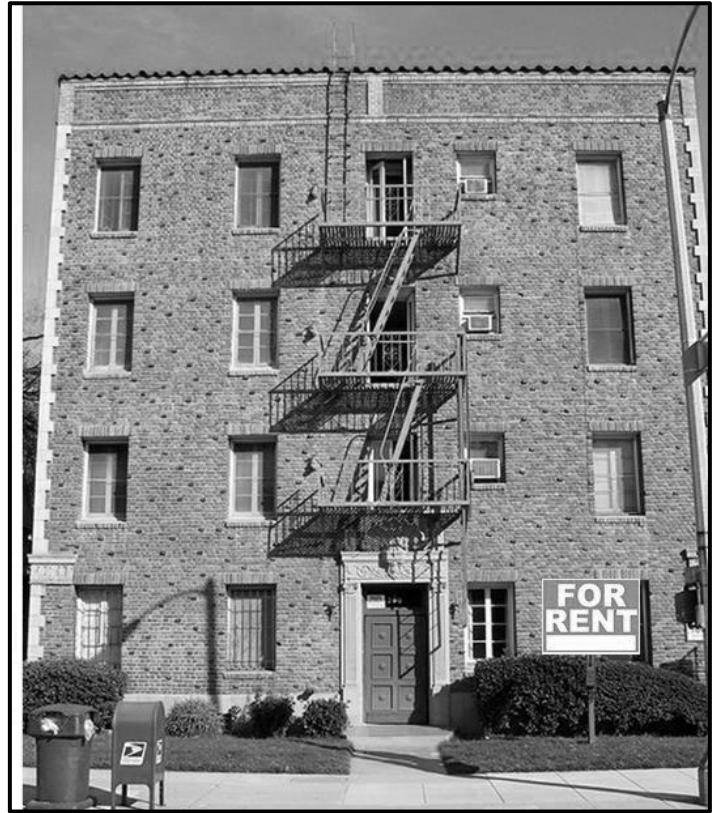


2019 NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT MATERIALS

Harley Davison v. Gotham City Department of Housing Preservation and Development



Materials prepared by the Law, Youth & Citizenship Program of the New York State Bar Association®

Supported by The New York Bar Foundation



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New York State Bar Association

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LETTER FROM THE CHAIR

November 2018

Dear Mock Trial Students, Teacher-Coaches and Attorney-Advisors:

Thank you for participating in the 2018-2019 New York State High School Mock Trial Tournament. The tournament is now entering its 37th year. Thanks to the continued financial and logistical support from the New York Bar Foundation and the New York State Bar Association, New York State continues to have one of the largest and longest running high school mock trial programs in the nation. Equally important to the success of the program is the continued support of the numerous local bar associations across the state that sponsor mock trial tournaments in their counties and the County Coordinators who spend many hours managing the local tournaments. We are grateful to the teacher-coaches and attorney advisors who give their time, dedication and commitment to the program. And finally, our special thanks to the students who devote their time and energy in preparing for the tournament. Every year, we are amazed at the level of skill and talent the students bring to the courtrooms. Congratulations to the 2017-2018 New York State Tournament Champion, *Goshen High School*, who turned in a winning performance last May at the State Finals in Albany.

Please take the time to carefully review all of the enclosed mock trial tournament information. The **Simplified Rules of Evidence** and the **General Tournament Rules** should be studied carefully. Please pay special attention to the information regarding the timing, redaction of evidence and constructive sequestration of witnesses.

In this civil case, Harley Davison v. Gotham City Department of Housing Preservation and Development, Harley allegedly resided with his/her great aunt, who was a tenant of a rent-controlled apartment in a building owned by the City of Gotham. His/her aunt, Barbra Stone, who was 95 years old and lived in the two-bedroom apartment until her death on March 15, 2018, resided in the apartment since 1968. Harley claimed to have moved in with his/her elderly aunt in February 2016 to assist in her care and well-being. Following his/her aunt's death, Harley applied to the Department of Housing Preservation and Development (DHPD) for succession rights to the apartment. DHPD denied the request, determining that Harley had failed to provide sufficient proof that s/he resided in the apartment prior to his/her aunt's death for the requisite period of time. Harley then commenced this proceeding pursuant to Article 78 of the State of Nirvana Civil Practice Law and Rules.

The mock trial program is, first and foremost, an educational program designed to teach high school students basic trial skills. Students learn how to conduct direct and cross examinations, how to present opening and closing statements, how to think on their feet, and learn the dynamics of a courtroom.

Students will also learn how to analyze legal issues and apply the law to the facts of the case. Second, but equally important, is that participation in mock trial will teach the students professionalism. Students learn ethics, civility, and how to be ardent but courteous advocates for their clients. Good sportsmanship and respect for all participants are central to the competition. We thank the teachers, coaches, advisors, and judges, not only for the skills that they teach, but for the example of professionalism and good sportsmanship they model for the students throughout the tournament.

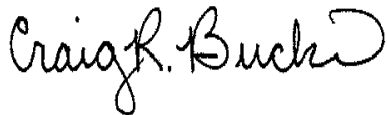
We remind the teams that all participants (students, teachers, attorneys, parents and all spectators) must conduct themselves with the utmost respect and civility toward the judge, before, during and after each round. If there is a circumstance in which any participant does not abide by this standard, a referral will be made to the LYC Mock Trial Subcommittee to consider appropriate sanctioning.

The tournament finals will be held in Albany, Sunday, May 19 through Tuesday, May 21, 2019. As in years past, the regional winners in each of the eight regions will be invited to participate in the semi-finals, and two of the teams will advance to the final round the last day. The New York Bar Foundation is generously supporting the tournament again this year and will fund the teams' room and board for the state tournament. More details will be available closer to the date of the tournament.

This year's Mock Trial Tournament materials will be posted on the Law, Youth and Citizenship website, www.lycny.org (click on the *NYS Mock Trial* tab).

We trust you will enjoy working on this year's case. Best wishes to all of you for a successful and challenging mock trial tournament.

Sincerely,

A handwritten signature in black ink that reads "Craig R. Bucki". The signature is written in a cursive, flowing style.

Craig R. Bucki, Esq.
Chair, Committee on Law, Youth and Citizenship

Subcommittee Members:

Oliver C. Young, Esq., *Buffalo (Chair)*
Craig R. Bucki, Esq., *Buffalo*
Melissa Ryan Clark, Esq., *New York City*
Matthew Coseo, Esq., *Ballston Spa*
Christopher E. Czerwonka, Esq., *New Windsor*
Christine E. Daly, Esq., *Chappaqua*

Eugenia Brennan Heslin, Esq., *Poughkeepsie*
Seth F. Gilbertson, Esq., *Syracuse*
Stuart E. Kahan, Esq., *White Plains*
Susan Katz Richman, Esq., *Hempstead*
Lynn Boepple Su, Esq., *Old Tappan*

STANDARDS OF CIVILITY

“ . . . [O]urs is an honorable profession, in which courtesy and civility should be observed as a matter of course.”

Hon. Judith S. Kaye, Former Chief Judge of the State of New York

The following standards apply to all Mock Trial Tournament participants, including students, teachers, attorneys, and parents/guardians. A Mock Trial Tournament participant’s failure to abide by any of these standards may result in the disqualification of his or her team from the Tournament, pursuant to the sole discretion of the New York State Bar Association Law, Youth and Citizenship Committee’s Mock Trial Subcommittee.

1. Lawyers should be courteous and civil in all professional dealings with other persons.
2. Lawyers should act in a civil manner regardless of the ill feelings that their clients may have toward others.
3. Lawyers can disagree without being disagreeable. Effective representation does not require antagonistic or acrimonious behavior. All participants in the Mock Trial Tournament shall avoid vulgar language or other acrimonious or disparaging remarks, whether oral or written, about other Mock Trial Tournament participants.
4. Lawyers should require that persons under their supervision conduct themselves with courtesy and civility.
5. A lawyer should adhere to all expressed promises and agreements with other counsel, whether oral or in writing, and to agreements implied by the circumstances or by local customs.
6. A lawyer is both an officer of the court and an advocate. As such, the lawyer should always strive to uphold the honor and dignity of the profession, avoid disorder and disruption in the courtroom, and maintain a respectful attitude toward the court.
7. Lawyers should speak and write civilly and respectfully in all communications with the court and court personnel.
8. Lawyers should use their best efforts to dissuade clients and witnesses from causing disorder or disruption in the courtroom.
9. Lawyers should not engage in conduct intended primarily to harass or humiliate witnesses.
10. Lawyers should be punctual and prepared for all court appearances; if delayed, the lawyer should notify the court and counsel whenever possible.
11. Court personnel are an integral part of the justice system and should be treated with courtesy and respect at all times.

The foregoing Standards of Civility are based upon the Standards of Civility for the New York State Unified Court System.

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT RULES

PART I

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MOCK TRIAL TOURNAMENT RULES

1. TEAM COMPOSITION

- a. The Mock Trial Tournament is open to all 9th–12th graders in public and nonpublic schools who are currently registered as students at that school.
- b. If a school chooses to limit student participation for any reason, this should be accomplished through an equitable “try-out” system, not through disallowing participation by one or more entire grade levels.
- c. Each school participating in the Mock Trial Tournament may enter only **ONE** team.
- d. Members of a school team entered in the Mock Trial Tournament—including teacher—coaches, back-up witnesses, attorneys, and others directly associated with the team’s preparation—are **NOT** permitted to attend the trial enactments of any possible future opponent in the contest. This rule should not be construed to preclude teams from engaging in practice matches, even if those teams may meet later during the competition.

Violations of this rule can lead to being disqualified from the tournament.

- e. Immediately prior to each trial enactment, the attorneys and witnesses for each team must be physically identified to the opposing team and the judge by stating their first and last names. Please do not state the name of your school in front of the judge since the judge will not otherwise be told the name of the schools participating in the enactment he or she is judging.

2. OBJECTIONS

- a. Attorneys should stand when making an objection, if they are physically able to do so.
- b. When making an objection, attorneys should say “objection” and then, very briefly, state the basis for the objection (for example, “leading question”). Do not explain the basis unless the judge asks for an explanation.
- c. Witnesses should stop talking immediately when an opposing party makes an objection. Please do not try to “talk over” the attorney making an objection.

3. DRESS

We emphasize to the judges that a student's appearance is not a relevant factor in judging his or her performance. However, we strongly encourage students to dress neatly and appropriately. A "business suit" is not required.

4. ABOUT STIPULATIONS

Any stipulations are binding on all participants and the judge, and may **NOT** be disputed at the trial.

5. OUTSIDE MATERIALS

Students may read other materials such as legislative histories, judicial opinions, textbooks, treatises, etc., in preparation for the Mock Trial Tournament. However, students may cite only the materials and cases provided in these Mock Trial Tournament materials.

6. EXHIBITS

Students may introduce into evidence or use only the exhibits and documents provided in the Mock Trial Tournament materials. Students may not create their own charts, graphs or any other visual aids for use in the courtroom in presenting their case. **Evidence is not to be enlarged, projected, marked or altered for use during the trial.**

NEW: Please note the revised text, identified IN BOLD in the paragraph below (Signals and Communication), effective 11/2018.

7. SIGNALS AND COMMUNICATION

The team coaches, advisors, and spectators may not signal the team members (neither student attorneys nor witnesses) or communicate with them in any way during the trial, including but not limited to wireless devices and text messaging. The use of cellular telephones, laptop computers, or any other wireless devices by any student attorney or witness, other than a timekeeper for the purpose of keeping time during the trial, is strictly prohibited. **The restriction upon the use of electronic devices during an enactment by a person other than a timekeeper should not be construed to prevent a county coordinator or other authorized tournament official from authorizing the use of such a device as a reasonable accommodation for a participant with a disability, where such use is required to ensure the person's full and equal participation in the tournament.** A student witness may talk to a student attorney on his/her team during a recess or

during direct examination, but may not communicate verbally or non-verbally with a student attorney on his/her team during the student witness' cross-examination.

8. VIDEOTAPING/AUDIOTAPING

- a. During any tournament round, except State semi-finals and State finals, a trial may be videotaped or audio taped but only if each of the following conditions is satisfied:
 - i. The courthouse in which the tournament round is taking place must permit video or audio taping, and the team wishing to videotape or audiotape has received permission from the courthouse in advance of the trial. *We note that many State and Federal courthouses prohibit video or audio taping devices in the courthouse.*
 - ii. The judge consents before the beginning of the trial.
 - iii. The opposing team consents in writing prior to the time the trial begins. Written consents should be delivered to the County Coordinator. Fax or e-mail is acceptable.
 - iv. A copy of the video or audio tape must be furnished to the opposing team (at no cost) within 48 hours after the trial.
 - v. The video or audio tape may not be shared by either team with any other team in the competition.
- b. Video or audio taping of the State semi-finals and final rounds is **NOT** permitted by either team.

9. MOCK TRIAL COORDINATORS

The success of the New York State Mock Trial Program depends on the many volunteer county and regional coordinators. **The appropriate supervisor will be contacted if any representative from a high school, parent, coach, or team member addresses a mock trial volunteer or staff person at any level of the competition in an unprofessional or discourteous manner. County Coordinators may also refer any such matters to the Law, Youth and Citizenship Committee of the New York State Bar Association for appropriate action by the LYC Committee.**

Absent prior approval by the Mock Trial Subcommittee of the New York State Bar Association's *Law, Youth and Citizenship Committee*, a county or regional Mock Trial Tournament coordinator or assistant coordinator may not be an employee of a school that competes, or of a school district that includes a high school that competes, in that county or regional Mock Trial Tournament. Nothing

in this rule shall prohibit an employee of a Board Of Cooperative Educational Services (BOCES) or the New York City Justice Resource Center from serving as a county or regional Mock Trial Tournament coordinator or assistant coordinator.

10. ROLE AND RESPONSIBILITY OF ATTORNEYS

- a. The attorney who makes the opening statement may not make the closing statement.
- b. 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.
- c. Attorneys may use notes in presenting their cases, for opening statements, direct examination of witnesses, etc. Witnesses are **NOT** permitted to use notes while testifying during the trial.
- d. Each of the three attorneys on a team must conduct the direct examination of one witness and the cross examination of another witness.
- e. The attorney examining a particular witness must make the objections to that witness's cross-examination, and the attorney who will cross-examine a witness must make the objections to the witness's direct examination.

11. WITNESSES

- a. Each witness is bound by the facts of his/her affidavit or witness statement and any exhibit authored or produced by the witness that is relevant to his/her testimony. Witnesses may not invent any other testimony. However, in the event a witness is asked a question on cross examination, the answer to which is not contained in the witness's statement or was not testified to on direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial.
- b. If there is an inconsistency between the witness statement or affidavit and the statement of facts or stipulated facts, the witness can only rely on, and is bound by, the information contained in his/her affidavit or witness statement.
- c. A witness is not bound by facts in other witnesses' affidavits or statements.
- d. If a witness contradicts a fact in his or her own witness statement, the opposition may impeach the testimony of that witness.

- e. A witness's physical appearance in the case is as he or she appears in the trial re-enactment. No costumes or props may be used.
- f. Witnesses, other than the plaintiff and the defendant, may be constructively sequestered from the courtroom at the request of opposing counsel. A constructively sequestered witness may not be asked on the stand about the testimony another witness may have given during the trial enactment. A team is **NOT** required to make a sequestration motion. However, if a team wishes to make such motion, it should be made during the time the team is introducing itself to the judge. Please note that while a witness may be constructively sequestered, said witness **WILL REMAIN** in the courtroom at all times. (Note: Since this is an educational exercise, no participant will actually be excluded from the courtroom during an enactment.)
- g. Witnesses shall not sit at the attorneys' table.
NEW: Please note the addition of Rule 11(h) below IN BOLD, effective 11/2018.
- h. **All witnesses are intended to be gender-neutral and can be played by any eligible student regardless of the student's sex or gender identity.**

12. PROTESTS

- a. Other than as set forth in 12(b) below, protests of judicial rulings are **NOT** allowed. **All judicial rulings are final and cannot be appealed.**
- b. Protests are highly disfavored and will only be allowed to address two issues:
 - (1) Cheating (a dishonest act by a team that has not been the subject of a prior judicial ruling)
 - (2) A conflict of interest or gross misconduct by a judge (e.g., where a judge is related to a team member). All protests must be made in writing and either faxed or emailed to the appropriate County Coordinator and to the teacher-coach of the opposing team. The County Coordinator will investigate the grounds for the protest and has the discretion to make a ruling on the protest or refer the matter directly to the LYC Committee. The County Coordinator's decision can be appealed to the LYC Committee.
- c. Hostile or discourteous protests will not be considered.

13. JUDGING

THE DECISIONS OF THE JUDGE ARE FINAL.

14. ORDER OF THE TRIAL

The trial shall proceed in the following manner:

- Opening statement by plaintiff's attorney/prosecuting attorney
- Opening statement by defense attorney
- Direct examination of first plaintiff/prosecution witness
- Cross-examination of first plaintiff/prosecution witness
- Re-direct examination of first plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second plaintiff/prosecution witness
- Cross-examination of second plaintiff/prosecution witness
- Re-direct examination of second plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third plaintiff/prosecution witness
- Cross-examination of third plaintiff/prosecution witness
- Re-direct examination of third plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Plaintiff/prosecution rests
- Direct examination of first defense witness
- Cross-examination of first defense witness
- Re-direct examination of first defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second defense witness
- Cross-examination of second defense witness
- Re-direct examination of second defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third defense witness
- Cross-examination of third defense witness
- Re-direct examination of third defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Defense rests
- Closing arguments by defense attorney
- Closing arguments by plaintiff's attorney/prosecuting attorney

15. TIME LIMITS

a. The following time limits apply:

- Opening Statement5 minutes for each team
- Direct Examination.....10 minutes for each witness
- Cross Examination.....10 minutes for each witness
- Closing Argument10 minutes for each team

b. At all county and regional trials, the time will be kept by two timekeepers. Each team shall provide one of the timekeepers. Timekeeper shall be a student of the participating school. A school may use a student witness who is not a witness during a particular phase of the trial. (For example, a defense witness can keep time when the plaintiff/prosecution attorneys are presenting their case.)

The timekeepers will use one watch and shall agree as to when a segment of the trial (e.g., the direct examination of a witness) begins. When one minute remains in a segment, the timekeepers shall flash the “1 Minute Remaining” card (found in the ***Appendices***), alerting the judge and the attorneys. The timekeepers will not stop the clock during objections, *voir dire* of witnesses or bench conferences.

Since the number of questions allowed on redirect and re-cross is limited to three, time limits are not necessary. Any dispute as to the timekeeping shall be resolved by the trial judge. The judge, in his/her sole discretion, may extend the time, having taken into account the time expended by objections, *voir dire* of witnesses and/or bench conferences, thereby allowing an attorney to complete a line of questioning.

16. TEAM ATTENDANCE AT STATE FINALS ROUND

Eight teams will advance to the State Finals. All eight teams are required to participate in all events associated with the Mock Trial Tournament, including attending the final round of the competition.

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**NEW YORK STATE
HIGH SCHOOL MOCK
TRIAL TOURNAMENT
POLICIES AND
PROCEDURES

PART II**

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MOCK TRIAL TOURNAMENT POLICIES AND PROCEDURES

New York's Annual Mock Trial Tournament is governed by the policies set forth below. The LYC Committee and the Law, Youth and Citizenship Program of the New York State Bar Association reserve the right to make decisions to preserve the equity, integrity, and educational aspects of the program.

By participating in the Mock Trial Tournament, participants agree to abide by the decisions rendered by the LYC Committee and the Mock Trial program staff and accept such decisions as final.

1. GENERAL POLICIES

- a. All mock trial rules, regulations, and criteria for judging apply at all levels of the Mock Trial Tournament.
- b. The Simplified Rules of Evidence and Procedure contained in Part III govern the trial proceedings.
- c. County Coordinators administer county tournaments. County Coordinators have sole responsibility for organizing, planning, and conducting tournaments at the county level and should be the first point of contact for questions at the county level.
- d. For any single tournament round, all teams are to consist of three attorneys and three witnesses.
- e. For all tournament rounds, one judge will be utilized for trial re-enactments.
- f. Teams must not identify themselves by their school name to the judge prior to the announcement of the judge's decision.
- g. If a team member who is scheduled to participate in a trial enactment becomes ill, injured, or has a serious conflict and as a result cannot compete, then the team may substitute an alternate team member. If an alternate team member is not available, the local coordinator may declare a forfeit or reschedule the enactment at his or her sole discretion.
- h. Members of a team may play different roles in different rounds, or other students may participate in another round.

- i. 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 coin flip will be used to determine assignments in the next round.
- j. Teacher-coaches of teams who will be competing against one another are required to exchange information regarding the names and gender of their witnesses at least three days prior to each round.
- k. 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 Tournament. When a team has a student or students with special needs who may require an accommodation, the teacher-coach **MUST** bring this to the attention of the County Coordinator at least two weeks prior to the time when the accommodation will be needed.
- l. The judge must take judicial notice of the Statement of Stipulated Facts and any other stipulations.
- m. Teams may bring perceived errors in the problem or suggestions for improvements in the tournament rules and procedures to the attention of the LYC staff at any time. These, however, are not grounds for protests. Any protest arising from an enactment must be filed with the County Coordinator in accordance with the protest rule in the Tournament Rules.

2. SCORING

- a. Scoring is on a scale of 1-5 for each performance (5 is excellent). Judges are required to enter each score on the Performance Rating Sheet (Appendix) after each performance, while the enactment is fresh in their minds. Judges should be familiar with and use the performance rating guidelines (Appendix) when scoring a trial.
- b. Judges are required to also assign between 1 and 10 points to **EACH** team for demonstrating professionalism during a trial. A score for professionalism may not be left blank.
Professionalism criteria are:
 - Team's overall confidence, preparedness and demeanor
 - Compliance with the rules of civility
 - Zealous but courteous advocacy

- Honest and ethical conduct
 - Knowledge and adherence to the rules of the competition
 - Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team’s time for its examinations. A score of 1 to 3 points should be awarded for a below average performance, 4 to 6 points for an average performance, and 7 to 10 points for an outstanding or above average performance.
- c. The appropriate County Coordinator will collect the Performance Rating Sheet for record-keeping purposes. Copies of score sheets are **NOT** available to individual teams; however, a team can get its total score through the County Coordinator.

3. LEVELS OF COMPETITION

- a. For purposes of this program, New York State has been divided into eight regions:

Region 1West	Region 5New York City (NYC-A)
Region 2Central	Region 6New York City (NYC-B)
Region 3Northeast	Region 7Nassau County
Region 4Lower Hudson	Region 8Suffolk County

- b. See Map and Chart of Counties in Regions (Appendix).

4. COUNTY TOURNAMENTS

- a. All rules of the New York State Mock Trial Tournament must be adhered to at tournaments at the county level.
- b. In these tournaments, there are two phases. In the first phase, each team will participate in at least two rounds before the elimination process begins, once as plaintiff/prosecution and once as defendant. After the second round, a certain number of the original teams will proceed to the second phase in a single elimination tournament. Prior to the competition, and with the knowledge of the competitors, the County Coordinator may determine a certain number of teams that will proceed to the Phase II single elimination tournament. While this number may be more or less than half the original number of teams, any team that has won both rounds based 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 tournament.

- c. The teams that advance to Phase II do so based on a combination of wins and point differential, defined as the points earned by a team in its Phase I matches minus the points earned by its opponents in those same Phase I matches. All 2-0 teams automatically advance; teams with a 1-1 record advance based upon point differential, then upon total number of points in the event of a tie; if any spots remain open, teams with a record of 0-2 advance, based upon point differential, then upon total number of points in the event of a tie.
- d. If the number of teams going into the single elimination phase is odd, the team with the most wins and highest combined score will receive a bye. If any region starts the year with an odd number of teams, one team from that region may receive a bye, coin toss, etc.
- e. Phase II of the contest is a single round elimination tournament; winners advance to the next round.
- f. 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. That procedure should be forwarded to the New York State Mock Trial Program Manager, before the first round of competition is held.
- g. 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.

5. REGIONAL TOURNAMENTS

- a. Teams who have been successful in winning county level tournaments will proceed to regional level tournaments. Coordinators administer regional tournaments. Coordinators have sole responsibility for organizing, planning and conducting tournaments at the regional level. Participants must adhere to all rules of the tournament at regional level tournaments.
- b. Regional tournaments are held in counties within the region on a rotating basis. Every effort is made to determine and announce the location and organizer of the regional tournaments before the new mock trial season begins.
- c. All mock trial rules and regulations and criteria for judging apply, at all levels of the Mock Trial Tournament.

NEW: Please note the revised text, identified IN BOLD in paragraph (d), effective 11/2018.

- d. 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 **point differential**) during the regional tournament. The winning team from each region will qualify for the State Finals in Albany.
- e. The regional tournaments **MUST** be completed 16 days prior to the State Finals. Due to administrative requirements and contractual obligations, the State Coordinator must have in its possession the schools' and students' names by this deadline. 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 State Finals.

6. STATEWIDE FINALS

- a. 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 Finals in Albany. Funding is available to pay for up to nine students, one teacher coach and one attorney-advisor for each team. Students of the same gender will share a room, with a maximum of four per room. Transportation costs are **not** covered. However, if a school can cover the additional costs for room and board for additional team members above the nine students, one teacher coach and one attorney-advisor sponsored through the Bar Foundation, all members of a team are welcome to attend the State Finals. However, requests to bring additional team members must be approved by the Mock Trial Program Manager in advance.

- b. Costs for additional students (more than 9) and adult coaches and/or advisors (more than 2) will **not** be covered by the New York Bar Foundation grant or the LYC Program. The Mock Trial Program Manager is **not** responsible for making room arrangements and reservations for anyone other than the nine students, one teacher-coach and one attorney-advisor for each team. However, the Mock Trial Program Manager may choose to make those arrangements for the additional team members. This applies to **team members only**, not guests. If the Program Manager chooses **not** to make the arrangements, every attempt will be made to pass along any special hotel rates to these other participants. Additional team members attending the State Finals may participate in organized meal functions but will be responsible for paying for their participation. **The teacher coach must advise their school administration of the school's responsibility to cover those additional charges and obtain their approval in advance.** The Mock Trial Program Manager will provide an invoice to the Coach to submit to the school's administrator. A purchase order must then be submitted to the Mock Trial Program Manager in Albany immediately after the school's team has been designated as the Regional Winner who will be participating in the State Finals in Albany. In most cases, the school will be billed after the State Finals. However, it is possible that a school may be required to provide payment in advance for their additional team members.
- c. 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.
- d. The two teams with the most wins and highest numerical score will compete on the following day, except that any team that 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.
- e. The final enactment will be a single elimination tournament. Plaintiff/prosecution and defendant will be determined by a coin toss by the Mock Trial Program Manager. All teams invited to the State Finals must attend the final trial enactment.
- f. A judge will determine the winner. **THE JUDGE'S DECISION IS FINAL.**

7. MCLE CREDIT FOR PARTICIPATING ATTORNEYS AND JUDGES

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program in the State of New York, as an accredited provider of CLE programs, we are required to carefully monitor requests for earning CLE credit through participation in our high school mock trial program. Credit may be earned for preparing students for and judging law competitions, mock trials and moot court arguments, including those at the high school level. Ethics and professionalism credit hours are not available for participation in this type of activity. No additional credit may be earned for preparation time.

One (1) CLE credit hour may be earned for each 50 minutes of participation in a high school or college law competition. **A maximum of three (3) CLE credits** in skills may be earned for judging or coaching mock trial competitions **during any one reporting cycle**, i.e., within a two-year period¹. **Newly admitted attorneys (less than 24 months) are NOT eligible for this type of CLE credit.**

The LYC Program will process all requests for CLE credit through the New York State Bar Association's Continuing Legal Education Department, an accredited provider of CLE approved by the New York State Continuing Legal Education Board. The procedure is as follows:

- a) The Mock Trial Program Manager will provide the County Coordinators with a copy of the Request for CLE Credit Verification Form² to disseminate to attorneys/judges participating in the mock trial tournament in their county.
- b) **Request for CLE Credit Verification Forms** must be signed by the attorney/judge and returned to the County Coordinator. The County Coordinator must return the signed copy to the Mock Trial Program Manager in Albany by mail, email or fax by June 1 for processing.
- c) MCLE certificates will be generated and sent by **email** to the attorney/judge requesting the credit. **MCLE credit cannot be provided without the signed Request for CLE Credit Verification Form.** The attorney/judge **MUST** provide a valid email address on the form. A copy of the Request for CLE Credit Verification Form follows and is also available online at www.nysba.org/nysmocktrial.

¹ 1) The biennial reporting cycle shall be the two-year period between the dates of submission of the attorney's biennial registration statement; 2) An attorney shall comply with the requirements of this Subpart commencing from the time of the filing of the attorney's biennial attorney registration statement in the second calendar year following admission to the Bar.

² County Coordinators will begin disseminating this revised form to participating attorneys and judges during the 2018-2019 New York State Mock Trial tournament season.

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New York State Bar Association High School Mock Trial Program

REQUEST FOR CLE CREDIT VERIFICATION FORM

NEW YORK STATE MCLE RULES PERTAINING TO CLE CREDIT FOR MOCK TRIAL PARTICIPATION. One (1) CLE credit hour may be earned for each 50 minutes of participation in a high school or college law competition. (No additional credit may be earned for preparation time.) A maximum of three (3) CLE credits in skills may be earned for judging or coaching mock trial competitions during any one reporting cycle, i.e., within a two-year period. Newly admitted attorneys (less than 24 months) are NOT eligible for this type of CLE credit. Go to www.nysba.org/mtclecredit for more information.

IMPORTANT! *You must complete this form to receive CLE credit. Completed forms should be returned to your County Coordinator or sent directly to the Mock Trial Program Manager at the NYS Bar Association for processing (**form must be signed to be valid**). Your CLE certificate will be emailed directly to you once it has been issued by the NYSBA, **so be sure to include a valid email address below**.*

Questions? Contact the NYS Bar Association's Mock Trial Program Manager, Kim Francis, at kfrancis@nysba.org.

Are you a member of the New York State Bar Association? ☐ Yes ☐ No If Yes, what is your member ID #? _____
(if you do not know your ID #, leave blank)

PLEASE PRINT NEATLY

- ◆ Your Name: _____
- ◆ Home Address: _____
- ◆ Name of Firm/Court : _____
- ◆ Work Address: _____
- ◆ Primary Email Address (**required**): _____

PLEASE INDICATE THE FOLLOWING INFORMATION FOR THE COMPETING HIGH SCHOOL WHERE YOU COACHED/JUDGED:

PLEASE REMEMBER THAT ACCORDING TO NEW YORK STATE MCLE RULES PERTAINING TO CLE CREDIT FOR MOCK TRIAL PARTICIPATION, YOU ARE ONLY ALLOWED TO RECEIVE A MAXIMUM OF 3.0 CREDITS PER BIENNIAL REGISTRATION CYCLE, EVEN IF YOU SERVED IN MORE THAN ONE COUNTY AND/OR ON MORE THAN ONE DATE DURING THE MOCK TRIAL TOURNAMENT SEASON.

- ◆ Name of Competing High School _____
- ◆ County of Service: _____
- ◆ Date of Service: _____ Hours of Service: _____

By signing below, I certify that the information provided on this form is accurate.

➤ **Signature:** _____ **Date:** _____

THIS FORM IS NOT VALID WITHOUT YOUR SIGNATURE AND DATE!

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**NEW YORK STATE
HIGH SCHOOL MOCK
TRIAL SIMPLIFIED
RULES OF EVIDENCE
AND PROCEDURE**

PART III

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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 judge will probably allow the evidence. The burden is on the attorneys to know the rules of evidence 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 Tournament, the New York State 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 that you think is 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. If counsel makes an objection not contained in these rules, counsel responding to the objection must point out to the judge, citing Rule 102 that the objection is beyond the scope of the listed objections. 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 and consider 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 probative value of the relevant evidence is substantially outweighed by the danger that the evidence will cause unfair prejudice, confuse the issues, or result in undue delay or a waste of time,

the court may exclude it. This may include testimony, physical evidence, and demonstrations that do not relate to time, event or person directly involved in the litigation.

Example:

Photographs present a classic problem of possible unfair prejudice. For instance, in a murder trial, the prosecution seeks to introduce graphic photographs of the bloodied victim. These photographs would be relevant because, among other reasons, they establish the victim's death and location of the wounds. At the same time, the photographs present a high danger of unfair prejudice, as they could cause the jurors to feel incredible anger and a desire to punish someone for the vile crime. In other words, the photographs could have an inflammatory effect on the jurors, causing them to substitute passion and anger for reasoned analysis. The defense therefore should object on the ground that any probative value of the photographs is substantially outweighed by the danger of unfair prejudice to the defendant.

Problems of unfair prejudice often can be resolved by offering the evidence in a manner that retains the probative value, while reducing the danger of unfair prejudice. In this example, the defense might stipulate to the location of the wounds and the cause of death. Therefore, the relevant aspects of the photographs would come in, without the unduly prejudicial effect.

Rule 202: CHARACTER. Evidence about the character of a party or witness may not be introduced unless the person's character is an issue in the case or unless the evidence is being offered to show the truthfulness or untruthfulness of the party or witness. Evidence of character to prove the person's propensity to act in a particular way is generally not admissible in a civil case.

In a criminal case, the general rule is that the prosecution cannot initiate evidence of the bad character of the defendant to show that he or she is more likely to have committed the crime. However, the defendant may introduce evidence of her good character to show that she is innocent, and the prosecution may offer evidence to rebut the defense's evidence of the defendant's character. With respect to the character of the victim, the general rule is that the prosecution cannot initiate evidence of the character of the victim. However, the defendant may introduce evidence of the victim's good or (more likely) bad character, and the prosecution may offer evidence to rebut the defense's evidence of the victim's character.

“Examples:

A limousine driver is driving Ms. Daisy while he is intoxicated and gets into a car accident injuring Ms. Daisy. If Ms. Daisy sues the limousine company for negligently employing an alcoholic driver, then the driver’s tendency to drink is at issue. Evidence of the driver’s alcoholism is admissible because it is not offered to demonstrate that he was drunk on a particular occasion. The evidence is offered to demonstrate that the limousine company negligently trusted him to drive a limousine when it knew or should have known that the driver had a serious drinking problem.

Sally is fired and sues her employer for sexual harassment. The employer cannot introduce evidence that Sally experienced similar problems when she worked for other employers.

Evidence about Sally’s character is not admissible to prove that she acted in conformity with her prior conduct, unless her character is at issue or it relates to truthfulness.

If an attorney is accused of stealing a client’s money, he may introduce evidence to demonstrate that he is trustworthy. In this scenario, proof of his trustworthiness makes it less probable that he stole the money.

Richard is on trial for punching his coworker, Larry, during an argument. The prosecution wants to offer that Richard has, in the past, lost his temper and has neared physical altercations. This evidence constitutes character evidence within the meaning of the rule, because it is being offered to show that Richard has a propensity for losing his temper and that he may have acted in conformity with this character trait at the time he struck Larry.

Therefore, it would only be admissible if Richard, as the defendant, has decided to place his character at issue.

Rule 203: OTHER CRIMES, WRONGS, OR ACTS. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person. Such evidence, however, may be admissible for purposes other than to prove character, such as to show motive, intent, preparation, knowledge, or identity.

Examples:

Harry is on trial for stealing from a heavy metal safe at an office. The prosecution seeks to offer evidence that, on an earlier date Harry opened the safe and stole some money from the safe. The evidence is not being offered to show character (in other words, it is not being offered to show that Harry is a thief), but rather it is being offered to show that Harry knew how to crack the safe. This evidence therefore places Harry among a very small number of people who know how to crack safes and, in particular, this safe. The evidence therefore goes to identity and makes Harry somewhat more likely to be guilty.

William is on trial for murder after he killed someone during a fight. The prosecution seeks to offer evidence that a week earlier William and the victim had another physical altercation. In other words, the victim was not some new guy William has never met before; rather, William and the victim had a history of bad blood. The evidence of the past fight would be admissible because it is not being offered to show that William has bad character as someone who gets into fights, but rather to show that William may have had motive to harm his victim.

In the same trial, the evidence shows that the victim died after William struck him in the larynx. William's defense is that the death was completely accidental and that the fatal injury suffered by his victim was unintended and a fluke. The prosecution seeks to offer evidence that William has a black belt in martial arts, and therefore has knowledge of how to administer deadly strikes as well as the effect of such strikes. This evidence would be admissible to show the death was not an accident; rather, William was aware that the strike could cause death.

3. WITNESSEXAMINATION

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: “*What is your current occupation?*”

Example of a Leading Question: “*Isn't it true that in your current position you are responsible for making important investment decisions?*”

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: “*Please describe how you were able to achieve your financial success.*” Or “*Tell me everything that was said in the board room on that day.*”

Narrative Answers: At times, a direct question may be appropriate, but the witness's 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 narrating.”

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.

Objection:

“Objection. The question requires information beyond the scope of the witness’s knowledge.”

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 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.

Objection:

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

Rule 306: IMPEACHMENT. An attorney may impeach the credibility of a witness (show that a witness should not be believed) in the following ways:

1. A witness may testify as to another witness’s reputation for truthfulness, provided that an adequate foundation is established for the testifying witness’s ability to testify about the other witness’s reputation.

Ben testifies at trial. Jeannette then takes the stand and is familiar with Ben's reputation in the community as not being truthful. Jeannette therefore would be able to testify to Ben's reputation for truthfulness.

2. Counsel may ask questions demonstrating that the witness has made statements on other occasions that are inconsistent with the witness's present testimony. A foundation must be laid for the introduction of prior contradictory statements by asking the witness whether he or she made such statements.

Example:

If a witness previously stated that the car was black but at trial testified that the car was red, the witness could be questioned about this prior inconsistent statement for impeachment purposes.

3. An attorney may ask questions demonstrating the witness's bias in favor of the party on whose behalf the witness is testifying, or hostility toward the party against whom the witness is testifying or the witness's interest in the case.

Examples:

"Isn't it true that you are being paid to testify at this trial?" If the witness is paid to testify, he may have an incentive not to tell the truth while testifying.

Steve is on trial for bank robbery, and calls his father as a defense witness to testify that they were watching football at the time of the crime. On cross-examination, the prosecutor could attempt to demonstrate the father's bias that could cause him to fabricate an alibi for his son. Proper questions to impeach the father's credibility might include, "You love your son very much, don't you?" and "You don't want to see your son go to jail, do you?"

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. Crimes of moral turpitude are crimes that involve dishonesty or false statements. These crimes involve the intent to deceive or defraud, such as forgery, perjury, counterfeiting and fraud.

"Have you ever been convicted of criminal possession of marijuana?"

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 attorney conducting the direct examination, 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’s 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 the cross-examiner challenges the witness about his or her inference from the facts, rather than seeking additional facts.

Example:

“Why were you driving so carelessly?”

Objection:

“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.

Examples:

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

“Did you see and feel the residue on the counter?”

Objection:

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

g. Asked And Answered Questions

Rule 312: A student-attorney may not ask a student-witness a question that the student-attorney has already asked that witness. Such a question is subject to objection, as having been asked and answered.

Objection:

“Objection. “Your Honor, the witness was asked and answered this question.”

h. Speculation

Rule 313: Questions that ask a witness to speculate about matters not within his personal knowledge are not permitted, and are subject to an objection by opposing counsel.

Example:

"Do you think your friend Robert knew about the robbery in advance?"

Objection:

"Objection. Your Honor, the question asks the witness to speculate."

4. HEARSAY

Understanding and applying the Hearsay Rule (Rule 401), and its exceptions (Rules 402, 403, 404, and 405), is one of the more challenging aspects of the Mock Trial Tournament. We strongly suggest that teacher-coaches and students work closely with their attorney-advisors to better understand and more effectively apply these evidentiary rules.

NEW: Please note the revised text, identified IN BOLD in Rule 401 (Hearsay) effective 11/2018.

Rule 401: HEARSAY. A statement made out of court (i.e., not made during the course of the trial in which it is offered) is hearsay if the statement is offered for the truth of the fact asserted in the statement. A judge may admit hearsay evidence if it was a prior out-of-court statement made by a party to the case and is being offered against that party. The party who made the prior out-of-court statement can hardly complain about not having had an opportunity to cross-examine himself regarding this statement. He said it, so he has to live with it. He can explain it on the witness stand. Essentially, the witness on the stand is repeating **a statement made** outside the courtroom. The hearsay rule applies to both written as well as spoken statements. If a statement is hearsay and no exceptions to the rule are applicable, then upon an appropriate objection by opposing counsel, the statement will be inadmissible.

REASONS FOR EXCLUDING HEARSAY: The reason for excluding hearsay evidence from a trial is that the opposing party was denied the opportunity to cross-examine the declarant about the statement. The declarant is the person who made the out-of-court statement. The opposing party had no chance to test the declarant's perception (how well did she observe the event she purported to describe), her memory (did she really remember the details she related to the court), her sincerity

(was she deliberately falsifying), and her ability to relate (did she really mean to say what now appears to be the thrust of her statement).

The opportunity to cross-examine the witness on the stand who has repeated the statement is not enough because the judge or the jury is being asked to believe what the declarant said.

Example:

Peter is on trial for allegedly robbing a Seven-Eleven store on May 1. A witness who is testifying on Peter's behalf testifies in the trial, "I heard Joe say that he (Joe) went to the Seven-Eleven on May 1." Peter, the party offering the witness's testimony as evidence, is offering it to prove that Joe was in the Seven-Eleven on May 1, presumably to create a question as to whether it could have been Joe at the scene of the crime, rather than Peter. In this example, Joe is the declarant. The reason why the opposing party, in this case the prosecution, should object to this testimony is that the prosecution has no opportunity to cross-examine Joe to test his veracity (was he telling the truth or just trying to help his friend Peter out of a mess) or his memory (was Joe sure it was May 1 or could it have been May 2)?

5. EXCEPTIONS

Hearsay may be admissible if it fits into certain exceptions. The exceptions listed below are the only allowable exceptions for purposes of the Mock Trial Tournament.

Rule 402: ADMISSION OF A PARTY OPPONENT: A judge may admit hearsay evidence if it was a prior out-of-court statement made by a party to the case that amounts to an admission that is against that party's interest at trial. Essentially, the party's own out-of-court statement is being offered into evidence because it contains an admission of responsibility or an acknowledgment of fault. The party who made the prior out-of-court statement can hardly complain about not having had the opportunity to cross-examine himself. He said it, so he has to live with it. He can explain it on the witness stand.

Example:

Pam is involved in a car accident. Wendy was at the scene of the crash. At Pam's trial, Wendy testifies that she heard Pam say, "I can't believe I missed that stop sign!" At the trial, Wendy's testimony of Pam's out-of-court statement, although hearsay, is likely to be admitted into evidence as an admission against a party's interest. In this example, Pam is on trial so she can testify about what happened in the accident and refute having made this statement or explain the circumstances of her statement.

Rule 403: STATE OF MIND: A judge may admit an out-of-court statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health). Such out-of-court statements of pain or intent do not present the usual concerns with the reliability of hearsay testimony. For instance, when a witness testifies as to a declarant's statement of intent, there are no memory problems with the declarant's statement of intent and there are no perception problems because a declarant cannot misperceive intent. When applying this exception, it is important to keep in mind that the reliability concerns of hearsay relate to the out-of-court declarant, not to the witness who is offering the statement in court.

Example:

Mike is on trial for a murder that occurred at the West End Restaurant. Mike's defense relies upon the theory that another person, Jane, committed the murder. The defense then calls a witness who testifies that on the night of the murder he heard Jane say that she intended to go to the West End Restaurant. This hearsay statement is admissible as proof of Jane's intent to go to the restaurant.

Rule 404: BUSINESS RECORDS. A judge may admit a memorandum, report, record, or data compilation concerning an event or act, provided that the record was made at or near the time of the act by a person with knowledge and that the record is kept in the regular course of business. The rationale for this exception is that this type of evidence is particularly reliable because of the regularity with which business records are kept, their use and importance in the business and the incentive of employees to keep accurate records or risk being reprimanded by the employer.

Example:

Diane is on trial for possession of an illegal weapon. The prosecution introduces a written inventory prepared by a police officer of items, including a switchblade knife, taken from Diane when she was arrested as evidence of Diane's guilt. The written inventory is admissible. In this example, the statement that is hearsay is the written inventory (hearsay can be oral or written), the declarant is the police officer who wrote the inventory and the inventory is being offered into evidence to prove that Diane had a switchblade knife in her possession. The reason that the written inventory is admissible is that it was a record made at the time of Diane's arrest by a police officer, whose job required her to prepare records of items taken from suspects at the time of arrest and it was the regular practice of the police department to prepare records of this type at the time of an arrest.

Rule 405: PRESENT SENSE IMPRESSION. A judge may admit an out-of-court statement of a declarant's statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter. The rationale for this exception is that a declarant's description of an event as it is occurring is reliable because the declarant does not have the time to think up a lie.

Example:

James is witnessing a robbery and calls 911. While on the phone with the 911 operator, James describes the crime as it is occurring and provides a physical description of the robber. These hearsay statements are admissible because they are James's description or explanation of an event – the robbery – as James perceives that event.

Rule 406: STATEMENTS IN LEARNED TREATISES. A statement contained in a treatise, periodical, or pamphlet is admissible if:

- (A) The statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
- (B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

Example:

Dr. G, plaintiff's expert witness, is being cross-examined by defendant's counsel. During the cross-examination Dr. G is shown a volume of a treatise on cardiac surgery, which is the subject of Dr. G's testimony. Dr. G is asked if s/he recognizes the treatise as reliable on the subject of cardiac surgery. Dr. G acknowledges that the treatise is so recognized.

Portions of the treatise may then be read into evidence although the treatise is not to be received as an exhibit.

If Dr. G does not recognize the treatise as authoritative, the treatise may still be read to the jury if another expert witness testifies as to the treatise's reliability or if the court by judicial notice recognizes the treatise as authoritative.

Rule 407: STATEMENTS BY AN UNAVAILABLE DECLARANT. In a civil case, a statement made by a declarant unavailable to give testimony at trial is admissible if a reasonable person in the declarant's position would have made the statement only if the declarant believed it to be true because, when the statement was made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to expose the declarant to civil or criminal liability.

Example:

Mr. X, now deceased, previously gave a statement in which he said he ran a red light at an intersection, and thereby caused an accident that injured plaintiff P. Offered by defendant D to prove that D should not be held liable for the accident, the statement would be admissible as an exception to the exclusion of hearsay.

6. 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. In addition, a non-expert witness may not offer opinions as to any matters that would require specialized knowledge, training, or qualifications.

Example:

(General Opinion)

The attorney asks the non-expert witness, “Why is there so much conflict in the Middle East?” This question asks the witness to give his general opinion on the Middle East conflict.

Note: This question is objectionable because the witness lacks personal perceptions as to the conflict in the Middle East and any conclusions regarding this issue would require specialized knowledge.

Objection:

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

Example:

(Lack of Personal Knowledge)

The attorney asks the witness, “Why do you think Abe skipped class?” This question requires the witness to speculate about Abe’s reasons for skipping class.

Objection:

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

Example:

(Opinion on Outcome of Case)

The attorney asks the witness, “Do you think the defendant intended to commit the crime?” This question requires the witness to provide a conclusion that is directly at issue and relates to the outcome of the case.

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. The attorney for the party for whom the expert is testifying must qualify the witness as an expert. 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:

The attorney asks the witness, an auto mechanic, “Do you think Luke’s recurrent, severe migraine headaches could have caused him to crash his car into the side of George’s house?”

Objection:

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

However, a doctor can provide an expert opinion on how migraine headaches affect eyesight.

7. 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 have 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.

A prosecutor must authenticate a weapon by demonstrating that the weapon is the same weapon used in the crime. This shows that the evidence offered (the weapon) relates to the issue (the crime). If the weapon belonged to the prosecutor, it would not be relevant to the defendant’s guilt. The evidence must be relevant to the issue to be admissible.

PROCEDURE FOR INTRODUCING EVIDENCE: 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:

Have exhibit marked for identification. *“Your Honor, please mark this as Plaintiff’s Exhibit 1 (or Defense Exhibit A) for identification.”*

- a. Ask witness to identify the exhibit. *“I now hand you what is marked as Plaintiff’s Exhibit 1 (or Defense Exhibit A). Would you identify it, please?”*
- b. Ask witness questions about the exhibit, establishing its relevancy, and other pertinent questions.
- c. Offer the exhibit into evidence. *“Your Honor, we offer Plaintiff’s Exhibit 1 (or Defense Exhibit A) into evidence at this time.”*
- d. Show the exhibit to opposing counsel, who may make an objection to the offering.
- e. The Judge will ask opposing counsel whether there is any objection, rule on any objection, admit or not admit the exhibit.
- f. If an 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. In order to read directly from an affidavit or submit it to the judge, it must first be admitted into evidence.

Rule 602: REDACTION OF DOCUMENT. When a document sought to be introduced into evidence contains both admissible and inadmissible evidence, the judge may, at the request of the party objecting to the inadmissible portion of the document, redact the inadmissible portion of the document and allow the redacted document into evidence.

Objection:

“Objection. Your Honor, opposing counsel is offering into evidence a document that contains improper opinion evidence by the witness. The defense requests that the portion of the document setting forth the witness’s opinion be redacted.”

Rule 603: 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 (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 make limited inquiry of the witness, which is called “*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. The clock will not be stopped for *voir dire*.

8. 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. Facts cannot be made up. If the witness goes beyond the facts given opposing counsel may object. If a witness testifies in contradiction of a fact given in the witness’s statement, opposing counsel should impeach the witness during cross- examination.

Objection:

“Objection. 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’s statement or the direct examination, the witness may respond with any answer that does not materially alter the outcome of the trial. If a witness’s response might materially alter the outcome of the trial, the attorney conducting the cross-examination may object.

Objection:

“Objection. The witness’s answer is inventing facts that would materially alter the outcome of the case.”

9. 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, whom 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 are not permitted at any time during the plaintiff’s or prosecution’s case.

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.

Rule 901: PROSECUTION’S BURDEN OF PROOF (criminal cases).

Beyond a Reasonable Doubt: A defendant is presumed to be innocent. As such, the trier of fact (jury or judge) must find the defendant not guilty, unless, on the evidence presented at trial, the prosecution has proven the defendant guilty beyond a reasonable doubt. Such proof precludes every reasonable theory except that which is consistent with the defendant’s guilt. A reasonable doubt is an honest doubt of the defendant’s guilt for which a reason exists based upon the nature and quality of the evidence. It is an actual doubt, not an imaginary one. It is a doubt that a reasonable person would be likely to entertain because of the evidence that was presented or because of the lack of convincing evidence. While the defendant may introduce evidence to prove his/her innocence, the burden of proof never shifts to the defendant. Moreover, the prosecution must prove beyond a reasonable doubt every element of the crime

including that the defendant is the person who committed the crime charged. (Source: NY Criminal Jury Instructions).

Rule 902: PLAINTIFF’S BURDENS OF PROOF (civil cases).

902.1 Preponderance of the Evidence: The plaintiff must prove his/her claim by a fair preponderance of the credible evidence. The credible evidence is testimony or exhibits that the trier of fact (jury or judge) finds to be worthy to be believed. A preponderance of the evidence means the greater part of such evidence. It does not mean the greater number of witnesses or the greater length of time taken by either side. The phrase refers to the quality of the evidence, *i.e.*, its convincing quality, the weight and the effect that it has on the trier of fact. (Source: NY Pattern Jury Instructions, §1:23).

902.2 Clear and Convincing Evidence: (To be used in cases involving fraud, malice, mistake, incompetency, etc.) The burden is on the plaintiff to prove fraud, for instance, by clear and convincing evidence. This means evidence that satisfies the trier of fact that there is a high degree of probability that the ultimate issue to be decided, *e.g.*, fraud, was committed by the defendant. To decide for the plaintiff, it is not enough to find that the preponderance of the evidence is in the plaintiff’s favor. A party who must prove his/her case by a preponderance of the evidence only needs to satisfy the trier of fact that the evidence supporting his/her case more nearly represents what actually happened than the evidence which is opposed to it. But a party who must establish his/her case by clear and convincing evidence must satisfy the trier of fact that the evidence makes it highly probable that what s/he claims is what actually happened. (Source: NY Pattern Jury Instructions, §1:64).

Rule 903: DIRECT AND CIRCUMSTANTIAL EVIDENCE

903.1 Direct evidence: Direct evidence is evidence of a fact based on a witness’s personal knowledge or observation of that fact. A person’s guilt of a charged crime may be proven by direct evidence if, standing alone, that evidence satisfies the fact-finder (a judge or a jury) beyond a reasonable doubt of the person’s guilt of that crime. (Source: NY Criminal Jury Instructions).

903.2 Circumstantial evidence: Circumstantial evidence is direct evidence of a fact from which a person may reasonably infer the existence or non-existence of another fact. A person's guilt of a charged crime may be proven by circumstantial evidence, if that evidence, while not directly establishing guilt, gives rise to an inference of guilt beyond a reasonable doubt. (Source: NY Criminal Jury Instructions).

NOTE: The law draws no distinction between circumstantial evidence and direct evidence in terms of weight or importance. Either type of evidence may be enough to establish guilt beyond a reasonable doubt, depending on the facts of the case as the fact-finder (a judge or a jury) finds them to be. [Source: NY Criminal Jury Instructions].

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL SCRIPT

PART IV

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HARLEY DAVISON

V.

GOTHAM CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

CASE SUMMARY

1. Harley Davison allegedly resided with his/her great aunt, who was a tenant of a rent-controlled apartment in a building owned by the City of Gotham. His/her aunt, Barbra Stone, who was 95 years old and lived in the two-bedroom apartment until her death on March 15, 2018, resided in the apartment since 1968. Harley claimed to have moved in with his/her elderly aunt in February 2016 to assist in her care and well-being. Following his/her aunt's death, Harley applied to the Department of Housing Preservation and Development (DHPD) for succession rights to the apartment. DHPD denied the request, determining that Harley had failed to provide sufficient proof that s/he resided in the apartment prior to his/her aunt's death for the requisite period of time. Harley then commenced this proceeding pursuant to Article 78 of the State of Nirvana Civil Practice Law and Rules.
2. Sage Wisner, Harley's fiancé/fiancée, claims that s/he has known Harley since December 2015 and that Harley, since February 2016, has always lived with his/her aunt. Sage acknowledges that Harley spends inordinate amounts of time at his/her apartment. Harley would sometimes spend weeks and months at a time living in Sage's apartment. This mostly occurred when Harley would have a "falling out" with his/her aunt, mostly over staying out until very late at night, not checking in with the aunt for weeks on occasions, and Harley's criminal conduct. Sage also confirmed that Harley receives mail addressed to Sage's apartment. Sage lives in a non-rent-controlled apartment and pays \$2,500.00 per month for a one-bedroom unit in a tenement. Harley's aunt paid \$500.00 per month for her apartment. After their marriage in 2020, Harley and Sage plan to reside in the aunt's apartment.
3. A neighbor of Harley's aunt, Finley Adams, lives directly across the hall. Finley, who is rather spry for an octogenarian, has poor vision and wears a hearing aid when s/he remembers to use it. Finley says that s/he sees Harley entering the aunt's apartment all the time using a key. S/he believes, but can't say for sure, that Harley ever really moved in. Finley did not like the DHPD investigator, who Finley believes was trying very hard to intimidate him/her into stating that Harley did not reside with the aunt. Finley held firm to his/her belief and eventually told the investigator to get lost.

4. Blake Wards, the DHPD investigator, believes that, while Harley may have resided with his/her aunt on occasions, s/he did not live in the apartment for the two-year period of time prior to the aunt permanently vacating the apartment as required by city regulation 28 RC 3-02[p][3]. S/he contends that Harley has failed to produce any documentation showing that s/he resided continuously in the apartment for two full years prior to the aunt's death. After re-establishing contact with his/her great aunt, Harley claims to have gone to live with Aunt Barbra to assist in her care. Harley acknowledges that s/he was incarcerated on a 60-day sentence from April 1, 2016 to May 28, 2016 on a petit larceny conviction. The court also imposed a two-year period of probation. Prior to allegedly moving in with his/her aunt, Harley claimed to have lived at flop houses or with friends. Harley contends that, although s/he was incarcerated for two months, his/her residence was still his/her aunt's apartment.

5. Tatum Neal is Harley's probation officer. Harley's two-year period of probation expired on May 25, 2018. S/he was required to report to Officer Neal's office on the first Monday of each month, unless the particular Monday was a holiday, in which case, s/he would report on Tuesday. Since Harley was faithful in keeping his/her appointments, Officer Neal never visited Harley at Harley's residence. The probation officer believed that Harley resided with Sage Wisner, as that was the address Harley had provided. Harley states that s/he gave probation Sage's address because s/he did not believe probation would allow him/her to reside with an elderly person and around other elderly individuals who could be easily victimized. Officer Neal states that as far as probation is concerned, Harley resided with Sage.

6. Rivers Ebb was Aunt Barbra's visiting nurse. S/he would come by Aunt Barbra's apartment once per day, including weekends, for two hours between noon and 2:00pm to make sure s/he was taking her medication and was eating properly. Nurse Ebbs states that, although Harley had some clothing at the apartment and stayed in the second bedroom when Harley was there, it did not appear that Harley permanently resided there. According to Nurse Ebb, there were many times on his/her daily visits when Ms. Stone would say that she has not seen Harley for weeks or months. Harley believes Nurse Ebb has it "in for him/her" ever since s/he accused the nurse of stealing money from Aunt Barbra. Nurse Ebb threatened Harley that if s/he ever repeated this to anyone, s/he would sue Harley for defamation. Nurse Ebb believes that if there is any money missing, it was taken by that ex-con Harley.

7. The issue on this Article 78 proceeding is whether the determination of DHPD denying Harley Davison succession rights to his/her aunt's apartment was not arbitrary and capricious, and has a rational basis.

Petitioner/Plaintiff:

- Harley Davison, petitioner/plaintiff
- Sage Wisner, Harley's fiancé/fiancée
- Finley Adams, neighbor of Harley's aunt

Respondent:

- Blake Wards, DHPD investigator
- Tatum Neal, probation officer
- Rivers Ebb, visiting nurse

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LIST OF STIPULATIONS

1. All witness statements are deemed sworn or affirmed, and duly notarized.
2. All items of evidence are originals and eligible for use during the match, following proper procedure for identification and submission.
3. Any enactment of this case is conducted after the named dates in the Case Summary and the witnesses' affidavits. (Please note that the Case Summary is provided solely for the convenience of the participants in the Mock trial Tournament. Said summary itself does not constitute evidence and may not be introduced at the trial or used for impeachment purposes.)
4. The petitioner exhausted all administrative remedies prior to commencing this Article 78 proceeding, **and the proceeding was commenced within the applicable 4-month Statute of Limitations.**
5. An order was issued staying Harley Davison's eviction pending a final decision on the Article 78 petition.
6. Court calendar congestion and requests for adjournments have delayed the return date of this Article 78 proceeding.
7. Harley Davison was not required to pay Gotham City income taxes in 2016 or 2017.
8. No other stipulations shall be made between the petitioner/plaintiff/prosecutor and the respondent/defense, except as to the admissibility of evidentiary exhibits provided herein.

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AFFIDAVIT OF HARLEY DAVISON

1. My name is Harley Davison, a name given to me by my father. He was a motorcycle enthusiast since his young adulthood and owned a Hog, which is the nickname for a Harley-Davidson motorcycle. My parents, who lived in Wisconsin, passed away in the summer of 2015 following a fatal crash during a cross-country tour on their Hog.
2. I am 39 years old and have resided in Gotham, State of Nirvana for the past 7 years. I am somewhat of an artist, specializing in repurposing trash and recyclables into sculptures. Someday, the whole world will know and appreciate my work.
3. I couldn't wait to get away from my parents in Wisconsin. Although they were free-spirits at heart, they wanted to be overly-controlling of me. Anyway, I really miss them now. Since moving to Nirvana from Wisconsin in June 2011, I resided in several flop houses or with friends I met at some of the "watering holes" on the Bowery, like my favorite bar/restaurant, Bikers' Lounge. After re-establishing contact with my great aunt, Barbra Stone, I have resided with her in Gotham since February 1, 2016, except for the brief time when I was incarcerated at Rikers Island. I went to live there so that I could assist in her care and well-being. My aunt Barbra, my mother's aunt, and I resided at 126-34 West Huron Street, Apt. #110, in Gotham. Aunt Barbra, in 1968, moved to Gotham from Chicago, where she and my mother were born and grew up, at different times of course. Aunt Barbra, who never married and was childless, resided in Apt. #110, a rent-controlled apartment, since moving to Gotham. ***She died on March 15, 2018 at the age of 95.***
4. On March 19, 2018, I found the document Aunt Barbra had sent to the City of Gotham's Department of Housing Preservation and Development (DHPD) in February 2018, informing them that I was a family member, that I permanently reside in the apartment, and that I was entitled to take over the apartment whenever she vacated the apartment. ***On March 26, 2018, I sent a letter to DHPD, which manages the apartment building on behalf of city, expressing my intention to take over Aunt Barbra's apartment. On April 2, 2018, I went down to the DHPD to fill out the application for the apartment.*** I had a copy of Aunt Barbra's death certificate with me. I assumed the process would be rather simple, so I did not use a lawyer. Quite to my surprise, DHPD denied my application by a decision dated May 16, 2018, making the preposterous claim that I had not resided in the apartment for two consecutive years as required by some obscure city regulation.

5. Anyway, DHPD got it completely wrong. I hired a very good law firm to represent me, and the lawyers recommended that I file an Article 78 petition challenging DHPD's decision. The lawyers have assured me that DHPD is wrong on the facts and that I am a legal occupant pursuant to the rent-control regulations. Most of my mail comes to Aunt Barbra's apartment, and if I had registered to vote, this would have been the address I would have provided. I have not made enough money to be required to file an income tax return. My lawyers tell me that a person can reside in several places at the same time, such as in a hotel while on vacation or at a summer cottage for several months during the year. The lawyers also point out that when children go off to college or to summer camp for months at a time, they still are considered permanent residents of their home address. The fact that the person has temporarily resided elsewhere for periods of time does not mean the person's permanent residence, or domicile, has changed. The lawyers tell me they learned in law school that you can have many residences, but only one domicile. My lawyers wondered if the lawyers at DHPD missed that lecture!
6. As I stated earlier, I moved in with Aunt Barbra on or about February 1, 2016, if my memory serves me correctly. I did not put in a change of mailing address with the post office when I moved in because I really did not have a previous permanent address, and besides, I don't get a lot of mail anyway. Aunt Barbra's apartment has been my domicile since February 1st.
7. I got into a little trouble with the law in early January 2016, having been charged with petit larceny. I was down on my luck and was caught stealing gloves to keep my hands warm. I had to take the whole box, which had about fifty pairs of cheap gloves inside, because the box was on the floor near the store's entry door. At arraignment, I was released on my own recognizance after indicating to the court that I resided with my friend at the time and now fiancé/fiancée, Sage Wisner. I met Sage in December 2015 and we became engaged in September 2016. Sage was present with me at the arraignment and "confirmed" that I was residing with him/her. I may have told Sage it was just one pair of gloves that I took because I was embarrassed about the whole incident. I was really embarrassed when Sage found out in court that it was a whole box of gloves
.
8. In order to increase my chances of being released on my own recognizance, I needed someone in court to vouch for me, and Aunt Barbra could not have made it to court ***to state that I could come to live with her. At the time of the arraignment, I did not have a permanent residence and was for all practical purposes homeless.*** I did not want Sage to lie, but I just was not ready to be locked up at the time. Besides, I was hoping to beat the rap. Anyway, I pleaded guilty to the charge on the court's commitment that the sentence would not exceed 2 months.

In accordance with the commitment, I was sentenced on April 1, 2016 to a 60-day term of imprisonment at Rikers Island, plus a two-year period of probation. I was released on May 28, 2016. Prior to being imprisoned, I had already established residency in my aunt's apartment. Even though I was "residing" at Rikers Island for 2 months, my permanent residence was still my aunt's apartment. Upon being released from Rikers, I was concerned about the Gotham Probation Department. I've heard they could be a real pain in the rear. I feared that Probation might not approve me residing with my elderly aunt and around other elderly individuals who are often victimized by unscrupulous miscreants. So, I told Probation that I would be residing with Sage.

9. Tatum Neal was my probation officer. My two-year period of probation expired on May 25, 2018. I was required to report to Officer Neal on the first Monday of the month, unless the particular Monday was a federal or state holiday, in which case I would report on the Tuesday. Would you believe Probation makes us pay \$25.00 per visit?! Talk about criminal! Since I was faithful in keeping my appointments, Officer Neal never visited me at Sage's apartment. To play it safe, I receive some mail at Sage's apartment and keep some personal items there as well, such as clothing and my sculptures. I figured I could get away with the little fib about where I resided because those guys in Probation try as best they can to stay in their offices, drinking coffee and pushing papers from one desk to the next. To be fair, they are overworked, each probation officer supervising hundreds of probationers at a given time. It's known that they don't visit ex-inmates who committed minor offenses like me, so long as we stop in the probation office once a month, pay the fee and provide proof that we are in school, working or looking for work. So, what's the harm in a little white lie?!
10. Now, I know I am no angel. In addition to my petit larceny conviction, I've had other encounters with the law and have been incarcerated or on probation for minor offenses on several occasions in the past. In the early Fall of 2011, I received a one-year conditional discharge on a disorderly conduct conviction involving a barroom fight that spilled out into the street. I spent 45 days at Rikers Island in the late Fall of 2012 for second degree harassment and served a two-year period of probation in connection with that conviction. On a bogus fourth degree marijuana possession charge, I served six months in Rikers from February 2015 to the end of July 2015. Sometimes, trouble just finds you.
11. I hate to say anything bad about a person, but my aunt's visiting nurse, Rivers Ebb, is a real piece of work! S/he was her nurse since September 2015. Nurse Ebb came by each day, including weekends, for two hours between noon and 2:00pm to make sure Aunt Barbra was taking her medication and

eating nutritiously. I always felt the amount of time s/he spent there was a bit excessive, considering s/he was charging my aunt \$35.00 per hour. In my opinion, \$70.00 per day and \$490.00 per week was robbery, pure and simple.

12. I believed Nurse Ebb was manipulating Aunt Barbra and taking gifts, including significant amounts of money, from her. I confronted the nurse and told him/her to knock it off! We never got along after the confrontation, but the manipulation of my aunt appeared to cease, at least when I was there. In retaliation, Nurse Ebb accused me of taking advantage of my aunt to “fund my lifestyle.” I admit that I would ask my aunt for money, but that was usually when I was in between jobs and needed money to pay my monthly probation fee or just to have some walking around money. Aunt Barbra was terribly generous to me, at least when we were not arguing about something.
13. In further retaliation, Nurse Ebb told the DHPD’s investigator, Blake Wards, that I really did not live with my aunt. The nurse claimed that there were weeks and months at a time when I was not around. Well, it is difficult being around all the time when you are in prison or when you are visiting with your fiancé/fiancée for long stretches of time. If you want to know whether I lived with my Aunt Barbra, just ask my aunt’s neighbor, Finley Adams. I believe s/he saw me move in and I know Mr./Ms. Adams sees me entering my aunt’s apartment using a key all the time.
14. Mr./Ms. Adams and I talked all the time about the building and the neighbors. Nurse Ebb told Mr./Ms. Adams that s/he once overheard Aunt Barbra tell another elderly neighbor that I was just visiting for a while and will not reside in the apartment long term. Aunt Barbra assured me that she was telling the elderly neighbor that falsehood just to allay the neighbors’ fears, since it was widely known that I was recently released from prison—nothing more than that. Anyway, Mr./Ms. Adams, who is in his/her 80’s, told me that s/he was not afraid of me and was happy to see me living with, and taking care of, my aunt.
15. The DHPD investigator, Mr./Ms. Wards, tried to intimidate Mr./Ms. Adams into stating that I did not reside with my aunt. Mr./Ms. Wards was suggesting to Mr./Ms. Adams that, because of Mr./Ms. Adams’ age, s/he may have been mistaken about what s/he saw and what s/he knows. Mr./Ms. Wards was all up in Mr./Ms. Adams’ face, yelling at him/her that s/he better not be lying if s/he did not want Wards to “lower the boom” on Mr./Ms. Adams. When I was incarcerated the last time, I learned that Wards had a reputation on the street for being a real nut-job. During his/her time on the

Newark police force, Wards was known to rough up arrestees even for something as little as “mouthing off” to Wards. After the beat-downs, s/he would accuse the arrestees of being the initial aggressors and that s/he was just acting in self-defense. I have since learned that no one in leadership on the Newark police force tried to discourage Wards from leaving when s/he decided to go work for DHPD. If Wards had stayed with the city, Newark would be looking at lawsuits for huge amounts of money for Wards’ misconduct. It’s my understanding that Mr./Ms. Adams held firm in his/her belief that I resided with my aunt and told the investigator Wards to get lost! Mr./Ms. Adams might have poor vision and wears a hearing aid when s/he remembers to put it in, but s/he is feisty and is no pushover.

16. I really miss my Aunt Barbra. I cared for her and she really cared about me. Aunt Barbra wanted me to keep the apartment and would be very disappointed with the shenanigans DHPD is pulling. My fiancé/fiancée, Sage, is prepared to testify that I have always resided with my aunt since s/he has known me. When reviewing the death certificate, I noticed that I had mistakenly given Sage’s address as my address to the funeral home that prepared the certificate. I was so distraught at that time to the point I was not thinking very clearly. I don’t know how much Sage pays each month for his/her apartment, but I am sure it is a lot more than what Aunt Barbra paid. So, Sage would probably save a lot of money by moving into my aunt’s apartment. However, s/he would not lie to the government or on the witness stand about something this important just to pay cheaper rent.
17. I found a copy of Aunt Barbra’s lease agreement and took it to my attorneys. My attorneys say that the lease does not prohibit a relative like me from permanently residing in the apartment or from acquiring the apartment upon the death of the leaseholder. So, Apartment #110 should continue to be my “home sweet home.”

I affirm under penalty of perjury that the above statements are true.

Gotham, Nirvana
September 7, 2018

Harley Davison
Harley Davison

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SAGE WISNER AFFIDAVIT

1. My name is Sage Wisner. I am 39 years old. I have a B.S. degree in Mathematics from Cornell University and a M.S. in Accounting from NYU's Stern Business School. I'm a certified public accountant licensed in New York and Nirvana.
2. I started my career as an accountant at Ernst & Young in Manhattan when I was approximately age 26. That life, however, was too stressful. About ten years ago, I started working as an accountant at Gotham General Hospital; the hours are good and I have more time for travel, family, and friends. The trade-off for a better quality of life is a big pay cut. I currently earn \$85,000.00 annually.
3. I live in Gotham. I rent a one-bedroom, one bath apartment; my address is 11-254 Civics Avenue, Apt. No. 1010. My apartment is not rent-controlled. I pay \$2,500.00 in rent each month. Considering my current salary, it's sometimes difficult to make ends meet.
4. I met Harley Davison in December 2015. S/he literally bumped into me when I was at my office holiday party at Bikers' Lounge, a bar and restaurant in the Bowery section of Gotham. S/he immediately apologized and asked if s/he could buy me a drink. That was the beginning of our romance.
5. Harley is a little rough around the edges, but s/he has a good heart and makes me laugh. We became good friends, started dating, and became engaged on September 17, 2016. The engagement was so romantic; Harley took me to Bikers' Lounge where we first met. S/He popped the question. We plan to get married in September 2020.
6. Harley's Aunt Barbra recently died and we're going to move into her apartment to save money. Her apartment is rent-controlled—the rent is only \$500 per month. The lower rent will help us save money for our honeymoon. We want to go to Australia to swim and snorkel at the Great Barrier Reef. We also have Iceland, South Africa, and Japan on our bucket list.
7. Harley has had some brushes with the law, but s/he's trying to turn things around. I admire Harley's grit and positive attitude. S/he's very creative; in fact, s/he's a gifted sculptor, specializing in repurposing trash and recyclables. Harley uses these discarded items to create amazing sculptures.

S/he keeps these masterpieces in my basement storage area. I know that it's only a matter of time until s/he has a breakthrough in the art world.

8. In the meantime, Harley has struggled. S/he was arrested in January 2016 and charged with petit larceny. It wasn't really a crime, but rather an act of poverty. Harley was down on his/her luck and told me s/he took a pair of gloves to keep his/her hands warm. I later found out it was a whole box of really cheap gloves, but no matter. It was very cold out during that time and s/he needed gloves.
9. I went to Harley's arraignment on the petit larceny charge. I told the judge a little white lie—I said that Harley lived with me ***when in fact Harley was pretty much homeless. Anyway, I knew that Harley was planning to move in with his/her aunt in February 2016.*** I knew that it was wrong to misstate where Harley lived, but I didn't want him/her locked up. His/her lawyer told us the judge was more likely to release Harley if there was someone in court who would vouch for him/her. His aunt wasn't there, so I stepped up. And Harley does stay with me a lot of nights, so I didn't think it was a big deal to say that s/he lived with me.
10. Harley ended up pleading guilty to the petit larceny charge and was sentenced to two-months in prison at Rikers Island and two years' probation. When s/he was released from jail, Harley resumed living with Aunt Barbra.
11. Harley was afraid that his probation officer wouldn't approve of his/her living arrangement with his/her aunt, so s/he told probation that s/he was living with me. S/he therefore receives his/her mail at my apartment and keeps some clothes at my place. This was just in case probation stopped by to check on him/her. But Gotham Probation Department never visited me to confirm Harley's residence.
12. I know that I'll be able to save a significant amount of money if Harley gets his/her aunt's apartment. I'm willing to pay the rent on Aunt Barbra's apartment until Harley starts selling his/her sculptures or gets a steady job.
13. In addition to saving up for international travel, we want to use the extra money to vacation in East Hampton; we love the surf and seafood and it's so relaxing there. Also, the Hamptons will be a good place for Harley to network with people in the art world.

14. Saving money is not enough to induce me to lie about where Harley lives. I know that wouldn't be right. The arraignment situation was different—Harley's freedom was on the line and I just stretched the truth a bit.
15. Harley was really broken up when Aunt Barbra died. S/He felt very close to her. I talked to Aunt Barbra on many occasions and she once said, "I'm happy most of the time that Harley lives with me."
16. When Harley spent significant amounts of time in my apartment, it was usually because s/he and his/her aunt had gotten into a heated argument. Harley would stay with me until everything cooled down. I can't wait to move in with Harley and start our adventures as a married couple.

I affirm that this statement is true to the best of my knowledge.

Gotham, Nirvana
October 2, 2018

Sage Wisner
Sage Wisner

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FINLEY ADAMS AFFIDAVIT

1. My name is Finley Adams. I am 81 years young and I reside at 126-34 West Huron Street, Apt. #109, in Gotham, Nirvana.
2. I've lived in #109 since 1965. It was a very different kind of neighborhood back then. Starbuck was a character from Moby Dick and a cup of coffee cost a quarter—or 50 cents with a hard roll—and they both tasted like the brown paper bag they came in.
3. The building has changed, along with the neighborhood. Just about the only things that have stayed the same around here are us old fogeys. I reckon that me and my friend Barbra Stone, who lived just across the hall from me in #110 for the last 50 years, were just about the top of the heap in that department.
4. Babs “passed away” last March. It may have been for the better. Neither of us has been the crackerjack specimen we once were for the last few years. I find myself asking people all the time to repeat what they said because my hearing is getting worse. Also, the glaucoma is affecting my vision and I hate wearing eyeglasses. Anyway, Babs and I got by though. When they think you can't see or hear much, they let you cheat at bingo! I'm not saying that makes it all worth it, but it doesn't hurt.
5. Babs had help too. She had a nurse named Rivers that was supposed to come by a couple of hours each day. I think that Babs would often send Rivers home or give him/her the day off while still paying Rivers for the full time. Rivers was kind of snoop and was always asking to “borrow” money or other things. I think that Babs preferred to have her niece/nephew, Harley, around anyway.
6. I admit that I enjoyed having Harley around as well. Harley would come and go a lot—Babs gave Harley a key so that s/he could—but most nights, Harley would stay in the spare room.
7. At first, when Harley started coming around more and moved some things into #110— this must have been early 2016—a few of us in the building weren't sure what to think since there were rumors that Harley had been involved in some kind of criminal activity. Some of the other tenants never really got over it, but once I got to know Harley, I didn't have any concerns.

8. We used to chat in the hallway all the time when Harley was around. It was nice to have someone to gossip with about Rivers and the other neighbors. Babs was too nice and would blush or walk away when the juicy gossip started flowing. I heard that she even told some neighbors that Harley was only a temporary guest since they were kind of hung up on Harley's shady background. They need to get over themselves. Who doesn't like a little spike in their punch?
9. It is great that Harley will be living in the apartment permanently now. I really miss our chats when s/he would be away from the apartment for long stretches of time. I suspect s/he was living with his/her fiancé/fiancée. I once joked with Harley after s/he had been away for about a month by wisecrackingly saying, "Are you back for another visit?" I'm a real card!
10. I'll tell you one person who could benefit from some spiked punch is probably the president of the No Fun Club and that is that ninny-hammer DHPD investigator Blake Wards. Leave it to DHPD to send around a flatfoot like Wards to harangue the elderly. Wards had the nerve to tell me I didn't hear what I heard or see what I saw. I told him/her that I was as sure that I saw Harley living in #110 as I was that I smelled Wards' own stink coming from down the block 5 minutes before s/he showed up at my door. How does Wards respond but to tell a sweet innocent old sugar cube like me that DHPD would put me out on the street if they could prove I was lying. Lying, pshh. I told that glorified meter-maid to bring it on!
11. I suppose that is what I should expect from DHPD. I've been filing complaints for years and my pipes still leak, my windows still stick, my heat only works in the summer and my air conditioning only works in the winter. I told them that the entry room should be worth something since it was last painted the same time as the Sistine Chapel. Come to think of it, rather than worrying about what Harley and that nice fiancé/fiancée pay for rent, why doesn't Ward make him/herself useful and paint my apartment. It's about time! Better yet, fire the lot of 'em!

Under the pains and penalties of perjury, I affirm that the foregoing statement is true and accurate to the best of my knowledge.

Gotham, Nirvana
October 2, 2018

Finley Adams
Finley Adams

AFFIDAVIT OF BLAKE WARDS

1. My name is Blake Wards. I am 45 years old and have worked as a Senior Investigator for the City of Gotham's Department of Housing Preservation and Development (DHPD) for the past 10 years. DHPD is located at 1788 Constitution Drive in Gotham, Nirvana. Prior to my employment with DHPD, I was a police officer for 11 years with the Newark (New Jersey) Department of Public Safety. I earned a Bachelor of Arts Degree in Criminal Justice from John Jay College in May 1995. I then attended the New Jersey State Police Academy in 1996 and proceeded to work as a police officer for the City of Newark in 1997.
2. DHPD is probably the largest municipal agency in the nation that is responsible for developing and maintaining affordable housing. The agency was established in 1978 and has approximately 300,000 housing units that it is developing or maintaining. It is a great agency that employs exceptional people who provide excellent service to the citizens of Gotham.
3. I enjoyed being a police officer. However, I am the first to admit that my personnel file, that is open for public review, shows that my time on the force was probably less than stellar. So what if I was accused of wracking some of the "bad boys" on occasions. Most of the time, it was for self-defense, and besides, the "corrective action" is something their parents should have done a long time ago. I should have been praised, rather than vilified.
4. I really enjoy my job with DHPD because I don't have to arrest anyone and deal with their nonsense. Now, I can help people who truly deserve the services DHPD provides. Harley Davison, however, is certainly not one of those deserving people.
5. Davison is, in my opinion, a 39 year-old "juvenile" who has not and never will grow up. S/he has chosen to lead a life of crime and to be a leech on society. Davison chose not to hold a steady job, was in and out of prison and took advantage of his/her dear old aunt. S/he is not the sort of person we want in our municipal housing.
6. In any event, my very thorough and comprehensive investigation revealed that Davison had not resided in his/her aunt's apartment for a continuous two-year period prior to the aunt's death as required by Gotham City regulations 28 RC §3-02[p][3] and 28 RC §3-02[n]. The records of DHPD show that a Ms. Barbra Stone resided in Apartment #110 at 126-34 West Huron Street in Gotham,

a housing unit owned by the city and managed by DHPD, from July 1, 1968 until her death on March 15, 2018. While DHPD did receive the document from Ms. Stone indicating that Davison was an occupant and was entitled to succeed to the apartment as a family member, the assertions in the document are not binding on DHPD. In my experience, tenants lie all the time to get their undeserving relatives into these rent-controlled apartments.

7. Our records further show that Ms. Stone was the sole occupant of the apartment for the longest time and was the person solely responsible for the rent payments. While Davison may have had a key to the apartment, may have had some mail delivered to the apartment, and may have had some clothing stored in the apartment, it appears from my investigation that Davison was just a frequent visitor to the apartment and not a permanent resident. Interestingly, Davison did not put in a change of mailing address when s/he so-called moved into his/her aunt's apartment. Anyway, Davison put down on his/her aunt's death certificate the address of 11-254 Civics Ave., Gotham, NR as his/her mailing address, which is not Ms. Stone's address.
8. Moreover, Davison was incarcerated at Rikers Island for 60 days in early 2016. His/her incarceration record shows clearly that s/he was not residing with his/her aunt for at least two months out of the 24-month period required by the regulation. Finally, I learned from Davison's probation officer, Tatum Neal, that Davison gave the address of his/her fiancé/fiancée, Sage Wisner, as the place where s/he resides. Consequently, there is a mountain of evidence showing that Davison was not a permanent resident of his/her aunt's apartment and therefore is not entitled to succession rights. I didn't bother contacting Davison's so-called fiancé/fiancée because, in my experience, people like this just lie and say whatever his/her boyfriend/girlfriend wants him/her to say. So, I don't want it said that my investigation was not thorough and by the book.
9. During my investigation of this matter, I encountered a very unpleasant person by the name of Finley Adams. My parents taught me to be respectful of the elderly, so I won't say anything derogative about him/her. However, this person was completely unreasonable. I simply asked Finley, who lived right across the hallway from Ms. Stone, whether Davison lived in the apartment with his/her aunt. S/he was hesitating in his/her response, so I might have pressed him/her a little hard to just answer my questions. Finley's retort, disproportionate to the tenor of my inquiry, was to suggest that I was trying to intimidate him/her and after a while s/he unceremoniously told me to get lost. All I was doing was trying to do my job.

10. I was quite suspicious as to why Finley would try to cover for Davison. I wondered if s/he had a beef with DHPD. After getting back to the office, I pulled Finley's file and noticed s/he had filed an "s-load" of complaints against DHPD. S/he constantly complains about the plumbing, the creaky floors, the dirty windows and the old electrical wiring. In the winter, Finley complains about the heating system and about the air conditioning in the summer. S/he also wants the hallway on the floor of his/her apartment painted every two years and complains about the color when the agency gets around to painting the common areas. In addition, Finley demands that DHPD paint his/her apartment, which is something the agency does not do for any resident. The agency has spent significant amounts of money fixing many of the problems with Finley's apartment that the agency is required to fix. Even with that, Finley threatens to sue DHPD for each unfulfilled demand. So clearly, Finley is not enthralled with DHPD, and anything s/he says has to be taken with a grain of salt.
11. Anyway, I got an earful from Ms. Stone's nurse, Rivers Ebb. I got in touch with Ebb after learning that Ms. Stone had a nurse and after contacting the nurse's home healthcare agency. Ebb told me s/he visited Ms. Stone every day and that Davison was definitely not a permanent resident of the apartment. Ebb stated that for weeks and months, including the time Davison was in prison, s/he was away from the apartment. Davison would show up for a while, stay in the apartment for a few weeks or a few months, and disappear again. It seems his/her absences were the result of fierce arguments Davison would have with his/her aunt. According to Ebb, the arguments usually centered on issues like Davison staying out until the wee hours of the night or Davison's frequent requests for large amounts of money to fund his/her carefree lifestyle. Ebb claims that Ms. Stone was concerned about Davison's criminal activities and apparent inability to get or keep a job. Whenever Ms. Stone and Davison had a flare up, Davison would disappear for a while. After talking to Ebb, it seemed to me that Davison was more of a visitor to the apartment than a permanent resident.
12. Ebb complained that Davison had once accused him/her of taking unfair advantage of Ms. Stone and accepting gifts, including money, from her. Ebb stated that the accusations were false, but that if the accusations had gotten out to his/her agency, his/her job would have been in jeopardy, even if they were ultimately proven false. According to Ebb, Davison is a worthless piece of stuff who will never amount to anything. I agree with Ebb that Davison is not deserving of the apartment.

13. I have examined Ms. Stone's lease agreement. Her name is the only one on the lease and appears to be the only person paying the rent. Davison does not appear to have any legal interest in the apartment that DHPD is required to recognize. Without a doubt, Davison was more of a visitor to, than a permanent resident of, Ms. Stone's apartment.

I affirm that this statement is true to the best of my knowledge.

Gotham, Nirvana

October 2, 2018

Blake Wards

Blake Wards

AFFIDAVIT OF RIVERS EBB

1. My name is Rivers Ebb. I am 49 years old, and reside at 537 Indigo Circle, Gotham, Nirvana.
2. For the past 20 years, I have worked as a nurse for Tender Homecare Agency (“THA”), an organization that provides in-home care services for patients who are elderly and infirm or whose disabilities might make self-care a challenge. Our goal is to keep people out of nursing homes and assisted living facilities and in the broader community.
3. The per hour rate for THA home health services is \$35.00, of which \$20.00 goes to the nurse/caregiver, and the remaining \$15.00 goes to THA. THA expects its nurses to personally bear the costs of transportation and other “incidental” expenses. They do not reimburse us for any of that. Some people think \$35.00/hour is on the high side, but there you have it.
4. From about three years ago until the time of her death, I was the caretaker for an elderly woman by the name of Barbra Stone. I visited Ms. Stone seven days a week to make certain that she was taking her medication and eating properly. These visits took place from noon to 2PM each time.
5. Ms. Stone took an immediate liking to me, and often gave me gifts and, on occasion, money. Sometimes, she would let me leave early at full pay. I never asked her for any of these, but hey, I’m not well paid and the bills don’t pay themselves. I figure that whatever good comes out of this dead-end job, I deserve it for dealing with everything I have to put up with in this line of work.
6. Ms. Stone has a niece/nephew named Harley Davison. Harley never really liked me. Harley said that I was preying on Ms. Stone and taking advantage of her by pressuring her into giving me gifts and money. That’s completely bogus. Like I said, I never asked to leave early or for any of the gifts, including the money that she gave me; she did that on her own because she really liked me. THA allows us to keep such things, but has a strict Code of Ethics which states in part:

“A nurse may not ask, suggest, advise, or induce a patient to provide to said nurse anything of value. However, nurses may keep any gifts that are voluntarily given.”

7. It true that although the Code of Ethics permits nurses to accept gifts given voluntarily, it discourages it. The agency doesn't want any accusations being made of theft, so they advise caution. But hey, like I said, a person's got to eat, and to heck with caution. I want what's coming to me.
8. At some point after Ms. Stone died, Investigator Wards reached out to me to ask whether Harley was permanently living in the apartment. Although it's true that Harley has a key and pops in every now and again, there are often weeks and even months at a time when s/he is totally absent. Ms. Stone used to argue quite a bit with Harley. See, Harley is a no-good, two-faced piece of garbage with a lengthy rap sheet and a lousy attitude to match. S/he was constantly out at all hours and could never seem to hold a real job. S/he was constantly asking his aunt for money, claiming that it was to cover his/her probation expenses from one of his/her many "adventures" in law-breaking, but I'm sure s/he was up to no good with the cash. And s/he claims I'm the one taking advantage?! Pot, meet kettle. I could lose my job on a mere accusation, even if it's later proven false, just because the administration doesn't have the stomach for a long public relations fight. Why on Earth would I do that?
9. Heck, I even once overheard Ms. Stone tell another building resident that Harley wasn't living there. Harley claims that she lied because she didn't want other tenants to worry about her with a delinquent living in the house. Oh, please. She was just telling the truth. There's no fancy motive behind any of it. In light of all that, I told Wards that Harley was nothing more than an occasional visitor, not a permanent resident, because that's what I know to be true.
10. As far I'm concerned that lowlife Harley doesn't deserve this apartment. S/he's nothing but a con artist looking to pull one over on everyone. If there is in fact money missing, I'd look to him/her first. S/he is a thief, after all.

Under the pains and penalties of perjury, I affirm that the foregoing statement is true and accurate to the best of my knowledge.

Gotham, Nirvana
Dated: October 11, 2018

Rivers Ebb, RN
Rivers Ebb, RN

AFFIDAVIT OF TATUM NEAL

1. My name is Tatum Neal. I have lived in Gotham, Nirvana my entire life. I am 53 years old. I am also a 28-year veteran Gotham City Probation Officer with offices in Gotham City Hall, located at 95 Franklin Street in the heart of the city. I have a Bachelor's Degree in Criminal Justice from Pace University.
2. As you can imagine, despite being overworked and underpaid, I've seen it all. I only have two (2) more years until I can retire at 55 with 30 years in the pension system, and finally enjoy the good life to which I'm entitled. For now, I can handle what's basically come down to paper-pushing and coffee klatches.
3. I was Harley Davison's Probation Officer from April 1, 2016 until May 25, 2018. Davison had been convicted of Petit Larceny, a class A misdemeanor, and was sentenced to 60 days in jail plus two (2) years' probation. I guess some judge bought Davison's story about having stolen gloves in early January 2016 to keep his/her hands warm, even if it was with the profit s/he would have made selling the 50 pairs of gloves inside the box s/he had stolen! Yeah, that kid is good. With his/her track record, s/he should've gotten a year in jail. S/he sure knows how to play the system.
4. Davison's definitely been around. S/he had a number of prior convictions for which s/he'd been previously incarcerated and/or put on probation. In early Fall 2011, as the result of a barroom brawl that spilled onto the street, Davison took a plea to Disorderly Conduct and was sentenced to a Conditional Discharge. S/he also did 45 days in Rikers and 2 years on probation in late Fall 2012 for another violation, to wit: second degree harassment, and served a six (6) month jail sentence from February 2015 through July 2015 for Criminal Possession of Marihuana in the Fourth Degree, also a class A misdemeanor.
5. Whatever. Davison went in to do his/her most recent jail stint on April 1, 2016 and was released from Rikers on May 28, 2016. I was assigned to supervise Davison during his/her probationary term which followed. The conditions of his/her probation, imposed pursuant to Penal Law §65.10(3), included to "[r]eport to a probation officer as directed by the court or the probation officer and permit the probation officer to visit him/her at his/her place of abode or elsewhere". S/he was also required to "[a]nswer all reasonable inquiries by the probation officer and notify the probation officer prior to any change in address."

6. As such, Davison was required to report to my office on the first Monday of each month, unless that was a state or federal holiday and we were off, one of the few benefits of being a “civil servant,” and in which case it would be that Tuesday. Every visit included payment of a \$25 fee by the probationer. Since Davison was faithful in keeping his/her appointments and paying the fee, there was no reason to visit Davison at his/her residence.
7. As far as the Gotham City Probation Department is concerned, Davison lived with Sage Wisner at 11-254 Civics Avenue, Apt. 1010, in Gotham, Nirvana. That’s the address they both gave the court, and the court gave us. I never visited Sage Wisner or that address to confirm that Davison lived there with him/her. Again, why would I? Davison showed up at my office as directed, and I don’t make house calls. I’m not a doctor and certainly don’t make the money that they do!
8. The Gotham City Probation Department has no policy that would’ve prevented Davison from living with his/her older aunt and/or around elderly people. S/he could’ve lived wherever s/he wanted. I personally might have been a little concerned about Davison living in a building with so many senior citizens. From where I stand, s/he’s a real manipulator. Had I known s/he was living with an elderly aunt, I may have made some unannounced visits.
9. Luckily, I didn’t have to do any home checks, since like I told Blake Wards, Davison gave his/her fiancé/e’s address as the place where s/he resided. I’ve come to know Wards through our mutual employment by Gotham and law enforcement backgrounds. We jokingly call ourselves Batman and Robin whenever our paths cross.
10. That said, I guess I can’t say for sure where Davison lived. Still, I think it’s fair to assume that it was with his/her fiancé/e, Sage Wisner, at 11-254 Civics Avenue, Apt. 1010, in Gotham. Especially since that’s the address we had for him/her and no mail was ever returned.
11. Having hundreds of probationers to supervise, I’m not about to waste time making unnecessary visits when I could be knocking out my paperwork in the comfort of my office and the company of my colleagues. They don’t pay me enough to leave the office to check up on probationers who are convicted of minor criminal charges. As long as these ex-cons show up at my office each month and pay their fees, that’s good enough for me!

12. For the record, Davison's probation ended on May 25, 2018. Just like I have no idea where s/he lived before his/her sentence, where s/he lives after it is not my problem.

I affirm under penalty of perjury that this statement is true to the best of my knowledge.

Gotham, Nirvana
September 6, 2018

Tatum Neal
Tatum Neal

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**NEW YORK STATE
HIGH SCHOOL
MOCK TRIAL
TOURNAMENT
EVIDENCE**

PART V

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EXHIBIT _____

STATE OF NIRVANA
SUPREME COURT : COUNTY OF BIG

IN THE MATTER OF THE APPLICATION OF
HARLEY DAVISON,

Petitioner,

ORDER TO
SHOW CAUSE

-VS-

Index No.
I-2016-123456

**DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT, CITY OF GOTHAM,**

Respondent.

SUPREME COURT, BIG COUNTY
HON. J. MICHAEL MILLER, JUSTICE PRESIDING
APPEARANCES:

H. Charles Greenberg, Esq.,
Counsel for the Petitioner

Upon the annexed petition of the petitioner by H. Charles Greenberg, Esq., counsel for the petitioner, dated August 16, 2018, and the papers annexed thereto,

LET the respondent SHOW CAUSE BEFORE THIS COURT, at the courthouse thereof, located at 100 Civics Square, Gotham, Nirvana 39803, on the 31st day of October 2018, or any adjourned date, at 9:30 o'clock in the forenoon of that date or adjourned date, why an order should not be made and entered:

1. Granting the relief prayed for in the petition; and
2. Granting such other and further relief as to the court may seem just and equitable.

SUFFICIENT CAUSE THEREFOR APPEARING, it is

ORDERED that pending the hearing and determination of this motion the eviction of the petitioner from the premises, located at 126-34 West Huron Street, Apt. #110, Gotham, Nirvana, is stayed; and it is further

ORDERED that service of a copy of this order to show cause and the papers upon which it was made upon the attorney for the respondent by office delivery pursuant to section 2103[b][3] of the Nirvana Civil Practice Law and Rules on or before September 30, 2018 shall be deemed sufficient service thereof.

DATED: Gotham, Nirvana
August 30, 2018

Hon. J. Michael Miller
HON. J. MICHAEL MILLER
Justice of the Supreme Court

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EXHIBIT _____

STATE OF NIRVANA
SUPREME COURT : COUNTY OF BIG

IN THE MATTER OF THE APPLICATION OF
HARLEY DAVISON,

Petitioner,

AFFIRMATION IN
SUPPORT OF ORDER
TO SHOW CAUSE

vs-

Index No.
I-2016-123456

**DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT, CITY OF GOTHAM,**

Respondent.

STATE OF NIRVANA)
COUNTY OF BIG) ss.
CITY OF GOTHAM)

H. CHARLES GREENBERG, Esq., pursuant to State of Nirvana CPLR 2106 and
subject to the penalties for perjury, duly affirms the following to be true and accurate to the best of my
knowledge:

1. I am an attorney duly admitted to the practice of law in the State of Nirvana. I am a senior associate
in the law firm of Miranda, Gutekunst & Gerstman, PLLC.

2. I represent Harley Davison (“Davison”), the petitioner in this action.

3. I submit this affirmation in support of Davison’s request for an order to show cause seeking an
order vacating a determination of the respondent made on May 16, 2018 denying Davison the right to succeed
to the leasehold of a rent-controlled apartment, to wit:

126-34 West Huron Street, Apt. #110, City of Gotham, State of Nirvana.

4. The petitioner is seeking to proceed by way of order to show cause rather than notice of motion
because the respondent has commenced an eviction proceeding, which, if successful, would result in
immediate harm to the petitioner and endanger his/her well-being.

5. The petitioner designates Big County as the venue of this special proceeding. The basis of venue is that the respondent's determination denying Davison the right to succeed to the leasehold of the rent-controlled apartment was made in Big County.

6. No previous application for the same or similar relief herein prayed for has been made.

WHEREFORE, it is respectfully requested that this court issue an order directing the respondent to show cause why the respondent's determination made on May 16, 2018 should not be vacated, why an order staying eviction should not be granted and why such other and further relief as may be just and proper should not be granted.

DATED: Gotham, Nirvana
 August 15, **2018**

H. Charles Greenberg, Esq.
H. CHARLES GREENBERG, Esq.

EXHIBIT _____

STATE OF NIRVANA
SUPREME COURT : COUNTY OF BIG

IN THE MATTER OF THE APPLICATION OF
HARLEY DAVISON,

Petitioner,

VERIFIED PETITION

-vs-

Index No.
I-2016-123456

**DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT, CITY OF GOTHAM,**

Respondent.

TO THE SUPREME COURT OF THE STATE OF NIRVANA FOR BIG COUNTY

The petition of HARLEY DAVISON complaining of the respondent Department of Housing Preservation and Development of the City of Gotham respectfully alleges that:

1. This is a special proceeding brought pursuant to Article 78 of the Nirvana Civil Practice Law and Rules.

2. Pursuant to CPLR §§ 7804 and 506[b], venue of this proceeding is the County of Big because this is where the determination of the respondent being challenged was made.

3. Petitioner is a resident of the City of Gotham and resides at 126-34 West Huron Street, Apt. #110, Gotham, Nirvana. The leaseholder of the apartment is Barbra Stone, the petitioner's great aunt.

4. Respondent is an agency of the City of Gotham and is located at 1788 Constitution Drive, Gotham, Nirvana. Respondent is the manager of the apartment building located at 126-34 West Huron Street, Gotham, Nirvana. The building located at 126-34 West Huron Street is owned by the City of Gotham and contains one or more rent-controlled apartments.

5. This petition challenges a determination made by the respondent on May 16, 2018, which denied the petitioner's application to succeed to the leasehold of Apt. #110 located at 126-34 West Huron Street,

on the ground that, *inter alia*, the determination made was arbitrary and capricious and was an abuse of the respondent's legal authority.

6. The petitioner has resided in Apt. #110 with his/her aunt since February 1, 2016. His/her aunt passed away on March 15, 2018. Consequently, the respondent's determination that the petitioner did not reside in the apartment for a continuous two-year period immediately prior to the leaseholder's death is erroneous, is arbitrary and capricious and is an abuse of discretion.

7. No previous application has been made for the requested relief.

WHEREFORE, it is respectfully requested that the determination rendered by the respondent on May 16, 2018 be vacated:

- (a) granting the petitioner a due process hearing relative to his/her application to take possession of Apt. #110 located at 126-34 West Huron Street in the City of Gotham;
- (b) staying any warrant of eviction that may have been issued; and
- (c) granting such other and further relief the court may deem just and proper.

DATED: Gotham, Nirvana
 August 15, 2018

Harley Davison
HARLEY DAVISON, petitioner

EXHIBIT _____

STATE OF NIRVANA
SUPREME COURT : COUNTY OF BIG

IN THE MATTER OF THE APPLICATION OF
HARLEY DAVISON,

Petitioner,

VERIFIED ANSWER

-vs-

Index No.

I-2016-123456

**DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT, CITY OF GOTHAM,**

Respondent.

TO THE SUPREME COURT OF THE STATE OF NIRVANA FOR BIG COUNTY

The respondent, the Department of Housing Preservation and Development (the “DHPD”), by its attorney, Felix Gonzalez, General Counsel of the DHPD, for the Verified Answer to the Petition in the above-entitled proceeding, respectfully alleges as follows:

1. ADMITS the allegation in paragraph number one of the Petition.
2. ADMITS the allegation in paragraph number two of the Petition.
3. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the allegations enunciated in paragraph number three regarding the residency of the petitioner, the residence of the petitioner and the relationship of the petitioner to a Ms. Barbra Stone, but ADMITS that Ms. Barbra Stone was the leaseholder of Apartment Number 110 located at 126-34 West Huron Street in Gotham, Nirvana.
4. ADMITS the allegation in paragraph number four of the Petition.
5. ADMITS that the petition seeks to challenge a determination made by the respondent on May 16, 2018, which denied the petitioner’s application to succeed to the leasehold of Apt. #110 located at 126-34 West Huron Street as alleged in paragraph number five, but DENIES that the determination

made was arbitrary and capricious or that said determination was an abuse of the respondent's legal authority.

6. DENIES KNOWLEDGE OR INFORMATION sufficient to form a belief as to the allegations enunciated in paragraph number six regarding where the petitioner has resided since February 1, 2016 and DENIES that the respondent's determination that the petitioner did not reside in the apartment for a continuous two-year period immediately prior to the leaseholder's death was erroneous, or arbitrary and capricious, or was an abuse of discretion.

7. The petitioner did not initiate his/her Article 78 within the applicable statute of limitations.

8. The petitioner fails to state a cause of action upon which relief can be granted and fails to state a triable issue of fact worthy of an Article 78 review.

WHEREFORE, the DHPD demands judgment dismissing the petition herein, awarding the costs and disbursements of this proceeding and granting such other and further relief the court may deem just and proper.

DATED: Gotham, Nirvana
 August 31, 2018

Felix Gonzalez

FELIX GONZALEZ, General Counsel
Gotham City Department of Housing
Preservation and Development

EXHIBIT _____

Harley Davison
126-34 West Huron Street, Apt. #110
Gotham, Nirvana 39809

March 26, 2018

**DHPD
1788 Constitution Drive
Gotham, Nirvana 39801**

Dear Sir or Madam,

My name is Harley Davison and I have resided with my aunt, Barbra Stone, at 126-34 West Huron Street, Apt. #110, Gotham, Nirvana, since February 1, 2016. My aunt, the tenant of this rent-controlled apartment, passed away on March 15, 2018. Enclosed is a copy of her death certificate. I am respectfully requesting permission to take over the lease of this apartment upon the next renewal.

Thank you,
Harley Davison
Harley Davison

Encl.

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EXHIBIT

STONE BARBARA

LOCAL FILE NO.		U.S. STANDARD CERTIFICATE OF DEATH		STATE FILE NO.	
1. DECEDENT'S LEGAL NAME (Include AKA's if any) (First, Middle, Last)		2. SEX		3. SOCIAL SECURITY NUMBER	
Barbara Stone		F		904-72-1255	
4a. AGE AT DEATH (Years)		4b. UNDER 1 YEAR		5. DATE OF BIRTH (Month/Day/Year)	
05		Months Days Hours Minutes		12-12-1922	
6. RESIDENCE STATE		7. COUNTY		8. CITY OR TOWN	
Nirvana		Big		Gotham	
9. STREET AND NUMBER		10. APT. NO.		11. ZIP CODE	
126-34 W Huron St		E10		39809	
12. EVER IN U.S. ARMED FORCES?		13. MARITAL STATUS AT TIME OF DEATH		14. SURVIVING SPOUSE'S NAME (If wid, give name prior to first marriage)	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Married <input type="checkbox"/> Married, but separated <input type="checkbox"/> Widowed <input type="checkbox"/> Divorced <input type="checkbox"/> Never Married <input type="checkbox"/> Unknown			
15. FATHER'S NAME (First, Middle, Last)		16. MOTHER'S NAME PRIOR TO FIRST MARRIAGE (First, Middle, Last)		17. COUNTY OF DEATH	
Oliver T. Stone		Rose Celia West		Big	
18. INFORMANT'S NAME		19. RELATIONSHIP TO DECEDENT		20. MAILING ADDRESS (Street and Number, City, State, Zip Code)	
Harley Davison		niece/nephew		11-254 Civics Ave., Gotham NR	
21. PLACE OF DEATH (Check only one: see instructions)					
22. IF DEATH OCCURRED IN A HOSPITAL:					
23. IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL:					
24. CITY OR TOWN, STATE, AND ZIP CODE					
25. METHOD OF DISPOSITION:					
26. PLACE OF DISPOSITION (Name of cemetery, crematory, other place)					
27. NAME AND COMPLETE ADDRESS OF FUNERAL FACILITY					
28. SIGNATURE OF FUNERAL SERVICE LICENSEE OR OTHER AGENT					
29. LICENSE NUMBER (Of Licensee)					
30. DATE PRONOUNCED DEAD (Month/Day/Year)					
31. TIME PRONOUNCED DEAD					
32. SIGNATURE OF PERSON SIGNIFYING DEATH (Only when applicable)					
33. DATE SIGNED (Month/Day/Year)					
34. ACTUAL OR PRESUMED DATE OF DEATH (Month/Day/Year) (Specify Month)					
35. ACTUAL OR PRESUMED TIME OF DEATH					
36. WAS MEDICAL EXAMINER OR CORONER CONTACTED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
37. CAUSE OF DEATH (See instructions and examples)					
38. IMMEDIATE CAUSE (Final disease or condition resulting in death)					
39. UNDERLYING CAUSE (Disease or injury that initiated the events resulting in death) LAST					
40. PART II. Enter other significant conditions contributing to death but not resulting in the underlying cause given in PART I					
41. WAS AN AUTOPSY PERFORMED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
42. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
43. DID TOBACCO USE CONTRIBUTE TO DEATH?					
44. IF FEMALE:					
45. MANNER OF DEATH					
46. DATE OF INJURY (Month/Day/Year) (Specify Month)					
47. TIME OF INJURY					
48. PLACE OF INJURY (e.g., Decedent's home; construction site; restaurant; wooded area)					
49. INJURY AT WORK? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
50. LOCATION OF INJURY: State					
51. CITY OR TOWN					
52. DESCRIBE HOW INJURY OCCURRED:					
53. IF TRANSPORTATION INJURY, SPECIFY:					
54. CERTIFIER (Check only one):					
55. NAME, ADDRESS, AND ZIP CODE OF PERSON COMPLETING CAUSE OF DEATH (Item 32)					
56. DATE OF CERTIFIER					
57. LICENSE NUMBER					
58. DATE CERTIFIED (Month/Day/Year)					
59. FOR REGISTRATION ONLY: DATE FILED (Month/Day/Year)					
60. DECEDENT'S EDUCATION: Check the box that best describes the highest degree or level of school completed at the time of death.					
61. DECEDENT OF HISPANIC ORIGIN? Check the box that best describes whether the decedent is Spanish/Hispanic/Latino. Check the "No" box if decedent is not Spanish/Hispanic/Latino.					
62. DECEDENT'S RACE (Check one or more races to indicate what the decedent considered himself or herself to be)					
63. DECEDENT'S USUAL OCCUPATION (Indicate type of work done during most of working life. DO NOT USE RETIRED).					
64. KIND OF BUSINESS/INDUSTRY					

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EXHIBIT _____

Department of Housing Preservation and Development

1788 Constitution Drive, Gotham, Nirvana 39801 | (800) 555-5555

May 16, 2018

Harley Davison
126-34 West Huron Street, Apt. #110
Gotham, Nirvana 39809

Re: Succession to 126-34 West Huron Street, Apt. #110, Gotham

Dear Harley Davison:

After careful consideration, your request for succession to the above-referenced apartment is denied pursuant to Gotham City regulation 28 RC §3-02[p][3]. You have failed to demonstrate that you have resided with the lessee in a familial relationship for a continuous and uninterrupted period of two or more years prior to the death of the lessee.

Sincerely,



Peggy Cho, Executive Director

cc: Felix Gonzalez, General Counsel

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EXHIBIT _____

LEASE AGREEMENT

Date: July 1, 1968

This lease agreement is between Gotham City Department of Housing Preservation and Development and

Barbra Stone

for premises located at

126-34 West Huron Street, Apt. #110

Gotham, Nirvana 39809

This lease agreement shall be subject to all regulations promulgated by Department of Housing Preservation and Development, its successors and assigns. Tenant acknowledges receipt of a copy of all such regulations. Amendments and changes shall be provided to the tenant by ordinary mail within thirty (30) days of such change(s).

Maximum occupancy of the apartment shall be four persons.

INITIAL RENT: The initial rent shall be the sum of ONE HUNDRED DOLLARS AND NO CENTS (\$100.00) per month. Rent may be adjusted on an annual basis pursuant to regulations promulgated by Department of Housing Preservation and Development.

This lease shall be automatically renewed an annual basis pursuant to regulations promulgated by Department of Housing Preservation and Development.

No pets are allowed.

Tenant is responsible for all utilities servicing the subject apartment.

DATE: July 1, 1968

TENANT: Barbra Stone

DATE: July 1, 1968

DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT
WAYNE BRUCE GORDON
EXECUTIVE DIRECTOR

By: Frank Avalon

FRANK AVALON
ASSISTANT EXECUTIVE DIRECTOR
For the Executive Director

(rev. 2018.12.14)

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EXHIBIT _____

**CITY OF GOTHAM, STATE OF NIRVANA**

**DEPARTMENT OF HOUSING PRESERVATION
AND DEVELOPMENT**
1788 Constitution Drive
Gotham, Nirvana 39801

**NOTICE OF FAMILY MEMBERS RESIDING WITH THE NAMED TENANT WHO MAY BE
ENTITLED TO SUCCESSION RIGHTS/PROTECTION FROM EVICTION**

Please check appropriate below:

☐ Notice requested by DHPD

☒ Notice submitted by Tenant

Name and address of Tenant:

Name and address of Family Member:

Barbra Stone

Harley Davison

126-34 W. Huron St., Apt. 110

126-34 W. Huron St., Apt. 110

Gotham, Nirvana 39809

Gotham, Nirvana 39809

Subject building (if different from mailing address):

same

For the purpose of determining the right of a family member to a renewal lease or protection from eviction pursuant to rent regulations, the information below may be requested by DHPD or provided by tenant(s) as follows:

☒ By tenants of rent controlled apartments, at any time

☐ By family member(s) within thirty (30) days of date of first permanent occupancy

The following information is REQUIRED:

Name(s) of all person(s) other than named tenant who are residing in the apartment

Whether such person is a "family member" and if so, the relationship

Whether such person is, or upon the passage of the minimum period of required occupancy, may become a person entitled to protection from eviction

INSTRUCTIONS FOR TENANT

When a tenant provides a completed copy of this form to DHPD, the tenant must keep a copy of the form and proof of delivery. A family member seeking to establish the right to a renewal lease or protection from eviction upon the vacancy of the tenant may point to the submission of this form to show that the information was given to DHPD. This may provide some evidence of the family member's succession rights. However, DHPD may later challenge the statements made in this form. Moreover, DHPD may use the information in this form if any later statements are inconsistent with the statements made in this form.

Name(s) of person(s) residing in apartment	Date of commencement of primary residence	Family Relationship* (If any)	over 65/ disabled
<u>Barbra Stone</u>	<u>July 1, 1968</u>	<u>Self</u>	<input checked="" type="checkbox"/>
<u>Harley Davison</u>	<u>February 1, 2016</u>	<u>Nephew/Niece</u>	<input type="checkbox"/>

☐ For additional persons, check box and attach sheet

* If relationship is not listed under (3)(a)(1) but meets the requirements of 3(a)(2), indicate "Other Family Member" or "OFM"

TENANT SWEARS OR AFFIRMS AS FOLLOWS:

1. The person(s) named above have resided with me as a primary resident for the applicable minimum residency period of two years
2. I understand that absences due to the following are not deemed to be an interruption in residency:
 - (1) Active military duty
 - (2) Enrollment as a full-time student
 - (3) Not in the residence as a result of a court order not involving any term or provision of the lease
 - (4) Employment requiring temporary relocation from the housing accommodation
 - (5) Hospitalization
 - (6) Any other reasonable grounds to be determined by DHPD.
3. (a) Family member is defined as the named tenant's::
 - (1) Spouse, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law
 - (2) In addition to "traditional" family members, for the purposes of renewal and protection from eviction, a family member also includes those persons who have resided with the tenant in a familial relationship based upon emotional and financial commitment and interdependence with the tenant.

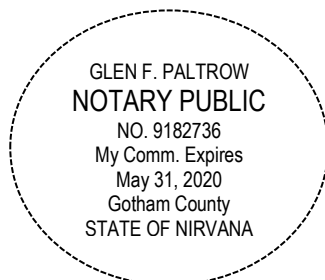
Several factors are considered in determining whether such commitment and interdependence existed between the tenant and family member. No single factor is determinative. The factors are:

- Longevity in the relationship (separate from any required minimum occupancy, and may include periods prior to the occupancy of the apartment)
 - Parties have shared or relied upon each other for payment of rent and household expenses, joint credit cards, joint ownership of personal property
 - They have intermingled their finances (e.g. joint bank accounts or shared budget for purposes of receiving government benefits)
 - Attendance at family functions together or held themselves out as family members to other family members or society in general
 - Formalized legal obligations with each other (e.g. naming each other as executor in a will, power of attorney, or health care proxy)
 - Reliance upon each other for daily family services (e.g. assistance during illness)
 - Any other pattern of behavior, agreement, or other action which evidences the intention of the creating a long-term, emotionally committed relationship.
- (b) A “senior citizen” is defined as a person over the age of 62. A “disabled person” is a person who has an impairment resulting in anatomical, physiological, or psychological conditions which are demonstrable by medically acceptable clinical diagnostic techniques, and which are expected to be permanent and which substantially limit one or more of such person’s life activities. Impairments resulting from substance or behavioral addiction or abuse (such as alcohol, drugs, gambling) do not meet the criteria.

Barbra Stone

Sworn to before me on February 28, 2018

Glen F. Paltrow
Glen F. Paltrow
Notary Public



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EXHIBIT _____

TENDER HOMECARE AGENCY CODE OF ETHICS

THA affiliates shall comport themselves at all times in accordance with the highest standards of professional behavior. Specifically, a THA employee shall:

- I) Arrive on time to each and every contact with a client we serve
- II) Be courteous and understanding of the needs of the persons in their care
- III) Not reveal confidential information gleaned in the course of performing their job duties to any party not authorized to have that information
- IV) Respect client wishes regarding the manner in which homecare is delivered to the maximum extent possible given their needs.

THA affiliates must also avoid impropriety, or even the appearance of impropriety, in all of their dealings with the clients we serve and the public at large. Specifically, a nurse may not ask, suggest, advise, or induce a patient to provide to said nurse anything of value. However, nurses may keep any gifts that are voluntarily given. THA strongly discourages such a practice however, as it tends toward the perception of undue influence on the vulnerable populations THA services.

THA affiliates are expected to promptly report all known or suspected incidents of waste, fraud or abuse promptly. Anonymous reports will be entertained.

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**NEW YORK STATE
HIGH SCHOOL MOCK
TRIAL RELATED
CASES / CASE LAW AND
STATUTES**

PART VI

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CASES

Peckham v. Calogero, 12 NY3d 424[2009]

In reviewing an administrative agency determination, courts must ascertain whether there is a rational basis for the action in question or whether it is arbitrary and capricious (see **Matter of Gilman v. NYS Div. Of Hous. & Community Renewal**, 99 NY2d 144[2002]). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts (see **Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1**, 34 NY2d 222[1974]). If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency (*id.*). Further, courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise (see **Kurcsics v. Merchants Mut. Ins. Co.**, 49 NY2d 451[1980]).

Malvern Volunteer Fire Dept. V. NYS Office of Fire Prevention and Control, 96 AD3d 1062[2012]

In a proceeding in which a petitioner challenges an agency determination that was not made after a quasi-judicial hearing, courts examine whether the action taken by the agency has a rational basis and will overturn that action only where it is taken without sound basis in reason or regard to the facts or where it is arbitrary and capricious.

Alexis v. City of Niagara Falls, 106 AD3d 1501[2013]

An arbitrary and capricious standard or an abuse of discretion standard is, of course, an extremely deferential one. The courts cannot interfere with an administrative agency's exercise of discretion unless there is *no rational basis* for its exercise . . . or the action complained of is arbitrary and capricious, a test which chiefly relates to whether a particular action should have been taken or is justified and whether the administrative action is *without foundation in fact*.

If the court finds that the agency's determination is supported by a rational basis, it must sustain the determination even if the court would have reached a different result than the one reached by the agency (see **Verizon New York Inc. v. NYS Public Service Comm.**, 991 NYS2d 841[2014])

Ward v. City of Long Beach, 20 NY3d 1042[2013]

The City denied an application by a former fire department lieutenant for supplemental disability pension benefits, a determination that was made without a hearing. The court held that in reviewing the City's determination, the issue is whether the action taken had a “rational basis” and was not “arbitrary and capricious” An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable.

IMPORTANT NOTE:

Only the names and the citations of the relevant cases are provided here.

Please go to www.nysba.org/mtcaselaw to **view** and/or **print** the text of each case.

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RELEVANT STATUTES

Nirvana Civil Practice Law and Rules, Article 78

§7803

The only questions that may be raised in a proceeding under this article are:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or
2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or
3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or
4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.

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Gotham City Regulations

28 RC §3-02[p][3]:

(3) Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if the tenant has permanently vacated the apartment, any member of such tenant's family, who has resided with the tenant in the apartment as a primary residence, as determined by § 3-02[n][4] of these rules, for a period of not less than two years immediately prior to the tenant's permanent vacating of the apartment, and the apartment was and continues to be the primary residence of the member of the tenant's family that resided with such tenant, may request to be named as a tenant on the lease. The family member shall be asked to provide evidence of occupancy for the required period of time. The burden of proof is on said family member to show use of the apartment as his or her primary residence during the required period to be eligible to succeed to possession.

28 RC §3-02[n]:

(n) Lease and occupancy agreements. (1) No tenant shall be permitted to occupy an apartment until an executed lease or occupancy agreement has been approved by DHPD. The minimum term of such lease or occupancy agreement shall be one year.

(2) No tenant shall have the right to sublet without prior written approval of DHPD and the housing company (if housing company is not DHPD), which only shall be given in exceptional circumstances, including, but not limited to, military service. No tenant shall have the right to assign his or her lease/occupancy agreement.

(3) No tenant may accept any consideration or thing of value from a guest, invitee or other occupant in exchange for occupancy, whether temporary or permanent, unless such person is listed on the application or recertification of the tenant and the tenant continues to maintain the apartment as his or her primary residence.

(4) It is required that the apartment of the tenant be at initial occupancy and continue to be his or her primary place of residence. The facts and circumstances to be considered in determining whether a tenant occupies a dwelling unit as his or her primary residence include, but are not limited to, whether such tenant

(i) Specifies an address other than such dwelling unit as his or her place of residence or domicile in any tax return, motor vehicle registration, driver's license or other document filed with a public agency,

- (ii) Gives an address other than such dwelling unit as his or her voting address,
 - (iii) Sublets or permits unauthorized persons to occupy the dwelling unit without written notice to DHPD and the housing company (if housing company is not DHPD) or attempts to assign such dwelling unit, or
 - (iv) Spent less than an aggregate of one hundred eighty-three days in the preceding calendar year in the City at such dwelling unit (unless such individual is in active service in the armed forces of the United States or took occupancy at such dwelling unit during the preceding calendar year). No dwelling unit may be considered the primary residence of the tenant unless the tenant provides proof that he or she either filed a Gotham City Resident Income Tax return at the claimed primary residence for the most recent preceding taxable year for which such return should have been filed or that the tenant was not legally obligated to file such tax return pursuant to applicable laws, rules and/or regulations because the tenant's income for such year was below that required for the filing of a return or pursuant to § 893 or 894 of the Internal Revenue Code due to employment by a foreign government or international organization or due to any treaty obligation of the United States which applies to such taxpayer. The tenant whose residency is being questioned will be obligated to provide proof that his or her apartment is his or her primary place of residence, including, but not limited to certified Nirvana State income tax returns, utility bills, and voter registration data.
- (5) The terms and conditions of all licensing agreements and all tenancies, including tenancies of commercial and professional space, shall be subject to DHPD written approval.

NEW YORK STATE HIGH SCHOOL MOCK TRIAL APPENDICES

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POINTS	MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES
<p>1 Ineffective</p>	<ul style="list-style-type: none"> • Not prepared/disorganized/illogical/uninformed • Major points not covered • Difficult to hear/speech is too soft or too fast to be easily understood • Speaks in monotone • Persistently invents (or elicits invented) facts • Denies facts witness should know • Ineffective in communications
<p>2 Fair</p>	<ul style="list-style-type: none"> • Minimal performance and preparation • Performance lacks depth in terms of knowledge of task and materials • Hesitates or stumbles • Sounds flat/memorized rather than natural and spontaneous • Voice not projected • Communication lack clarity and conviction • Occasionally invents facts or denies facts that should be known
<p>3 Good</p>	<ul style="list-style-type: none"> • Good performance but unable to apply facts creatively • Can perform outside the script but with less confidence than when using the script • Doesn't demonstrate a mastery of the case but grasps major aspects of it • Covers essential points/well prepared • Few, if any mistakes • Speaks clearly and at good pace but could be more persuasive • Responsive to questions and/or objections • Acceptable but uninspired performance
<p>4 Very Good</p>	<ul style="list-style-type: none"> • Presentation is fluent, persuasive, clear and understandable • Student is confident • Extremely well prepared—organizes materials and thoughts well and exhibits a mastery of the case and materials • Handles questions and objections well • Extremely responsive to questions and/or objections • Quickly recovers from minor mistakes • Presentation was both believable and skillful
<p>5 Excellent</p>	<ul style="list-style-type: none"> • Able to apply case law and statutes appropriately • Able to apply facts creatively • Able to present analogies that make case easy for judge to understand • Outstandingly well prepared and professional • Supremely self-confident, keeps poise under duress • Thinks well on feet • Presentation was resourceful, original and innovative • Can sort out the essential from non-essential and uses time effectively • Outstandingly responsive to questions and/or objections • Handles questions from judges and attorneys (in the case of a witness) extremely well • Knows how to emphasize vital points of the trial and does so
<p>Professionalism of Team</p> <p>Between 1 to 10 points per team</p>	<ul style="list-style-type: none"> • Team's overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; and strategies intended to waste the opposing team's time for its examinations.

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2019 NEW YORK STATE MOCK TRIAL TOURNAMENT

PERFORMANCE RATING SCORE SHEET

In deciding which team has made the best presentation in the case you are judging, 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 5 AS FOLLOWS (USE WHOLE NUMBERS ONLY). INSERT SCORES IN THE EMPTY BOXES.**

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 1 of 2
T I M E L I M I T S						
OPENING STATEMENTS		DIRECT EXAMINATION		CROSS EXAMINATION		CLOSING ARGUMENTS
5 minutes for each side		10 minutes for each side		10 minutes for each side		10 minutes for each side
				PLAINTIFF / PROSECUTION		DEFENSE
➤ OPENING STATEMENTS (ENTER SCORE) ➔						
PLAINTIFF/PROSECUTION 1st Witness		Direct and Re-Direct Examination by Attorney				
		Cross and Re-Cross Examination by Attorney				
		Witness Preparation and Credibility				
PLAINTIFF/PROSECUTION 2nd Witness		Direct and Re-Direct Examination by Attorney				
		Cross and Re-Cross Examination by Attorney				
		Witness Preparation and Credibility				
PLAINTIFF/PROSECUTION 3rd Witness		Direct and Re-Direct Examination by Attorney				
		Cross and Re-Cross Examination by Attorney				
		Witness Preparation and Credibility				

PLEASE BE SURE TO ALSO COMPLETE THE OTHER SIDE OF THIS FORM (PAGE 2)

SCALE	1=Ineffective	2=Fair	3=Good	4=Very Good	5=Excellent	Page 2 of 2
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TIME LIMITS

OPENING STATEMENTS	DIRECT EXAMINATION	CROSS EXAMINATION	CLOSING ARGUMENTS
5 minutes for each side	10 minutes for each side	10 minutes for each side	10 minutes for each side

		PLAINTIFF / PROSECUTION	DEFENSE
DEFENSE 1st Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
DEFENSE 2nd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
DEFENSE 3rd Witness	Direct and Re-Direct Examination by Attorney		
	Cross and Re-Cross Examination by Attorney		
	Witness Preparation and Credibility		
➤ CLOSING STATEMENTS (ENTER SCORE→)			
(1-10 points PER team) ➤ PROFESSIONALISM (ENTER SCORE→) <ul style="list-style-type: none"> • Team's overall confidence, preparedness and demeanor • Compliance with the rules of civility • Zealous but courteous advocacy • Honest and ethical conduct • Knowledge of the rules of the competition • Absence of unfair tactics, such as repetitive, baseless objections; improper communication and signals; invention of facts; strategies intended to waste the opposing team's time for its examinations. 			
➤ TOTAL SCORE (ENTER SCORE)→			

JUDGE'S NAME (Please print) →

In the event of a tie, please award one point to the team you feel won this round. Mark your choice below.

☐ PLAINTIFF/PROSECUTION

☐ DEFENSE

ORDER OF THE TRIAL

The trial shall proceed in the following manner:

- Opening statement by plaintiff's attorney/prosecuting attorney
- Opening statement by defense attorney
- Direct examination of first plaintiff/prosecution witness
- Cross examination of first plaintiff/prosecution witness
- Re-direct examination of first plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second plaintiff/prosecution witness
- Cross examination of second plaintiff/prosecution witness
- Re-direct examination of second plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third plaintiff/prosecution witness
- Cross examination of third plaintiff/prosecution witness
- Re-direct examination of third plaintiff/prosecution witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Plaintiff/prosecution rests
- Direct examination of first defense witness
- Cross examination of first defense witness
- Re-direct examination of first defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of second defense witness
- Cross examination of second defense witness
- Re-direct examination of second defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Direct examination of third defense witness
- Cross examination of third defense witness
- Re-direct examination of third defense witness, if requested
- Re-cross examination, if requested (but only if re-direct examination occurred)
- Defense rests
- Closing arguments by defense attorney
- Closing arguments by plaintiff's attorney/prosecuting attorney. There can be no deviation from this ordering.

Thank you,

Oliver Young, Chair

NYSBA's Mock Trial Subcommittee

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PREPARING FOR THE MOCK TRIAL TOURNAMENT

Learning the Basics

Teachers and attorneys should instruct students in trial practice skills and courtroom decorum. You may use books, videos and other materials in addition to the tournament materials that have been provided to you to familiarize yourself with trial practice. However, during the competition, you may cite only the materials and cases provided in the Mock Trial Tournament materials contained in this booklet. You may find the following books and materials helpful:

Mauet, Thomas A., Trial Techniques (6th ed.), Aspen Law and Business Murray, Peter, Basic Trial Advocacy, Little, Brown and Company

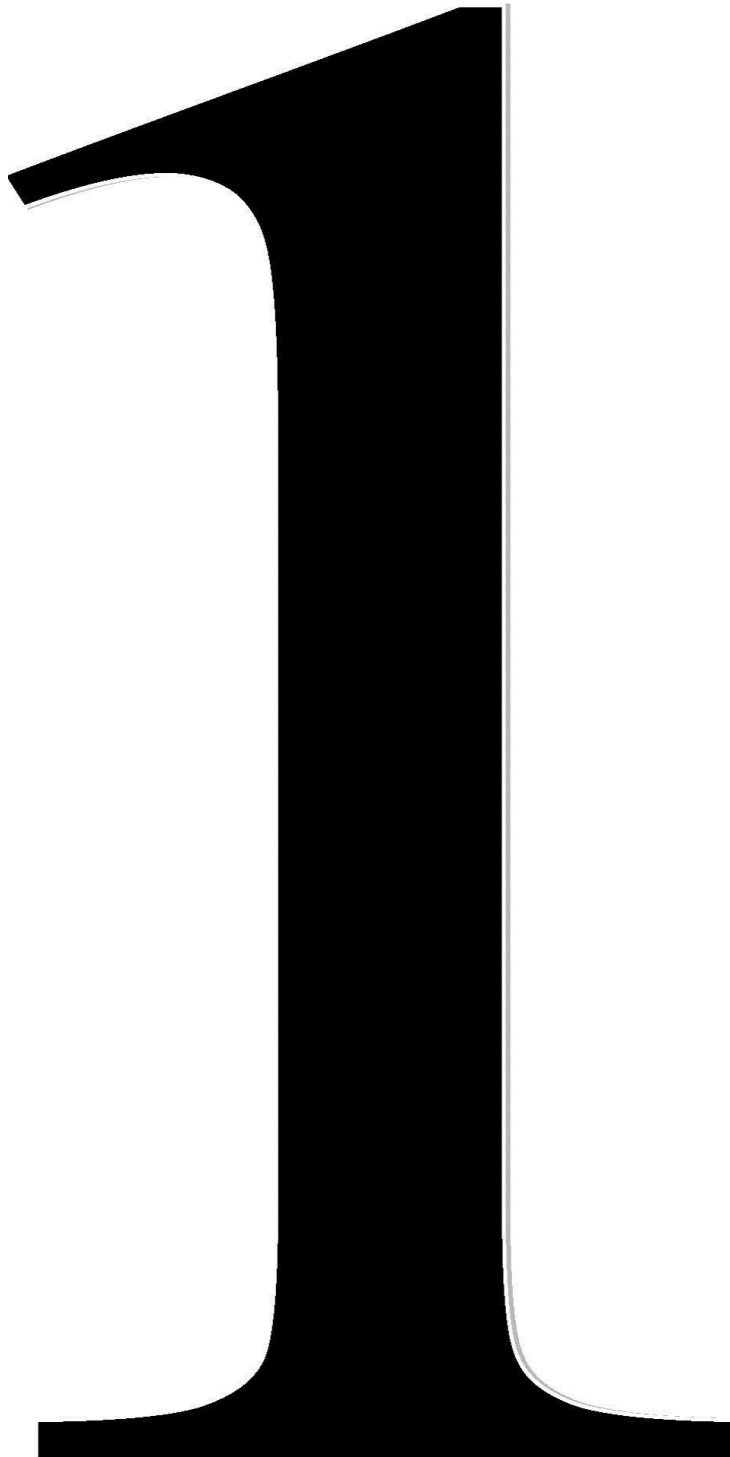
Lubet, Steven, Modern Trial Advocacy, National Institute for Trial Advocacy

Vile, John R., Pleasing the Court: A Mock Trial Handbook (3rd ed.), Houghton Mifflin Company

Preparation

1. Teachers and attorneys should teach the students what a trial is, basic terminology (e.g., plaintiff, prosecutor, defendant), where people sit in the courtroom, the mechanics of a trial (e.g., everyone rises when the judge enters and leaves the courtroom; the student-attorney rises when making objections, etc.), and the importance of ethics and civility in trial practice.
2. Teachers and attorneys should discuss with their students the elements of the charge or cause of action, defenses, and the theme of their case. We encourage you to help the students, but not to do it for them.
3. Teachers should assign students their respective roles (witness or attorney).
4. Teams must prepare both sides of the case.
5. Student-witnesses cannot refer to notes so they should become very familiar with their affidavits and know all the facts of their roles. Witnesses should “get into” their roles. Witnesses should practice their roles, with repeated direct and cross examinations, and anticipate questions that may be asked by the other side. The goal is to be a credible, highly prepared witness who cannot be stumped or shaken.

6. Student-attorneys should be equally familiar with their roles (direct examination, cross examination, opening and closing statements). Student attorneys should practice direct and cross examinations with their witnesses, as well as practice opening and closing arguments. Closings should consist of a flexible outline. This will allow the attorney to adjust the presentation to match the facts and events of the trial itself, which will vary somewhat with each trial. Practices may include a judge who will interrupt the attorneys and witnesses occasionally. During the earlier practices, students may fall “out of role”; however, we suggest that as your practices continue, this be done less and that you critique presentations at the end. Each student should strive for a presentation that is as professional and realistic as possible.
7. Each team should conduct a dress rehearsal before the first round of the competition. We encourage you to invite other teachers, friends and family to your dress rehearsal.



TIME LIMITS

OPENING STATEMENTS

5 minutes for each side

DIRECT EXAMINATION

10 minutes for each side

CROSS EXAMINATION

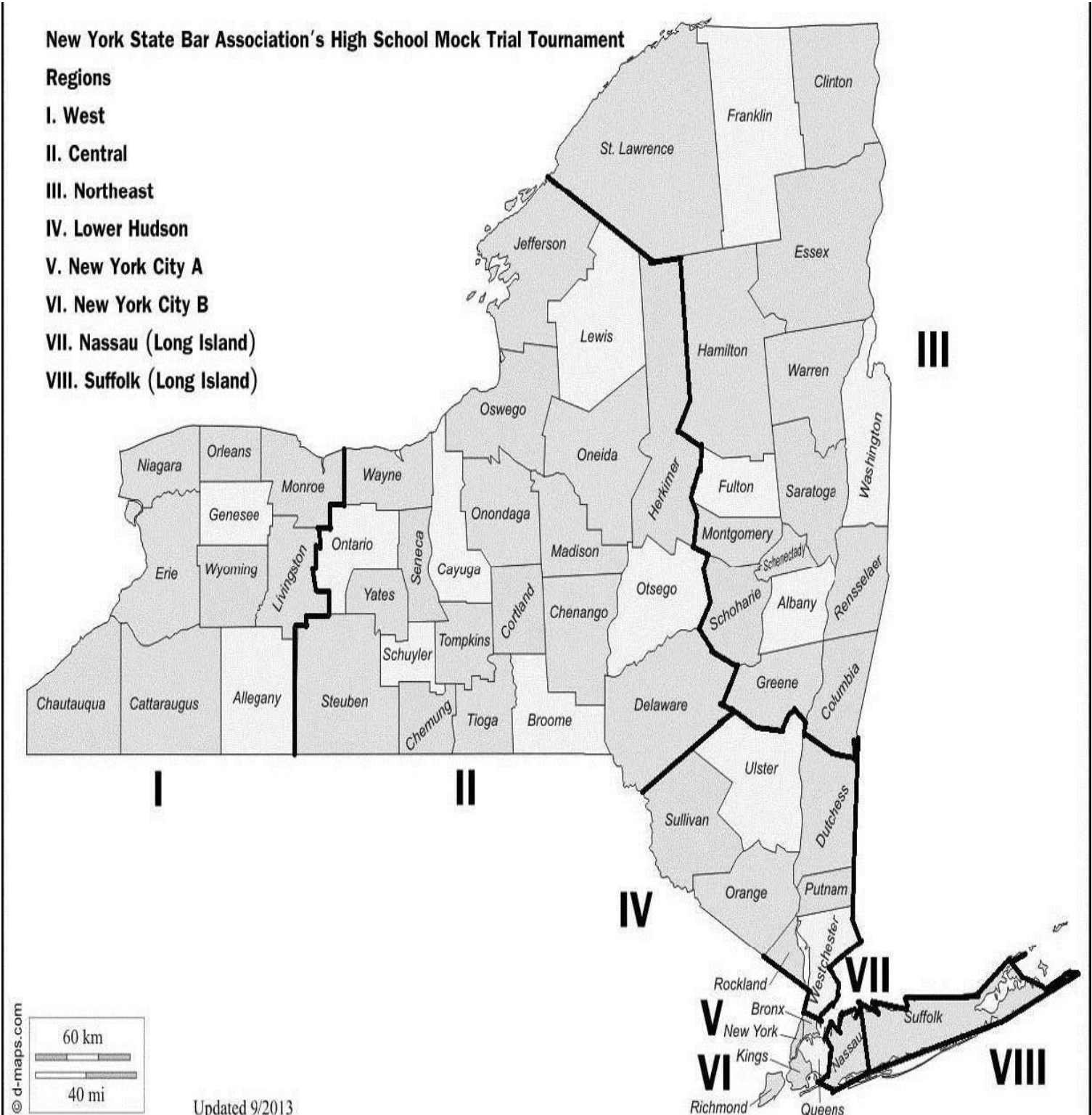
10 minutes for each side

CLOSING ARGUMENTS

10 minutes for each side

Regional Map for New York State Bar Association's High School Mock Trial Tournament

A list of all the Past Regional Champions is available at www.nysba.org/pastchampions



2018 NEW YORK STATE BAR ASSOCIATION HIGH SCHOOL MOCK TRIAL CHAMPIONS



GOSHEN HIGH SCHOOL *Goshen, NY / Orange County*

Faculty Coach
Robert Karchawer

Attorney Coach
Mark Stern

Team Members

Fattum Abbad
Nazya Ahmed
Jessica Bailey
Rachel Blustein
Arrington Brendle
Kareena Chhabra
Zachary Constantine
Giannamarie Diaz
Michael Ehling
Liam Higgins
Sara Higgins
Caitlin Hough
Aleena Jacob

Sydney Jessup
Jay Jung
Olivia Klugman
Ava Kunis
Magdalen Larsen
James Lindeman
Anya Malhotra
Domenico Pasquini
Ashley Rivera
Robbie Siracuse
Robert Winslow
Melanie Vazquez

