

## **LSU LAW CENTER TRIAL ADVOCACY BOARD**

### **IRA S. FLORY TRIAL RULES**

#### **Article I. Participants and Team Composition.**

1. A Flory Trial Team shall consist of two student-attorneys. No student may compete in the Flory Trials individually.
2. Any second or third-year student enrolled in and in good standing at the LSU Law Center is eligible to compete as a student-attorney. Candidates for the LLM degree may compete as a student-attorney with the express written permission of the Director of Advocacy Programs.
3. Any student currently enrolled at the LSU Law Center may participate in the Ira S. Flory trials as a witness. No other persons shall be permitted to participate as witnesses absent express written permission from the Director of Advocacy Programs, which shall be given in extreme extenuating circumstances only.
4. Substitution of student-attorneys may occur up to a date designated by the Trial Advocacy Board which shall be no later than 24 hours before the first preliminary round. No substitution of student-attorneys may occur after this date.
5. A student attorney may withdraw from the competition up to two days before the first preliminary round. In the event a student attorney withdraws in this manner, it is the responsibility of the other student attorney teammate to find an eligible substitute for the competition as set forth in Article I(4).
6. Student attorneys must inform the Trial Advocacy Board of any and all scheduling conflicts for all Flory Trial competition dates no later than two days before the first preliminary round.
7. In the event one or both student attorney(s) withdraw(s) or is/are otherwise unavailable for a Flory Trial round at any time up to 24 hours before that round, that Flory Trial Team shall be considered to have forfeited the competition. Any team scheduled to compete against the withdrawn team will not have an automatic win - the Trial Advocacy Board will make a reasonable attempt to find a replacement team; only after a reasonable attempt will a team receive a win.
8. The Trial Advocacy Board shall make every reasonable effort to accommodate any scheduling conflict of which it is advised as specified in Article I(6). In the event a scheduling accommodation is impossible, that Flory Trial Team shall be considered to have forfeited the competition.
9. Absent a specific due date posted on the Flory registration form or the Advocacy Programs website, the deadline for signing up to compete is 2 calendar days before the first scheduled preliminary round.

#### **Article II. Applicable Rules**

1. These rules govern all trials. Where these rules conflict with any of the rules of evidence or procedure listed in Rule II(2), these rules control.
2. The Flory Trial Competition problem may specify what rules of evidence govern the competition. Such statement controls. However, where the case file is silent (and only where it is silent), the Louisiana Rules of Evidence, the Uniform Local Rules promulgated by the Louisiana Supreme Court, and the Model Rules of Professional Conduct as adopted

- by the Louisiana Supreme Court shall control.
3. The Flory Trial Court is deemed to have jurisdiction over all parties and cases.

### **Article III. Conduct of Trials**

1. Each side shall have forty-five (45) minutes total in which to present their case, which shall consist of an opening statement, direct examinations, cross-examinations, redirect examinations where permitted, and closing arguments.
2. Time consumed for objections and responses to objections is not charged against other teams.
3. Each trial shall be conducted as a jury trial.
4. Each student-attorney must:
  - a. Deliver one opening statement or one closing argument, and
  - b. Conduct one direct examination and one cross-examination.
5. The plaintiff/prosecution may save time for a rebuttal-closing argument that is limited in scope to the defendant's closing argument.
6. Only the student-attorney handling the examination of a witness may object during the testimony offered by the witness.
7. A student-attorney may request permission to consult with co-counsel during trial.
8. No written briefs or motions, trial notebooks, bound case files, or other written materials may be presented to the judge(s). Each judge shall be provided an unmarked copy of the case file by the Trial Advocacy Board in advance of the trial. Judges may be provided copies of individual exhibits while a foundation is being laid.
9. No pre-trial motions are allowed. Student-attorneys may, however, discuss "housekeeping matters," such as swearing of witnesses, use of the well, etc., with the presiding judge before trial begins. No substantive or procedural law may be discussed during these housekeeping matters.
10. Exhibits
  - a. The trial judge has sole discretion regarding the admissibility of evidence at trial.
  - b. An advocate may not create, alter, modify, redact or change an exhibit in any way. The exhibits are limited to those provided in the file and demonstratives created by counsel or a witness during the trial. Exhibits created by counsel or a witness must conform in all respects to the facts set forth in the case packet.
  - c. An advocate is permitted to enlarge/blow up exhibits and documents contained in the case file. The advocate must bear the cost if they choose to do so.
  - d. If the advocate plans to create a demonstrative (for example, making a chart on a dry-erase board), the advocate must create it during the trial and is responsible for providing the materials to make such a demonstrative.
  - e. An advocate's opponent is permitted to make use of the advocate's enlargements and demonstratives, but they may not alter them in any way (including erasing or making marks on them).
11. Fact Invention
  - a. Student-attorneys and witnesses may not invent or create facts.

- b. A student-attorney shall be extraordinarily careful to be fair, accurate and comprehensive in staying within the bounds of the file. When in doubt as to whether the file supports a question or argument, an advocate shall err on the side of not asking the question or arguing the fact.
- c. The case file is a “closed universe” of facts and student-attorneys may use only the materials provided in the file except where the file states otherwise.
- d. A witness may not “invent” an individual or an exhibit not mentioned in the file nor offer testimony or evidence from that “invented” individual or about the exhibit.
- e. A team may not invent anything about a witness’s background which is not specifically stated in the file.
- f. In the event a witness does invent a fact on direct examination, the proper response (and the approach the student-attorney must use) is to impeach that witness "by omission" on cross examination. The student-attorney should not make an objection to "facts outside the case file", nor will judges entertain such an objection.
- g. Impeachment By Omission: Advocates may impeach witnesses by omission. Where asked, witnesses must admit that the fact(s) to which they have testified are not in their prior statement(s). It is a violation of these rules for witnesses to answer in any way which calls into question the reliability of the earlier statement. The witness must admit, if asked, that the facts testified to are not in his/her statement. The witness must also admit, if true, that the advocate who prepared the witness to testify, advised the witness to add or make up the fact to which an objection has been made. Advocates must instruct their witnesses that the following types of answers are **not** permitted to questions about what the witness earlier stated:
  - i. “I was not asked that question in my deposition.”
  - ii. “I was not asked to talk about that issue in my statement.”
  - iii. “I was not asked about those facts in my deposition.”
  - iv. “Those answers are in another part of the deposition which has not been transcribed.”
  - v. “This is the first time I’ve been asked about those facts but I’m prepared to respond at this time.”
- h. Re-Cross-Examination: Notwithstanding a general prohibition of re-cross-examination, where on re-direct examination an advocate offers evidence which (1) was not a subject of cross-examination, (2) is outside of the record, and (3) is a statement inconsistent with the witness’s prior written statement, a brief re-cross-examination shall be permitted, *strictly limited* to addressing the inconsistency through impeachment by omission.

## 12. Witnesses

- a. A witness may testify to a fact which, although not in the witness’s statement or deposition, is part of the file (as expressly stated in another witness’s statement or appears in an exhibit). Under these circumstances, it is permissible for an advocate to show the “other witness’s statement” or the “exhibit” to the witness. In such cases, however, the opponent may impeach the witness regarding the omission of the fact from the witness’s own statement.
- b. Witnesses are not allowed to use notes or his/her deposition while testifying at trial. Student-attorneys may, however, use a deposition to refresh the witness’s memory or impeach the witness.

- c. If counsel requests sequestration of witnesses, any sequestered witnesses may remain in the courtroom but shall to the best of their ability act as though they had been sequestered.
  - d. All formal statements (statements to investigators, police officers or public officials), depositions and former testimony are full, complete and accurate descriptions of all material events and occurrences within the witness's knowledge, unless the statement, deposition, testimony or file specifically states otherwise. All such statements are also presumed to be truthful unless the witness specifically states elsewhere that the statement was not truthful.
13. Charges and Responsive Verdicts: The parties may not abandon the applicable law and/or jury charge(s)/instruction(s) specified in the case file. Nor may they seek additional charges or responsive verdicts. The defense may, of course, rest its theory of the case upon the burden of proof.
14. In the preliminary rounds, each team of student-attorneys shall present both sides of the case. For example, in Preliminary Round One, one team shall present the case for the plaintiff/prosecution. In Preliminary Round Two, that same team shall present the case for the defendant. Presentation of cases in advanced rounds shall be controlled by the power-seeding rules set forth in Rule V(4).

#### **IV. Observation of Trials**

1. All trials are open to the public, but student-attorneys shall not view trials nor gather information from trials that occur prior to the trial in which they participate as a student-attorney.
2. Student-attorneys may not view another trial until elimination from the competition.
3. Student-attorneys cannot serve as witnesses for other teams without the express prior written permission of the Director of Advocacy Programs. The Director will only grant such permission in extenuating circumstances. This rule applies to elimination rounds as well as preliminary rounds, so a student may not be a student-attorney in one round and then serve as a witness for another team in a subsequent elimination round even if that student's team has been eliminated.

#### **V. Scoring Procedure**

1. A "ballot" is the score from one judge of each student-attorney team participating in a single Flory round. The ballot form shall be drafted by the Director of Advocacy Programs.
2. Advancement to Elimination Rounds:
  - a. In the event sufficient teams register that an Octofinal Round is deemed necessary by the Director of Advocacy Programs (typically more than 24 teams), the Competition will proceed from preliminary rounds to an Octofinal Round. The sixteen (16) highest ranked teams after the preliminary rounds, ranked in accordance with Article V(3), then advance to the Quarterfinal Round. The bracket in Figure 1 at the end of this packet will be used for pairings in subsequent rounds.
  - b. In all other circumstances, the Competition will not have a Octofinal Round and will proceed directly to a Quarterfinal Round. In this situation, the eight (8) highest ranked teams after the preliminary rounds, ranked in accordance

with Article V(3), will participate. The bracket in Figure 2 at the end of this packet will be used for pairings in subsequent rounds.

3. Team rank is determined by the following:
  - a. Teams are first ranked according to their win-loss ratio (i.e; the total number of winning ballots divided by the total number of ballots). A perfect record is the highest ranking.
    - i. A win or loss is determined by comparing the prosecution/plaintiff combined score and the defense combined score on one ballot. The team with the higher combined score wins that ballot. If the teams have equal combined scores, that ballot is tied.
  - b. For teams with the same win-loss ratio, teams are further ranked according to the average team score. Higher average score ranks higher.
    - i. The average team score is determined by taking the mean of every score on every ballot for each student-attorney team (i.e.; the sum of all points divided by the total number of ballots)
  - c. For teams with the same win-loss ratio and the same average score, teams are further ranked according to the point differential record. Higher point differential record ranks higher.
    - i. The point differential for a ballot is determined by the difference between the prosecution/plaintiff combined score and the defense combined score on the ballot. A team that won the ballot would have a positive point differential. A team that lost the ballot would have a negative point differential.
    - ii. The point differential record is determined by adding the point differentials of every ballot.
4. Seeding and Pairings
  - a. Teams will be power-seeded and paired according to the ranking procedure set forth in Article V(3); thus, the first ranked team and the sixteenth-ranked team would compete against each other in Octofinal Round A; the second-ranked team and the fifteenth-ranked team participate in Octofinal Round B; and so on.
  - b. The higher-ranked team in each round chooses whether it will compete as prosecution/plaintiff or defense. This selection must be made at least twenty-four (24) hours prior to the next elimination round.
  - c. Teams' power seeding ranks that were established during preliminary rounds will remain the same through elimination rounds.
5. Advancement of Teams in Elimination Rounds
  - a. The winner of an Elimination Round is the team who wins the majority of the ballots from the Round. In the event that each team wins an equal number of ballots, the Round's judges must meet to determine the winner of the Round.
  - b. Judges in Elimination Rounds, except the Final Round, shall utilize the win-loss ratio scoring procedure set out in V(3)(a)(i).
  - c. The eight (8) winners of the trials of an Octofinal Round will advance to the Quarterfinal Round.
  - d. The four (4) winners of the trials of the Quarterfinal Round will advance to the Semifinal Round.
  - e. The two (2) winners of the trials of the Semifinal Round will advance to the Final Round.

## 6. Final Round

- a. The winner of the Final Round of the Ira S. Flory Trial Competition is the team that wins the majority of the ballots from the Final Round.
- b. Judges in the Final Round may elect to utilize the scoring procedure set out above or may simply vote to select the winning team. If voting is elected or in the event of a tie if numerical scores are used, the judges must select a winner by majority vote.

## VI. Complaint Procedure

### 1. Complaint Procedure for In-Round Rules Violations

- a. Competitors are advised that complaints for in-round rules violations are strongly discouraged, as most perceived violations (including fact inventions, improper objections, etc.) can and should be dealt with by making timely objections and impeachments during the trial.
- b. In the event a team feels that it has a complaint of a rules violation *and* that that violation could not have been handled through methods discussed above, it must be made in writing to the Flory Vice-President no later than ten minutes after the conclusion of the trial, so as to permit time for the Flory Vice-President to confer with the judges in the room.
- c. This writing must specify what rule was violated, how it was violated, and what means (if any) were employed to cure the violation during the round.
- d. The complaint will be ruled upon in the first instance by the Flory Vice-President. The Flory Vice-President's decision may then be appealed, in writing, to the Director of Advocacy Programs. This appeal must be made no later than 12 hours after the Flory Vice-President's decision.
- e. No formal action will be taken on any complaint made outside of the ten minute window.

### 2. Complaint Procedure for Out-of-Round Rules Violation

- a. In the event a team feels that a competition rule (ex.; the rule on outside assistance) has been violated by another team, a team may submit a complaint via email to the Flory Vice-President via email at [flory@law.lsu.edu](mailto:flory@law.lsu.edu). The complaint must specify what rule has been violated, by whom, and how.
- b. The complaint will be ruled upon in the first instance by the Flory Vice-President. The Flory Vice-President's decision may then be appealed, in writing, to the Director of Advocacy Programs. This appeal must be made no later than 12 hours after the Flory Vice-President's decision.

## VII. Outside Assistance

1. Teams may submit questions about these rules or for clarifications of facts contained the problem packet via email to the Vice-President of Flory or the Director of Advocacy Programs. Any answers/clarifications given shall be sent to all registered teams.
2. Teams may ask any person *general* questions about the rules of evidence, trial procedures, and the Flory competition process. However, any answers to any questions made by competitors shall be considered unofficial and non-binding unless the question is made for clarification to the Flory Vice-President or the Director of Advocacy Programs as set forth in Rule VII(1).

3. Teams **may not** receive any other assistance from any person regarding specific objections or specific procedures in relation to specific facts in the packet.

# Brackets for Elimination Rounds

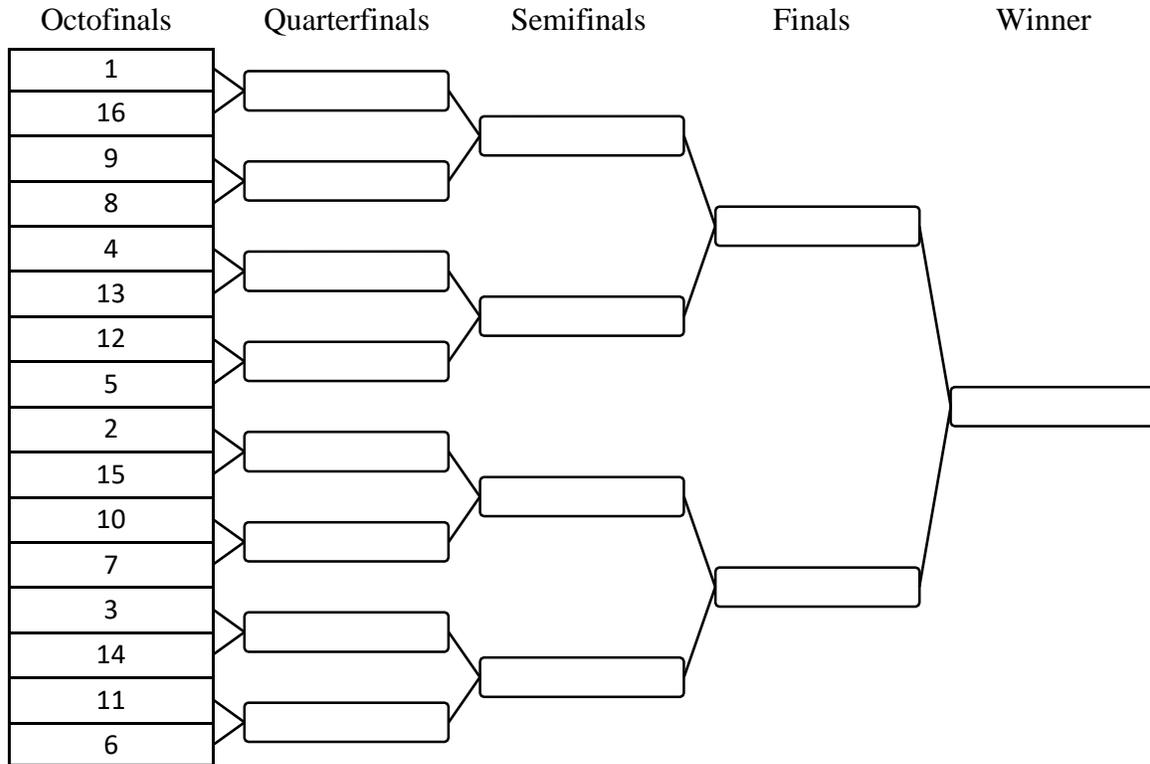


Figure 1. If more than 20 teams in Prelims

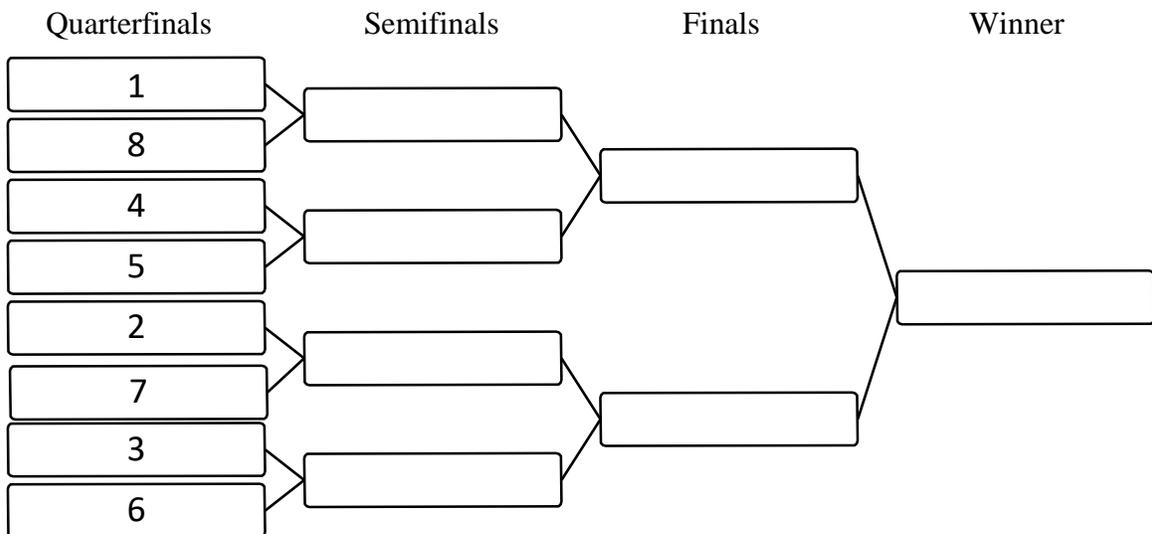


Figure 2. If 20 or less teams in Prelims