

OFFICIAL TOURNAMENT OF CHAMPIONS RULES 2023

Article I. Administration.

1. Tournament of Champions Selection Process.

- a. Invitations to the Tournament of Champions are based on a school's three-year performance in the National Trial Competition sponsored by TYLA and ACTL and the Student Trial Advocacy Competition sponsored by AAJ.
- b. Schools are awarded one point for each regional winner. In years when either competition has only one regional winner, schools will be awarded one point for making the regional final round. Schools are awarded one point for each advancement at the nationals for each competition including one point for winning the national championship.
- c. The sixteen (16) schools in the country with the highest points for the previous three years will receive an invitation to the Tournament of Champions subject to Rule I.2(g).
- d. If there is a tie for the final invitation, the team with the highest total points for the previous three-year period will receive the invitation. For instance, if School A and School B are tied with 4 points for the three-year period running from 2021-2023 but School A has a total of 6 points and School B has a total of 5 points from the three-year period running from 2020-2022, then School A will receive the invitation.
 - i. If teams remain tied by looking back to the previous three-year period, the next three-year period will determine the tie breaker. For example, if School A and School B remain tied looking back to the three-year period running from 2020-2022, the next tie breaker will be the total points for the three-year period running from 2019-2021. This process will continue until the tie is broken.

2. Host Schools:

- a. The TOC champion is **expected** to host TOC two years following winning the championship. For instance, the 2023 champion is expected to host TOC in 2025. By participating in the tournament, each school accepts this responsibility.
- b. Automatic Invitation: If the host school in any given year does not qualify for the tournament, the host school is automatically entitled to enter a team in the competition, regardless of whether they qualify by points.

- c. Host School Competing: The TOC Board finds the best practice is for a host school not to compete the year in which that school hosts. However, the Board recognizes the large time and financial commitment host schools make and therefore does allow the host school to compete the year in which that school hosts the tournament. If a host school chooses to compete in the year they host, the Board strongly recommends the Tournament Director not serve as the coach of that school's team.
- d. Deferral: If the host school would prefer not to compete in the year that school hosts, that school will be entitled to defer the automatic invitation to the following year, where they can send a team regardless of whether they would qualify by points. The deferral is good for one year only. If the school deferring qualifies by points for the tournament the following year, there will be no extension of the deferral.
- e. Refusal to Host: If a school scheduled to host cannot host that year, after consultation with the TOC Board of Directors, the school may be relieved from hosting responsibilities. However, the Board reserves the right to rescind an invitation to any school who refuses to host the tournament for reasons not related to deferment as set out in Rule 1.2(d) regardless of whether the school would otherwise qualify for an invitation.
- f. Volunteer Host School: If a school scheduled to host cannot host that year, the TOC Board will seek a volunteer host school.
- g. Invitations Following Host Deferral or Volunteer Host: If a school is awarded an invitation to the tournament based on a deferral of hosting or by virtue of being a volunteer host school the year before, the fifteen (15) schools in the country with the highest points for the previous three years will receive an invitation to the Tournament of Champions

3. Tournament of Champions Rules.

- a. Each Tournament Director for a host school, by agreeing to host the tournament, consents to strictly following the Official Rules of the Tournament of Champions. The TOC Board of Directors is the final decision maker on all questions regarding the interpretation of these rules and all matters of administration of the tournament and those decisions shall be final.
- b. The Board members shall be available for consultation with the Tournament Director for each host school concerning the interpretation of these rules and administration of the tournament. Contact information for the Board members shall be provided to the Tournament Director prior to the start of the tournament.

- c. Any protests regarding the conduct of a round shall be handled consistent with Article V of these rules.
4. Contact with the Tournament of Champions Board of Directors:
 - a. ***No student*** shall contact any member of the Tournament of Champions Board of Directors by email, letter, messaging, or phone. Only Advocacy Directors, Assistant Directors, Coaches, or Non-Student Advisor shall be permitted to contact the TOC Board.
 - b. The Board ***reserves the right to rescind an invitation*** to any school that violates Rule I.4(a).
5. Clarifications.
 - a. Clarifications for the 2023 Tournament must be submitted to Matt Woodham at mwoodham@samford.edu by Noon Central time on September 21, 2023.
 - b. Discovery questions for the 2023 Tournament must be submitted to Matt Woodham at mwoodham@samford.edu by Noon Central time on September 21, 2023 consistent with Rule IV. 10.
 - c. Answers to clarifications and discovery questions shall and any revised case file provided as a result shall be the final version of the 2023 case file.

Article II. Team Composition.

1. Students:
 - a. Each invited school shall field a team consisting of four students currently enrolled in the sponsoring law school's J.D. program.
 - b. For each round, two students will be advocates and two students will play their witnesses. At least two students must advocate; however, schools may choose to have three or four advocates. As such, advocates and witnesses may change their roles from round to round (be an advocate on one side and change to a witness on the opposite side), but not during a single trial.
 - c. Team members may not be substituted except for exigent circumstances such as death, severe illness, or other uncontrollable and unforeseeable circumstances. Any substitutions must be approved by the TOC Board in advance. A team requiring a substitution may be required to forfeit that round.

2. Non-Student Attorney Advisors:

- a. Each team ***MUST*** be accompanied to the competition by a non-student advisor who is an attorney. At least one non-student attorney advisor ***MUST*** be ***present for the competition***.
- b. All communication with the Tournament Director must be from the non-student attorney adviser, not the students.
- c. Teams with no non-student attorney adviser will be allowed to compete in the tournament but will ***NOT*** be allowed to advance to the semi-final round.

3. Anonymity:

- a. Teams shall be identified to judges only by a letter or number assigned by the Tournament Director.
- b. No team member, coach, non-student attorney adviser, family member, or person associated with a team shall directly or indirectly attempt to communicate the identity of a team to a judge, and no judge shall attempt to discover that information.
- c. Students, coaches, non-student attorney advisers, family members, or persons associated with a team shall ***NOT*** have books, notepads, clothing or any other paraphernalia identifying a particular school.
- d. Violation of Rule II.3 could result in the forfeiting of the round in which the violation occurred.

Article III. Case Files.

1. The Federal Rules of Evidence and the Federal Rules of Civil or Criminal Procedure shall control. Only those rules, and the law provided in the fact pattern shall be used in argument. ***Specifically, no statutory, regulatory, or case law shall be cited except for what is provided in the fact pattern.*** Students may argue the comments or advisory notes to the Federal Rules of Evidence but may ***not*** cite the cases contained therein.

2. Exhibits:

- a. Copies of any material contained in the fact pattern may be made and may be enlarged for demonstrative purposes. Further, any team may enlarge any exhibit, jury instruction, or other component of the problem to use as a demonstrative exhibit.

5. Witness Statements:

- a. Witness statements are any deposition, testimony, report, or affidavit of a witness.
- b. All witness statements, depositions, photographs, diagrams, signatures, and other material included as part of the problems shall be deemed as originals and authentic. 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.
- c. All witness statements shall be considered full and complete and the witness shall attest to the same as follows:
 - i. I have carefully reviewed the above deposition transcript to determine whether the answers contained are true and correct, and whether I had any additional information relevant to the matters therein. I hereby certify, under penalty of perjury, that the deposition transcript is accurate, and I have no information relevant to the matters discussed other than what is discussed in this deposition. Everything was covered and nothing was left out.
- d. The jury instructions will include the following:
 - i. In this case, each witness has given a prior statement. Each witness later reviewed his or her statement and certified the statement was true and correct and that s/he had no information relevant to the matters discussed in his/ her statement that was not already included in the statement. If a witness has provided information today that differs from or is in addition to information contained in his or her statement, you should consider that witness' entire testimony with great caution.

Article IV. Trials.

1. Judges and Evaluators:

- a. Judges and evaluators will be given only copies of (1) the case summary, (2) the complaint and answer, (3) the applicable jury instructions, and (4) the exhibits contained within the problem.
- b. Before the start of each round the Tournament Director shall instruct the judges: (1) to ignore regional variations of courtroom practice; (2) to judge the teams on the basis of performance and not the apparent merits of the case; and (3) not to announce the result of the round to the students. The Director may also give such other instructions as are appropriate.

2. Scoring: Scoring will be by points. No ties will be permitted on any individual ballot.
3. Format:
 - a. Each trial will consist of (1) Opening Statements; (2) Direct Examination; (3) Cross Examination; (4) Closing Argument. Students may choose to do a redirect examination, limited to the scope of cross examination, and the plaintiff/prosecution may choose to do a rebuttal closing argument subject to the presiding judge's discretion.
 - b. ***Re-cross examination is generally not permitted unless it is being used solely to impeach a witness on a fact testified to for the first time on re-direct that is either directly impeachable or impeachable by omission.*** In any event, even if a re-cross examination is allowed to take place, under no circumstances will another re-direct examination be allowed after the re-cross examination concludes.
4. Objections:
 - a. Objections during opening statement or closing argument may be made and responded to only by the advocates conducting the opening statements or closing arguments.
 - b. Objections during the testimony of a witness may be made and responded to only by the advocates conducting the direct or cross examination of that witness.
5. Motions:
 - a. Each team may address the court with preliminary or housekeeping matters in the discretion of the presiding judge.
 - b. Each team may make a pretrial Motion in Limine and may respond to an opponent's Motion in Limine.
 - c. Each team may make and respond to a Motion for Judgment as a Matter of Law or Motion for Judgment of Acquittal following the plaintiff/prosecution case-in-chief and following the defense case-in-chief. The presiding judge shall deny any motion for Judgment as a Matter of Law or Acquittal.
 - d. Either or both advocates may address motions in limine, preliminary motions, housekeeping matters and motions for judgment of acquittal or judgment as a matter of law.

6. Timing:

- a. Each team shall be allotted **seventy (70) minutes** to conduct its case.
- b. An additional **five (5) minutes per side** shall be allowed for pretrial motions in limine and housekeeping matters.
- c. The clock shall be stopped for objections and responses to objections.
- d. The presiding judge or tournament director may extend these time periods **only** (1) where an opponent used excessive time either in answering questions or making objections, (2) to resolve time keeping mistakes or (3) to address an inequity. The decision of the presiding judge or tournament director to extend or not to extend time periods shall be final and shall not be the subject of a protest.

7. Written Materials:

- a. **No** written briefs, motions, trial notebooks, list of advocates, list of witnesses, exhibit lists or other written material shall be presented to the court.
- b. Teams will submit to the presiding judge a Notice of Appearance at the start of each round using **only** the official TOC Notice of Appearance form. A copy of the TOC NOA will be included in the case file. Teams will complete the NOA by typing their information into the form and shall bring copies to provide to the scoring judges prior to each round.

8. **NECESSARY INFERENCE RULE:** Teams must confine their presentations to the facts given in the fact pattern, any matters judicially noticeable under Federal Rule of Evidence 201, **and those inferences that are absolutely necessary, inescapable and inevitable.**

- a. Definition: An inference is said to be necessary if another and a different inference cannot be drawn from the facts stated. A necessary inference is one that is inescapable and inevitable. A necessary inference is NOT any fact that you might wish to be true nor is it a factual inference that is merely possible or consistent with facts in the fact pattern.
- b. Material facts: No inferred fact may be material, which is defined (a) as a fact that changes the merits of either side of the case or (b) that bears on the credibility of any witness or litigant. For example, if one of the witnesses is a police officer then it is a necessary inference that the officer went to and graduated from the police academy, but it is not a necessary inference that the officer graduated top of their graduating class. By way of another example, if the police officer's deposition testimony and/or

investigative report is completely silent as to whether the officer collected fingerprints at the scene of the crime, it is not a necessary inference that the officer did, in fact, collect fingerprints at the scene.

- i. 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 pursuant to Rule IV.8(e) and the team that elicits that testimony on direct examination may be subject to penalties under Article V.
- c. Non-Events: During cross examination, an advocate may question the witness about ***non-events*** that are necessary 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 a necessary inference that a 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?”
 - i. This is permissible because the witness statements are full and complete statements of everything the witness knows. Therefore, the absence of information in the record pertaining to the collection of DNA means DNA was not collected. If a witness is asked on cross examination about the absence of information, the witness must admit that collection or testing was not done. The witness is prohibited from saying “I do not know” or “that was not asked at my deposition.”
- d. Outside Resources During Cross Examination: 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 the margin of error for DNA tests can be as high as five percent, correct?” This is not a necessary inference.
- e. Impeachment:
 - i. Except during closing arguments, ***no objections shall be made that the opposing team is going “outside the record,”*** and any breach of the Necessary Inference Rule may be addressed by means of impeachment.
 - ii. Should a witness be impeached by omission, the ***witness MUST admit, if asked, that the facts they have testified to are not in***

their deposition. It is a VIOLATION of the rules for the witness to say that they were not asked about those facts in their deposition. The answer should simply be, "I did not say that in my deposition".

- iii. The judges will be instructed concerning the significance of this form of impeachment in the mock trial context, and they are likely to account for unfair additions to the record in their scoring of that witness' team.
 - iv. If a witness answers an impeachment by saying, "I was not asked that in my deposition", the judges will be instructed that they **SHOULD** deduct up to three (3) points from the direct examination score of the student-attorney who directed a witness who violated this rule.
 - v. The Necessary Inference Rule will be strictly enforced, and the judges will be instructed concerning the specifics of this Rule. Violators run the risk of having points deducted, ballots lost, or rounds forfeited (Article V). This method of enforcement has been used in the past and will be used in the future if appropriate.
9. Negative Space Cross Examinations: If a Negative Space Cross Examination (questions about ***missing details from an event***) of a lay/fact witness occurs, the lay/fact witness **MAY** answer, "I do not remember" or "I do not recall" to negative space questions.
- a. For instance, if a lay/fact witness states in their deposition that they were punched in the face but does not state with which hand they were punched and is asked on cross examination, "you cannot tell us with what hand you were punched", the student-witness may answer that they do not remember.
 - b. However, if the same lay/fact witness is asked, "you did not tell the police with which hand you were punched", the witness must answer no.
10. Discovery Questions: Because some facts may be overlooked by problem drafters, thereby creating unintentional missing details from an event, teams may submit up to five (5) discovery questions by Noon Central time on September 21, 2023. Discovery questions are those specifically designed to fill any factual gaps or provide unintentional missing details in the case file which teams view as crucial. Those questions, along with the responses to other clarification requests, will be answered by the problem drafters on or about September 28, 2023 along with a revised case file.

11. **WITNESS BEHAVIOR RULE:** *Because the tournament relies on lawyers and judges to volunteer their time to score the competition and the Board does not want to waste the time of those willing to serve, the Board has adopted and will strictly enforce the Witness Behavior Rule.*

- a. Definition: A witness is expected to behave professionally and **must** answer the questions posed on cross examination with **very** limited explanation **only permitted** when applicable, recognizing that each team has time limit restrictions and that in the actual practice of law, judges would not permit wasting of jurors' or the court's time.
- b. A student-witness **may not intentionally and unreasonably refuse to answer questions, unnecessarily explain their answers and may not take any action designed to exhaust the time of the cross-examining advocate's team such as repeatedly asking to be refreshed or shown their deposition or statement.**
- c. Coaches or non-student attorney advisors are expected to discuss this rule with their teams and to ensure their teams abide by this rule.
- d. The judges will be instructed concerning the significance of this rule and will be instructed that they **SHOULD** deduct up to three (3) points from the direct examination score of the student-attorney who directed a witness who violated this rule.

12. Witness Use of Aids: Witnesses may **NOT** take any papers or other aids to memory with them on the witness stand. This does not preclude an advocate from refreshing a witness' recollection or using exhibits, insofar as the same is consistent with the rules of evidence.

13. Assistance:

- a. Neither the non-student attorney adviser, nor any other person that is not a member of a particular team (such as a parent or spouse), may communicate in **any manner** with the student members of that team during a round. This prohibition **includes** recesses and breaks and includes, but is not limited to, verbal conversations, text messaging, instant messaging, notes, and/or gesturing.
- b. Student team members may talk to other student team members on their own team during rounds.
- c. For purposes of this rule, the round starts as soon as the teams begin the meet and confer process and ends once the presiding judge concludes the round.

14. Scouting:

- a. Except in the final round, no coach or other person associated with a team may be present during any part of a round in which that team is not competing. In the semi-final rounds, persons associated with eliminated teams may observe, but may not thereafter describe their observations to the finalists.

Article V. Protests.

1. At the coaches' meeting, the Tournament Director shall appoint a committee of coaches to act as the protest committee.
2. All questions arising during the competition itself, including any protest about the conduct of a round shall be addressed directly to the Tournament Director verbally as soon as possible after the matter arises. This may be done before the end of the round. No protest will be considered if not filed within **five minutes** of the end of that round.
3. Meet and Confer: Before filing a protest with the Tournament Director and before the protest committee convenes, coaches/non-student advisors must first Meet and Confer and make a good faith attempt to resolve the issue. Any agreed upon resolution must be conveyed to the Tournament Director within five minutes of the end of that round.
4. Witness Behavior Rule:
 - a. In determining whether a violation of the Witness Behavior Rule occurred and, if so, the severity of the violation, protest committee shall consider the following guidelines: (1) whether the witness advocated from the witness stand; (2) whether the witness made legal arguments from the witness stand; and (3) whether the witness intentionally evaded answering questions.
5. Necessary Inference Rule:
 - a. In determining whether a violation of the Necessary Inference Rule occurred and, if so, the severity of the violation, protest committee shall consider the following guidelines: (1) whether the fact testified to was material; (2) whether the fact testified to was a necessary inference; and (3) whether the conduct was intentional.
 - b. Intentional Conduct: In determining whether any facts elicited which violate the Necessary Inference Rule were intentional, the protest committee shall consider (1) whether the fact was elicited more than once; (2) whether the fact was argued by the team who elicited the fact in

closing argument; and (3) whether the advocate who elicited the fact attempted to address the fact by (a) withdrawing the fact; (b) asking the witness to clarify (“are you sure you have previously said ...”); (c) moving to strike the fact; or (d) otherwise informed the presiding judge, scorers, and/or opposing advocates that the fact was unintentionally elicited.

6. The protest committee may consult with the presiding judge and scorers in determining whether a violation of either the Witness Behavior Rule or the Necessary Inference Rule occurred and, if so, the severity of the violation.
7. Suggested Penalties: ***The TOC Board of Directors considers violations of the Witness Behavior Rule and the Necessary Inference Rule to be serious*** and encourages protest committees to take any substantial violations of these rules seriously to discourage teams from violating these rules in this and future competitions. Therefore, the TOC Board of Directors suggest the following penalty ranges be considered by a protest committee for any substantial violation of these rules.
 - a. Intentional and Material Violations: If the protest committee finds a violation to be intentional and material, the protest committee should consider a point deduction per ballot of no less than five (5) points.
 - b. Intentional but Non-Material Violations: If the protest committee finds a violation to be intentional but non-material, the protest committee should consider a point deduction per ballot of at least (1) point but no more than two (2) points.
 - c. Repeat Offenders: If the protest committee finds that a school/team is a repeat offender during the competition (has been sanctioned in a previous round and committed violations in a subsequent round), the protest committee may (1) require the repeat offending team to forfeit a ballot; or (2) require the repeat offending team to forfeit the round.
8. Future Disqualification: The TOC Board of Directors ***reserves the right to disqualify*** any repeat offending team from future Tournament of Champions competitions regardless of the repeat offending teams’ ranking in the TOC points process for selecting teams.
9. 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.

Article VI. Rounds.

1. Preliminary Rounds:

- a. There will be four preliminary rounds. All teams will try the case twice on each side. Teams will not meet each other twice in the preliminary rounds.
- b. The first two rounds will be randomly paired. The third and fourth rounds will be power-matched.

2. Third Round:

- a. For the third round, the team ranked first after the first two rounds will be matched against the team ranked second and so on (3 v. 4; 5 v. 6, etc.).
- b. If the natural power-match for the third round matches two teams who have met in the first two rounds, the Tournament Director shall adjust the power matching so that the higher ranked team goes against the next available highest ranked team that they have not previously played.
 - i. For example, if going into the third round Team A is ranked first, Team B is ranked second, and Team C is ranked third, but Team A and Team B played each other in the first round, and Team A has not played Team C, then Team A would be matched against Team C for the third round, and Team B would be matched against the next highest seeded team they have not already played.
 - ii. These adjustments would continue until all teams have been matched for the third round.

3. Fourth Round:

- a. For the fourth round, the team ranked first after the first three rounds will be matched against the team ranked second and so on (3 v. 4; 5 v. 6, etc.).
- b. Just like with the third round, if the natural power-match for the third round matches two teams who have met in the first two rounds, the Tournament Director shall adjust the power matching so that the higher ranked team goes against the next available highest ranked team that they have not previously played.
- c. Additionally, for the fourth round, if the natural power-match matches two teams who were on the same side of the case in the third round, the Tournament Director shall adjust the power matching so that the higher

ranked team goes against the next available highest ranked team that was on a different side in the third round.

- i. For example, if going into the fourth round Team A is ranked first, Team B is ranked second, and Team C is ranked third, but Team A and Team B both represented the Defendant in the third round, and Team C represented the Plaintiff in the third round, and assuming Team A and Team C did not play each other in the first three rounds, then Team A would be matched against Team C for the fourth round, and Team B would be matched against the next highest seeded team they have not played that represented the Plaintiff in the third round.
- ii. These adjustments would continue until all teams have been matched for the fourth round. The Tournament Director shall continue to use this method of adjustment to ensure that each team has each side of the case twice and that no teams meet each other twice in the preliminary rounds while adhering as closely to the power-matched system as possible.

4. Seeding for Power Matching: The seeding for power matching will be determined as follows: (1) win-loss record; (2) number of ballots won; (3) total point differential; and (4) total points.

5. Semifinal Rounds:

- a. The four teams to advance to the semi-final rounds will be selected based on the following criteria used in the following order: (1) win/loss record; (2) total ballots; (3) point differential; (4) sum of opponent's records; and (5) coin toss.
 - i. To determine point differential, the Tournament Director shall summarize the point differential for each preliminary round and add those together for a team's overall point differential for the preliminary rounds. The team with the highest point differential shall win the tie breaker.
- b. The semi-finalists shall be seeded based on their performance in the preliminary rounds, and the draw for the semi-final round shall seed 1 v. 4 and seed 2 v. 3.
- c. If the teams faced each other in preliminary rounds, they shall reverse sides. Otherwise, the higher seeded team shall choose sides.

6. Final Round:

- a. In the final round, if the teams have faced each other in the preliminary rounds, they will reverse sides.
- b. If the finalists did not face each other in the preliminary rounds and had opposite sides from each other in the semi-final rounds, they shall switch sides from the sides they had in semi-final rounds.
- c. If the finalists did not face each other in the preliminary rounds and had the same side in the semi-finals, the higher seeded team shall choose sides.

