

# OFFICIAL RULES: 2009 HOFFMAN CUP

## *GENERAL INFORMATION*

1. The Daniel S. Hoffman Student Trial Competition is sponsored by the University of Denver Sturm College of Law Moot Court Board.
2. The competition is intended to advance education in trial skills and to determine the University of Denver College of Law champion in trial advocacy.
3. The competition is designed to measure trial skills including the use of the available materials. The Judges are instructed to make no decisions on the merits of the case, but to judge trial skills only.
4. The Hoffman Cup competition will be held at the University of Denver Sturm College of Law on **October 23 – 28, 2009**.
5. The 2009 competition is a criminal trial. The case will be given to each team selected through the merit based process.
6. Jason Pock and Emily Secor of the Moot Court Board are serving as the Hoffman Cup Competition Committee.
7. Questions arising before and during the competition are to be submitted only to the competition committee leads (Jason Pock or Emily Secor) or to the Moot Court Board President (Chris Scolari). Questions should be submitted directly to a member of the competition committee by email. All decisions of the competition committee are final. Questions will be reviewed and answered, with the answer being provided to all competitors. All questions must be submitted in writing no later than 5:00 on Thursday, October 23. Questions received after this time will not be answered.
8. A “Hoffman Primer” will be offered on **Saturday, October 17, from 1:00 p.m. to 4:00 p.m.** The first portion of the session will cover performance and decorum techniques (e.g. how to introduce an exhibit). The second portion of the session will cover specific evidence questions submitted by teams. The third portion of the session will cover success tips from past winners.
9. Since one of the purposes of The Cup is for it to serve as an educational experience, the Board is pleased to announce that the first improvement being made is teams may receive help and assistance from anyone – attorneys, clerks, parents, siblings...you name it.
10. The deadline to drop from the Hoffman Cup without penalty was Wednesday, October 6. Failure to compete in the competition will result in the loss of the team’s bond check and both members will be prohibited from participating in a Moot Court Board competition for one calendar year.

11. The Honor Code applies to all competitors' activities relating to the Hoffman Cup.
12. Business dress is required at all stages of the competition. This means full suits and shirt and tie for the men.

### ***TEAM LOGISTICS***

1. Students of the University of Denver Sturm College of Law currently enrolled for the J.D. Degree and in their second, third, or fourth year of study are eligible to compete.
2. Each team must be prepared to argue both sides of the problem.
3. Each team member shall actively participate in a significant part of the trial. Each team member must conduct one direct examination and one cross-examination.
4. The team member conducting a direct examination shall make any objections to that witness's cross-examination. The team member who will cross-examine a witness will make objections to direct examination of that witness.
5. One team member must make the opening statement and the other team member must make the closing argument.
6. Team members must be at counsel table and ready for trial at the time trial is scheduled, or face possible forfeiture.

### ***COMPETITION LOGISTICS***

1. The competition shall consist of three preliminary rounds in which all teams compete. Preliminary rounds are followed by quarter-final, semi-final and final rounds. In the event of an odd number of teams, the Hoffman committee may decide on bye rounds for competitors.
2. Each team will be assigned to represent either the plaintiff or the defense before the first round. Each team will then represent the other side in the second round. Sides for the third preliminary round will be randomly assigned. Team pairings for the three preliminary rounds will be at random. The final notice of all pairings will be posted no later than the Thursday before the competition.
3. No two teams will meet more than once in the preliminary rounds.

4. For the 2009 Hoffman problem, the State and the Defense must call two (2) witnesses—no more and no less. Please see page 54 (points 1 and 2) of the case. The testimonies of Dale Wieman and Cameron Lynch can be taken into account by both sides on the bases of their respective statements provided in the case – thus no live witnesses for these roles may be called during any round. Their testimonies may be referenced in opening and closing statements. Only Aaron/Erin Schneider, Brendan/Brenda Williams (for the state) and Sean/Shawna Whitney and Paul/Paula Smoker (for the defense) can be called during trial. Neither side may call a witness of the other side. No witness may be called as an adverse witness.
  
5. The trial will consist of the following:
  - a. Pre-trial motions (Plaintiff & Defense)
  - b. Opening Statements (Plaintiff & Defense)
  - c. Direct of Plaintiff Witness 1
  - d. Cross of Plaintiff Witness 1
  - e. Redirect of Plaintiff Witness 1, if any
  - f. Direct of Plaintiff Witness 2
  - g. Cross of Plaintiff Witness 2
  - h. Redirect of Plaintiff Witness 2, if any
  - i. Direct of Defense Witness 1
  - j. Cross of Defense Witness 1
  - k. Redirect of Defense Witness 1, if any
  - l. Direct of Defense Witness 2
  - m. Cross of Defense Witness 2
  - n. Redirect of Defense Witness 2, if any
  - o. Closing Arguments (Plaintiff & Defense)
  
6. Each team will have 60 minutes to complete arguments. Time on cross-examination is charged against the team conducting the cross-examination. Each team must inform the timekeeper and judges how they will allocate their time.
  
7. **Time limits will be strictly enforced, although it is not necessary that all time allotted be used.** Each team is responsible for providing a timekeeper. This timekeeper will track the allocated time and give signals. Team witnesses often act in this role when not on the witness stand.
  
8. Plaintiff may choose to reserve a portion of the time allotted for summation in order to rebut Defendant’s closing argument. Proper notice must be given to the Court and timekeeper.
  
9. Argument of motions and objections made during the course of the trial are to be limited at the Judge’s discretion. The clock will be stopped. This is a trial competition and the emphasis is on trial skills, and not appellate advocacy. **Objections should be short and concise.**

10. No written motions or trial briefs will be permitted. The contest is to be determined on the basis of trial skills and not on the basis of legal research.
11. The Federal Rules of Evidence and the Federal Rules of 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.
12. ***No written briefs, motions, trial notebooks, or other written material shall be presented to the court.*** Pretrial motions in limine and motions for judgment of acquittal may be made and argued orally. The presiding judge shall however, deny any motion for judgment of acquittal.
13. Each team is limited to motions in limine and the time used to present such motions will be taken out of that team's 60 minute time.
14. All trials will be open for observations. Teams may not direct friends, family or witnesses to watch other rounds in order to scout out opposing teams. **NO SCOUTING!** Scouting is considered cheating and is unacceptable. Any teams in violation of this rule will be subject to disqualification and the conduct may be reported to the Dean of Academic Affairs and the Honor Board.
15. ***NECESSARY INFERENCE RULE:*** To ensure that no team obtains an unfair advantage by having their witnesses make up facts during their testimony, a "***necessary inference rule***" has been adopted for this tournament. Accordingly, 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 necessary, inescapable and inevitable.*** For the purpose of this tournament a necessary inference is ***NOT*** any fact that you might wish to be true nor is it any factual inference that is merely possible or consistent with the facts in the pattern. For example, if the fact pattern establishes that a witness is a police officer, it is a necessary inference that the witness had training in a police academy, even if not explicitly stated in the packet. However, a necessary inference would ***NOT*** include that officer's grades, ranking or specific subjects taught unless otherwise established in the fact pattern.
16. The Necessary Inference Rule will be strictly enforced. Violators run the risk of having the round forfeited and points stricken. This method of enforcement has been used in the past and will be used in the future if appropriate.
17. 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 shall be addressed by means of impeachment. Should a witness be impeached by omission, the ***witnesses 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."***

18. 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. ***Except for renumbering exhibits to correspond to a teams presentation plan, no team may alter, modify, change or redact an Exhibit in ANY way.*** This does not apply to redactions ordered during a round by the presiding judge.
19. While participants are free to enlarge any diagram, document, statement, exhibit, or portion of the fact pattern, judges will be instructed that credit is to be on the basis of advocacy and not on the basis of demonstrative evidence that is unduly elaborate or beyond good taste in a law school competition. Moreover, counsel and witnesses may draw or make simple charts and drawings in court for the purpose of illustrating the direct or cross-examination or argument
20. Assume the Jury Instructions provided in the fact pattern are the only instructions to be given and are not subject to motion or modification. They are the only statements of the applicable substantive law. No additional instructions may be tendered.
21. At no point in the competition should a competitor tell a judge what year in law school the competitor is in. Nor shall any competitor tell any judge what legal jobs the competitor has had in the past.
22. Decisions of the judges are final.

## ***SCORING LOGISTICS***

1. The following awards will be given based on scoring totals in the Daniel S. Hoffman Competition:
  - 1<sup>st</sup> place team (2 plaques – one for each team member)
  - 2<sup>nd</sup> place team (2 plaques – one for each team member)
  - Best Orator (plaque)
2. Performance at trial will be evaluated by a jury made up of a panel of judges and/or attorneys. Every effort will be made to provide three-person panels for scoring purposes. A copy of the score sheet that will be used to evaluate the team is attached.
3. Individual competitors in the Daniel S. Hoffman Cup Trial Advocacy Competitions will be scored on trial advocacy skills in the following areas:
  - Opening Statement (worth up to 5 points)
  - Closing Statement, including Rebuttal (worth up to 5 points)
  - Direct Examinations (worth up to 10 points)
    - Each individual direct examination is worth up to 5 points
  - Cross Examinations (worth up to 10 points)
    - Each cross will be worth up to 5 points
  - Ethics, Courtroom Demeanor & Professionalism (worth up to 10 points)

- Each team member may receive up to 5 points
  - Discretionary Points for Motions & Objections (worth up to 2 bonus points)
    - The team may receive a total of 2 bonus points, not each competitor
    - These points will not be used to determine total points but will be used by the competition committee to break ties. See number 7 below.
4. Each Round (Preliminary Rounds 1-3, Quarter-Final, Semi-Final and Final) has a 40-point maximum score for the team. The maximum score does not include points allocated for Motions & Objections.
  5. The total points for each team's Opening, Closing, Directs, Crosses, and Ethics Courtroom Demeanor & Professionalism (lines 1-12 on the score sheet) shall not exceed 10 points. Discretionary Points will not be factored into total points. Total points will be used to determine the round winner for each individual judge ballot. Ties in total points will not be allowed.
  6. The team winning the most judge ballots will receive a win for that round.
  7. Discretionary points will be based on the effective use of motions and objections. These will not be used to determine the winner of a trial. These points will only be used in the position of a tie-breaker as outlined in item 11 below.
  8. In the event of an even number of judges in a round, the scores from all judges will be averaged to provide an average score for each team for that round. This averaged score will be treated as phantom ballot. The team with the highest average will win the phantom ballot. The averaged score will be between 0 and 40.
  9. If there are an odd number of teams competing, one team in each round will receive a "bye" chosen by lot. For ranking purposes, a bye will count as a win with three winning votes and the points will be determined by averaging the points from the team's other two preliminary rounds.
  10. The individual scores for each competitor are used to determine the Best Orator Award, as well as who may be eligible to try-out for the DU Trial Teams.
  11. Matchups for the first preliminary round will be made at random. Matchups for the second and third preliminary rounds will be made based on a power matching system based on the results of the previous round(s). As a result, teams will not know which sides they are representing in these rounds until the morning before the rounds.
  12. The following factors are used in the determination of which teams will go on to the quarter-final round:
    - Win/loss record after three rounds and points earned.
    - Number of winning ballots after three rounds. If any team has fewer than three judges in a round then the phantom ballot (see number 7 above) will be tallied.

### 13. Quarter-Final Round

- The eight teams in the quarter-final round will be power matched. The number one ranked team will be matched with the number eight ranked team. The number two ranked team will be matched with the number seven team and so on.
- If the matched teams already met in the preliminary rounds, they will represent different sides from the previous confrontation. If they have not met, then each team will take the side they represented only once in the preliminary rounds. If matched teams represented the same side only once, then a coin toss will determine the side. The higher ranked team will call the coin toss. The winner of the coin toss will select the side they wish to argue in the quarter-final round.
- The total points for each team will be used to determine the round winner for each individual judge ballot. The team winning the most judge ballots will receive a win for that round. In the event of an even number of judges in a round and a split decision, the scores from the judges will be averaged to create a phantom ballot (see number 7 above).
- Only the winner of each power-match will progress to the semi-final round.

### 14. Semi-Final Round

- The 4 teams in the semi-final round will be power matched. The number 1 ranked team will be matched with the number 4 ranked team. The number 2 ranked team will be matched with the number 3 ranked team.
- In order to determine which side will be argued, a coin toss will take place prior to the semi-final round. The higher ranked team will call the coin toss. The winner of the coin toss will select the side they wish to argue in the semi-final round.
- The total points for each team will be used to determine the round winner for each individual judge ballot. The team winning the most judge ballots will receive a win for that round. In the event of an even number of judges in a round and a split decision, the scores from all judges will be averaged to create a phantom ballot (see item 7 above).

### 15. Final Round

- In order to determine which side will be argued, a coin toss will take place prior to the final round. The higher ranked team will call the coin toss. The winner of the coin toss will select the side they wish to argue in the final round.
  - Important note: In the event the final round teams have been matched together before an earlier round, no coin toss should take place and they should be assigned to argue the opposite side they previously argued. This is to ensure no tricks are used and to also make the final round a true competition, with each side unsure of the case being presented by the other.
- The total points for each team will be used to determine the round winner for each individual judge ballot. The team winning the most judge ballots will receive the win for that round. In the event of an even number of judges in a round and a split decision, the scores from all judges will be averaged to create a phantom ballot (see item 7 above).
- The team winning the most ballots will be announced as the 1<sup>st</sup> place winner. The other finalist will take 2<sup>nd</sup> place.

### 16. Best Orator Award – Individual Scores

- The highest individual score from the three preliminary rounds only receives the best orator award.
- Each preliminary round (1-3) has a maximum of 20 points for each competitor.

## ***WITNESS LOGISTICS***

**(Competitors must have all witnesses read this section.)**

1. Each team is responsible for securing and preparing its own witnesses. One person may play the part of more than one witness. Witness roles are not gender specific.
2. A list of all students willing to participate as a witness is hanging in the forum hallway on the bulletin board near the garage entrance doors to the law school. Competitors are encouraged to consult this list but are ultimately responsible for securing their own witness. Witnesses do not have to be law students.
3. Teams must email the names of their witnesses to Emily Secor at [esecor10@law.du.edu](mailto:esecor10@law.du.edu), once they have secured a firm commitment from each witness. Each team is responsible for making sure your witnesses know when to arrive for the competition. Witnesses who fail to show for the competition will be officially banned from Moot Court Board competitions for one full calendar year.
4. Each side shall present only those witnesses allowed by the problem.
5. Each witness has been provided with some form of deposition testimony or statement. Each witness “knows” only the facts contained in the applicable statement. Anything additional is invented by the witness. If a witness makes a statement of fact not contained in the deposition testimony or statement, the witness must admit that the fact was not contained in such testimony if questioned on the subject. If the witness testifies to a fact outside the record the witness must admit to that, if questioned.
6. The witnesses will inevitably be asked questions whose answers go beyond the facts contained in the material distributed. Allowing the witnesses to answer beyond the facts contained in the problem results in unexpected testimony, an unfair advantage. Witnesses are limited to the facts of the problem and those reasonably inferred from the problem.
7. Except during closing argument, no objection shall be made that the opposing team is going outside the record. Any breach should instead be addressed by means of impeachment. Witnesses must admit if facts they testify to are not in the record. Witnesses may not qualify this admission in a misleading way. The judges will be instructed concerning the significance of this form of impeachment in the mock trial context, and they are directed to account for unfair additions to the record in their scoring of relevant directs, cross-examinations, and specifically the scoring for Ethics, Courtroom Demeanor & Professionalism.

8. The purpose of the contest is to develop and demonstrate trial skill. The actual merits of the Plaintiff's case and the Defense presented are irrelevant to this purpose. The contest is not to be decided on the merits of Plaintiff's or Defendant's case. The fact that a witness may introduce information outside the record is not normally important; the way the competitors handle such information is important.
9. A witness may bring a prompt sheet to the witness stand when being questioned. However, we urge all competitors to consider how this will affect their scoring performance in the competition.