

**SAN DIEGO DEFENSE LAWYERS
2014 MOCK TRIAL COMPETITION
OFFICIAL RULES**

GENERAL INFORMATION

1. The Competition is sponsored by the San Diego Defense Lawyers (“SDDL”).

A violation of any of the rules governing the Competition shall subject the violators to penalty, including deduction of points, round forfeiture or disqualification. In the event a conflict arises during the Competition, the ruling of Competition Co-Chairs Samir Patel, Robert Mardian and/or Andrew Kleiner shall be binding for the respective rounds of Competition. Decisions regarding any and all aspects of the Competition will be made in keeping with the rules and objectives of the program.

Any questions concerning the clarity of the fact pattern should be submitted to the Competition Chair in writing. A formal response from the Competition Chair will then be circulated to all participants.

2. All correspondence regarding the competition should be sent to Competition Co-Chair:

Robert C. Mardian III
Henderson, Caverly, Pum & Charney LLP
12750 High Bluff Drive, Suite 300
San Diego, CA 92130
(858) 755-3000
rmardian@hcesq.com

3. **Each school registering with SDDL shall designate a single primary contact person.** The primary contact person shall be a person with general day-to-day responsibility for all the schools’ mock trial teams. SDDL will only send official communications to and accept official communications from a school’s primary contact person. The school has the affirmative obligation to provide SDDL with the primary contact person’s current e-mail address, telephone number(s), mailing address, and, if applicable, fax number and to notify SDDL of any changes thereof.

4. The Competition involves the trial of a civil lawsuit. **The case will be tried on the issues of liability and comparative fault only.** The trial has been bifurcated on the issues of liability and damages. This Competition consists solely of the trial on the issue of liability. Damages should only be an issue at trial to the extent that the existence of damages (i.e., extent of injuries and not the monetary amount of damages) are an essential element of any liability and/or causation under any cause of action.

5. The Competition Judges do not know the affiliation of the teams being judged. All teams will be given anonymous letter designations, for example Team “C.” All persons, including participants, coaches and spectators should refrain from making any comments, wearing any clothing or bringing any materials which would identify any school affiliation. When in the courtroom spectators and coaches should distribute themselves evenly about the gallery so that team affiliation cannot be identified.

6. Due to limitations placed on SDDL by the court administrators, each team shall be permitted to have no more than 20 guests per day of the competition. **No recording devices of any kind, whether audio or video, are permitted in the courtrooms or corridors of the courthouse.** Still photographs may be taken in the courtrooms or courthouse corridors only *after* completion of a trial.

7. Each team will participate in the opening rounds the evenings of Thursday, October 23 and Friday October 24. Scores from both of the opening rounds will be combined to determine the top four teams. These semi-finalists will be announced at a reception immediately following the competition on October 24. The top four teams will then proceed to the semi-final rounds the morning of October 25. The two winners of the semi-final rounds will then proceed to the final round the afternoon of October 25.

8. Each team may, and is strongly encouraged to request comments and feedback from the Judges in the courtroom immediately after conclusion of the summations. The Judges will not disclose specific scores. However, the Judges will be available to provide their observations of the presentations. The Judges are experienced attorneys and often include active and retired judges. The Judges are an excellent resource for improvement and success of your team. Rankings for each of the other competing teams will be privately provided upon request to the advisor for that competing team. ***Scoring sheets and information regarding the numerical scoring by the trial Judges will not be provided.***

TRIAL PRESENTATION

9. There will be no trial brief writing component to the Competition.

10. Each team will consist of four law students. Teams consist of two advocates and two witnesses. Teams shall alternate advocate/witness roles in the second night of the Competition. Roles must remain consistent throughout each individual trial. Teams may change the gender of the trial witnesses to accommodate the gender make-up of the team. In the semi-final and final rounds the finalist teams may select which of their members will play the role of advocates and which team members will be witnesses. Again, roles must remain consistent throughout each individual trial.

11. Each team member acting as an advocate must participate in three of the six *scored* phases of the trial. Opening statement and summation may not be done by the same person.

12. Each side will be given a total of 80 minutes to present all phases of their case (160 minutes for presentation of entire case of both sides). ***There are no pre-set time allocations to***

the various phases of trial. The teams may use their discretion in allocating time as long as they stay within the 80-minute limitation. The trial will consist of the following phases by each time:

<u>Phase</u>	<u>Maximum Points</u>
Pre-trial motions	0
Opening Statement	20 points
Direct Examination	20 points
Cross Examination	20 points
Use of Objections/Response to Objections	10 points
Evidentiary Issues	10 points
Summation	20 points

13. Examination of witnesses shall consist of direct examination, cross-examination and re-direct examination only. In extraordinary circumstances, re-cross-examination shall be permitted upon request to the presiding Judge, and then solely at his or her discretion.

14. Time limits will be strictly enforced, although it is not necessary that all time allotted be used. Short recesses will be taken at the end of Plaintiff's case in chief and at the end of Defendant's case, before closing arguments. The participants will be advised at those times, upon request, of the time which has been used by each side to that point. During closing arguments the advocates will be given a signal when they have 5 minutes remaining on the clock. Other than those advisories, the participants are responsible for their own time management. Any team which does not finish within time limits will be scored based on what presentation was made and marked down according to the amount of material omitted.

15. Argument of motions and objections made during the course of the trial should be kept to a minimum and shall be limited. The clock may be stopped, at the Judge's discretion, to prevent one side from using the other side's allotted time for lengthy argument of objections.

16. Performance at trial will be evaluated by a panel of three Judges, one of whom will preside over the trial as the lead Judge, making rulings from the bench, as necessary. Scoring will be kept confidential. Each Judge shall score his or her own sheet and determine the winner. In the event of a tie on point totals, the Judge *must* select a winner based on overall presentation. The team which is the winner on score cards of two or more Judges shall be the winner of that round.

17. Each team will be assigned to represent either plaintiff or defendant for the purpose of the team's first trial. Advocates may be required to switch sides in a subsequent trial if the opposing team represents the same side, in which case the winner of a coin flip will have the choice.

18. Lay and expert witnesses, if any, must be prepared to switch sides within their respective teams as well. Faculty advisors may not serve as witnesses.

19. While trial is in progress, the courtrooms will be off limits to all other teams and coaches unless their respective team has already been eliminated from the competition.

20. The use of demonstrative evidence is limited to that which is provided in the fact pattern and that which may be reasonably inferred there from and is pertinent to the presentation of a case. Participants are free to enlarge any diagram, document, statement, exhibit, or portion of the fact pattern. Moreover, counsel and witnesses may draw or make simple charts and drawings in court for the purpose of illustrating direct examination, cross-examination or argument. However, no demonstrative evidence outside the given facts, or those reasonably inferred there from, may be “created” for the purpose of this Competition. The Judges’ interpretation of this rule shall be final.

21. Each witness has been provided with his or her applicable file material. Each witness “knows” only the facts contained in the applicable materials. Anything additional is invented by the witness. If a witness makes a statement of fact not contained in the deposition, resume or applicable file material, the witness must admit to doing so if questioned on the subject. In addition, if the witness testifies to a fact outside the record supplied by one of the attorney-competitors, the witness must admit to that as well.

22. The fact that the backgrounds of the experts, if any, are fictitious is not to be used to impeach the experts.

23. All depositions are to be considered complete and accurate. Deposition transcripts are deemed to have been reviewed for accuracy, corrected and signed by the witnesses.

24. The witnesses will inevitably be asked questions whose answers go beyond the facts contained in the material distributed. This allows the Competition to go beyond a mere rehashing of the given facts, and ensures that there will be unexpected testimony. The practice of going beyond the facts provided should, however, be limited to facts that can be *reasonably inferred* from the record. The court will not entertain an objection based *solely* on the ground that the witness’ testimony is “outside the record.” Cross examination and closing argument provide an adequate opportunity for counsel to show that the witness has strayed from the record. The fact that a witness may introduce information outside the record is not as important as the manner in which the competitors handle such information. Otherwise, it is encouraged that objections be made based upon principles set forth in the rules of evidence.

The Competition will not be decided on the merits of plaintiff’s or defendant’s case. The purpose of this Competition is to develop and demonstrate trial skills. The quality of the presentation rather than the actual merits of plaintiff’s case are the essence of the Competition.

25. Motions *in limine* are discouraged. No points will be awarded for motions *in limine*; however, inappropriate, frivolous or poorly presented arguments may result in a loss of points. Time spent on motions *in limine* will be deducted from that team’s total. *Advocates are strongly encouraged to demonstrate their knowledge of the rules of evidence and trial technique by the proper and effective use of objections during trial.*

26. Dispositive motions, such as motions for non-suit, are *not* permitted. This is to ensure efficient use of time and guarantee that both teams have the opportunity to present their case.

27. The case will be tried on the issue of liability and comparative fault only. The format of the Competition requires limiting the number of witnesses to be called to testify. The teams may only call as trial witnesses those persons who are identified below.

For purposes of Opening Statement, teams may refer to and rely upon the testimony of non-live witnesses or other evidence identified in this Case File as if said testimony or evidence will be or has been admitted. Teams may also refer to and rely upon evidence associated with the non-live witnesses as if the proper foundation for such evidence will be or has been laid and such evidence will be or has been admitted. One of the reasons for this rule is to minimize evidentiary objections during opening statement and closing argument. Objections during opening statement or closing argument will be strictly scrutinized. *Closing arguments may rely upon the testimony of non-live witnesses or other evidence identified in the Case File as if said testimony or evidence has been admitted except to the extent that such evidence has expressly been excluded pursuant to an objection made during the course of the trial.* The Judges will be thoroughly briefed on the non-live testimony and evidence and this procedure prior to the Competition.

SCORING CRITERIA

The following criteria for trial performances are set forth to assist both judges and student advocates. Judges are not limited to these points and may consider other aspects of strategy, technique, etc., which they view as important.

OPENING STATEMENT

Did counsel:

1. Generally confine statement to outlining the evidence that would be presented?
2. Clearly present a theory of the case?
3. Persuasively present a theory of the case?
4. Personalize self and client?
5. Adhere to the time limits?
6. Allow opposing counsel to make argument during opening statement?
7. Make unnecessary objections?

CLOSING ARGUMENT

Did counsel:

1. Present a cohesive theory of the case pulling all the positive arguments together?
2. Deal effectively with the weaknesses in counsel's own case?
3. Make an argument that was persuasive?
4. Have an effective style of presentation?

5. Utilize the law effectively in the argument?
6. Inappropriately interrupt the argument of the opposing counsel?
7. Property conduct rebuttal?

EXAMINATION OF WITNESSES

Did counsel:

1. Ask questions that generated a minimum of valid objections?
2. Make/fail to make objections with tactical or substantial merit?
3. Respond appropriately to objections made?
4. Know the rules of evidence and express that knowledge clearly?
5. Develop rapport with witnesses?
6. Maintain appropriate general attitude and demeanor?
7. Address court and others properly?
8. Demonstrate awareness of ethical considerations?

Did direct examiner:

9. Unnecessarily use leading questions?
10. Develop testimony in an interesting and coherent fashion?
11. Follow-up on the witness' answers?
12. Present the witness in the most favorable light?

Did cross examiner:

13. Appropriately use leading questions?
14. Control the witness?
15. Follow-up on answers and elicit helpful testimony?
16. Use impeachment opportunities?