram or make charts in court to highlight an aspect of the case when appropriate. No other demonstrative evidence is to be created that is outside the problem. All demonstrative evidence enlarged, etc. must be shown to all Faculty Advisors at the Advisors' meeting on Thursday evening. Bring your own easel, markers, display boards and other equipment you will need, as these will not be provided. The hotel may provide these for you, but keep in mind that hotels charge stiff fees for equipment provided, and this charge would be the responsibility of your school. Trial rooms set-up is tables only, no podiums.

21. In all trial competitions there is, unfortunately, the inevitable problem of teams seeming to go outside the record. The Committee believes the problem will not warrant this. If this inadvertently happens the judge will not accept an "outside the record" objection; straying from the record can be cured by the opposing team during cross and closing.

Advisors, let's encourage our students to act in the highest spirit of professionalism here, and strongly discourage the win-at-all-costs mentality that sometimes creeps into our profession. Schools whose teams are demonstrated to have made up facts or to have gone outside or contrary to the record will not be invited back in future years.

22. **Given the time constraints of completing the entire competition in a three-day period, the time demands already placed upon the volunteers who judge each round, and many other considerations, there is no appeals process. If your team encounters a team that has violated the letter or spirit of the Competition rules, the Committee should be made aware of such alleged violations, but it is up to the students to be prepared through effective trial advocacy techniques to make such deviations from the record apparent during the trial. The judges will be instructed that part of the evaluation process should include the ethics of the teams participating, and should it become clear during a round that a team has breached the ethics of the competition, that fact should be considered in evaluating the overall performance of the team in question. At the conclusion of each trial, however, the results will be final!**

23. **During the trials, Faculty Advisors may not sit in with their teams and should have no substantial contact with their teams until the trial is over, including during any breaks in the trial. Faculty Advisors may sit in on the critiques only. While the Faculty Advisors are waiting, we invite them to attend the seminars being held by NACDL which allows free admission to Faculty Advisors. Please keep your nametag with you for admission.**

24. Teams will be identified by a team number assigned by the Committee, and may not tell or indicate in any manner to the judges what school they represent except as specifically provided below. Do not say, wear, bring, or do anything that identifies your school until the judges' decision is announced. This includes bringing any materials to the courtroom bearing the identity of your school in a way that could be seen by any judge (for example: notebooks, pads of paper, library books, pens, etc., bearing your school name or logo). Identify yourself by team number only. At the conclusion of a round (i.e. AFTER the completed ballots of the judges have been collected), if asked by a judge or judges, students may reveal the identity of their school. Judges will be instructed not to request such information if there is the potential that any one of those judges might serve as a judge in a future round.

E. TRIAL FORMAT AND TIME LIMITS

25. The trial is limited to 90 minutes per side. Stay on track in order to finish on time. You may determine how best to apportion your time. This will be a factor in judging. There will not be a

“strict clock” being stopped and started, however the judges will be casually keeping time, and if any round goes over three hours it may be preemptorily stopped by the Committee so the next round or event can begin on time.

26. Teams must call each witness for their side of the case as assigned in the problem. Teams may choose in which order to call their witnesses but must adhere to the time constraint.
27. The problem is to be tried in accordance with the Federal Rules of Evidence and Procedure. Any statutes and/or jury instructions to be used will be provided as part of the problem.
28. The defense may reserve their opening statement if they so desire but they must let the court know so it is not considered waived.

F. SCORING

29. Each Round of the competition will be judged by a panel of three experienced lawyers. All judges will attend a brief “judges’ school.” One lawyer will be designated as the presiding judge and will make all rulings. The other two lawyers will make up the jury and one will double as clerk/bailiff. All judges will receive the materials and a bench brief before the competition. They will be well aware that the actual merits of the case should play no role in their deliberations. Overall performance and competency of advocacy are the only standards.

Each lawyer/judge will deliberate and file an individual ballot. The three judges may confer or not, as they choose.

30. Overall Records and Total Ballots Received will be posted after the conclusion of the preliminary round of trials. Please be patient and give us time and space to do the calculations. It is a tedious endeavor which requires a lot of concentration. Results will NOT be provided on a trial by trial basis.
31. **At NO time during or after the Competition will individual judges' ballots be made available to any team or advisor. Judges will be encouraged to do brief oral critiques of the participants at the conclusion of each trial, with the emphasis on brief, in order to keep things moving along.**
32. The presiding judge will make a note of any conduct worthy of being held in contempt should he/she feel the advocate’s behavior falls into this category. A student receiving a contempt flag will be ineligible to be chosen as best advocate for that round.
33. In addition, any student who is rude to the Committee or our staff will be ineligible to be chosen for any advocate award or the Cat Bennett Award. Having practiced law and having coached competition teams ourselves, we realize students are under pressure, but all should learn early on that there is no excuse for unprofessional behavior. This will be strictly enforced.

G. AWARDS

34. Team awards will be given to the Champion, Finalist, and Semi-finalist teams. In each round the judges will select one student as “Best Advocate” for a particular trial. The selected student will receive a Best Advocate Certificate in recognition of this accomplishment. The Cathy Bennett Best Overall Advocate award will be given to the student in the final round who has the overall best point record.

There will be an awards ceremony at the NACDL Board Meeting on Saturday morning. All competitors and advisors are encouraged to attend.