



# **SIXTEENTH ANNUAL THURGOOD A. MARSHALL MEMORIAL MOOT COURT COMPETITION**

## **OFFICIAL RULES OF THE 2013 COMPETITION**

These rules apply to all teams participating in the 2013 Competition.

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YOUNGER LAWYERS DIVISION**

## OFFICIAL TIMETABLE

January 8, 2013	Distribution of Competition Problem and Rules
February 12, 2013	Registration & Entry Fee Deadline
February 19, 2013	Distribution of team numbers to all registered participants
March 12, 2013	Deadline for receiving briefs. All briefs shall be emailed (preferably in PDF format) to Sherwin Valerio at svalerio@fedbar.org and must be <b><u>received</u></b> by no later than <b>March 12, 2013 11:59 p.m. EST</b> .
March 19, 2013	Distribution of all briefs to teams.
March 22, 2013	Distribution of preliminary round pairings

### April 4, 2013

5:00 p.m.	<b>Team check-in on 3<sup>rd</sup> floor of the DC Superior Court</b>
6:00 p.m.	Preliminary rounds of oral argument Round 1 <b>Location: DC Superior Court</b>
7:30 p.m.	Preliminary rounds of oral argument Round 2 <b>Location: DC Superior Court</b>
9:30 p.m.	Announcement of teams advancing to round of sixteen

### April 5, 2013

9:00 a.m.	Round of sixteen of oral argument (Part A) <b>Location: U.S. Court of Federal Claims</b>
10:30 a.m.	Round of sixteen of oral argument (Part B) <b>Location: U.S. Court of Federal Claims</b>
12:30 p.m.	Announcement of teams advancing to quarterfinal round
1:00 p.m.	Quarterfinal round of oral argument <b>Location: U.S. Court of Federal Claims</b>
2:45 p.m.	Announcement of teams advancing to semifinal round of oral argument
3:30 p.m.	Semifinal round of oral argument <b>Location: U.S. Court of Federal Claims</b>
5:00 p.m.	Announcement of teams advancing to Final Round
6:30 p.m.	Final Round of oral argument <b>Location: U.S. Court of Appeals for the Armed Forces</b>
8:00 p.m.	Awards Reception <b>Location: U.S. Court of Appeals for the Armed Forces</b>

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**Rule 1.           *Competition Sponsorship and Structure.***

The Thurgood A. Marshall Memorial Moot Court Competition ("Competition") shall be sponsored by the Federal Bar Association and administered by the Younger Lawyers Division. The Board of Directors of the Younger Lawyers Division shall select a Competition Director, who shall be a member in good standing of the Young Lawyers Division. The Competition Director shall select an Assistant Director (or Co-Competition Director), and shall establish such committees and working groups as the Competition Director finds necessary for the efficient administration of the Competition.

The Competition shall be held in conjunction with the Mid-Year Meeting of the Federal Bar Association. The Competition shall consist of written and oral pleadings. Each team shall submit a written brief supporting either the Petitioner or Respondent. Each team shall also participate in oral arguments, and must be prepared to argue the positions of both Petitioner and Respondent.

The oral pleading portion of the Competition shall be divided into preliminary, round of sixteen, quarterfinal, semi-final, and final rounds. All teams shall participate in the preliminary rounds. Teams advancing beyond the preliminary rounds shall be chosen on a combination of written and oral pleading scores. Teams advancing through the playoff rounds will also be chosen on a combination of written and oral pleading scores. The Competition Champion, however, shall be selected on the basis of oral argument scores in the Final Round only.

**Rule 2.           *The Problem.***

(a) The Competition shall be based on a hypothetical case (the "Problem"), which shall be prepared each year by scholars and practitioners. The substantive area of law that forms the basis of the Problem may vary from year to year, but shall always involve an area of law in which the Federal Bar Association has a Section, Division, or Committee.

(b) The substantive area of law for the 2013 Competition shall be Federal Law.

(c) Participants in the Competition may request clarification of any portion of the Problem by sending an e-mail to [svalerio@fedbar.org](mailto:svalerio@fedbar.org) no later than **March 8, 2013**. The Competition Director and Assistant Director (or Co-Competition Director) shall review any requests and determine whether clarification is warranted. If so, written clarification shall be sent to all participants.

**Rule 3.           *Participation.***

(a) Only law schools accredited by the American Bar Association are eligible to participate in the Competition. Each school may enter no more than three teams.

(b) Each team shall be comprised of two members, each of whom must be enrolled in a full-time or part-time academic program of legal education. Each team member must be so enrolled from January 2013 through April 2013. The method of selection of team members is left to the discretion of the participating schools.

(c) Each team shall pay an entry fee of \$400.00. The entry fee shall be made payable to the Federal Bar Association and must be received no later than February 12, 2013. Late payment of fees may be allowed, at the discretion of the Competition Director(s), upon a showing of good cause. Teams requesting a late payment option shall submit their request to the Competition Director(s), in writing, no later than February 12, 2013. No team shall be allowed to participate unless proper payment has been made on a timely basis.

**Rule 4.           *Team Identification.***

(a)       Upon proper registration, the Competition Director(s) shall assign to each team a Team Number. The participants shall not disclose their school affiliation during the course of the competition. After the Competition is concluded, however, the Competition Director(s) may publicly disclose the names of the law schools that participated in the Competition, unless a team requests in writing prior to the first round of oral argument that its law school affiliation not be disclosed.

(b)       The Team Number shall be placed on the cover of the brief in lieu of any identification of the school name. During oral argument, participants shall identify themselves by Team Number and the participants' names only. Any team that discloses its school affiliation during the Competition shall be subject to a penalty in accordance with Rule 11.

**Rule 5.           *Preparation of Written and Oral Pleadings.***

(a)       All preparation for the Competition shall be performed by the student participants. All written materials shall be the exclusive product of the participants.

(b)       Teams may utilize the assistance of faculty members, other students, and practitioners in preparing for the Competition. However, such assistance shall be limited to discussions of the issues, of research sources or methods, and of the art of oral advocacy. Such assistance in the preparation of written or oral pleadings shall not interfere with the final work product.

(c)       In no event shall any participant utilize the Bench Brief to assist in the preparation of written briefs or in preparation for oral argument. Any team found to have utilized the Bench Brief to prepare for the Competition shall be subject to a penalty in accordance with Rule 11.

**Rule 6.           *Judges.***

(a)       Each round of oral argument shall be judged by three-judge panels whenever possible. Judges for oral arguments shall be licensed attorneys, judges, or scholars, and shall be members of the Federal Bar Association whenever possible. It is not required that the judges have specialized knowledge of the substantive area of law that forms the basis of the Problem, although the Competition Director(s) shall endeavor to secure as many judges with such knowledge as possible. Each judge will be provided with the Problem and a comprehensive Bench Brief discussing the applicable law, and all judges shall familiarize themselves with the contents of the Problem and Bench Brief.

(b)       All written briefs shall be graded by three graders. All brief graders shall have specialized knowledge of the substantive area of law which forms the basis of the Problem whenever possible. In addition, each brief grader will be provided with the Problem and a comprehensive Bench Brief discussing the applicable law, and all brief graders shall familiarize themselves with the contents of the Problem and Bench Brief.

(c)       In no event shall any judge sit on a panel that will be hearing argument from any team with which the judge is affiliated. In accordance with this Rule, all judges shall endeavor to avoid even an appearance of impropriety. In the event a team in any oral round believes a judge has an affiliation with its opponent, this suspicion shall be immediately reported to the Competition Director(s), who shall investigate the complaint and, if necessary, reassign the judge to a different courtroom.

(d)       In the event a judge sits in both preliminary and playoff rounds of oral argument, the Competition Director(s) will try to avoid having that judge hear arguments from any team which that judge heard in earlier rounds, but in practice this is sometimes unavoidable.

(e) Each judge in oral arguments shall endeavor to provide feedback to participants regarding their performance. Such feedback shall be limited to the art of oral advocacy and shall not include guidance in the applicable substantive area of law. In no event shall any judge reveal any contents of the Bench Brief to participants.

**Rule 7.            *Written Briefs.***

(a) Each team shall submit an electronic version (preferably in PDF format) of their written brief to Sherwin Valerio via email at svalerio@fedbar.org and must be **received** by no later than **March 12, 2013 11:59 p.m. EST**. Any team which fails to submit briefs in a timely manner shall be subject to a penalty in accordance with Rule 11.

(b) Each team shall submit a written brief supporting the position of either the Petitioner or the Respondent. Each team may select whether it shall brief the position of the Petitioner or Respondent. However, in the event any school enters more than one team in the Competition, at least one team from that school must brief for the Petitioner and at least one team must brief for the Respondent.

(c) Once a team has submitted its brief, the brief may not be altered in any way. In no event shall the Competition Director(s) accept revised or replacement briefs from any team.

(d) All briefs shall comply with the following format rules. Any team whose brief violates any of the format rules shall be subject to a penalty in accordance with Rule 11.

(i) Each brief shall be no more than twenty-five pages in length. This twenty-five page limit excludes the brief covers, title page, table of contents, table of authorities, questions presented, and statement of jurisdiction. The twenty-five page limit includes the summary of argument, statement of facts, arguments, and conclusion, as well as all footnotes or endnotes.

(ii) The body of the brief must be typed and double-spaced. Footnotes, as well as quotations of more than fifty words, may be single-spaced. There shall be no more than 28 double-spaced lines (or their equivalent) per page, including headings and footnotes.

(iii) All briefs must be formatted to fit on 8-1/2 inch by 11 inch paper.

(iv) All briefs shall be typed in a font size of not less than twelve characters per inch, including headings and footnotes. Any style of font is acceptable.

(v) Each page of the briefs shall have margins of not less than one inch on all sides.

(vi) Each brief shall have a cover bearing a copy of the Title Page. The Team Number shall be placed in the upper left-hand corner of the brief. In no event shall any brief indicate the team's school affiliation.

(vii) Each brief shall contain the following:

- a Title Page, bearing the Team Number, the case caption, and whether it is on behalf of Petitioner or Respondent;
- a Table of Contents;
- a Table of Authorities;
- a Statement of Questions Presented;
- a Statement of Jurisdiction;
- a Summary of Argument;
- a Statement of Facts;
- an Argument; and
- a Conclusion.

(e) Upon receiving the briefs from participants, each brief shall be reviewed by the Competition Director and Assistant Director (or Co-Competition Director) for violations of the brief format rules. The Competition Director and Assistant Director (or Co-Competition Director) shall assess the appropriate penalties for any format violations in accordance with Rule 11.

(f) Each brief shall be graded by three Brief Graders. Each Brief Grader may award each brief between 60 and 100 points. Each brief shall be graded on the basis of the substantive law presented, the writing style, and the persuasiveness of the writing.

(g) After the briefs have been graded and the points assigned to each brief by each Brief Grader, the Competition Director and Assistant Director (or Co-Competition Director) shall subtract the appropriate number of penalty points from any briefs that violate the brief format rules. The raw score assigned by each Brief Grader, minus any penalty points, shall be the Brief Score. Each brief shall therefore have three Brief Scores.

(h) Prior to the oral argument segment of the Competition, the Competition Director shall distribute to all teams all of the briefs.

**Rule 8. Oral Arguments.**

(a) Oral arguments shall consist of Preliminary, Round of Sixteen, Quarterfinal, Semi-final, and Final Rounds. The Preliminary Round shall consist of two rounds, conducted in accordance with the preliminary round schedule as announced by the Competition Director(s). Each team shall argue in each segment of the Preliminary Rounds, arguing once for Petitioner and once for Respondent.

(b) Pairings for the Preliminary Rounds shall be selected randomly by the Competition Director and Assistant Director (or Co-Competition Director). Each team shall be notified of its Preliminary Round pairings by mail or e-mail, to be sent by the Competition Director(s) not later than **March 8, 2013**. For the Round of Sixteen and Quarterfinal Round, the Competition Director and Assistant Director (or Co-Competition Director) will randomly determine which teams argue for Petitioner and Respondent. For the Semi-Final Round, teams will draw lots to determine whether a team will argue for Petitioner or Respondent. For the Final Round, the team with the higher aggregate brief and oral argument scores in the Preliminary and previous playoff rounds will have the option of choosing whether it will argue for Petitioner or Respondent in the Final Round.

(c) Each round of oral argument shall last one hour. Each team is allotted thirty minutes to present its oral argument. Each team may allocate its time between team members at its discretion; however, in no event shall any member of a team argue more than twenty minutes in any round. At the discretion of the oral round judges, a team may be allotted additional time at the expiration of its thirty minutes to answer questions of the panel.

(d) Oral arguments shall be structured as follows. The two team members representing the Petitioner shall present their arguments consecutively, followed by the two team members representing the Respondent. The team representing Petitioner may reserve up to five minutes for rebuttal, which will follow the arguments of Respondent. Rebuttal may be presented by only one team member. Rebuttal is limited to the scope of oral arguments presented by the Respondent.

(e) Immediately following the arguments, each of the oral argument judges shall complete an Oral Argument Score sheet for the round. In no event shall judges disclose to participants the scores awarded during the round. Judges are, however, strongly encouraged to provide feedback to the participants at the close of arguments.

(f) In the event a team fails to appear for its scheduled argument, the judges shall wait fifteen minutes for the team to appear. At the expiration of fifteen minutes, the team which is present shall present its arguments and shall be scored by the judges as if the opponents had appeared.

(g) In no event shall any team member disclose his or her school affiliation to the oral argument judges. Any participant doing so shall be subject to a penalty in accordance with Rule 11.

(h) While a team member is presenting his or her argument, that team member shall not communicate, orally or in writing, with his or her teammate. In no event shall any participant in an oral argument communicate with its coach or with spectators while the arguments are in progress. Any team violating this rule shall be subject to a penalty in accordance with Rule 11. All participants, their coaches, and affiliated spectators shall be courteous and respectful while opponents are presenting oral arguments. Any team violating this rule shall be subject to a penalty for unsportsmanlike conduct.

(i) Teams may not utilize exhibits or demonstrative aids during oral arguments.

(j) All rounds of oral argument shall be open to the public. However, teams are prohibited from viewing known opponents in advance of the argument against that opponent, nor may team coaches, family members, or other team affiliates engage in such behavior. Any team violating this rule shall be subject to a penalty in accordance with Rule 11.

(k) Each oral argument judge shall award to each oralist a score between fifty and one hundred points ("Oral Raw Score"). The scores will be based on a variety of factors including, but not limited to, courtroom demeanor, familiarity of issues, and ability to answer questions.

**Rule 9. Calculation of Scores for Advancement to Playoff and Final Rounds.**

(a) For each round of oral argument, a team's score shall be calculated as follows:

(i) Brief Points. Each brief shall have been awarded between sixty and one hundred points by the Brief Graders, in accordance with Rule 7.

(ii) Oral Points. Each oral judge shall assign oral argument points to each oralist in accordance with Rule 8. The total scores from all judges will be calculated by adding the team's two oralists' scores together.

(iii) For each round of oral argument, the Brief Points for each team shall be added to the Oral Points. A team's Brief score shall count as one-third and the Oral score shall count as two-thirds of each team's score per round.

(iv) At the conclusion of the Preliminary Rounds, the total scores for each segment of the Preliminary Rounds shall be added together. The sixteen teams with the highest number of points in the Preliminary Rounds shall advance to the Round of Sixteen. Teams advancing to the Round of Sixteen will be seeded based upon their preliminary round scores.

(v) The Round of Sixteen, Quarterfinal and Semi-Final Rounds shall be scored in the same manner as the Preliminary Rounds. Advancement shall be determined by the points accumulated in each playoff round. Advancement in the playoff rounds will be determined by single elimination. The winner of each round will advance to the next round of competition. The team with the highest number of aggregate points after the semi-final round that does not advance to the Final Round shall be awarded Third Place overall.

(vi) The Final Round winner shall be determined on the basis of the oral argument scores in the Final Round only. Brief scores and oral argument scores from the prior rounds will not count.

(vii) In the event that only two judges are present for any round of oral argument, a third Oral Raw Score will be assigned to each participant. This third Oral Raw Score shall be calculated for each participant by averaging the Oral Raw Scores given to that participant by the two oral round judges who were present.

(viii) In the event of a tie, the team advancing to the next round shall be selected by comparing the teams' win-loss records in all prior rounds, including the preliminary rounds. If the teams are still tied, the Competition Director(s) shall determine whether the teams have faced each other in earlier rounds and, if so, the team which won that round shall advance. If this method does not break the tie, the team with the higher aggregate raw brief scores shall advance.

**Rule 10. Awards**

(a) Awards shall be presented to the top three overall teams. First place shall be awarded to the team that is chosen as winner of the Final Round. Second place shall be awarded to the other participant in the Final Round. Third place shall be awarded to one of the other teams participating in the Semi-Final Round, and shall be selected based on an aggregate of the Brief and Oral Argument scores received in the Preliminary and Playoff Rounds. Each team finishing in the top three teams overall shall receive a trophy commemorating their achievement. The Competition Champion shall also receive a "traveling trophy," which may be displayed at the school until the following year's Competition. The Competition Champion accepts full responsibility for the safety and condition of the traveling trophy during the year, and agrees to return the trophy to the succeeding year's Competition. The Competition Director shall have the names of the Competition Champion team, as well as their school affiliation, engraved on the traveling trophy.

(b) The teams with the First, Second, and Third place briefs shall receive a trophy commemorating their achievement. Brief awards shall be selected by an aggregate of the three Brief Scores given to each team.

(c) Trophies shall also be presented to the First, Second, and Third place individual Oralists, commemorating their achievement. Oralist awards shall be selected based on an aggregate of all oral argument scores given to each oralist during the Preliminary Rounds.

(d) In addition to selecting the Competition Champion, the final round judges shall also select the Final Round Best Oralist.

**Rule 11. Penalties.**

(a) The following penalties are mandatory and shall be assessed by the Competition Director and Assistant Director (or Co-Competition Director) after a violation has been determined to exist.

(i) Violation of any of the brief format rules described in Rule 7(d): six points for each violation, to be deducted from the brief raw score awarded by each Brief Grader;

(ii) Failure to submit briefs to the Competition Director(s) in a timely manner: three points for each day past the deadline, to be deducted from the brief raw score awarded by each Brief Grader;

(iii) Disclosure of school affiliation in any manner, either in the brief or during oral arguments: eight points, to be deducted from either the brief raw scores or the oral raw scores, depending on the manner in which the violation occurred;

(iv) Communication with team coaches, spectators, or other team affiliates during oral arguments: ten points, to be deducted from the oral raw score awarded by each oral argument judge to the participant engaging in such communication;

(v) Unprofessional conduct: ten points, to be deducted from the oral raw score awarded by each oral argument judge to the participant engaging in such conduct; and

(vi) Use of Bench Brief in the preparation of written briefs or oral argument: twenty points, to be deducted from either the brief raw scores or the oral raw scores, depending on the manner in which the violation occurred.

(b) Any team witnessing a violation of any of the Competition Rules shall promptly report the violation to the Competition Director or Assistant Director (or Co-Competition Director). The complaint shall be immediately investigated and, in the event a penalty is assessed, the Competition Director or Assistant Director (or Co-Competition Director) shall promptly notify the penalized team of the nature and extent of the penalty. In no event shall the Competition Director or Assistant Director (or Co-Competition Director) identify the source of the complaint.