

November 15, 2004

Dear Mock Trial Coaches and Teachers,

Thank you for participating in the New York State High School Mock Trial Tournament. This program, now in its 22nd year, is sponsored by the New York State Bar Association's Committee on Law, Youth and Citizenship and The New York State Bar Foundation. Many thanks to the numerous county bar associations across the state that sponsor the mock trial tournaments in their counties and to the county coordinators who spend many hours managing the local tournaments. Thanks also go to all of the teacher-coaches and attorney-advisors who dedicate a countless number of hours to students across the state.

Please review carefully all of the enclosed mock trial tournament information, paying special attention to the rules of the competition with which you must become familiar and the simplified rules of evidence. The case this year, *Maccao Elery McLaughlin v. Lee and Robbie McLaughlin*, is a civil lawsuit brought in New York State Supreme Court under the **New York Mock Trial Prudent Investor Act**. We hope you enjoy developing and enacting the case.

The New York High School Mock Trial Tournament is a program with a strong educational emphasis. While you are working on the case, students will be:

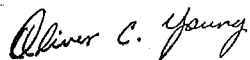
- Learning about the law, the legal system and court procedures
- Increasing their proficiency in basic skills such as listening, speaking, reading and reasoning
- Learning to use the law as a tool for the analysis of legal situations
- Improving their ability to think on their feet
- Learning about appropriate courtroom decorum and the adversarial system

The tournament is a competition and, as in all other competitive endeavors, good sportsmanship is critical. Respect for volunteers, judges and other teams should be displayed at all times inside and outside the courtroom.

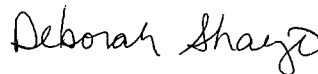
The tournament finals will be held in Albany on May 18-20, 2005. The team that is successful in achieving the regional championship in each of the six mock trial regions will be invited to participate in the finals. The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days that the team participates in the tournament finals in Albany. Regional teams consist of the nine students paid for by The New York Bar Foundation. Only those nine students will be able to compete in Albany.

We hope you enjoy working on this year's case. Best wishes to all of you for a successful and enjoyable mock trial season.

Sincerely,



Oliver C. Young, Esq., Chair  
Committee on Law, Youth and Citizenship



Deborah Shayo, Director  
Law, Youth and Citizenship Program

## STANDARDS OF CIVILITY FOR MOCK TRIAL PARTICIPANTS AND OBSERVERS

The New York State Standards of Civility for the legal profession set forth principles of behavior to which the bar, the bench and court employees should aspire. They are not intended as rules to be enforced by sanction or disciplinary action. Instead they are a set of guidelines intended to encourage lawyers, judges and court personnel to observe principles of civility and decorum.

The following are relevant excerpts from those standards, which the Law, Youth and Citizenship Program believes should be adhered to by all members of the mock trial program.

- A. Lawyers can disagree without being disagreeable.
- B. Effective representation does not require antagonistic or acrimonious behavior.
- C. Whether orally or in writing, lawyers should avoid vulgar language disparaging personal remarks or acrimony toward other counsel, parties or witnesses.
- D. Lawyers should ask only those questions they reasonably believe are necessary for the prosecution or defense of an action.
- E. Lawyers should refrain from asking repetitive or argumentative questions and from making self-serving statements.
- F. A lawyer should not ascribe a position to another counsel that counsel has not taken.
- G. Lawyers should not engage in conduct intended primarily to harass or humiliate witnesses.
- H. Lawyers should be punctual and prepared for all court appearances.
- I. A judge should be patient, courteous and civil to lawyers, parties, and witnesses.
- J. A judge should maintain control over the proceedings and insure that they are conducted in a civil manner.
- K. Judges should not employ hostile, demeaning or humiliating words in opinions or in written or oral communications with lawyers, parties or witnesses.

The principles underlying all of these guidelines are the promotion of behavior, which contains the ingredients of civility and respect. It is expected that not only will the participants adhere to these principles but the **observers** of trials as well, including family, friends, coaches and advisors.

The Law, Youth and Citizenship Program is committed to having the statewide mock trial program become a forum for the development of skills in, and the practice of, behavior containing civility and respect.

# **2005 Mock Trial Case Materials**

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## **PART I**

### **TOURNAMENT RULES**

New York's annual Mock Trial Tournament is governed by the rules set forth below. The Committee on Citizenship Education and the Law, Youth and Citizenship (LYC) Program reserve the right to make decisions to preserve the equity, integrity, and educational aspects of the program. By participating in the Tournament, participants agree to abide by the decisions rendered by the LYC Program and accept such decisions as final.

#### **GENERAL CONTEST FORMAT**

##### **Local Tournaments**

In this tournament there are two phases. In phase I each team will participate in at least two rounds, once as plaintiff/prosecution and once as defendant, before the elimination process begins. After the second round, half the original number of teams will continue in a phase II single elimination tourney.

The teams that advance to phase II do so based on a combination of wins and points. Any 2-0 team would automatically advance; teams with a 1-1 record would advance based on total number of points; if any spots remained open, teams with a record of 0-2 would advance based on their total number of points.

The local coordinator may, prior to the competition and with the knowledge of the competitors, set a certain number of teams that will continue in the phase II single elimination tourney. This number may be more or less than half the original number of teams. However, any team that has won both rounds on points, but whose combined score does not place it within the established number of teams, must be allowed to compete in the phase II single elimination tourney.

The number of teams going into the single elimination phase will usually be even. If the number is odd, the team with the most wins and highest combined score will receive a bye. If any region has an odd number of teams to begin with, one team from that region may receive a bye—coin toss, etc. Phase II of the contest is a single round elimination tournament; winners advance to the next round. If a tie results between or among the teams who would be qualifying for the last position to continue into the elimination rounds, then the "Special Point" procedure explained on the Performance Rating Sheet (see Appendix E, bottom) whether or not previously used in a prior round, shall be added to the total for each time awarded; if a tie remains, then one point will be added to a team's total for each time that team won in a preliminary round.

At times, a forfeit may become a factor in determining aggregate point totals and which teams should advance to the single elimination tournament. Each county should review its procedures for dealing with forfeits, in light of the recommended procedures, below. Please note that due to the variety of formats in use in different counties, it is strongly urged that each county

develop a system which takes its own structure into account and which participants understand prior to the start of the local tournament.

If a county has an established method for dealing with forfeits, or establishes one, then that rule continues to govern. If no local rule is established, then the following state rule will apply: In determining which teams will advance to the single elimination tournament, forfeits will first be considered to cancel each other out, as between two teams vying for the right to advance. If such canceling is not possible (as only one of two teams vying for a particular spot has a forfeit victory) then a point value must be assigned for the forfeit. The point value to be assigned should be derived from averaging the team's point total in the three matches (where possible) chronologically closest to the date of the forfeit; or if only two matches were scheduled, then double the score of the one that was held.

**Please Note:** The Tournament is open to all 9th - 12th graders in public and nonpublic schools. If a school chooses to limit student participation for reasons of supervision or safety, this should be accomplished through an equitable "try-out" system, not through disallowing participation by one or more entire grade levels. Each school participating in the Tournament may enter **one** team.

- ◆ For any single contest round, all teams are to consist of three attorneys and three witnesses.
- ◆ If a team member, scheduled to participate in an enactment, becomes ill, injured or has a serious conflict and as a result cannot compete, then an alternate team member should substitute. If no alternate team member is available, then at the discretion of the local coordinator, the local coordinator may declare a forfeit or reschedule the enactment.
- ◆ A team may use its members to play different roles in different rounds, or it may use other students in another round. (See Part II: Hints on Preparing for the Contest.)
- ◆ Winners in any single round will be asked to switch sides in the case for the next round. Where it is impossible for both teams to switch sides, a flip of the coin will be used to determine assignments in the next round.
- ◆ Teacher-coaches who will be competing against one another are required to exchange information regarding the names and sex of their witnesses at least three days prior to any given round.
- ◆ Use of a podium shall not be required of the participants at any level of competition.
- ◆ Teams should not identify themselves by their school name to the judge prior to the announcement of the judge's decision.

- ◆ Members of a school team entered in the competition—including teacher-coaches, back-up witnesses, attorneys, and others directly associated with the team’s preparation—are not to attend the enactments of any possible future opponent in the contest. **Violations of this rule can lead to a point penalty or disqualification.**
- ◆ All teams are to work with their assigned attorney-advisors in preparing their cases. It is suggested that they meet with their attorney-advisors at least twice prior to the contest. For some suggestions regarding the attorney-advisor’s role in helping a team prepare for the tournament see Appendix B.
- ◆ No attorney may be compensated in any way for his or her service as an attorney-advisor to a mock trial team or as a judge in the mock trial competition.
- ◆ Prior to the first round of the tournament, all teams are required to conduct one full trial enactment or “dress rehearsal” based on the case. (Several additional sessions devoted to the attorneys’ questioning of individual witnesses are also suggested.)
- ◆ When a team has a student or students with special needs who may be assisted by an accommodation, the teacher coach should bring this to the attention of the county coordinator as soon as possible so as to facilitate appropriate assistance. In all cases the coordinator must be notified at least two weeks prior to the time when the accommodation will be needed.

## **TRIAL ENACTMENTS**

- ◆ The trial proceedings are governed by the Simplified Rules of Evidence and Procedure found in this packet of materials. Other more complex rules should not be raised in the trial, i.e., procedural motions.
- ◆ Usual rules of courtroom decorum apply to all participants. Appropriate dress is required.
- ◆ Immediately prior to each trial enactment, the attorneys and witnesses for each team must be physically identified to the opposing team.
- ◆ Requests for bench conferences (i.e. conferences involving the Judge, attorney(s) for the plaintiff or the people and attorney(s) for the defendant) may be granted after the opening of Court in a mock trial, but not before.
- ◆ The Statement of Facts and any additional stipulations may not be disputed at the trial.
- ◆ Each witness is bound by his/her written affidavit.
  - If a witness testifies in contradiction of a fact in the witness statement, which is to be treated as a sworn affidavit, the opposition may impeach the testimony of the witness—that is, point out the contradiction on cross-examination by introducing the witness’s statement to the court.

- If a witness invents an answer which is likely to materially alter the outcome of the trial, the opposition may object and ask for a bench conference; the judge will decide whether to allow the testimony. The judge may also consider such action in making the decision concerning the best team presentation. (See Simplified Rules of Evidence and Procedure—Rules 701 and 702.)
- ◆ A witness's physical appearance in the case is as he or she appears in the trial enactment.
- ◆ Witnesses shall stay in the courtroom at all times during the Mock Trial proceedings.
- ◆ Witnesses, whether plaintiff's/prosecution's or defendant's, shall not sit at the attorneys' table.
- ◆ Witnesses are not permitted to use notes in testifying during the trial.
- ◆ There shall be no sequestration of witnesses at any time during the trial. If such a motion is made, it will be denied.
- ◆ Attorneys may use notes in presenting their cases, for opening statements, direct examination of witnesses, etc.
- ◆ An attorney for a team presenting the opening statement may not make the closing arguments in the case.
- ◆ The Judge must take Judicial Notice of the "Statement of Stipulated Facts" and any other stipulations.
- ◆ Before proceeding with its opening statement, each team of attorneys should have one of its members introduce the team to the presiding judge.
  - "Your Honor. My name is Mr./Ms. \_\_\_\_\_.
  - My Colleagues are Mr./Ms. \_\_\_\_\_ and Mr./Ms. \_\_\_\_\_."
- ◆ The presiding judge may interrupt an attorney's opening and closing statements and ask questions.
- ◆ Each of the three attorneys on a team entered in the competition must engage in the direct examination of one witness and the cross-examination of another.
- ◆ Students may read other cases and materials in preparation for the mock trial. However, they may cite only the cases given, and they may introduce as evidence only those documents that are provided. (See Section on Physical Evidence.)



- ◆ During the actual trial, including any recesses, up to and until both closing arguments have been made, teacher-coaches, attorney-advisors and all other observers may not talk to, signal, or otherwise communicate with, or in any way coach their team. Any violation must be brought to the judge's attention at once (prior to the end of the trial). Behavior of this sort will result in a mandatory deduction of up to three points as a penalty, and may result in disqualification of the team from the tournament. The judge retains the discretion to apply a one to three point penalty, given the circumstances before the judge. Neither the county coordinator nor the LYC Program may apply such a penalty after the fact. (Please note that it is not a rule violation for a witness, participating in a trial, to talk with a student attorney, participating in the same trial, during a recess period occurring in that trial.)
- ◆ A trial may be videotaped only under the following conditions unless it is precluded by local court rules:
  1. Consent of the opposing team is obtained in writing before the trial begins.
  2. The Judge consents.
  3. A copy of the videotape is furnished to the opposing team (at no cost) within 48 hours after the trial.
  4. The videotape will not be disseminated by either team to any other team in violation of the no-scouting rule.
- ◆ Any protest arising from an enactment must be directed to the county coordinator in a timely fashion, to best enable the coordinator to investigate the alleged circumstances.

## JUDGING

- ◆ The presiding trial judge will render two decisions at the end of the trial. One will be on the merits of the legal case and the applicable law. The decision of guilt or innocence in a criminal case, or finding in favor of the plaintiff or defendant in a civil case, does not determine which team wins or advances to the next round.
- ◆ The second decision rendered by the presiding judge is based on both the quality of the students' performance in the case, and on the best team presentation. The judges have been instructed to rate the performance of all witnesses and attorneys on the team. (See Appendix E for Performance Rating Sheet.) In each enactment a "Special Point" will be awarded, but will only be added onto a team's score in cases of an arithmetic tie. This is explained at the bottom of the Performance Rating Sheet. (The Performance Rating Sheet will be collected by the Coordinator for record keeping concerning the "Special Point.")
- ◆ **The decisions of the judge are final.**

## TIME LIMITS

- ◆ Due to the excessive length of some mock trials held in past years, the following time periods should be observed in preparing your case for trial.

Opening Statements . . .  
5 minutes for each side

Direct Examination . . .  
7 minutes for each witness

Cross-Examination . . .  
5 minutes for each witness

Closing Arguments . . .  
5 minutes for each side

- ◆ These time periods are only guidelines. However, abuse of these guidelines may result in deduction of points.
- ◆ It is the sole responsibility of the Judge to monitor the time guidelines of the trial enactment. In keeping with the atmosphere and decorum of a courtroom trial, timekeepers, stopwatches, and buzzers are not permitted during the enactment of the trial.
- ◆ The determination of the abuse of the time periods is a discretionary decision of the Judge. The Judge's decision on abuse of time is final and cannot be appealed.

## REGIONAL TOURNAMENTS

To reach the statewide finals, a team will have to compete in one of six regional tournaments. The local sponsors in each region will coordinate these tournaments. Six regions have been identified:

Region #1: West  
Region #2: Central  
Region #3: Northeast

Region #4: Lower Hudson  
Region #5: New York City  
Region #6: Long Island

(See Map, Appendix A.)

It must be emphasized that the regional tournaments must be completed by April 30, 2005. Because of administrative requirements and contractual obligations, the LYC Program must know the schools' and students' names by this date. Failure to adhere to this deadline may jeopardize hotel blocks set aside for a region's teacher-coaches, attorney-advisors and students coming to Albany for the Mock Trial Tournament's final two rounds.

The winning team from each region will be determined by an enactment between the two teams with the best records (most number of wins and greatest number of points) during the regional tournament. The winning team from each region will qualify for the Statewide Tournament in Albany.

Once regional winners have been determined, The New York Bar Foundation will provide the necessary funds for each team's room and board for the two days it participates in the State tournament in Albany. Regional teams consist of the nine students paid for by The New York Bar Foundation. Only those nine students are eligible to compete in Albany.

- ◆ All rules and regulations and criteria for judging regarding the regional tournament shall be the same as in the local tournament.
- ◆ The local sponsors will be responsible for coordinating the regional tournament.

## **STATEWIDE FINALS**

Under the statewide tournament format, each participating team will include up to nine (9) students, the teacher-coach, and the attorney-advisor. The Statewide Finals will be held in Albany on May 18-20, 2005.

Each team will participate in two enactments the first day, against two different teams. Each team will be required to change sides—plaintiff/prosecution to defendant, defendant to plaintiff/prosecution—for the second enactment. Numerical scores will be assigned to each team's performance by the judges.

The two teams with the most wins and highest numerical score will compete on the following day, except that any team which has won both its enactments will automatically advance, regardless of its point total. In the rare event of three teams each winning both of their enactments, the two teams with the highest point totals, in addition to having won both of their enactments, will advance.

The final enactment will be a single elimination tournament. Plaintiff/Prosecution and Defendant will be determined by a coin toss.

A judge or a panel of judges will determine the winner. The judge's or judges' decision will be final.



## **PART II**

### **HINTS ON PREPARING FOR A MOCK TRIAL TOURNAMENT**

The following tips have been developed from previous experiences in training mock trial teams.

- ◆ All students should read the entire set of materials, and discuss the information/procedures and rules used in the mock trial contest.
- ◆ The facts of the case, witnesses' testimony, and the points for each side in the case then should be examined and discussed. Key information should be listed on the chalkboard or flipchart as discussion proceeds so that it can be referred to at some later time.
- ◆ Even though a school team has to represent only one side in the case during any single round of the competition, all roles in the case should be assigned and practiced. This will help in practicing the case as well as in preparing for future rounds.
- ◆ The credibility of the witnesses is very important to a team's presentation of its case. As a result, students acting as witnesses need to really "get into" their roles and attempt to think like the persons they are playing. Students who are witnesses should read over their statements (affidavits) many times and have other members of the team or their class ask them questions about the facts until they know them "cold."
- ◆ Based on the experiences obtained through several years of mock trial competitions, we have found that the best teams generally had their students prepare their own questions, with the teacher-coach and attorney-advisor giving the team continual feedback and assistance on the assignment as it was completed. Based on the experience of these practice sessions, attorneys should revise their questions and witnesses should restudy the parts of their witness statements where they are weak.
- ◆ Opening statements should also be written by team members. Legal and/or non-legal language should be avoided where its meaning is not completely understood by attorneys and witnesses.
- ◆ Closing arguments should not be totally composed before trial, as they are supposed to highlight the important developments for the plaintiff and the defense which have occurred during the trial. The more relaxed and informal such statements are, the more effective they are likely to be. Students should be prepared for interruptions by judges who like to question the attorneys, especially during closing argument.
- ◆ As a team gets closer to the first round of the contest, the tournament requires that it conduct at least one complete trial as a kind of "dress rehearsal." All formalities should be followed and notes taken by the teacher-coach and students concerning how the team's presentation might be improved. A team's attorney-advisor should be invited to attend this session and comment on the enactment.

- ◆ The ability of a team to adapt to different situations is often a key component in a mock trial enactment, since each judge or lawyer acting as a judge, has his or her own way of doing things. Since the proceedings or conduct of the trial often depend in no small part on the judge who presides, student attorneys and other team members should be prepared to adapt to judicial rulings and requests.

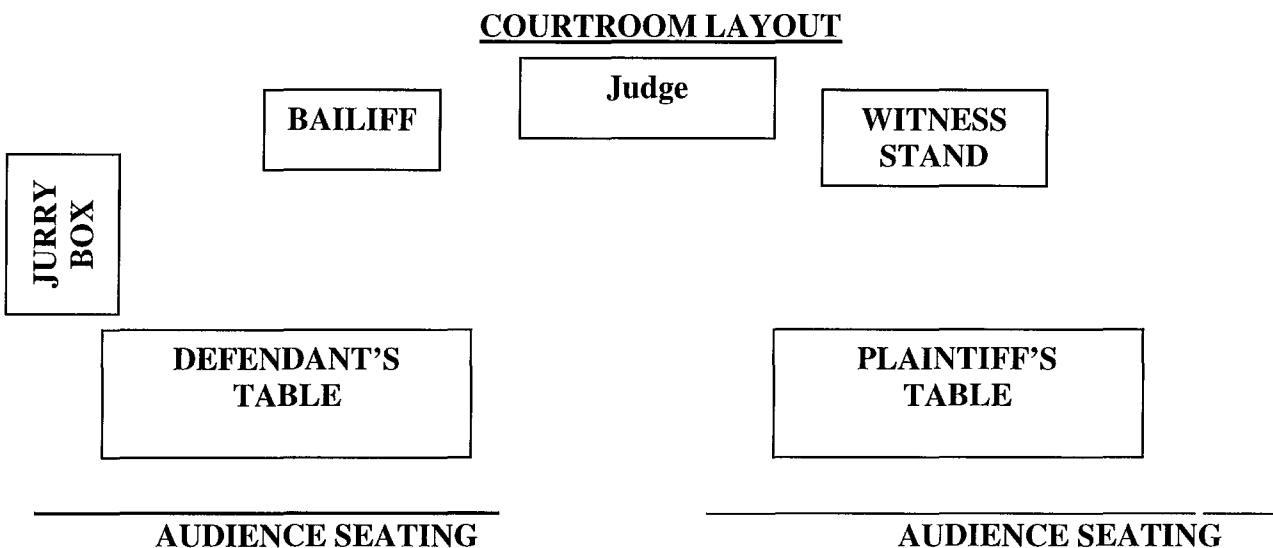
**Some of the skills most difficult for team members to learn are:**

- a. Deciding which points are the most important to prove their side of the case and making sure such proof takes place;
- b. Stating clearly what they intend to prove in an opening statement and arguing effectively in their closing statement that the facts and evidence presented have proven their case;
- c. Following the formality of court, e.g., standing up when the judge enters, or when addressing the judge; calling the judge “Your Honor,” etc.;
- d. Phrasing questions on direct examination that are not leading (carefully review the rules of evidence and watch for this type of questioning in practice sessions);
- e. Refraining from asking so many questions on cross-examination that well-made points are lost. When a witness has been contradicted or otherwise discredited, student attorneys tend to ask additional questions, which often lessen the impact of the points previously made. (Stop . . . recognize what questions are likely to require answers that will make good points for your side. Rely on the use of these questions. Avoid pointless questions!); and
- f. Thinking quickly on their feet when a witness gives an unexpected answer, an attorney asks unexpected questions, or a judge throws questions at the attorney or witness. (Practice sessions will help prepare for this.)

### **PART III**

### **TRIAL PROCEDURES**

Before participating in a mock trial, it is important to be familiar with the physical setting of the courtroom, as well as with the events that generally take place during the exercise and the order in which they occur. This section outlines the usual steps in a “bench” trial—that is, a trial without a jury. The following layout is provided for example purposes only. Actual Courtroom layouts vary from Court to Court and mock trial participants should not rearrange Courtrooms, unless so directed by a tournament coordinator.



### **PARTICIPANTS**

- ◆ The Judge
- ◆ The Attorneys
  - Plaintiff - Defendant (Civil Case)
  - Prosecutor - Defendant (Criminal Case)
- ◆ The Witnesses
  - Plaintiff - Defendant (Civil Case)
  - Prosecutor - Defendant (Criminal Case)

## STEPS IN MOCK TRIALS

### The Opening of the Court

Either the clerk of the Court or the judge will call the Court to order.

When the judge enters, all participants should remain standing until the judge is seated.

The case will be announced . . . i.e., “The Court will now hear the case of \_\_\_\_\_ against \_\_\_\_\_.”

The judge will then ask the attorneys for each side if they are ready.

### Opening Statements

1. Plaintiff (in civil case)  
Prosecution (in criminal case)

After the attorney introduces all team members to the judge, the plaintiff’s attorney in a civil case (or the prosecutor in a criminal case) summarizes the evidence which will be presented to prove the case.

2. Defendant (in criminal or civil case)

After the attorney introduces all team members to the judge, the defendant’s attorney (in a criminal or civil case) summarizes the evidence for the Court which will be presented to rebut the case the plaintiff/prosecution has made.

### Direct Examination by Plaintiff/Prosecution

The plaintiff’s/prosecution’s attorneys conduct direct examination (questioning) of each of its own witnesses. At this time, testimony and other evidence to prove the plaintiff’s/prosecution’s case will be presented. The purpose of direct examination is to allow the witness to narrate the facts in support of the case.

NOTE: The attorneys for both sides, on both direct and cross-examination, should remember that their **only function is to ask questions**; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.

### Cross-Examination by the Defense Attorneys

After the attorney for the plaintiff/prosecution has completed questioning a witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness. The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through an effective cross-examination.



### **Re-Direct Examination by Plaintiff/Prosecution**

The Plaintiff's/Prosecution's attorneys may conduct re-direct examination of the witness to clarify any testimony that was cast in doubt or impeached during cross-examinations.

### **Re-Cross Examination by the Defense Attorneys**

The defense attorneys may re-cross examine the opposing witness to impeach previous testimony.

### **Direct and Re-Direct Examination by the Defense Attorneys**

Direct and Re-direct examination of each defense witness follows the same pattern as the above which describes the process for plaintiff's/prosecution's witnesses.

### **Cross and Re-Cross Examination by the Plaintiff/Prosecution**

Cross and Re-cross examination of each defense witness follows the same pattern as the step above for cross-examination by the defense.

### **Closing Arguments (Attorneys)**

#### **1. Defense**

A closing statement is a review of the evidence presented. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not satisfy the elements of the charge or claim, stresses the facts favorable to the defense and asks for a finding (verdict) of not guilty (criminal case) or judgment for the defense (civil case).

#### **2. Plaintiff/Prosecution**

The closing statement for the plaintiff/prosecution reviews the evidence presented. The plaintiff's/prosecution's closing statement should indicate how the evidence has satisfied the elements of the charge or claim, point out the law applicable to the case, and ask for a finding (verdict) of guilty (criminal case), or judgment for the plaintiff (civil case). Because the burden of proof rests with the plaintiff, his/her attorney makes the final statement in the case.

### **THE JUDGE'S ROLE AND DECISION (VERDICT)**

The judge is the person who presides over the trial to ensure that the parties' rights are protected, and that the attorneys follow the rules of evidence and trial procedure. In trials held without a jury, the judge also has the function of determining the facts of the case and rendering a judgment.



## **PART IV**

### **SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE**

In trials in the United States, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the attorneys to know the rules and to be able to use them to protect their client and to limit the actions of opposing counsel and their witnesses.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this mock trial competition, the rules of evidence have been modified and simplified. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule you think proper. No matter which way the judge rules, you should accept the ruling with grace and courtesy.

#### **1. SCOPE**

- Rule 101:      **SCOPE.** These rules govern all proceedings in the mock trial competition. The only rules of evidence in the competition are those included in these rules.
- Rule 102:      **OBJECTIONS.** The court shall not consider an objection that is not contained in these rules. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objection.

#### **2. RELEVANCY**

- Rule 201:      **RELEVANCY.** Only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, the court may exclude it. This may include testimony, pieces of evidence, and demonstrations that have no direct bearing on the issues of the case and have nothing to do with making the issues clearer.

Examples: The Plaintiff asks, “Mr./Ms. Macca McLaughlin, why did you choose a car instead of money

after winning a talent show when you were 12 years old?” This question is permissible only if the selection of one prize over another proves or disproves a fact which is important to the case.

The plaintiff attorney tries to introduce a piece of evidence that demonstrates defendant’s potential lack of fiduciary duty based on an event that occurred prior to the relevant time period in this case. As this fact does not have anything to do with the specific facts of this case, the testimony is irrelevant and in any even may be considered unduly prejudicial.

Objection: “I object, your honor. This evidence is irrelevant to the facts of the case.”

“Objection. This testimony is unduly prejudicial.”

Rule 202: CHARACTER. Evidence about the character of a party or witness (other than his or her character for truthfulness or untruthfulness) may not be introduced unless the person’s character is an issue in the case.

Examples: Whether one spouse has been unfaithful to the other may be a relevant issue in a civil trial for divorce, but is generally not an issue in a criminal trial for assault. A person’s violent temper may be relevant in a criminal trial for assault; but it is not an issue in a civil trial for breach of contract.

Objections: “Objection. Evidence of the defendant’s character is not proper given the facts of the case.”

“Objection. The defendant’s reputation for violence is at issue here.”

### 3. WITNESS EXAMINATION

#### a. Direct Examination (attorneys call and question witnesses)

Rule 301: FORM OF QUESTION. Witnesses should be asked direct questions and may not be asked leading questions on direct examination. Direct questions are phrased to evoke a set of facts from the witnesses. A leading question is one that suggests to the witness the answer desired by the examiner and often suggests a “yes” or “no” answer.

Example of a Direct Question: “Ms./Mr. Macca

McLaughlin, how old were you when you won your first talent competition?’

Example of a Leading Question: “Isn’t it true Ms./Mr. Macca McLaughlin, that you won your first talent competition when you were 11?”

Narration: While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or “narrate” a whole story. Narrative questions are objectionable.

Example of a Narrative Question “Mr./Ms. Macca McLaughlin, please describe all the musical training you have received.”

Narrative Answers: At times, a direct question may be appropriate, but the witness’ answer may go beyond the facts for which the question was asked. Such answers are subject to objection on the grounds of narration.

Objections: “Objection. Counsel is leading the witness.”

“Objection. Question asks for a narration.”

“Objection. Witness is being narrative.”

Rule 302: SCOPE OF WITNESS EXAMINATION. Direct examination may cover all the facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

Rule 303: REFRESHING RECOLLECTION. If a witness is unable to recall a statement made in an affidavit, the attorney on direct may show that portion of the affidavit that will help the witness to remember.

b. **Cross-Examination** (questioning of the other side’s witnesses)

Rule 304: FORM OF QUESTION. An attorney may ask leading questions when cross-examining the opponent’s witnesses. Questions tending to evoke a narrative answer should be avoided.

Rule 305: SCOPE OF WITNESS EXAMINATION. Attorneys may only ask questions that relate to matters brought out by the other side on direct examination, or to matters relating to the credibility of the witness. This includes facts and statements made by the witness

for the opposing party. Note that many judges allow a broad interpretation of this rule.

Example: If on direct examination a witness is not questioned about a topic, the opposing attorneys may not ask questions about this topic on cross-examination.

Objection: “Objection. Counsel is asking the witness about matters that did not come up in direct examination.”

Rule 306: **IMPEACHMENT.** On cross-examination the attorney may impeach a witness (show that a witness should not be believed) by (1) asking questions about prior conduct that makes the witness’ credibility (truth-telling ability) doubtful; or (2) asking questions about previous contradictory statements. These kinds of questions can only be asked when the cross-examining attorney has information that indicates that the conduct actually happened.

Rule 307: **IMPEACHMENT BY EVIDENCE OF A CRIMINAL CONVICTION.** For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted, but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the value of this evidence as reliable proof outweighs its prejudicial effect to a party.

Example: “Have you ever been convicted of criminal possession of a controlled substance?”

Objections: “Objection. The prejudicial effect of this evidence outweighs its usefulness.”

“Objection. The prior conviction being testified to is not a felony or a crime involving moral turpitude.”

c. **Re-Direct Examination**

Rule 308: **LIMIT ON QUESTIONS.** After cross-examination, up to three, but no more than three, questions may be asked by the direct examining attorney, but such questions are limited to matters raised by the attorney on cross-examination. (The presiding judge has considerable discretion in deciding how to limit the scope of re-direct.)

**NOTE:** If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more

questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to “save” the witness’ truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Please note that at times it may be more appropriate not to engage in re-direct examination.

Objection: “Objection. Counsel is asking the witness about matters that did not come up in cross-examination.”

d. **Re-Cross Examination**

Rule 309: **LIMIT ON QUESTIONS.** Three additional questions, but no more than three, may be asked by the cross-examining attorney, but such questions are limited to matters on re-direct examination and should avoid repetition. (The presiding judge has considerable discretion in deciding how to limit the scope of re-cross.) Like re-direct examination, at times it may be more appropriate not to engage in re-cross examination.

Objection: “Objection. Counsel is asking the witness about matters that did not come up on re-direct examination.”

e. **Argumentative Questions**

Rule 310: Questions that are argumentative should be avoided and may be objected to by counsel. An argumentative question is one in which cross-examiner challenges the witness about his or her inference from the facts, rather than seeking additional facts.

Example: “Robbie McLaughlin, how do you expect anyone to believe that?”

Objection: “Your Honor, counsel is being argumentative.”

f. **Compound Questions**

Rule 311: Questions that are compound in nature should be avoided and may be objected to by counsel. A compound question requires the witness to give one answer to a question, which contains two separate inquiries. (Each inquiry in an otherwise compound question could be asked and answered separately.)

Example: “Tony, didn’t you get sued by the buyer of your company and get prosecuted by the IRS?”

Objection: “Your Honor, counsel is asking a compound question.”

g. **Asked and Answered Questions**

Rule 312: Questions that have already been asked of and answered by a witness should not be asked again and may be objected to by opposing counsel.

4. **HEARSAY**

a. **The Rule**

Rule 401: **HEARSAY.** Any evidence of a statement made by someone who is not present in the courtroom which is offered to prove the truth of the matter asserted in that out-of-court statement is hearsay and is not permitted.

Example: Defense attorney asks Andy Anderson “Isn’t it true that Kelsey English thought Odyssey Omni was a great investment opportunity?”

Objection: “Objection. Counsel’s question is seeking a hearsay response.”

Example: Macca says, “I heard my mom and dad discuss ways to get rich quicker.”

Objection: The witness’ answer is based on hearsay. I ask that the statement be stricken from the record.”

Response to Objections: “Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show...”

b. **Exceptions**

Rule 402: **ADMISSION AGAINST INTEREST.** A judge may admit hearsay evidence if it was said by a party in the case and contains evidence which goes against the party’s side.

Rule 403: **STATE OF MIND.** A judge may admit hearsay evidence if a person’s state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person’s state of mind.



Example: Macca McLaughlin says that he/she once heard Robbie McLaughlin say that the he/she felt bad about the money they owed Tony so they hired him/her to be Macca's Manager.

Objection: "Objection. The witness' answer is based on hearsay. I ask that the statement be stricken from the record."

Response to Objection: "Your Honor, the testimony is not being offered for the truth of the matter asserted, but to show the state of mind of the declarant, Robbie McLaughlin."

Rule 404: BUSINESS RECORDS: A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method or circumstances of preparation indicate lack of trustworthiness, shall be admissible. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and callings of every kind, whether or not conducted for profit.

NOTE: For additional guidance regarding the Statewide Mock Trial Tournament Hearsay Rule and its exceptions, see Appendix D.

## 5. OPINION AND EXPERT TESTIMONY

Rule 501: OPINION TESTIMONY BY NON-EXPERTS, Witnesses who are not testifying as experts may give opinions which are based on what they saw or heard and are helpful in explaining their story. A witness may not testify to any matter of which the witness has no personal knowledge, nor may a witness give an opinion about how the case should be decided.

Example: (General Opinion) Defense's attorney asks Robbie McLaughlin, "Why did Woolly Mammoth reject Macca's "Lord of Grunge"?"

Objection: “Objection. Counsel is asking the witness to give an opinion.”

Example: (Lack of Personal Knowledge) The plaintiff’s attorney asks Robin Rabin, “Why do you think the McLaughlin’s didn’t choose a safer investment for Macca’s money?”

Objection: “Objection. The witness has no personal knowledge that would enable him/her to answer this question.”

Example: (Opinion on Outcome of Case) Defense asks Robbie McLaughlin, “Do you believe you looked after Macca’s finances to the best of your ability?”

Objection “Objection. The question asks the witness to give a conclusion that goes to the finding of the Court.”

Rule 502: OPINION TESTIMONY BY EXPERTS. Only persons qualified as experts may give opinions on questions that require special knowledge or qualifications. An expert may be called as a witness to render an opinion based on professional experience. An expert must be qualified by the attorney for the party for whom the expert is testifying. This means that before the expert witness can be asked for an expert opinion, the questioning attorney must bring out the expert’s qualifications, education and/or experience.

Example: Plaintiff’s attorney asks Macca McLaughlin, “How much money do you think you lost by not being able release your second album?”

Objection: Objection. Counsel is asking the witness to give an expert opinion for which the witness has not been qualified.

## 6. PHYSICAL EVIDENCE

Rule 601: INTRODUCTION OF PHYSICAL EVIDENCE. Physical evidence may be introduced if it is relevant to the case. Physical evidence will not be admitted into evidence until it has been identified and shown to be authentic or its identification and/or authenticity has been stipulated to. That a document is “authentic” means only that it is what it appears to be, not that the statements in the document are necessarily true.

NOTE: Physical evidence need only be introduced once. The proper procedure to use when introducing a physical object or document for identification and/or use as evidence is:

- a. Have exhibit marked for identification. "Your Honor, please mark this as Plaintiff's Exhibit I (or Defense Exhibit A) for identification."
- b. Ask witness to identify the exhibit. "I now hand you what is marked as Plaintiff's Exhibit I (or Defense Exhibit A). Would you identify it, please?"
- c. Ask witness questions about the exhibit, establishing its relevancy, and other pertinent questions
- d. Offer the exhibit into evidence. "Your Honor, we offer Plaintiff's Exhibit I (or Defense Exhibit A) into evidence at this time."
- e. Show exhibit to opposing counsel who may make an objection to the offering.
- f. Judge will ask opposing counsel whether there is any objection, rule on any objection, admit or not admit the exhibit.
- g. If exhibit is a document, hand it to the judge.

NOTE: After an affidavit has been marked for identification, a witness may be asked questions about his or her affidavit without its introduction into evidence. But to read directly from it or submit it to the judge, it must first be admitted into evidence

Rule 602: *VOIR DIRE* OF A WITNESS. When an item of physical evidence is sought to be introduced under a doctrine that normally excludes that type of evidence, unless it falls within an exception to such doctrine (e.g., a document which purports to fall under the business record exception to the Hearsay Rule) or when a witness is offered as an expert, an opponent may interrupt the direct examination to request the judge's permission to take the witness on "*voir dire*."

The opponent may use leading questions to conduct the *voir dire* but it must be remembered that the *voir dire's* **limited purpose is to test the competency of the witness or evidence** and the

opponent is not entitled to conduct a general cross examination on the merits of the case.

The *voir dire* must be limited to three questions and any time spent on *voir dire* will be deducted from the time allowed for cross-examination of that witness.

7. **INVENTION OF FACTS** (Special Rules for the Mock Trial Competition)

Rule 701: **DIRECT EXAMINATION.** On direct examination, the witness is limited to the facts given. If the witness goes beyond the facts given, a bench conference may be requested by opposing counsel, at which time counsel may object to the invention of facts. (It should be noted that the granting of a bench conference is a discretionary decision of the judge and a request for a bench conference might not always be granted.) If a witness testifies in contradiction of a fact given in the witness' statement, opposing counsel should impeach the witness' testimony during cross-examination.

Objection to be Made at Bench Conference: "Your Honor, the witness is creating facts which are not in the record."

Rule 702: **CROSS-EXAMINATION.** Questions on cross-examination should not seek to elicit information that is not contained in the fact pattern. If on cross-examination a witness is asked a question, the answer to which is not contained in the witness' statements or the direct examination, the witness may respond with any answer which does not materially alter the outcome of the trial. If a witness' response might materially alter the outcome of the trial, the attorney conducting the cross-examination may request a bench conference, which the judge may grant at his/her discretion.

Objection: "Objection. The witness' answer is inventing facts which would materially alter the outcome of the case."

8. **PROCEDURAL RULES**

Rule 801: **PROCEDURE FOR OBJECTIONS.** An attorney may object any time the opposing attorneys have violated the "Simplified Rules of Evidence and Procedure." Each attorney is restricted to raising objections concerning witnesses, which that attorney is responsible for examining, both on direct and cross-examinations.

NOTE: The attorney wishing to object (only one attorney may object at a time) should stand up and do so at the time of the violation. When an objection is made, the judge will ask the

reason for it. Then the judge will turn to the attorney who asked the question and the attorney usually will have a chance to explain why the objection should not be accepted (“sustained”) by the judge. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence (“objection sustained”), or whether to allow the question or answer to remain on the trial record (“objection overruled”).

- Rule 802: MOTIONS TO DISMISS. Motions for directed verdict or dismissal at the end of the plaintiff’s case are not permitted.
- Rule 803: CLOSING ARGUMENTS. Closing arguments must be based on the evidence presented during the trial.
- Rule 804: OBJECTIONS DURING OPENING STATEMENTS AND CLOSING ARGUMENTS. Objections during opening statements and closing arguments are **not** permitted.



**PART V**

**New York State Supreme Court, Kings County**

<b>Macca Elery McLaughlin,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>versus.</b>	)	
	)	
<b>Lee and Robbie McLaughlin,</b>	)	
	)	
<b>Defendants</b>	)	<b>Index No. I 2005-1234</b>

**Statement of Stipulated Facts\***

“North American Shining Stars!” (NASS!) was a television program produced by Goldstar Productions, and presented weekly on WOLF-TV, a national television network. It ran in prime time from 1998 until 2003. The program’s format was that of an amateur contest, in which non-professionals from all three major North American nations competed for the title “Year’s Best New Pop Artist.” The top three winners of the competition were guaranteed a recording contract with Woolly Mammoth Records, as well as a first place prize of \$1,000,000, a second place prize of \$500,000, and a third place prize of \$250,000.

Regional competitions were held before judges in several cities including Toronto, New York, Baltimore, San Francisco, Vancouver, Chicago and Mexico City.

Those who won the regional competitions advanced to the finals, which were held in Hollywood, California where NASS! was filmed before a live audience.

Macca Elery McLaughlin, an aspiring singer, was fourteen at the time of the Spring 2001 competition. Macca competed in and won the regional competition held in New York City that year and then traveled to California to compete in the finals, finishing in third place on March 15, 2001. As a result, Macca won \$250,000, a recording contract and the opportunity to participate with the other NASS! winners on the PEPTARTS NASS! WINNERS tour that summer. For performing on that tour, Macca, who had by then adopted the stage name M-EEE-M, was paid an additional \$250,000 by the Peptarts Company.

In April 2001, Lee and Robbie McLaughlin, Macca's parents, in their capacity as Macca's legal guardians, signed Macca to a three-year recording contract with Wooly Mammoth Records. Cameron Cruelle, President of Wooly Mammoth Records, signed on behalf of Wooly Mammoth. The contract called for M-EEE-M to deliver three "albums" (an album being enough songs to complete a full-length compact disc), one each year for the life of the contract. Wooly Mammoth gained all rights to the artistic creations of M-EEE-M during the contract period. The contract obliged Wooly Mammoth to pay royalties to M-EEE-M in set percentages depending on the market in which the CDs and other products were sold or profits were generated.

Because Macca was a minor, Cameron Cruelle insisted that the contract be court-approved so that Macca could not later seek to declare the contract void, as is the general right of a minor. Lee and Robbie McLaughlin petitioned a New York court on May 8, 2001 to approve the contract pursuant to New York Cultural Affairs Law §35.03. Although Lee and Robbie's petition requested that ten percent (10%) of any money earned by Macca under the contract be set aside for Macca's behalf, the New York court ordered that one-half of the money earned by Macca under the contract be set aside and turned over to Macca upon Macca's reaching the age of 18. Robbie McLaughlin was made the guardian of the court-ordered account.



Robbie and Lee, who had two children in addition to Macca, put into their own bank accounts the \$250,000 NASS! third-place prize money, the \$250,000 PEPTARTS NASS! TOUR payment, and one-half of all the money paid under the Wooly Mammoth contract for Macca's first, enormously successful CD. Robbie set up an account on Macca's behalf for the other one-half of Macca's earnings. Using the money they put in their own account, Lee and Robbie paid \$500,000 down on a million dollar home, joined a prestigious country club, hired a manager, Tony Triacon, and a public relations agent, Sammy Wright, for Macca, and hired expensive trainers and teachers to develop the talent of their other two children.

In Spring 2002, friends they met at the club mentioned to Robbie and Lee that they were investing in an Initial Public Offering (IPO) of stock in a technology company called Odyssey Omni. Robbie, who did some studying of the company, thought the stock looked like a fantastic investment and desperately wanted to participate in the IPO. Because the McLaughlin's had significantly lowered the balances in their accounts in acquiring the assets and services described above, Robbie took over \$750,000 in the account established for Macca, nearly all that was in that account, and invested it in Odyssey Omni. Unfortunately, within a year the stock had plummeted, Odyssey Omni had dissolved, its Chief Executive Officer and Chief Financial Officer had been indicted, and Lee and Robbie lost the total investment.

After Lee and Robbie invested in Odyssey Omni but before its fortunes sunk, M-EEE-M's second CD was found unacceptable by Cameron Cruelle and Wooly Mammoth refused to release it. Under the terms of the contract, M-EEE-M was not permitted to contract with any other company to release that or any other M-EEE-M CD and, as a result, Macca earned no further money under the contract, other than limited continued royalties for the first CD.

Upon turning 18 in June 2004, Macca immediately fired Tony and Sammy and then hired his/her friend and former voice and guitar teacher, Stevie Styx, a former

member of the band, the “Mash Trashers.” Stevie, still known by the stage name “Tiny Mash,” found Macca a new recording company, Strawberry Fields, but that company required an initial investment by the artist of \$250,000. Only when Macca sought control of the guardianship account in order to engage the new recording company did the fact that there was virtually no money in the account come to light. As a result, Macca was not able to engage Strawberry Fields to produce his/her CD.

Macca has brought a claim against Robbie and Lee. Macca alleges that both parents have grossly mismanaged Macca’s funds and failed in their fiduciary roles not only in squandering the money but also in hiring a manager and public relations agent who were disastrous to Macca’s career, causing gross economic hardship to Macca. Macca seeks damages in the amount of \$1,827, 661. The amount of the guardianship is \$827,661 created by the earlier court order. Macca asserts that the other million dollars demanded is a low valuation of the cost of the career-ending demands of Tony Triacon and Sammy Wright. Robbie and Lee defend on the ground that they always acted in the best interest of their children and did not violate any fiduciary duty imposed on them by law.

\*Witness statements are duly sworn and notarized

## **WITNESSES**

### **Plaintiff Witnesses**

Macca McLaughlin, Plaintiff

Stevie Styx, Macca's Former Manager

Robin Rabin, Financial Witness

### **Defense Witnesses**

Robbie McLaughlin, Parent of Plaintiff

Tony Triacon, Macca's Former Manager

Andy Anderson, Financial Witness

This case is hypothetical. Any resemblance between the persons, facts and circumstances described in this mock trial and real persons, facts and circumstances is coincidental.

All witnesses may be portrayed be either sex. All names are meant to be gender non-specific. It is stipulated that any enactment of this case is conducted after the named dates in the fact patter and witness statements.



**Affidavit of Macca Elery McLaughlin**

**Witness for the Plaintiff**

My name is Macca Elery MacLaughlin but everyone knows me as M-EEE-M. I was born and raised in New York. Ever since I can remember I have loved to perform. If I remember right, I competed in my first singing competition when I was five or six. When I was seven, my folks got me a really great singing coach, Stevie Styx – well, everybody knows Stevie by the stage name “Tiny Mash.” Tiny Mash was the lead guitarist with the “Mash Thrashers.” They were a 1970’s band. I don’t know how I would have gotten through everything that has happened to me, good and bad, without Tiny Mash.

Anyway, Tiny Mash worked with me for a few years and I gradually got better and better. The thing that I really liked in studying with Tiny Mash was that we concentrated on way more than my music. I learned to respect myself. My Dad and Mom always wanted a bigger house and a better car and they let me know early on by the way they treated me that I was their “ticket.” Tiny Mash taught me to love music and perform for the pure joy of it.

I won my first big competition when I was 11. It was the State Fair Young Talent Search. After that, I began to win a lot. I won a performing contest sponsored by a local car company when I was 12. The prize was your choice of \$5,000 or a new car. Since I didn’t drive I really wanted the \$5,000. I was planning to save some of it, get Tiny Mash a new guitar with some, and maybe treat the family to Disney World. My parents made me pick the car.

My really big break came in 2001. I was 14 and entered the NASS! Competition. I won the regional competition and then went off to Los Angeles. My parents and Tiny Mash came with me and the whole thing was incredibly cool. I didn’t win but I came really close; I won a prize of \$250,000 and I got a recording contract.

I met with Ms. Cruelle of Wooly Mammoth Records with my parents right after the competition. Wooly Mammoth gave me a contract to sign. Mostly the adults in the room talked about the requirement that I produce one CD a year and do music videos. I don't remember a lot of details of that meeting but I do remember my parents asking how much money I would earn. The night that I signed the contract, I found out that my parents had fired Tiny Mash even though I had promised that Tiny Mash would be my manager. They knew I was upset so they wrote me a letter to try to calm me down, saying that they would always look out for my interests. I still have that letter although it is a laugh now. About a month later, we went to court, my folks, the recording people and me. It was a proceeding of some kind to have the court approve the contract. The judge asked me if I understood the contract and I said that I did.

Immediately after they fired Tiny Mash, my folks hired Tony Triacon as my manager and Sammy Wright as my press agent. They didn't even ask me. Tony is such a loser and I can't see why I needed public relations help - Tiny Mash told me that was just ridiculous because under recording contracts the record company takes care of all of that. Sammy had no idea what she was doing anyway.

Recording my first CD was no problem because Tiny Mash and I had done all the artistic work on that CD before I even competed in NASS! Everyone knows my first big hit, "CyberGirl." They still play it on the radio sometimes. My first CD, "M-EEEE-M Mixed" was in the top ten on the charts for about a month. That year, after the CD was released, I toured for four months straight. I had toured right after the NASS! Competition with the other winners. I loved doing the group numbers and we had a pretty wild time when we weren't on stage. I think I was paid about \$250,000 for that show but I never saw any of it. My parents took it and bought a new house. I was mad that they just treated the money as their own but I was happy for them and for my little brother, Sasha, and my sister, Jenna, because they got their own rooms.

Anyway, touring by myself in the “M-EEE-M Mixed” tour wasn’t so great. I was pretty much alone, although one or the other of my folks, or Tony, were always there pushing me. I really missed being home with my brother and sister. All the money I made was taken by my folks so I figured at least my brother and sister were having some fun.

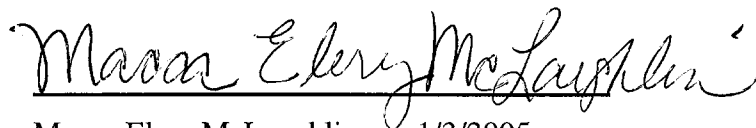
Even before the tour was over, the Wooly Mammoth folks, Tony, Sammy, and my parents were all over me, reminding me that I had to create a new CD within the year. Tony, who was supposed to be helping me, just kept pressuring me. Tony was way into grunge music and he/she decided to change my whole image into a “grunger.” I told him that grunge was way over but he/she didn’t care. My second CD, which Tony decided to call “The Lord of the Grunge,” was rejected by Wooly Mammoth. Ms. Cruelle told Tony that they were committed to promoting the other NASS! Winners who were singing pop music. She never liked grunge. Right after that conversation Tony told me “I really put her in her place. What does she know about music?” A few weeks later Ms Cruelle told Tony that Wooly Mammoth didn’t want any more CDs from me and that they weren’t going to sponsor any tours or gigs. A week after that we received a letter from Wooly Mammoth’s lawyer reminding us that under the contract I couldn’t sign with any other label and I couldn’t perform for money unless Wooly Mammoth endorsed the performance. There was only a year left on the contract at that time.

I thought my parents would go ballistic but they didn’t really. They just told me, “Don’t worry, baby, we’ve got something going that will make your earnings from Wooly Mammoth look like peanuts.” So I didn’t perform and just wrote music. My parents, unbelievably, kept Tony and Sammy on salary. They said that Tony would get me a better contract when the Wooly Mammoth contract ended. Not!

I turned 18 on June 15<sup>th</sup>, 2004. My first act on my birthday was to fire Tony and Sammy. Man, did that feel good. Then I got ahold of Tiny Mash and hired him as my manager again. He/she had a job with a recording studio but I would give him 15% of any money I made and he/she decided to come with me again. We started working on a new sound, borrowing from some afropop and some South American sounds. I did some local gigs

around New York and really got good reviews. Tiny Mash told me about this phenomenal new recording company that had all the right attitudes about music and musicians. The only downside, according to Tiny Mash, was that this company, Strawberry Hills, didn't have a lot of cash. The only way they would sign me is if I paid \$250,000 up front. I told Tiny Mash, "no problem." I knew that I'd made at least ten times that much and that the court had ordered my folks to set aside half of anything I made for me.

It turns out that they didn't hold my half - they spent it. Almost all of it. I'm not sure even now where all of it went. Tiny Mash had to quit being my trainer and go back to work at the recording studio and I lost the chance to record with Strawberry. I lost my childhood, I lost my career, and now I'm 19 and I have nothing.

  
Macca Elery McLaughlin 1/3/2005



## **Affidavit of Stevie Styx**

### **Witness for the Plaintiff**

I am Stevie Styx. Macca calls me "Tiny Mash." That was my stage name when I played lead guitar and sang as a member of the "Mash Trashers." We had what looked like a really great run going until East Coast Enterprises, our recording company, just plain screwed us over. Everybody on the East Coast in the 70's knew the Mash Trashers. We played clubs from here to Boston to Fort Lauderdale. Man, we were hot. We couldn't lose - until we signed a recording contract. I had two chances in my life to really make it big in the music business. One was with the Mash Trashers and the other was with Macca. East Coast Enterprises killed my first chance and Robbie and Lee McLaughlin killed the other. Despite my best efforts, Macca got plowed over, too. There's just nothing like greed to take all the beauty out of music. Now, I'm just a "mixer" at a recording studio. I can't even afford a nice house. But the McLaughlins sure got themselves some nice digs.

I met Macca eleven years ago. Seems impossible that Macca was only 7. A lot of water under our bridges since then. Macca's parents hired me to teach Macca to sing. Man, they were crazy to make that kid successful. That's all they talked about, Macca making it big. Lee would constantly show me articles about super star kids and the lavish lifestyles that they lived. But, in a way, I could understand their excitement, at least as first. Macca was one of the most naturally talented kids I ever met. The kid could sing like a dream and wasn't bad as a dancer.

I felt sorry for the kid though. Even at 7, Macca didn't have much of a child's life. Dance class at age 3. Piano at age 4. Practice, practice, practice. Macca said it was okay at first but got really old. Macca told me that Robbie and Lee endlessly pushed, saying that Macca wasn't good enough. Not good enough? Anyway, Macca sang in the church choir and in school and kept taking all these lessons that Lee and Robbie demanded. It didn't leave a lot of time for much else. The kid had some great friends at

one time but they were all gone by the time the kid was 10 and didn't have time to do all the things they were doing because of lessons six days a week. Macca wanted to play soccer but the parents said it would interfere with practice. That happens to a lot of kids whose parents push them too hard. They lose their childhood. Hey, childhood is for having fun not for preparing to be your parents' meal ticket. I've been in the entertainment business enough to see it all the time.

Anyway, Macca was naturally talented but really needed my help. I worked with the kid three days a week for years. My work really paid off immediately when Macca won that first competition. I think the kid was still 11 when that happened. From then on there was no stopping me and Macca. We even started winning money at the competitions. Not that I saw any of it. Robbie and Lee took it all and didn't give me a cent. When Macca started to win prizes, I asked them for a cut of Macca's winnings. All I wanted was five percent. For all those years I'd been giving Macca lessons for only \$25.00 an hour. I could have asked for more but I thought Macca and I were in the thing together for the long run. You'd think I'd asked the McLaughlins for their right arms. Lee just went ballistic and said that they didn't need me any more and I should just get out of Macca's life. Robbie was smarter- knew how much the kid needed me. That's why I stayed really - the kid would have just gotten eaten up by the sharks, including Robbie and Lee.

Macca and my best moment came when Macca competed in NASS! in 2001. By then we had come up with the stage name "M- EEE-M." I came up with it and Macca really liked it. Macca was just unbelievable, both in the regionals - we won that - and the internationals - we came in third.

Boy, Macca had no sooner won than the recording company and his/her parents came swooping down. I told Lee and Robbie that they should go slow - they weren't obliged to sign with Woolly Mammoth. I told them that that was a big mistake that the Mash Trashers made, signing with the first company that offered them a contract. The recording company didn't let us record the music we wanted to and we lost total artistic


control. Then the company refused to book any gigs for us. So the Mash Thrashers didn't make it really big. Even one of the judges of the NASS! Competition, who was an entertainer, said "be careful of the Woolly Mammoth contract – it stinks." I told Robbie and Lee that these companies will just eat you up and spit you out and that you had to negotiate with them and play them off against one another. You have to be in the driver's seat. That's the only way to get a good contract. That's the only way to protect yourself. But Macca's parents were as excited as I've ever seen them. When I warned them about problems with the contract, they told me to stay out of it because it was none of my business. They were in charge of Macca.

What did I get for trying to protect Macca and his/her family? I got fired. Robbie and Lee told me to stay away from them and stay away from Macca. All the years of work, Macca finally makes it and they fire me. All my life I will wonder how things would have turned out for Macca and for me if Robbie and Lee hadn't been such vultures.

Macca's first CD hit big, CyberGirl, turned out to be the only hit for Macca - because of the morons that Macca's parents hired. Tony Triacon is an idiot and everybody in the music business now knows it. Tony didn't know a thing about recording and music. Anyway, I was happy for Macca when CyberGirl hit it big but it really burned that I was cut out. I worked with him on that whole CD – it was as much mine as it was Macca's. Somebody made a ton of money on that deal and it wasn't me and I now know it wasn't Macca. Tony made his/her money and Robbie and Lee have their big house on the hill. Heck, Macca's not even living in it. It was bought with Macca's money so it should be Macca's house anyway.

And the worst of it is - Macca had a second chance. A whole new style that was so sweet. Strawberry Fields is a great label and Macca was flat out lucky that they were so wired on signing the kid. But Strawberry Fields doesn't produce records unless the artist can front a quarter mill. That should have been a breeze for Macca. But thanks to Robbie and Lee squandering Macca's money, Macca has nothing and I have nothing. Sure,

Macca can still play in the clubs, like the Mash Thrashers did - and that's not bad. But man, what could have been.

  
Stevie Styx 1/5/2005

**Affidavit of Robin Rabin**

**Witness for the Plaintiff**

My name is Robin Rabin. I am a proud 1963 graduate of Indiana University, where I obtained my Bachelor of Arts in Accounting. I'm a big Indiana fan. In fact, I have gone to a home game every year since I graduated. It is a sign of my loyalty that I have supported the team through the bad times as well as the good. Fidelity, loyalty and steadfastness – they count for a lot. For over forty years I worked for Barney Smith Brothers, the accounting firm. I was what Barney Smith calls a Junior Financial Analyst. I quit Barney Smith a year ago because they kept promoting people with less seniority than I to Senior Financial Analyst, even though I had far more experience and financial sense. At some point you just have to take a stand when people are not acknowledging your worth.

I have seen the financial statements agreed to by the parties detailing information about the disposition of monies earned by Macca. I should say that that was eye-opening. My better half and I raised our three children to appreciate money, save all that you can, spend wisely and live frugally. Our children have been better for that advice. All of them are financially secure even though they haven't been out in the workplace all that long. That's what sound financial management and good sense will do for you.

The McLaughlins seems to have had neither sound financial management skills nor good sense. The way they spent Macca's money is a darn shame. Let's start with the business about the IPO. I remember Professor Malone, the Chair of the Accounting Department at Indiana, saying "If a thing seems too good to be true, it probably is." Boy, isn't that the truth. It is funny how you hear about all the success stories in the stock market but you sure don't hear about the failures – although there have been a lot more failed investments than successful ones, especially where IPOs – that's Initial Public Offerings - are concerned. But that's not the reality. I remember reading in a magazine awhile back – I don't remember which magazine – that for every winner in an IPO there are ten losers. It is usually the big investors who win and the little investors who lose. That's

why I've never recommended playing in the stock market. It is too risky. And that is the place where the McLaughlins put Macca's money. It's a shame, a darn shame.

They should have taken all of Macca's money and put it in a nice tight savings account. The partners at Barney Smith were always upbraiding me for encouraging people to put money into savings. They always said that savings accounts, with their 1-2% interest rates, were the last place you should put your money. But this is the way I see it. A bird in hand is definitely worth two in the bush and I'll just bet Macca would rather have his/her money plus 1% than to have nothing. It's a darn shame. I never invest money in anything except myself and my family. It's just too darn risky. You know, long term Certificates of Deposit wouldn't have been a bad bet either. Sure you don't have access to your money for awhile but Macca didn't need access for awhile. What Macca needed was for the money to be there. A CD would have earned about 2.5% for a three-year term. Now that's a darn good rate of return. It's not the 20% you might have gotten in the stock market but its enough. Like I say, I never invest my money in the stock market but you know, there are a lot of mutual finds that did well during the last five years. Why not invest in one of them?

I guess the McLaughlins just couldn't resist the chance to hit it big. But, my God, they have some responsibility to their child. They are what we call fiduciaries, which means they have to recognize what is good for Macca, not what is good for them. Hadn't the McLaughlins ever heard of Enron, Tyco, Imclone, Global Crossing – these were all companies that were at the top but fell from grace and lost all their investors' money. It always reminds me of Frank Sinatra singing "That's Life." "You're riding high in April, shot down in May." I tell you I don't want to ride high or get shot down. The middle course is best. But, you know, as dangerous as the stock market is, IPOs are even more risky. Throughout the last four years there have been some disastrous IPOs. The way it works is this. A private company has a good product or sometimes just a good idea. Sometimes that company needs capital to develop its product; sometimes the private owners just want to generate some cash – lots of it - for themselves. So they take the company public by selling shares in the company to the public. Because investors saw a

few people make a fortune when buying IPOs in the late '90s, some people think that this is the way to get rich quick. But for a lot of investors it has been just the opposite. They buy 100,000 shares of an IPO at \$7 a share, the share price climbs to \$9 but the investor just can't resist going for more. Then the markets realize that the idea or the product isn't as good as was touted and the stock price bottoms. It was not unusual to see such shares drop to pennies in value. It is just plain too risky.

I'll tell you another investment that is safe and that is real estate. That's the other thing I tell my clients – buy real estate. You can't lose. I guess the McLaughlins knew what safe investments were when it came to their share of the money.

Now, finally, I want to talk about some of the other expenses on the financial statement. While I was at Barney Smith, I worked on some financial advising teams for some pretty big-name entertainers. When you work with the financial statements of those people you get a real look at how money is spent by entertainers. That's one of the reasons that Macca asked me to take a close look at what happened to the money. Well, aside from the shame about the IPO, the way the McLaughlins spent Macca's money on a manager and public relations person is just criminal. I mean, 10% for a manager with little or no experience, that is ridiculous. And Triacon got a flat fee as well. Yes, I saw some accounts where that kind of money was spent but that was for big name promoters like, what's his name, Poof Diddy. I think the best way to go is to give a manager a flat salary not a percentage. To me, that makes more sense, because then your expenses are fixed. And to pay Ms. Wright \$75,000 a year. Preposterous!

Finally, a word about those cars. I've worked for over forty years and I never aspired to a Mercedes or a BMW. An American-made sedan will get you around as well as any German car and cost a whole lot less. Macca's folks used Macca's money to try to keep up with the Jones at the Club, that's all it was. They thought there would be an endless supply of money but there never is. That's why you have to live within your means. No one in my family ever needed or wanted a fancy car or a million dollar home. Macca

didn't want those things either. All Macca wanted was to make music – now that is not even possible. It's a darn shame.

A handwritten signature in cursive script that reads "Robin Rabin". The signature is written in black ink and is positioned above a solid horizontal line.

Robin Rabin 1/7/2005



**Affidavit of Robbie McLaughlin**

**Witness for the Defense**

My name is Robbie McLaughlin. I've been married for 24 years to Lee, the best spouse anyone could have. We have three beautiful children, Macca, Alexander, who we call Sasha, and Jenna. They are just great kids, all incredibly talented. Lee and I always laugh that we don't know where the talent came from because neither Lee nor I have an ounce of musical talent. We live at 16 Meadow Hill Road in Great Wessex, New York.

When Lee and I got married we had nothing. We really had to struggle. It seemed like all we did was work. It was worth it to both of us because we knew we wanted a family and we wanted to be able to provide a nice life for them. When Sasha, our second child, was born, Lee quit work outside the home and stayed with the kids. It was tough to go without Lee's income but we thought Lee would be able to work at home and take care of the kids as well. Unfortunately, Lee never could make much money at home so things were really tight.

That was the year Macca was 3. I guess we had been working so much, neither of us really appreciated what a natural performer Macca was. Lee told me that Macca just never stopped singing. Even though we hardly had any disposable income, Lee thought we owed it to Macca to develop that talent so we began lessons. For the next ten years we spent every cent we could on lessons for Macca. It was hard but Macca's joy made it worth every penny and all the sacrifice.

When Macca lost a couple of early competitions, that child was so devastated that Lee and I decided to hire someone who could really help refine Macca's remaining rough edges. That's when we hired Stevie Styx. Macca really loved Stevie and seemed to learn and grow a lot through that association. Lee and I admired Stevie's talent and were glad for Macca's growth and happiness but it bothered us that Stevie seemed so down on

the entertainment industry. It was almost as if Stevie was convinced that whatever happened to Stevie was going to happen to Macca, too.

Anyway, Macca just rose like a shooting star. When our child came in third in the NASS! Competition it was just incredible. All that sacrifice for ten years, not just by Macca but by all of us, had paid off. Lots of times during that ten years Lee and I wondered whether we were being fair to Sasha and Jenna by putting so much time and money into Macca's talents. You see, Sasha and Jenna are really talented, too. We thought that at last, we'd be able to make it up to them, too.

Wooly Mammoth offered Macca a recording contract. We felt that we should sign that contract because, without NASS! and Wooly Mammoth, Macca would never have gotten the national exposure. We weren't sure that anyone else would give Macca a contract. That's what Cameron Cruelle told us. Stevie said we should shop around because the contract was no good.

Everybody was happy except Stevie. Stevie seemed to get greedier as Macca's exposure grew - even asking for a cut when we hadn't even started to cover all the expenses we had laid out all those years. We must have laid out thirty thousand dollars to get Macca to be a star and a lot of that money went to Stevie. I wanted to end it with Stevie right then but Lee talked me out of it. Anyway, Stevie didn't want us to sign the contract with Wooly Mammoth. We finally told Stevie that it was time to end it. Macca was upset but we sent him/her a letter promising everything would be alright and that seemed to calm him/her down a little.

We called Tony Triacon to get a recommendation of somebody to manage Macca's career. Tony volunteered. Well, not volunteered exactly - Tony wanted to be hired as Macca's manager. We owed Tony some money from when Lee and Tony had been in business so it seemed like we owed it to Tony to give it a try. Tony told us to sign the Wooly Mammoth contract. Tony also said we needed to get court approval so the contract would be binding. So we signed the contract and went to court. The court

directed us to set aside half of Macca's earnings for Macca's use as an adult. Tony hadn't told us about that possibility. Our attorney told us that we could use the money for Macca's and the family's needs. I wanted to just put the money in a savings account but our friends said that the law requires us to invest it wisely so that Macca would have as much as possible as an adult.

I should say that one of the things we were so anxious to do was to make everything up to Sasha and Jenna. The first thing we did when Macca got some money from the NASS! and the Peptarts tour was to buy a new house so that each of the kids could have their own room. We put \$500,000 down - that was the competition prize and tour money - and we borrowed \$500,000. Can you imagine we live in a million dollar house! We joined a golf and tennis club so that all the kids could enjoy it. Later, we got two great cars, a Mercedes and a BMW. We also made it up to Sasha and Jenna by buying them lessons to support their talents. They really wanted to follow in Macca's footsteps. We got them the best lessons we could buy. This time we could afford real professionals to help the kids.

We also hired Sammy Wright as Macca's public relations agent. Sammy's been my friend since high school. Sammy did a lot of advertising and public relations when she was first out of college and she's really got a knack for it. Unfortunately, Macca resented us for firing Stevie and resisted all the things Tony and Sammy tried to do to enhance Macca's career.

A couple of years ago, we made what turned out to be a big mistake but we had no way of knowing that at the time. There just wasn't a good place to put the money Macca had earned and we knew we had a responsibility to make that money grow. About that time, some friends we met at the club were talking about an IPO that they were all determined to be a part of. It was for a company named Odyssey Omni. The company had developed a new search engine for the Web that was supposed to be better than Google and Yahoo. Everything that they told us made us think that this stock was a sure bet. I've studied the stock market a lot and know the risk but I did my homework on this

company and it seemed solid. We also knew that one of the people at the club was an expert on technology companies. And all those folks at the Club were backing up their optimism with their money. We asked Sammy to ask her stock broker and she said the broker told her it was a golden opportunity. Sammy told us, "Go for it - Macca will thank you for it later." So we took Macca's account and participated in the IPO. At first it seemed like it was going to be a winner. We didn't tell Macca about our good fortune because we were having trouble with Macca's attitude.

Then the stock plummeted and the company folded. I don't know exactly what happened, except that the CEO and CFO of the company have been indicted. We lost the money we invested. We didn't worry about it that much at the time because we figured Macca's career was going to go straight up, with or without Woolly Mammoth. We planned to put all the money that Macca would earn off the second CD in his/her account to make up for what we lost. But there never was another CD. Lee and I feel really terrible about it but there is nothing we can do. We made every decision in Macca's interest. It broke our heart when Macca decided to sue us. All we have ever tried to do is what was best for our child.

A handwritten signature in cursive script that reads "Robbie McLaughlin". The signature is written in dark ink and is positioned above the printed name and date.

Robbie McLaughlin 1/6/2005

**Affidavit of Tony Triacon**

**Witness for the Defense**

My name is Tony Triacon. I am 52 years old and I've been an entrepreneur all my life. In high school not only was I the President of the Future Business Persons of America but I was voted "Most likely to be a Millionaire" by my class in our senior year. I've just always had a knack for business. Of course, not every venture a business person enters into is a winner but I've had my share. I graduated from high school in 1970. I got my B.A. in Business in 1975. I took five years in college because I took one year off to run a coffee business on my college campus between my sophomore and junior years. I called the business "The Bean Scene" and I served specialty coffees. I really think I could have made a go of it if I'd just had a little more capital to develop the business. But nobody knew my talent then and I had to fold the company after nine months. Every time I drive by a Starbucks it sort of makes me sick because I was onto the coffee business before any one else. Howard Schultz had backers, that's why he became a billionaire with Starbucks. That's all I lacked - some backers.

After I got my degree I was offered a job with Trader Mike's, the big grocery store chain. That's when I moved from Seattle, where I was raised, to the East Coast. I worked with Trader Mike's for four years. I was going to quit before they let me go because I am just not the type of person to work for anyone. None of the people at Trader Mike's really understood my talent and they just didn't seem to have a vision. That's probably why they are nearly bankrupt now. I wonder what would have happened if they'd taken some of my advice. Well, we'll never know.

Anyway, the 80's were big for me. I started my own business, this time with some backers. I leased entertainment equipment for home use. That's when I first was in the entertainment business. I made over a million dollars a year with that business in the first five years. I guess my classmates in high school had me pegged. The next five years weren't so great. The sales prices on a lot of the kinds of equipment I leased came down so far that people could afford to buy instead of lease. So I had to lower my leasing

prices and that really cut into the profits. I knew a bit about accounting so I was able to structure the financials so that they reflected what I knew to be the true value of the company. I sold the company in 1989 to a national outfit.

Then I hit a few of those bumps that every successful business person hits. First, a couple years after I sold the business the company that bought it sued me, saying that I had “doctored” the financial books. I didn’t do anything that most other entrepreneurs don’t do - it’s just the way business is done. But I didn’t want my reputation to be ruined so I settled out of court for a couple of hundred thousand. Then, the feds came after me claiming that I didn’t pay all the taxes due on the business. Give me a break - no business owner can survive if they pay all the taxes the government would demand. I didn’t do anything wrong but the court found me guilty of tax evasion in 1992. Having a felony on my record still frosts me. I didn’t serve time but I did have to pay a fine of something like half a mil.

When you know business like I do, you know that when you feel like you just can’t win is about the time that you do. That was true of 1992. I decided to open a “grunge” club. Grunge was just taking off and I just knew it could be a “go.” I was a little short of funds by then because of the settlement and fine. I got some financing from friends and took on a couple of business partners, Lee McLaughlin and Shorty Simons. Shorty threw in \$50K to the project and knew the entertainment business even better than I did and Lee and Robbie had been my neighbors years before. Lee didn’t have any money to contribute but had a lot of time since deciding to stay home with the kids. Lee promised to kick in 50K when their money wasn’t so tight. Til then, Lee was going to do the promoting of the club with the media. Promotion is everything in the entertainment business. The first months we were open were fantastic. Kurt Cobain and Courtney Love even dropped in one night. Once that word got around every grunger in the area just hung out at the club.

A lot of the grunge groups that appeared at our club had managers and promoters who were useless. They had no vision for how to promote their groups. I mean, you don’t

have to be in the music business as long as I have to know that musicians aren't business-wise. Heck, you think the Beatles would have made it without George Martin? No matter how good a group is they need a promoter with vision. They need someone who can push. And if there are two things I have, and there are - it's vision and push. So I formed my own managing company. I signed four of the best grunge groups I heard at the club. I think everything would have really taken off if Kurt hadn't died. All the kids I represented just gave it up after that. What losers. If you want something to keep going, you've got to keep it going. I thought about changing the grunge club to something else but grunge has a life to it. I know it does. Anyway, if my backers had just stayed with me, I'd have made the club go but they didn't. I ended up losing a lot of money. Lee felt bad about not being able to kick in the 50 thousand but it wouldn't have helped that much anyway.

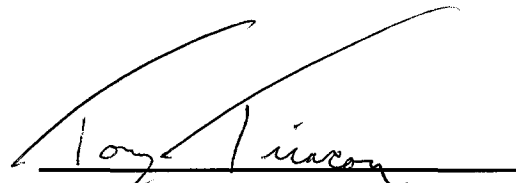
I'd met some friends through the club and one of them hired me to work managing some other clubs. I turned those clubs around really fast. Most of them were losing money but I used my vision and push and now every one of them is a gold mine. The thing that frosts me is that I made a ton of money for those owners but didn't get a percentage. Sure, they gave me a raise every year but percentages are where the money is. I knew then that it was just a matter of time before I went off on my own again.

My opportunity came when Lee McLaughlin called out of the blue looking for a manager/promoter for their Macca. They knew I had a lot of contacts in the entertainment industry. Why, I thought, should I recommend one of the losers I'd seen along the way, when I knew I was the best person for the job. I asked 10% of Macca's earnings and a guaranteed minimum of \$75,000 a year because I'm worth it. Besides Lee still owed me the 50K but I didn't bring that up.

Well, Macca was just impossible to work with. You'd think there was no other kind of music than pop music. I told Macca over and over again that musicians have to grow and that each CD must be different or you lose your fan base. I really believe it is time for a comeback of grunge and I think Macca could have led the way. But Macca just wouldn't

put heart into it. If Macca had put heart into Lord of the Grunge it would have taken off and Macca would have led the rebirth of the grunge culture. Professionals can hear when there is no heart in music so I'm not surprised that Wooly Mammoth rejected the CD. That didn't have to be the end of it, though. If Macca had just worked with me we could have been ready to go as soon as the Wooly Mammoth contract expired. I had all kinds of plans. Instead Macca fired me. Kids these days don't know the meaning of gratitude.

I landed on my feet though. With the money I earned helping Macca I am back in the beverage business. This time I'm riding the wave of the no-carb movement. My line of low-carb vegetable juices will hit the stands in May. This is a sure bet!



Tony Triacon 1/11/2005



**Affidavit of Andy Anderson**

**Witness for the Defense**

I am Andy Anderson and I have owned my own stock investment firm, Andy Anderson Advisors for the last twenty years. I have a degree in Marketing from the University of Southern California. For the last three years I have been honored to be a friend of Lee and Robbie McLaughlin. I came to know Lee and Robbie when they joined the Great Wessex Country Club. They are just wonderful people and have a wonderful family. I am sick at heart to be making this statement as part of the litigation between Macca and his/her parents. I know that every decision they have made since they have had kids has been made in the best interest of their kids. They are so proud of Macca and of Sasha and Jenna, too. And I know because I have talked to them extensively that they would do anything to recover the investment they made in Odyssey Omni if they could. But, unfortunately, they can't. Nor do I think they should have to.

I have advised clients for two decades about the risks and rewards of investing in the stock market. Before I ever talked about the rewards I talked about the risks. People have to know that there are ups and downs and that the best you can do is educate yourself before you invest and only invest an amount that you are comfortable with.

One of my pet peeves with those who criticize market players is that they comment from perfect 20/20 hindsight. It is easy to criticize a stock choice that has turned out to be a bad one, just as it is easy to praise a stock choice once it has turned out to be a winner. But no one can know which a stock will be – winner or loser – before they invest. There is really not that much difference between those who earn money on stocks and those who lose, at least among those wise people who seek stock advice. It is always funny to me to hear people criticize stocks as an investment now. You certainly didn't hear that in the 90's when people were routinely increasing their portfolios by 20% a year without investing an additional dime. Even in this decade, when the stock market ride has been a

little rough, there is still very, very good value in the stock market. And, despite some real loser IPOs, there have been some great opportunities there as well. In fact, without our investment in IPOs, my family would not have the considerable wealth we've amassed.

Let me talk specifically about Odyssey Omni and how Robbie and Lee got involved. A number of stock investment firms, including my own, had been carefully watching the technology companies in 2002 and 2003. Some of them were dogs and some looked very promising. The companies that I am talking about are not the big boys, like Microsoft, Macintosh or Dell. I am talking about the dot.coms and particularly the search engine companies. Everyone had been keeping a particularly close eye on Google – an incredibly valuable company essentially owned by just two individuals. A couple of us, myself and Kelsey English at Stanley Morgan – Kelsey also belongs to the Club – had our eyes on Odyssey Omni. Although Odyssey Omni did not get the press that Google did, all our research suggested that company had tremendous value. It hadn't launched its search engine yet but the concept looked good. Kelsey's company had issued an internal report that I was able to get my hands on suggesting that, if Odyssey Omni went public, it would be the opportunity of the year.

Well, you can imagine that this was all the talk at the Great Wessex Club when our golf foursome got together. That is one of the great things about golf, it really gives you a chance to do business and learn a lot about how others are doing business if you just keep your eyes and ears open, which I do, believe me. Kelsey, Robbie, Alex Johnson and I played about once a month back then. Robbie and Lee were very popular at the Club, not only because they are great people but because of Macca's fame. All our kids hung out at the Club constantly hoping to get a glimpse of Macca. I think it drove Lee and Robbie a little crazy at times always being bugged by the kids. At any rate, we did a lot of talking over our gold rounds about Odyssey Omni. Kelsey and I made it clear that we wanted to be in on the IPO when it came. I remember Robbie taking me aside, maybe in July; I remember it was really hot. Robbie wanted to talk to me about investing Macca's money in the stock market. I told Robbie I would put together a suggested portfolio of long-

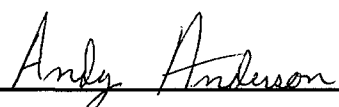
term, investments. Robbie told me that long-term investments were out because as guardian of Macca's funds Robbie couldn't tie up those funds after Macca turned 18. The funds would become Macca's then. Robbie was feeling that the interest Macca's money was making in the bank, which was about nothing, really suggested irresponsible stewardship on Robbie's part. So we talked more about it over the next few days and Robbie became increasingly interested in Odyssey Omni. I told Robbie that IPOs are generally risky but I thought Odyssey Omni was a sure bet. I cautioned Robbie not to hold it too long as IPOs did to jump up and then fall back. Robbie understood.

Robbie asked me a week or so later whether there was anything I saw in the market that made more sense and I could only say that Odyssey Omni looked like the best deal coming down the pike. The IPO for Odyssey Omni was in September. The stock was trading at \$25 @ share at the end of the first day of trading. I bought shares for myself – I'm uncomfortable saying how many, and I bought 30,000 shares for Robbie. I sold my shares at \$28 a week later because that is what I always do with IPOs. I was kicking myself because about a month after that the share price went to \$31.

What none of us knew was that the CEO and CFO of Odyssey Omni were nothing better than crooks. They'd lied from the beginning about their technology and how close they were to be able to launch it. They'd done all kinds of off-balance sheet transactions to hide the extent of their losses and a whole lot of other misleading and illegal things. The Securities Exchange Commission caught them but not before Robbie, Kelsey and thousands of other investors lost every cent they invested. There is a civil suit by the investors to try to get some of their money back but those suits rarely result in any recovery for the shareholders. Only the lawyers get rich in those suits.

I feel truly sorry for Robbie and Lee, and for Macca as well. Kelsey asked me the other day if I felt any guilt for recommending the stock to Robbie. What could I say, if someone in the investment business took their clients' losses to heart, they'd never sleep. My advice to Robbie was sound when I gave it. It was a good, solid, smart investment

for Robbie to make. It just didn't work out, that's all. It happens in the market. I sleep just fine.

  
\_\_\_\_\_  
Andy Anderson      1/10/2005

## **PART VI**

### **2005 Mock Trial Case Materials**

#### **Official Exhibits**



**Order Approving Infant's Contract for Artistic or Professional Services**

SURROGATE COURT, Kings County, STATE OF NEW YORK

In the Matter of the Application

MACCA MCLAUGHLIN, an infant of the age of

Fourteen years, to obtain an order of

court approving contract of said infant services

Present: Honorable Anne Hartsfeld Hohnreit, Justice.

This matter having come on before me to be heard on this 10th day of June 2001 upon the order to show cause dated May 10, 2001 and the petition of Robbie and Lee McLaughlin, verified May 8, 2001, and the proposed contract annexed thereto, and sufficient service of the aforesaid order to show cause according to its terms having been shown by the affidavit sworn to the 23<sup>rd</sup> day of May 2001;

Now, on reading and filing the aforesaid order to show cause, petition, and affidavits of service of the order to show cause, the consents of Robbie and Lee McLaughlin and Macca McLaughlin consenting to the approval of such contract and to the setting aside and saving for the said infant of one-half of the net earnings for services performed or rendered under said contract and no one appearing in opposition, and the aforesaid infant having attended personally before the Court upon the hearing of the petition, and having been heard thereon, and the Court being fully informed in the premises, and due deliberation being had thereon, it is found and determined that the proposed contract is legal, reasonable and prudent, and for the best interests of the said infant, and it is

ORDERED:

I. That the contract attached to the petition herein be and the same hereby is approved and the prayers of the said petition as modified by this order granted.

II. That one-half (1/2) of the net earnings of said infant for services performed or rendered during the term of the said contract be set aside and saved for said infant pursuant to Arts and Cultural Affairs Law § 35.03, Subds 3 and 7.

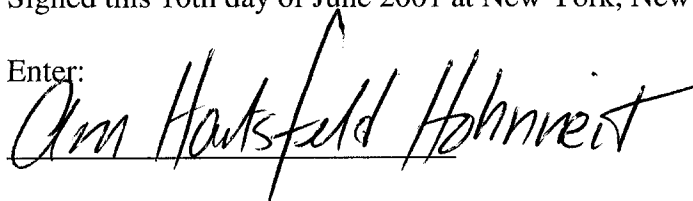
III. It satisfactorily appearing to the court that Robbie McLaughlin is a suitable and proper person to act as limited guardian herein and receive the one-half of the net

earnings of the said infant for services performed or rendered during the term of said contract, computed as ordered herein; now therefore said Robbie McLaughlin is hereby appointed limited guardian pursuant to Arts and Cultural Affairs Law § 35.03, Subd 7, and is hereby directed to qualify in the manner required of a general guardian of the property of an infant; and the said Robbie McLaughlin, as limited guardian, shall have the powers and duties of a general guardian appointed by this court of the property of said infant and shall receive, hold and pay over the said amounts or proportions of net earnings of said infant under said contract, pursuant to the orders of this court when said infant reaches the age of 18.

- IV. That Woolly Mammoth Records, the employer under said contract, pay over as follows, the sums to become due under said contract to the infant for services:
- a. Fifty percent (50%) of net earnings to be set aside for the infant under Paragraph II of the order, after computation of net earnings of each such contract payment, to Robbie McLaughlin, as limited guardian appointed by this order, at such place as Robbie McLaughlin shall thereafter designate in writing from time to time.
  - b. The balance of each such contract payment, to Robbie and Lee McLaughlin, parents of said infant.

Signed this 10th day of June 2001 at New York, New York.

Enter:

A handwritten signature in black ink, reading "Anne Hartsfeld Hohnreit". The signature is written in a cursive style with a large, stylized initial "A".

Anne Hartsfeld Hohnreit



CERTIFICATE OF CERTIFIED COPY

STATE OF NEW YORK SURROGATE COURT  
COUNTY OF KINGS

I hereby CERTIFY that the attached Order Approving Infant's Contract for Artistic or Professional Services consisting of 2 pages is a full, true and accurate copy of the original having been FILED in the MATTER OF MACCA MCLAUGHLIN and RECORDED in this Court with an identification of Roll Number 3 at Batch Number 3 thereon.

[RAISED SEAL]

-----  
  
John Smith, Chief Clerk

Date: January 3, 2005

**Petition Under Arts and Cultural Affairs Law 35.03 For Approval of Infant's  
Contract for Artistic or Professional Services**

In the Matter of the Application of

Macca Elery McLaughlin, an infant of the age of  
Fourteen (14) years to obtain an order of  
court approving contract of said infant services

To the Surrogate Court, Kings County, State of New York:

The petition of Lee and Robbie McLaughlin, of South End, New York, respectfully  
shows to the Court:

- (1) Petitioners, Lee and Robbie McLaughlin, are the parents of Macca Elery McLaughlin, an infant, born on June 15, 1986, and residing at 2015 Lincoln Lane, South End, New York.
- (2) Said infant is unmarried.
- (3) The full name, date of birth and residence of the infant are as aforesaid; the living parents of said infant, with whom s/he resides, and who have custody of him/her, are residing at 2015 Lincoln Lane, South End, New York.
- (4) Macca Elery McLaughlin, the aforesaid infant, has never had at any time a guardian appointed for him/her by will or deed or by a court of any jurisdiction.
- (5) The said infant is a resident of the State of New York.
- (6) Macca McLaughlin's employer under the annexed contract is Wooly Mammoth Records, Cameron Cruelle, President, 1635 Wilshire Dr., Hollywood, California.
- (7) Said Wooly Mammoth Records has offered to produce, distribute and promote the artistic work, specifically music, of Macca McLaughlin as is more fully set forth in said contract a true copy of which is attached hereto and is incorporated herein by reference the same as though fully set forth at length.
- (8) The term of the said contract is for a period which is to commence upon entry of the order of this Court approving the same, and is to continue for a term of three (3) years.

(9) The said infant is not entitled to his/her earnings. Under law, his/her parents are entitled to these earnings. These parents currently make an after-tax income of \$47,335.06. They own a home subject to an existing note on which they owe \$86,916.45

(10) Attached hereto as Exhibit B is a schedule showing the said infant's gross earnings, estimated outlays and estimated net earnings, as defined in Arts and Cultural Affairs Law § 35.03, Subd 3.

(11) The interest of the petitioners in the contract or the proposed contract or in the infant's performance under it, is that of parents, entitled under New York law to all the earnings of a minor child.

(12) Petitioners believe that the contract is reasonable and provident and for the best interest of the infant.

(13) Petitioner nominates Robbie McLaughlin as limited guardian to be appointed as prayed for herein, under Arts and Cultural Affairs Law § 35.03, Subd 7, and respectfully submits that s/he, the said nominee is a proper and suitable person to be so appointed for the following reasons: Robbie is the parent of Macca.

(14) The interest of the said Robbie McLaughlin so nominated herein for limited guardian, in the contract or proposed contract or in the infant's performance under it is as follows: the nominee would otherwise have the right along with the other parent to all the earnings of the infant.

(15) No previous application has been made to this or any Court for the relief sought herein or for similar relief.

WHEREFORE petitioner respectfully prays:

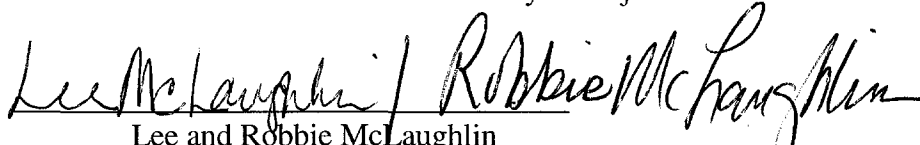
I. That the Court approve the proposed contract a copy of which is annexed hereto.

II. That the Court set aside and save for the infant one tenth (1/10th) of the infant's net earnings under said contract.

III. That Robbie McLaughlin be appointed limited guardian to receive and hold any net earnings directed by the court to be set aside for the infant as provided in Arts and Cultural Affairs Law § 35.03, Subd 3, and that such proceedings may be had in the premises as may be proper and necessary for that purpose.

IV. Petitioner prays for such other or further relief as to the court may seem just and proper.

Date: May 8, 2001

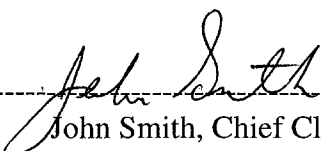
  
Lee and Robbie McLaughlin

CERTIFICATE OF CERTIFIED COPY

STATE OF NEW YORK  
SURROGATE'S COURT  
COUNTY OF KINGS

I hereby CERTIFY that the attached Petition under Arts and Cultural Affairs Law 35.03 for Approval of Infant's Contract for Artistic or Professional Services consisting of 3 pages is a full, true and accurate copy of the original having been FILED in the MATTER OF MACCA MCLAUGHLIN and RECORDED in this Court with an identification of Roll Number 3 at Batch Number 3 thereon.

[RAISED SEAL]

-----  
  
John Smith, Chief Clerk

Date: January 3, 2005

**Agreed Financial Statement**  
**Earnings of Macca Elery McLaughlin**  
**2001-2004**

**Credits**

NASS! Third Place Prize     \$250,000

PepTarts Tour Share         \$250,000

Wooly Mammoth

Distribution:

12/31/01	\$0.00
3/31/02	\$111,620.00
6/30/02	\$438,755.00
9/30/02	\$406,661.00
12/31/02	\$479,202.00
3/31/03	\$118,647.00
6/30/03	\$54,333.00
9/30/03	\$26,100.00
12/31/03	\$20,004.00

**Total Distribution: \$1,655,322.00**

**Assignment to Accounts:**

Robbie and Lee McLaughlin

\$1,327,661 (Nass!, Peptarts, 50% Wooly Mammoth Distribution)

Robbie McLaughlin in trust for Macca McLaughlin @ Court Order

\$827,661 (50% Wooly Mammoth Distribution)

**Debits:**

## Robbie and Lee McLaughlin Accounts

\$500,000 - Downpayment on 16 Meadow Hill Road, Great Wessex, NY  
\$100,000 - Initial Membership, Great Wessex Country Club  
\$ 33,116 - Dues and expenses, Great Wessex Country Club  
\$ 88,999 - 2003 Mercedes C500 Sedan  
\$ 80,299 - 2003 700 Series BMW  
\$390,542 - Salary and Percentage to Tony Triacon  
\$225,000 - Salary to Sammy Wright  
\$ 27,000 - Sasha Expenses  
\$ 24,000 - Jenna Expenses

## Robbie McLaughlin In Trust for Macca Elery McLaughlin

\$750,000 – Investment: Odyssey Omni  
\$ 45,000 - Misc. Expenditures for Stage Costumes

**Lee and Robbie McLaughlin**  
**2015 Lincoln Lane**  
**South End, New York**

*Dear Macca,*

*We can't tell you how proud we are of you for finishing third in NASS! As far as we were concerned you should have been First, as you are in our hearts! Just think, after all your work you are about to really take off on your career. We want you to know that we will be with you all the way. We know that you feel like you need Stevie with you but we are your parents and we have always tried to do what is best for you. You have our solemn promise that we will always put you first, look out for you above all and do our best to do the best for you. You concentrate on that wonderful talent of yours. Don't worry about the business end of things – that is for us to worry about. We give you our word that we will do everything in our power, as we always have, to make your life a good one.*

*All our love,*

*Mom and Dad*





## **PART VII**

### **Pertinent Law and Related Cases**

#### **Pertinent Law**

#### **NEW YORK MOCK TRIAL PRUDENT INVESTOR ACT**

##### **(a) Prudent investor rule**

A trustee has a duty to invest and manage property held in a fiduciary capacity in accordance with the prudent investor standard defined by this section.

##### **(b) Prudent investor standard**

- (1) The prudent investor rule requires a standard of conduct, not outcome or performance. Compliance with the prudent investor rule is determined in light of facts and circumstances prevailing at the time of the decision or action of a trustee. A trustee is not liable to a beneficiary to the extent that the trustee acted in substantial compliance with the prudent investor standard or in reasonable reliance on the express terms and provisions of the governing instrument.
- (2) A trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument.
- (3) The prudent investor standard requires a trustee:
  - (A) to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio;
  - (B) to consider, to the extent relevant to the decision or action, the size of the portfolio, the nature and estimated duration of the fiduciary relationship, the liquidity and distribution requirements of the governing instrument, general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies and of distributions of income and principal, the role that each investment or course of action plays within the overall portfolio, the expected total return of the portfolio (including both income and appreciation of capital), and the needs of beneficiaries (to

- the extent reasonably known to the trustee) for present and future distributions authorized or required by the governing instrument;
- (C) to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes and terms and provisions of the governing instrument; and
- (D) within a reasonable time after the creation of the fiduciary relationship, to determine whether to retain or dispose of initial assets.

(4) The prudent investor standard authorizes a trustee:

- (A) to invest in any type of investment consistent with the requirements of this paragraph, since no particular investment is inherently prudent or imprudent for purposes of the prudent investor standard;
- (B) to consider related trusts, the income and resources of beneficiaries to the extent reasonably known to the trustee, and also an asset's special relationship or value to some or all of the beneficiaries if consistent with the trustee's duty of impartiality;
- (C) to delegate investment and management functions if consistent with the duty to exercise skill, including special investment skills; and
- (D) to incur costs only to the extent they are appropriate and reasonable in relation to the purposes of the governing instrument, the assets held by the trustee and the skills of the trustee.

(c) As used in this section:

- (1) the term "trustee" includes a personal representative, trustee, guardian, donee of a power during minority, guardian under article eighty-one of the mental hygiene law, committee of the property of an incompetent person, and conservator of the property of a conservatee;
- (2) the term "trust" includes any fiduciary entity with property owned by a trustee as defined in this section;
- (3) the term "governing instrument" includes a court order; and
- (4) the term "portfolio" includes all property of every kind and character held by a trustee as defined in this section.

## **BREACH OF FIDUCIARY DUTY BY A COURT-APPOINTED GUARDIAN**

Plaintiff Macca Elery McLaughlin alleges that defendants Lee and Robbie McLaughlin breached their fiduciary duty to her.

Plaintiff is a minor. Defendants were appointed by the Court to be plaintiff's guardians. A guardian has a duty to his or her minor to act in good faith and in the minor's best interests during the period of the guardianship. A guardian is a fiduciary. A fiduciary owes his or her minor undivided and unqualified loyalty and may not act in any manner contrary to the interests of the minor. A person acting in a fiduciary capacity is required to make truthful and complete disclosures to those to whom a fiduciary duty is owed and the fiduciary is forbidden to obtain an improper advantage at the other's expense.

A guardian has an obligation to invest his or her minor's assets in accordance with the Prudent Investor Act.

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### **Commentary: Nature of Fiduciary Duty**

A fiduciary relationship exists between an agent and principal, signifying a relationship of trust and confidence whereby the agent is bound to exercise the utmost good faith and undivided loyalty toward the principal throughout the relationship. Thus, agents must act in accordance with the highest and truest principles of morality. Judge Cardozo expressed this concept as follows: "a trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive." *Meinhard v. Salmon*, 249 NY 458, 464 (1928). Many forms of conduct forbidden to those in a fiduciary relationship are permissible in an arm's length transaction. Whether or not there has been a breach of fiduciary duty is generally a question of fact.

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### **Commentary: The Trustee**

The trustee is judged by his conduct, not by the outcome. No investment is intrinsically imprudent. Prudence is gauged by the trustee's overall investment strategy, not by individual investments viewed outside the context of the whole portfolio. Substantial compliance with the Prudent Investor rule is enough. The fiduciary must consider the needs of the beneficiary, the size of the trust corpus, the duration of the trust, the condition of the economy, the projected distribution, inflation, tax consequences, the overall return, the amount of income and the appreciation. The trustee may take

appropriate risks “reasonably suited to the entire portfolio”, and said trustee must diversify the trust assets unless the trustee makes a reasoned decision that diversification is not in the beneficiary’s best interest.

### **RELATED CASES**

**In the Matter of Estate of Rodney B. Janes, 90 N.Y.2d 41, 681 N.E.2d 332, 659 N.Y.S.2d 165 (1997).**

This case addressed the issue of when it is appropriate for a trustee to sell stock or diversify a stock portfolio in light of prudent investor rules. Over the course of a number of years, the stock in question dropped in value from \$135 per share to \$47 per share. The trust had held 13,232 shares of the stock during this time. As a result, the financial loss to the beneficiaries was significant and they sued the trustees for imprudent investing. The court stated: “No precise formula exists for determining whether the prudent person standard has been violated in a particular situation; rather, the determination depends on an examination of the facts and circumstances of each case... Generally, whether a fiduciary has acted prudently is a factual determination to be made by the trial court. ... [O]ne of the primary virtues of the prudent person rule ‘lies in its lack of specificity, as this permits the propriety of the trustee’s investment decisions to be measured in light of the business and economic circumstances existing at the time they were made.’”

**In the Matter of the Estate of Francis E. Rowe, 274 A.D.2d 87, 712 N.Y.S.2d 662 (3<sup>rd</sup> Dept. 2000).**

The trustee was found to have been imprudent in sustaining losses due to negligent inattentiveness, inaction or indifference in failing to sell blue-chip stocks as the price was falling over an eight-year period when there was no legal or practical impediment to sale during this extended time. The court noted that any court deciding whether an investment decision was prudent must engage in “a balanced and perceptive analysis” of [the trustee’s] considerations and actions at the time they were undertaken.

**In the Matter of John Saxton, 274 A.D.2d 110, 712 N.Y.S.2d 225 (3<sup>rd</sup> Dept. 2000).**

The court, while citing the fiduciary standard applicable to trustees, noted that a court should not view each action or omission by a trustee through hindsight. The proper focus is on the prudence of the investment when made.

**In the Matter of Hai Yan Huang, 2003 N.Y. Slip Opinion 50859U (S. Ct. N.Y. Co. 2003).**

The court noted that substantial losses are not per se evidence of gross mismanagement or imprudence. Further, the court described the trustees, in the early stages of their trust position, as having no malice in their actions but rather as being “misguided and uncertain of what to do.” Nonetheless, the court found the trustees to have breached their duties by engaging in speculative “day trading,” a practice of buying and selling a stock on the same day.



## **APPENDICES**

- A. STATEWIDE MOCK TRIAL REGIONS (MAP)
- B. GUIDELINES - ATTORNEY-ADVISORS
- C. GUIDELINES - TOURNAMENT JUDGES
- D. HEARSAY
- E. MOCK TRIAL TOURNAMENT  
PERFORMANCE RATING SHEET

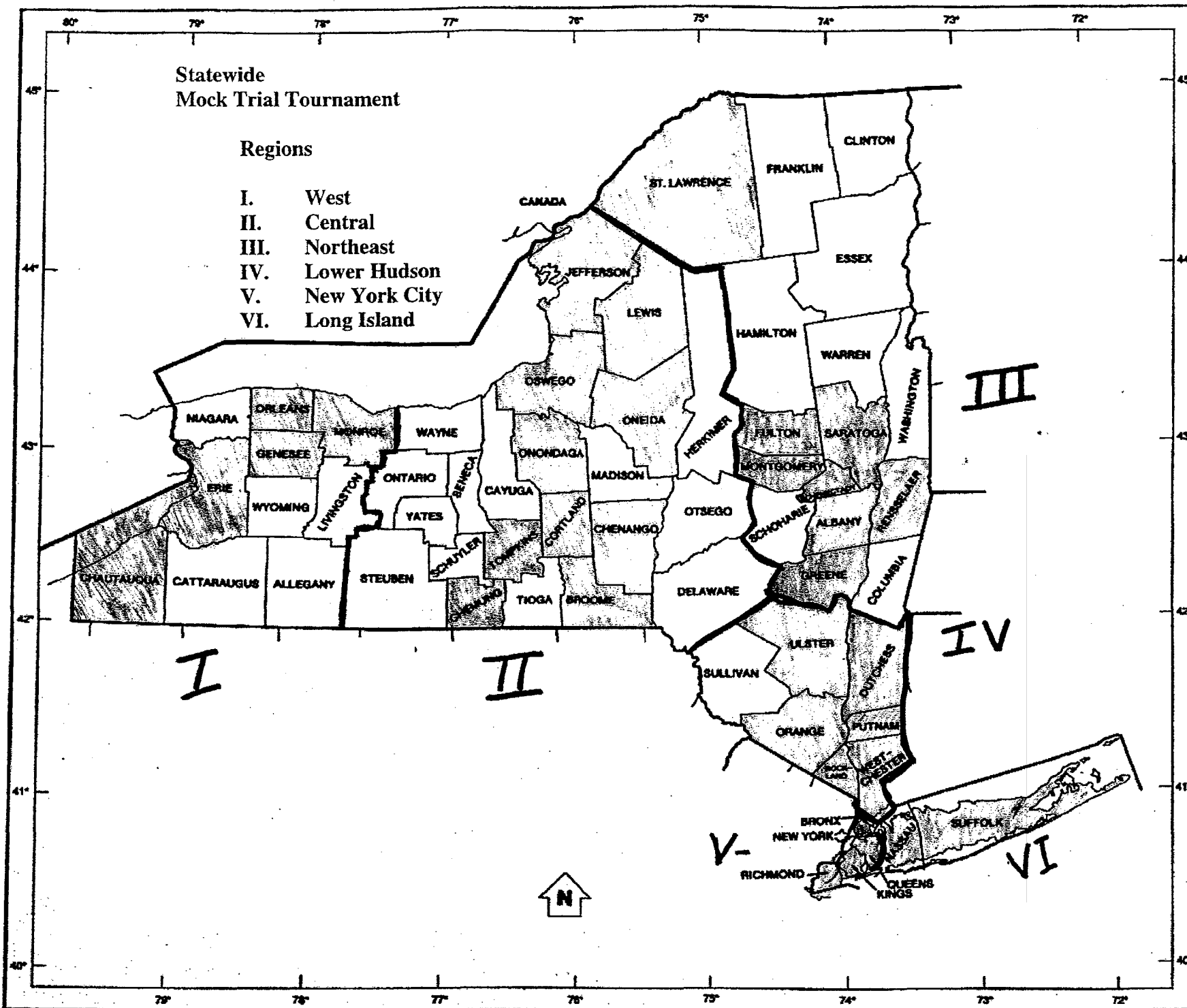




# Statewide Mock Trial Tournament

## Regions

- I. West
- II. Central
- III. Northeast
- IV. Lower Hudson
- V. New York City
- VI. Long Island



## APPENDIX B

### GUIDELINES - ATTORNEY-ADVISORS

- The preparation phase of the contest is intended to be a cooperative effort of students, teacher-coach and attorney-advisor. For such cooperation to occur, it is important for attorney- advisors to avoid (even the appearance of) “talking down” to students and/or stifling discussion through the use of complicated “legalese.”
- Experience has shown that students and teachers alike develop a better understanding of the case and learn more from the experience if the attorney-advisors do not dominate the preparation phase of the tournament.
- Attorneys and witnesses may not contradict the “Statement of Stipulated Facts” or the “Witness Affidavits” for the case (See Part V: Trial Script), nor may they introduce any evidence that is not included in this packet of materials.
- All witnesses (three for each side) must take the stand.
- The rules of evidence governing trial practice have been modified and simplified for the purposes of this mock trial tournament (See Part IV: Simplified Rules of Evidence and Procedure). Other more complex rules are not to be raised during the trial enactment.
- The first session with a student team should be devoted to the following tasks:
  - answering the questions that students have concerning general trial practices;
  - explaining the reasons for the sequence of events/procedures found in a trial;
  - listening to the students’ approach to the assigned case; and
  - discussing general strategies as well as raising key questions regarding the enactment.
- A second and subsequent session with students should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here an attorney can best serve as a constructive observer and critical teacher—listening, suggesting, demonstrating to the team.
- The decision of the judge in any mock trial enactment determines which team advances in the single elimination tournament. This decision is to be based on the quality of the student’s performance (See Appendix E: Rating Sheet).

## APPENDIX C

### GUIDELINES - TOURNAMENT JUDGES

- To help ensure successful enactments, it is critical for Judges to **prepare in advance** by reading the Tournament Materials and familiarizing themselves with the fact pattern and the Statewide Tournament's unique rules, procedures and guidelines and their application.
- Except for opening the court, general procedural instructions, and rulings on objections, etc., years of tournament experience have shown that it is best to keep judicial involvement/participation to a minimum during the trial enactment.
- Phase I of this contest is a double elimination tournament based on a combination of wins and points. Therefore it is essential that the presiding judge carefully rate each team on a clean performance sheet using the scoring system provided. Tournament Judges are strongly encouraged to score the performance of the attorneys and witnesses as the enactment proceeds in order to enhance the accuracy of the scoring.
- Scores should not be announced at the trial **until and unless the numbers have been carefully double-checked.**
- Attorneys have been asked to keep their presentations within the following guidelines: Opening/Closing Statements—5 minutes each; Direct Examination—7 minutes/witness; and Cross-Examination—5 minutes/witness.
- It is the sole responsibility of the presiding Judge to monitor the time guidelines of the trial enactment. In keeping with the atmosphere and decorum of a courtroom trial, timekeepers, stopwatches and buzzers are not permitted during the enactment of the trial.
- The purpose of the tournament is to hear both sides; therefore, motions as to jurisdiction, to split the trial, or to dismiss for failure to establish a prima facie case, etc. should be avoided.
- There shall be no sequestration of witnesses at any time during the trial. If such a motion is made, the motion must be denied.
- The rules of evidence governing trial practice have been modified and simplified for the purposes of this mock trial tournament (See Part IV: Simplified Rules of Evidence and Procedure). They are to govern proceedings. Other more complex rules are not to be raised during the trial enactment.
- Requests for bench conferences (i.e. conferences involving the Judge, attorney(s) for the plaintiff or the people and attorney(s) for the defendant) may be granted after the opening of Court in a mock trial, but not before. Note: Avoid contact with only one side in a case. Single sided contact will give rise to complaints and protests by the neglected team.

- Attorneys and witnesses may neither contradict the “Statement of Stipulated Facts” or “Witness Affidavits” for the case (See Part V: Trial Script), nor introduce any evidence that is not included in this packet of materials (See Part IV: Simplified Rules of Evidence and Procedure, Rules 701 and 702). Under Rules 701 and 702 a request for a bench conference should be granted and an objection to an invention of facts should be sustained if, in the judge’s opinion, the invented facts would materially alter the outcome of the trial.
- Objections should be judged on the basis of the appropriateness of an objection, the ability to reference and apply the relevant Simplified Rules of Evidence and Procedure (Part IV), and the interaction of the opposing attorneys. The quality of the objections and/or response to opponent’s objections should be factored into the score given to each attorney. Note that the quantity of objections, aside from their appropriateness and quality, should be neither rewarded nor penalized in awarding points. (Attorneys who fail to make appropriate objections and those who cannot adequately explain the basis for their objections should be scored lower than attorneys who make appropriate objections and can adequately explain the basis for their objections.)
- Each attorney (three for each side) must engage in the direct examination of one witness and the cross-examination of another.
- Tournament procedures permit only one opening and closing statement for each party.
- Under contest rules, student-attorneys are allowed to use notes in presenting their cases; witnesses may not use notes in testifying.
- Witness statements may be used by attorneys to “refresh” a witness’s memory and/or impeach the witness’s testimony in court.
- If a team fails to adhere to the established guidelines/rules set forth for the tournament competition, a Judge may (depending upon the circumstances of the violation) lessen his/her rating of that team.
- The “Special Point” is to be awarded to one team and is used only in case of a tie. This point should indicate which team, overall, gave the better performance. (See explanation on bottom of the Mock Trial Tournament Performance Rating Sheet.)
- The decision of the Judge in any mock trial enactment determines which team advances in the single elimination tournament and which team is eliminated (See Mock Trial Tournament Performance Rating Sheet).
- Experience has shown that better understanding is promoted among students and teachers, and less ill feeling generated, if the presiding judge in a mock trial employs a helpful, relaxed attitude toward students and takes a few minutes following the enactment to explain his/her decisions regarding the case and the teams’ presentations. Attempt to comment on and critique each team’s general performance in a manner which will be educational and assist the teams in future enactments. It is best to avoid specific negative

remarks directed at any individual student, especially one from the losing side. Making notes as the enactment proceeds will help you to formulate knowledgeable and meaningful comments for students. Students, in turn, truly appreciate the feedback.

- During the actual trial, including any recesses, up to and until both closing arguments have been made, teacher- coaches, attorney-advisors and all other observers may not talk to, signal, or otherwise communicate with, or in any way coach their team. Any violation must be brought to the judge's attention at once (prior to the end of the trial). Judges should attempt to monitor for prohibited coaching/contacts by teacher-coaches, attorney-advisors and all other observers with their teams. Violations are subject to a mandatory deduction of up to three points as a penalty, and may result in disqualification of the team from the tournament. (Please note that it is not a rule violation for a witness, participating in a trial, to talk with a student attorney, participating in the same trial, during a recess period occurring in that trial.)
- Each attorney is restricted to raising objections concerning witnesses which that attorney is responsible for examining, both on direct and cross-examinations.
- Objections during opening statements and closing arguments are not permitted.
- Teams should not identify themselves by their school name to the Judge prior to the announcement of the Judge's decision.

## APPENDIX D

### HEARSAY

Understanding and applying the Hearsay Rule (Rule 401) and its exceptions (Rules 402 and 403) is one of the more challenging aspects of the Statewide Mock Trial Tournament. We attempt to amplify the definition of the rule and its exceptions for the purposes of the Statewide Mock Trial Tournament herein. However, we strongly suggest that teacher-coaches and students work closely with their attorney-advisors in order to better understand and more effectively apply these evidentiary rules.

Hearsay (Rule 401), broken down into its component parts, is:

- Any evidence (usually the testimony of a witness) of a
- Statement (usually an oral assertion)
- Made by someone who is not the witness on the stand (i.e. “declarant”)
- Offered to prove the truth of the out-of-court statement.

Example: Witness on the stand states that he/she heard declarant say “\_\_\_\_\_” and the testimony of the witness describing what he/she heard the declarant say is relevant and is being offered to prove that that is in fact what the declarant said. If objected to, this testimony is likely to be deemed inadmissible hearsay.

Hearsay evidence may be admissible, however, if it fits into one of three exceptions:

(1) Evidence of the party’s own statement is offered because it contains an admission of responsibility or acknowledgment of fault.

Example: At the scene of an automobile crash, witness overhears party state, “I can’t believe I missed that stop sign!” At the trial, witness’ testimony of party’s out-of-court statement, although hearsay, is likely to be admitted into evidence as an *admission of a party* (Rule 402).

(2) The declarant’s statement is offered because it contains evidence of the declarant’s state of mind and such evidence is relevant to the case.

Example: Witness overhears declarant state in an angry tone of voice, “I have never been this angry with Fran or anyone else before!” At trial against declarant for assault of Fran, witness’ testimony of declarant’s out-of-court statement, although hearsay, is likely to be admitted into evidence to show *state of mind* (Rule 403).

(3) A statement contained in the form of a business record is offered because it contains an admission or other relevant evidence and it was made in the regular course of business by someone who regularly keeps that kind of record.

Example: The custodian of records of a police department seeks to introduce a voucher of items taken from the defendant when the defendant was arrested as evidence of the defendant's guilt of illegal possession of a weapon. The list of items are technically statements made by the police officer who prepared the voucher but they are admissible under the Business Records exception to the hearsay rule (Rule 404).

## MOCK TRIAL TOURNAMENT PERFORMANCE RATING SHEET

In deciding which team has made the best presentation in the case you are judging, we ask that you use the following criteria to evaluate each team's performance. For each of the performance categories listed below, rate each team on a scale of 1 to 3 as follows (no fractions allowed):

1 = "Poor"

2 = "Good"

3 = "Excellent"

### Time Limits

Opening Statements	Direct Examination	Cross Examination	Closing Arguments
5 minutes for each side	7 minutes for each witness	5 minutes for each witness	5 minutes for each side

		Plaintiff/ Prosecution	Defense
OPENING STATEMENTS			
Plaintiff/ Prosecution - First Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
Plaintiff/ Prosecution - Second Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
Plaintiff/ Prosecution - Third Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		



		Plaintiff/ Prosecution	Defense
Defense - First Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
Defense - Second Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
Defense - Third Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Performance		
CLOSING STATEMENTS			
TOTAL			
*** SPECIAL POINT (Based upon overall impression.) (To be used only in the event of a tie.)			
FINAL TOTAL			

\*\*\* SPECIAL POINT - Overall impression of team's performance. (One point must be awarded to a team, but it is not to be added unless there is a tie resulting from the addition of the performance standards shown on this rating sheet.) If the "TOTAL" above is a tie, award the special point and ANNOUNCE ONLY THE WINNER.

