NEW YORK STATE BAR ASSOCIATION

2020 NYS HIGH SCHOOL MOCK TRIAL TOURNAMENT

"Macca Elery McLaughlin v. Lee and Robbie McLaughlin"

CORRECTION MEMO #1 – Issued February 1, 2021

PLEASE READ THIS IMPORTANT INFORMATION…

Print this Correction Memo and keep it with your case materials for reference.

- **Please bookmark the following link to access the Mock Trial page:**
  https://nysba.org/nys-mock-trial/.

Print all revisions to the case. We suggest replacing the entire revised section/document rather than just the specific page(s). Remove the current ones, replace with the newly revised ones. Revised pages are identified with Page Number-Revision Number and Date of Revision (for example: page 55 becomes 55-R1 (2/1/21). Revisions on affected pages are indicated by **BOLD AND UNDERLINE.**

DOCUMENT	CORRECTIONS (CORRECTION MEMO #1 – Issued February 1, 2021)	OLD PAGE	NEW PAGE
Table of Contents	Table of Contents has been updated to reflect the changes in pagination.	n/a	i-R1; ii-R1, iii-R1, iv-R1
Case Summary	**Correction on Page 55, Line 1** *Change "**Tr**ashers" to "**Thr**ashers"*	55	55-R1 (2/1/21)
Affidavit of Macca Elery McLaughlin	**Correction on Page 59, Paragraph 1, Line 1:** *Spelling error: Changed **Mac**Laughlin to **Mc**Laughlin* **Correction on Page 60, Paragraph 7, Line 3:** *Spelling error: Changed "M-EEE**E**-M" to "M-EEE-M"* **Correction on Page 61, Paragraph 11:** *Changed name of record company from Strawberry **Hills** to Strawberry **Fields***	59 60 61	59-R1 (2/1/21) 60-R1 (2/1/21) 61-R1 (2/1/21)
Affidavit of Stevie Styx	**Correction on page 63, Paragraph 1, Lines 2, 4, 6** *Change "**Tr**ashers" to "**Thr**ashers"* **Correction on Page 64, Paragraph 6, Line 3** *Change "**Tr**ashers" to "**Thr**ashers"*	63 64	63-R1 (2/1/21) 64-R1 (2/1/21)

DOCUMENT	CORRECTIONS (CORRECTION MEMO #1 – Issued February 1, 2021)	OLD PAGE	NEW PAGE
Affidavit of Tony Triacon	**Correction on Page 75, Paragraph 3:** *Changed "80s" to "90s"* **Correction on Page 77, Paragraph 8, Line 4:** *Spelling corrected from: "…I asked **fpr**…" to "… I asked **for**…"* **Correction on Page 77, Paragraph 8, Line 5:** *Changed $75k to $50k*	75 77	75-R1 (2/1/21) 77-R1 (2/1/21)
Exhibit: **Agreed Financial Statement**	**Correction on Page 89, in Distribution chart, Line 4:** *Change $813,322.00 to $913,322,00* **Correction on Page 89, in Distribution chart, Line 6:** *Change $237, 294.00 to $337,294.00* **Correction on Page 90, Line 3 in breakdown ($75,000 - Dues and expenses, Great Wessex County Club – 2003)** *Changed year 2003 to 2016*	89 90	89-R1 (2/1/21) 90-R1 (2/1/21)
Related Cases/Statutes/Other Materials: **New York Mock Trial Prudent Investor Act**	**<u>New York Mock Trial Prudent Investor Act</u>** **Delete text on Page 95, Paragraph (b)(3)(B), Line 1** *Deleted the text "to the extent to consider"* **Correction on Page 96, Paragraph (b)(4)(B), Line 2:** ***Change "**…and also **and asset5s" to** "…and also **an asset's"***	95 96	95-R1 (2/1/21) 96-R1 (2/1/21)
Related Cases/Statutes/Other Materials: **Related Cases**	**<u>Related Cases</u>** **Correction on Page 101, "In the Matter of Estate of Rodney B. Janes", Line 10:** *Changed "me" to "be"*	101	101-R1 (2/1/21)

Pertinent information regarding the case:

- A plaintiff can seek damages in an amount s/he believes s/he has been harmed. This is a liability only trial. The plaintiff will not need to prove damages at this stage of the matter.
- No complaint will be provided.
- Macca's parents did not completely deplete Macca's account. After doing the math there is roughly $71,000.00 remaining in the account.
- The plaintiff will need to prove the case by a preponderance of the evidence
- The plaintiff's account as under the control of the parents
- The court order needs a separate document attesting to the authenticity of said court order.
- The purpose of the commentary notes is to assist the students in understanding the nature of the fiduciary duty. Said commentaries should not be referenced at the trial.
- "Agreed" means that the figures in the financial statement are not in dispute.
- The letter from Robbie and Lee McLaughlin to Macca is as it appears.

2021 NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT MATERIALS

Macca Elery McLaughlin

v.

Lee and Robbie McLaughlin

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

Supported by The New York Bar Foundation

NYSBA

THE NEW YORK BAR FOUNDATION

LYC
Law, Youth and Citizenship

Greetings Mock Trial Tournament Participants!

Each year, the Mock Trial Subcommittee spends several months creating a new mock trial case for you to work with. The cases typically alternate each year between a civil and criminal case. There are over 400 teams around the state competing in the high school mock trial tournament, so it does take some time for everyone to begin working with the case.

It is possible that once the case has been released and teams begin to work with it, questions may arise, and corrections may be required. Please note the following important information:

- **All questions and comments about the case should be submitted in writing (no phone calls please) and sent the NYS Bar Mock Trial Statewide Coordinator, Kim Francis at kfrancis@nysba.org for review** (copy your County Coordinator on the email).

- The Statewide Coordinator will forward all questions to the Mock Trial Subcommittee for their review, and if necessary, a **correction memo** will be issued, along with any **revised pages** which may need to be inserted into the case booklet. The most current revisions will always be easily identifiable for you.

- All correction memos and revised pages will immediately be provided by email to the county coordinators, who will then notify the team coaches/advisors. **The memos and revised pages will also be accessible online at https://nysba.org/nys-mock-trial/**

- **Once a correction memo has been issued, the current pages in the case booklet should immediately be replaced with the revised pages.** You may also want to include the correction memo in your case booklet for reference purposes.

- Please be aware that more than one correction memo may be issued if the questions or comments received require additional changes to be made to the case after the first correction memo has been issued. We realize that receiving the correction memos can be frustrating once you have begun working with the case, and although the case is proofread before being released, please bear in mind that human error does occur, so your patience and understanding is greatly appreciated.

- The most current updated version of the case will also be available **online at** https://nysba.org/nys-mock-trial/ should you choose to reprint the entire case. It is **not** necessary to reprint the entire case booklet each time a correction memo is issued, but you do have that option.

We hope you enjoy working with this year's case. Have fun, and good luck with your trials!

FYI, the 2021 Mock Trial State Finals will be held in a virtual format in May (dates to be determined).

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New York State Bar Association
NYSBA
One Elk Street, Albany, New York 12207 • 518/463-3200 • http://www.nysba.org

LETTER FROM THE CHAIR

December 2020

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

Thank you for participating in the New York State High School Mock Trial Tournament. This program, now in its 39th year, is sponsored by the New York State Bar Association's Committee on Law, Youth and Citizenship and The New York State Bar Foundation.

As you know, in March 2020, the competition, already underway, had to be cancelled due to the Governor's direction to shut down due to the Coronavirus public health issue. We are still in the midst of the pandemic. However, the decision was made to adapt to our circumstances by following the lead of our court system and to institute a virtual courtroom competition for 2021. It is our hope that we will be able to resume in-person competition in 2022.

Many thanks to the numerous county bar associations across the state that sponsor the mock trial tournaments in their counties and to the county coordinators who spend many hours managing the local tournaments. Thanks also go to all the teacher-coaches and attorney-advisors who dedicate a countless number of hours to students across the state. We appreciate all your input and feedback on implementing a virtual competition this year. We know, regrettably, that many schools are not able to participate this year because of various pandemic-related reasons.

Because we have a reduced number of schools participating and an imbalance among some counties, we must work on the structure of the competition. Once we have the final number of teams participating, we will send that information out to you. It is our intention to keep the policies and procedures from previous years intact as much as possible. We are committed to a fair and equitable competition across the state.

We will keep you apprised of any changes to the structure of the competition that may become necessary. Please be advised that some sections of the *Policies and Procedures Section, Part II* of the case booklet contain the following disclaimer:

> **Note: This Section Is Under Review and Subject To Change!!**

Please carefully review all of the enclosed mock trial tournament information, paying special attention to the rules of the competition, including the new virtual rules, with which you must become familiar, as well as the simplified rules of evidence.

The case this year is *Macca Elery McLaughlin v. Lee and Robbie McLaughlin,* a civil lawsuit brought in New York State Supreme Court under the **New York Mock Trial Prudent Investor Act.** We hope you enjoy developing and enacting the case.

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

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

The tournament is a competition and, as in all other competitive endeavors, good sportsmanship is critical. Respect for volunteers, judges and other teams should always be displayed. This has added importance this year as we all work together to make virtual competition a success.

Best wishes to all of you to meet the challenges of the 2021 competition. Learn and enjoy!

Sincerely,

Gail Ehrlich, Esq., *Mount Vernon*
Chair, Committee on Law, Youth and Citizenship

Mock Trial Subcommittee

Oliver C. Young, Esq., *Buffalo*
Chair, Mock Trial Subcommittee

Mock Trial Subcommittee Members

Craig R. Bucki, Esq., *Buffalo*
Christopher E. Czerwonka, Esq., *New Windsor*
Christine E. Daly, Esq., *Chappaqua*
Gail Ehrlich, Esq., *Mount Vernon*
Seth F. Gilbertson, Esq., *Syracuse*
David P. Johnson, Esq., *Albany*
Hon. Susan Katz Richman, *Hempstead*
Jennifer L. Smith, Esq., *New York City*
Lynn B. Su, Esq., *Old Tappan*
Hon. Jonah Triebwasser *Red Hook*
Glenn P. Warmuth, Esq., *Farmingville*

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

Special Online Trial Rules Have Been Added! See #16 in this Section.

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MOCK TRIAL TOURNAMENT RULES
(Special Online Trial Rules Have Been Added! See #16 in this Section)

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

Note: Paragraph "a." below has been revised for the virtual competition.

a. **Attorneys, if able, may stand when making an objection, if doing so will not take them out of camera range.**

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.

7. SIGNALS AND COMMUNICATION

Note: Please note the revision in bold below for the Virtual Competition.

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, text messaging and **the video conferencing platform chat feature**. A student witness may talk to a student attorney on their team during a recess or during direct examination but may not communicate verbally or non-verbally with a student attorney on their team during the student witness' cross-examination.

8. RECORDING

Note: Please note the revisions for this section (8.) below in bold for the Virtual Competition.

a. During any tournament round, except State semi-finals and State finals, a trial may be **recorded** but only if each of the following conditions is satisfied:

i. The team wishing to **record** the proceedings has received permission from the judge before the beginning of the trial.

ii. 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.

iii. A copy of the **recording** must be furnished to the opposing team (at no cost) within 48 hours after the trial.

iv. The recording may not be shared by either team with any other team in the competition.

b. **Recording** of the State semi-finals and final rounds is **NOT** permitted by either team.

c. Any **recording** of a round made by a team according to the conditions in (a) above, can only be used for educational purposes related to mock trial **and may not be shared on any online platform.**

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. 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.

c. Each of the three attorneys on a team must conduct the direct examination of one witness and the cross examination of another witness.

d. 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

Note: Please note the revisions in paragraph (f) below in bold for the Virtual Competition.

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, the witness **will remain in the video conferencing platform room at all times.** (Note: Since this is an educational exercise, no

participant will actually be excluded from the **video conferencing platform room** during an enactment.)

g. Witnesses shall not sit at the attorneys' table.

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

Please note edit in bold in paragraph (b)

a. The following time limits apply:

- Opening Statement .....5 minutes for each team
- Direct Examination.....10 minutes for each witness
- Cross Examination.....10 minutes for each witness
- Closing Argument .....10 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. The timekeeper shall be a student at 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 **on camera** (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 their 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. SPECIAL ONLINE TRIAL RULES

NEW SECTION!!

a. Applicability of Online Trial Rules: These rules apply to any NYSBA Mock Trial event that is held online. Insofar as there is any contradiction between rules in this Section 16 and rules in other sections of this rulebook, this section 16 controls.

b. Video conference platform Hosting: Mock trial coordinators will determine how rounds will be virtually hosted. They may use Court Monitors to set up virtual rounds, issue invitations to the participants and speculators, and assist with any technological issues

prior to and during rounds.

c. Video conferencing platform Naming: As soon as participants enter the video conferencing platform courtroom, they will change their video conferencing platform names according to the following naming scheme which will allow judges to identify video conferencing platform accounts by their roles:

Examples:
(P for Prosecution, D for Defense, Student's real name, role and witness character name if a witness)

P – John Smith – attorney

P- Jane Jones – Witness – Character name

All other prosecution and defense witnesses and attorneys will do the same.

d. Video and Audio: The following rules govern the use of video and audio by participants in each trial.

i. Pretrial Matters: During introductions, anyone being introduced for the record may have their microphone on. All other participants should have their microphones muted.

ii. Opening and Closing Statements: During opening and closing statements, the only people who will have their microphones on are the presiding judge and the attorney giving the current opening or closing statement. All other participants will have their microphones muted.

iii. Direct and Cross examination - The witness will have their microphones on at all times. The attorneys examining the witness will have their microphones on at all times. The objecting attorneys (i.e., on direct examination the attorney who crosses that witness and on cross examination the attorney who directs that witness) will mute their microphones except during objections. All other participants should have their microphones muted.

e. There will be no video breakout rooms for bench conferences. All bench conferences shall be conducted constructively on the host screen.

f. Documents, Exhibits, and Demonstrative Aids:

i. Access to Documents: All participants should assume that all other student participants and the presiding judge have a copy of the case in front of them and access to all the exhibits and case documents. Students need not show opposing counsel documents prior to the admission of those documents. All students must acknowledge that they have access to these documents.

ii. Timekeeping: Timekeepers may temporarily unmute themselves to inform the judge that one minute is left and that time is finished. Any discrepancy between the timekeepers shall be resolved by the judge.

iii. Technical Issues: Should it become clear that any party is experiencing technical issues (video conferencing platform audio or video are not working, or a student loses their connection) the presiding judge may request that time be stopped until the issues are resolved. Students will notify the presiding judge if they or a performing teammate are experiencing technical issues. Students will do this verbally as soon as the connection is lost, unless another student is conducting opening or closing statements in which case, they will only notify he judge if they cannot hear the opposing opening or closing. Each team may designate one alternate lawyer and one alternate witness to substitute during the round if a student's connection is lost and cannot be resolved in a timely manner. The names of the alternates must be submitted at the beginning of the round.

iv. Use of Electronics: The ban on use of electronics is waived. Students may make use of any electronic device they wish to use. However, this does not permit them to communicate with individuals they would not otherwise be permitted to communicate with. In other words, students may use their electronic devices, but they are still not permitted to communicate with anyone not on their roster (in particular, they may not communicate with their coaches during the trial.)

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT POLICIES AND PROCEDURES PART II

This Section Is Under Review and Subject To Change!!

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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

Note: This Section is Under Review and Subject To Change!!

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

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

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

4. COUNTY TOURNAMENTS

Note: This Section is Under Review and Subject To Change!!

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

Note: This Section is Under Review and Subject To Change!!

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.

d. The winning team from each region will be determined by an enactment between the two teams with the best records (the greatest 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

Note: This Section is Under Review and Subject To Change!!

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 period[1]. **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 Form[2] 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 NYSBA member ID #?** _____
(if you do not know your NYSBA member ID #, leave blank)

PLEASE PRINT NEATLY

- Your Name: _____
- Home Address: _____
  Street *City* *State* *Zip Code*

- Name of Firm/Court : _____
- Work Address: _____
  Street *City* *State* *Zip Code*
- Primary Email Address **(required):** _____

Your CLE Certificate will be sent to you by email, so please be sure to include your email address!

PLEASE NOTE: New York State MCLE Rules pertaining to CLE credit for mock trial participation only allows 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. You may review the Rules online at www.nysba.org/mtclerules.

- County of Service where you Coached or Judged: _____
- 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!

Revised Nov. 2019 **NYSBA Staff use only: Date processed:** _____ **CE21:** ☐ **Download** ☐ **Email** **Initials:** _____

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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 matter 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. WITNESS EXAMINATION

a. Direct Examination (attorneys call and question witnesses)

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

Example of a Direct Question: "*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.

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 CIRCUMSTANIAL 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 factfinder (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 factfinder (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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MACCA ELERY MCLAUGHLIN V. LEE AND ROBBIE MCLAUGHLIN
CASE SUMMARY

1. "North American Shining Stars!" (NASS!) was a television program produced by Goldstar Productions, and presented weekly on WOLF-TV, a national television network. It ran in prime time from 2013 until 2018. The program's format was that of an amateur contest, in which non-professionals from all three major North American nations competed for the title "Year's Best New Pop Artist." The top three winners of the competition were guaranteed a recording contract with Wooly Mammoth Records, as well as a first-place prize of $1,500,000, a second-place prize of $750,000, and a third-place prize of $500,000.

2. Regional competitions were held before judges in several cities, including Toronto, New York, Baltimore, San Francisco, Vancouver, Chicago, and Mexico City. Those who won the regional competitions advanced to the finals, which were held in Hollywood, California where NASS! was filmed before a live audience.

3. Macca Elery McLaughlin, an aspiring singer, was fourteen at the time of the Spring 2016 competition. Macca competed in and won the regional competition held in New York City that year and then traveled to California to compete in the finals, finishing in third place on May 15, 2016. As a result, Macca won $500,000, a recording contract and the opportunity to participate with the other NASS! winners on the PEPTARTS NASS! WINNERS tour that summer. For performing on that tour, Macca, who had by then adopted the stage name M-EEE-M, was paid an additional $500,000 by the Peptarts Company.

4. In June 2016, Lee and Robbie McLaughlin, Macca's parents, in their capacity as Macca's legal guardians, signed Macca to a three-year recording contract with Wooly Mammoth Records. Cameron Cruelle, President of Wooly Mammoth Records, signed on behalf of Wooly Mammoth. The contract called for M-EEE-M to deliver three "albums" (an album being enough songs to complete a full-length compact disc), one each year for the life of the contract. Wooly Mammoth gained all rights to the artistic creations of M-EEE-M during the contract period. The contract obliged Wooly Mammoth to pay royalties to M-EEE-M in set percentages, depending on the market in which the CDs and other products were sold, or profits were generated.

5. Because Macca was a minor, Cameron Cruelle insisted that the contract be court-approved so that Macca could not later seek to declare the contract void, as is the general right of a minor. Lee and

Robbie McLaughlin petitioned a New York court on June 15, 2016 to approve the contract pursuant to New York Cultural Affairs Law §35.03. Although Lee and Robbie's petition requested that ten percent (10%) of any money earned by Macca, under the contract, be set aside on Macca's behalf, the New York court ordered that one-half of the money earned by Macca under the contract be set aside and turned over to Macca upon Macca's reaching the age of 18. Robbie McLaughlin was made the guardian of the court-ordered account.

6. Robbie and Lee, who had two children, in addition to Macca, put into their own bank accounts, the $500,000 NASS! third-place prize money, the $500,000 PEPTARTS NASS! TOUR payment, and one-half of all the money paid under the Wooly Mammoth contract for Macca's first, enormously successful CD. Robbie set up an account on Macca's behalf for the other one-half of Macca's earnings. Using the money they put in their own account, Lee and Robbie paid $1,000,000 down on two-million-dollar home, joined a prestigious country club, hired a manager, Tony Triacon, and a public relations agent, Sammy Wright, for Macca, and hired expensive trainers and teachers to develop the talent of their other two children.

7. In Spring 2018, friends they met at the club mentioned to Robbie and Lee that they were investing in an Initial Public Offering (IPO) of stock in a technology company called Odyssey Omni. Robbie, who did some studying of the company, thought the stock looked like a fantastic investment and desperately wanted to participate in the IPO. Because the McLaughlins had significantly lowered the balances in their accounts in acquiring the assets and services described above, Robbie took over $1,500,000 in the account established for Macca, nearly all that was in that account, and invested it in Odyssey Omni. Unfortunately, within a year the stock had plummeted, Odyssey Omni had dissolved, its Chief Executive Officer and Chief Financial Officer had been indicted, and Lee and Robbie lost the total investment.

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

9. Upon turning 18 in June 2019, Macca immediately fired Tony and Sammy, and then hired his/her friend and former voice and guitar teacher, Stevie Styx, a former member of the band, the "Mash

Thrashers." Stevie, still known by the stage name "Tiny Mash," found Macca a new recording company, Strawberry Fields, but that company required an initial investment by the artist of $500,000. Only when Macca sought control of the guardianship account to engage the new recording company did the fact that there was virtually no money in the account come to light. As a result, Macca was not able to engage Strawberry Fields to produce his/her CD.

10. Macca has brought a claim against Robbie and Lee. Macca alleges that both parents have grossly mismanaged Macca's funds and failed in their fiduciary roles, not only in squandering the money, but also, in hiring a manager and public relations agent who were disastrous to Macca's career, causing gross economic hardship to Macca. Macca seeks damages in the amount of $3,655,322. The amount of the guardianship is $1,655,322, created by the earlier court order. Macca asserts that the other two-million dollars demanded is a low valuation of the cost of the career-ending demands of Tony Triacon and Sammy Wright. Robbie and Lee defend on the grounds that they always acted in the best interest of their children and did not violate any fiduciary duty imposed on them by law.

WITNESSES

Plaintiff Witnesses	**Defense Witnesses**
Macca McLaughlin, *Plaintiff*	Robbie McLaughlin, *Parent of Plaintiff*
Stevie Styx, *Macca's Former Manager*	Tony Triacon, *Macca's Former Manager*
Robin Rabin, *Financial Witness*	Andy Anderson, *Financial Witness*

This case is hypothetical. Any resemblance between the persons, facts and circumstances described in this mock trial, and real persons, facts, and circumstances, are coincidental. All witnesses may be portrayed be either sex. All names are meant to be gender nonspecific.

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LIST OF STIPULATIONS

1. All witness statements are deemed to have been 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. 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 MACCA ELERY MCLAUGHLIN

(Witness for the Plaintiff)

1. My name is Macca Elery **McLaughlin**, but everyone knows me as M-EEE-M. I was born and raised in New York. Ever since I can remember, I have loved to perform. If I remember right, I competed in my first singing competition when I was five or six. When I was seven, my folks got me a really great singing coach, Stevie Styx – well, everybody knows Stevie by the stage name "Tiny Mash." Tiny Mash was the lead guitarist with the "Mash Thrashers." They were a 1980's band. I don't know how I would have gotten through everything that has happened to me, good and bad, without Tiny Mash.

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

3. I won my first big competition when I was 11. It was the State Fair Young Talent Search. After that, I began to win a lot. I won a performing contest sponsored by a local car company when I was 12. The prize was your choice of $10,000 or a new car. Since I didn't drive, I really wanted the $10,000. I was planning to save some of it, get Tiny Mash a new guitar with some, and maybe treat the family to Disney World. My parents made me pick the car.

4. My really big break came in May 2016. I was 14 and entered the NASS! Competition. I won the regional competition and then went off to Los Angeles. My parents and Tiny Mash came with me, and the whole thing was incredibly cool. I didn't win, but I came really close; I won a prize of $500,000, and I got a recording contract.

5. I met with Ms. Cruelle of Wooly Mammoth Records, with my parents, right after the competition. Wooly Mammoth gave me a contract to sign. Mostly, the adults in the room talked about the requirement that I produce one CD a year and do music videos. I don't remember a lot of details of that meeting, but I do remember my parents asking how much money I would earn. The night that I signed the contract, I found out that my parents had fired Tiny Mash, even though I had promised that Tiny Mash would be my manager. They knew I was upset, so they wrote me a letter to try to calm me down, saying that they would always look out for my interests. I still have that letter, although

it is a laugh now. About a month later, we went to court – my folks, the recording people and me. It was a proceeding of some kind to have the court approve the contract. The judge asked me if I understood the contract, and I said that I did.

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

7. Recording my first CD was no problem because Tiny Mash and I had done all the artistic work on that CD before I even competed in NASS! Everyone knows my first big hit, "CyberGirl." They still play it on the radio sometimes. My first CD, "M-**EEE**-M Mixed" was in the top ten on the charts for about a month. That year, after the CD was released, I toured for four months straight. I had toured right after the NASS! Competition with the other winners. I loved doing the group numbers, and we had a pretty wild time when we weren't on stage. I think I was paid about $500,000 for that show, but I never saw any of it. My parents took it and bought a new house. I was mad that they just treated the money as their own, but I was happy for them and for my little brother, Sasha, and my sister, Jenna, because they got their own rooms.

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

9. Even before the tour was over, the Wooly Mammoth folks, Tony, Sammy, and my parents were all over me, reminding me that I had to create a new CD within the year. Tony, who was supposed to be helping me, just kept pressuring me. Tony was way into grunge music, and he/she decided to change my whole image into a "grunger." I told him that grunge was way over, but he/she didn't care. My second CD, which Tony decided to call *The Lord of the Grunge*, was rejected by Wooly Mammoth. Ms. Cruelle told Tony that they were committed to promoting the other NASS! Winners who were singing pop music. She never liked grunge. Right after that conversation, Tony told me "I really put her in her place. What does she know about music?" A few weeks later Ms. Cruelle told Tony that Wooly Mammoth didn't want any more CDs from me and that they weren't going to

sponsor any tours or gigs. A week after that, we received a letter from Wooly Mammoth's lawyer reminding us that, under the contract, I couldn't sign with any other label, and I couldn't perform for money unless Wooly Mammoth endorsed the performance. There was only a year left on the contract at that time.

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

11. I turned 18 on June 15th, 2019. My first act on my birthday was to fire Tony and Sammy. Man, did that feel good. Then I got ahold of Tiny Mash and hired him/her as my manager again. He/she had a job with a recording studio, but I would give him/her 15% of any money I made, and he/she decided to come with me again. We started working on a new sound, borrowing from some afro-pop and some South American sounds. I did some local gigs around New York and really got good reviews. Tiny Mash told me about this phenomenal new recording company that had all the right attitudes about music and musicians. The only downside, according to Tiny Mash, was that this company, Strawberry **Fields**, didn't have a lot of cash. The only way they would sign me is if I paid $500,000 up front. I told Tiny Mash, "no problem." I knew that I'd made at least ten times that much and that the court had ordered my folks to set aside half of anything I made for me.

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

13. My lawyers are seeking damages in the amount of $3,655,322. The amount of my guardianship, created by the court order, was $1,655,322. I figure the other two million dollars I'm seeking is a pretty good estimation of the cost of the career-ending travesty caused by hiring of Tony Triacon and Sammy Wright.

Macca Elery McLaughlin

Macca Elery McLaughlin 7/3/2020

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AFFIDAVIT OF STEVIE STYX

(Witness for the Plaintiff)

1. I am Stevie Styx. Macca calls me "Tiny Mash." That was my stage name when I played lead guitar and sang as a member of the "Mash **Thrashers**." We had what looked like a really great run going until East Coast Enterprises, our recording company, just plain screwed us over. Everybody on the East Coast in the 80's knew the Mash **Thrashers**. We played clubs from here to Boston to Fort Lauderdale. Man, we were hot. We couldn't lose – until we signed a recording contract. I had two chances in my life to really make it big in the music business. One was with the Mash **Thrashers**, and the other was with Macca. East Coast Enterprises killed my first chance, and Robbie and Lee McLaughlin killed the other. Despite my best efforts, Macca got plowed over, too. There's just nothing like greed to take all the beauty out of music. Now, I'm just a "mixer" at a recording studio. I can't even afford a nice house. But the McLaughlins sure got themselves some nice digs.

2. I met Macca eleven years ago. Seems impossible that Macca was only 8. A lot of water under our bridges since then. Macca's parents hired me to teach Macca to sing. Man, they were crazy to make that kid successful. That's all they talked about, Macca making it big. Lee would constantly show me articles about superstar kids and the lavish lifestyles that they lived. But, in a way, I could understand their excitement, at least as first. Macca was one of the most naturally talented kids I ever met. The kid could sing like a dream and wasn't bad as a dancer.

3. I felt sorry for the kid though. Even at 8, Macca didn't have much of a child's life. Dance class at age 3. Piano at age 4. Practice, practice, practice. Macca said it was okay at first but got really old. Macca told me that Robbie and Lee endlessly pushed, saying that Macca wasn't good enough. Not good enough? Anyway, Macca sang in the church choir and in school and kept taking all these lessons that Lee and Robbie demanded. It didn't leave a lot of time for much else. The kid had some great friends at one time, but they were all gone by the time the kid was 10 and didn't have time to do all the things they were doing because of lessons six days a week. Macca wanted to play soccer, but the parents said it would interfere with practice. That happens to a lot of kids whose parents push them too hard. They lose their childhood. Hey, childhood is for having fun, not for preparing to be your parents' meal ticket. I've been in the entertainment business enough to see it all the time.

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

5. Macca and my best moment came when Macca competed in NASS! in 2016. By then, we had come up with the stage name "M-EEE-M." I came up with it and Macca really liked it. Macca was just unbelievable, both in the regionals – we won that – and the internationals – we came in third.

6. Boy, Macca had no sooner won when the recording company and his/her parents came swooping down. I told Lee and Robbie that they should go slow – they weren't obliged to sign with Wooly Mammoth. I told them that that was a big mistake that the Mash **Thrashers** made, signing with the first company that offered them a contract. The recording company didn't let us record the music we wanted to, and we lost total artistic control. Then the company refused to book any gigs for us. So, the Mash Thrashers didn't make it really big. Even one of the judges of the NASS! Competition, who was an entertainer, said "be careful of the Wooly Mammoth contract - it stinks." I told Robbie and Lee that these companies will just eat you up and spit you out and that you had to negotiate with them and play them off against one another. You have to be in the driver's seat. That's the only way to get a good contract. That's the only way to protect yourself. But Macca's parents were as excited as I've ever seen them. When I warned them about problems with the contract, they told me to stay out of it because it was none of my business. They were in charge of Macca.

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

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

9. And the worst of it is – Macca had a second chance. A whole new style that was so sweet. Strawberry Fields is a great label, and Macca was flat out lucky that they were so wired on signing the kid. But Strawberry Fields doesn't produce records unless the artist can front a half-mil. That should have been a breeze for Macca. But thanks to Robbie and Lee squandering Macca's money, Macca has nothing, and I have nothing. Sure, Macca can still play in the clubs, like the Mash Thrashers did – and that's not bad. But man, what could have been?!

Stevie Styx

Stevie Styx 7/6/2020

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AFFIDAVIT OF ROBIN RABIN

(Witness for the Plaintiff)

1. My name is Robin Rabin. I am a proud 1978 graduate of Indiana University, where I obtained my Bachelor of Arts in Accounting. I'm a big Indiana fan. In fact, I have gone to a home game every year since I graduated. It is a sign of my loyalty that I have supported the team through the bad times as well as the good. Fidelity, loyalty, and steadfastness – they count for a lot. For over forty years, I worked for Barney Smith Brothers, the accounting firm. I was what Barney Smith calls a Junior Financial Analyst. I quit Barney Smith a year ago because they kept promoting people with less seniority than me to Senior Financial Analyst, even though I had far more experience and financial sense. At some point, you just have to take a stand when people are not acknowledging your worth.

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

3. The McLaughlins seems to have had neither sound financial management skills nor good sense. The way they spent Macca's money is a darn shame. Let's start with the business about the IPO. I remember Professor Malone, the Chair of the Accounting Department at Indiana, saying "If a thing seems too good to be true, it probably is." Boy, isn't that the truth?! It is funny how you hear about all the success stories in the stock market, but you sure don't hear about the failures – although there have been a lot more failed investments than successful ones, especially where IPOs – that's Initial Public Offerings – are concerned. But that's not the reality. I remember reading in a magazine awhile back – I don't remember which magazine – that for every winner in an IPO there are ten losers. It is usually the big investors who win and the little investors who lose. That's why I've never recommended playing in the stock market. It is too risky. And that is the place where the McLaughlins put Macca's money. It's a shame, a darn shame.

4. They should have taken all of Macca's money and put it in a nice tight savings account. The partners at Barney Smith were always upbraiding me for encouraging people to put money into savings. They always said that savings accounts, with their 0.5-0.95% interest rates, were the last place you should put your money. But this is the way I see it. A bird in hand is definitely worth more than two in the bush, and I'll just bet Macca would rather have his/her money plus 0.5% than to have nothing. It's a darn shame. I never invest money in anything except myself and my family. It's just too darn risky. You know, long term Certificates of Deposit wouldn't have been a bad bet either. Sure, you don't have access to your money for a while, but Macca didn't need access for a while. What Macca needed was for the money to be there. A CD would have earned about 1.25% for a three-year term. Now that's a darn good rate of return. It's not the 20% you might have gotten in the stock market, but it's enough. Like I say, I never invest my money in the stock market, but you know, there are a lot of mutual funds that did well during the last five years. Why not invest in one of them?

5. I guess the McLaughlins just couldn't resist the chance to hit it big. But, my God, they have some responsibility to their child. They are what we call fiduciaries, which means they have to recognize what is good for Macca, not what is good for them. Hadn't the McLaughlins ever heard of Enron, Tyco, Imclone, Global Crossing – these were all companies that were at the top but fell from grace and lost all their investors' money. It always reminds me of Frank Sinatra singing *That's Life*: "You're riding high in April, shot down in May." I tell you I don't want to ride high or get shot down. The middle course is best. But, you know, as dangerous as the stock market is, IPOs are even more risky. Throughout the last decade, there have been some disastrous IPOs. The way it works is this: A private company has a good product or sometimes just a good idea. Sometimes that company needs capital to develop its product; sometimes the private owners just want to generate some cash – lots of it – for themselves. So, they take the company public by selling shares in the company to the public. Because investors saw a few people make a fortune when buying IPOs in the late '90s, some people think that this is the way to get rich quick. But for a lot of investors, it has been just the opposite. They buy 100,000 shares of an IPO at $7 a share, the share price climbs to $9, but the investor just can't resist going for more. Then the markets realize that the idea or the product isn't as good as was touted, and the stock price bottoms. It was not unusual to see such shares drop to pennies in value. It is just plain too risky.

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

7. Now, finally, I want to talk about some of the other expenses on the financial statement. While I was at Barney Smith, I worked on some financial advising teams for some pretty big-name entertainers. When you work with the financial statements of those people, you get a real look at how money is spent by entertainers. That's one of the reasons that Macca asked me to take a close look at what happened to the money. Well, aside from the shame about the IPO, the way the McLaughlins spent Macca's money on a manager and public relations person is just criminal. I mean, 10% for a manager with little or no experience, that is ridiculous. And Triacon got a flat fee as well. Yes, I saw some accounts where that kind of money was spent, but that was for big-name promoters like, what's his name, Poof Diddy. I think the best way to go is to give a manager a flat salary, not a percentage. To me, that makes more sense, because then your expenses are fixed. And to pay Ms. Wright $150,000 a year. Preposterous!

8. Finally, a word about those cars. I've worked for over forty years, and I never aspired to a Mercedes or a BMW. An American-made sedan will get you around as well as any German car and cost a whole lot less. Macca's folks used Macca's money to try to keep up with the Jones's at the Club, that's all it was. They thought there would be an endless supply of money, but there never is. That's why you have to live within your means. No one in my family ever needed or wanted a fancy car or a two-million-dollar home. Macca didn't want those things either. All Macca wanted was to make music – now that is not even possible. It's a darn shame.

Robin Rabin

Robin Rabin 7/9/2020

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AFFIDAVIT OF ROBBIE MCLAUGHLIN

(Witness for the Defense)

1. My name is Robbie McLaughlin. I've been married for 24 years to Lee, the best spouse anyone could have. We have three beautiful children, Macca, Alexander, who we call Sasha, and Jenna. They are just great kids, all incredibly talented. Lee and I always laugh that we don't know where the talent came from because neither Lee nor I have an ounce of musical talent. We live at 16 Meadow Hill Road in Great Wessex, New York. When Lee and I got married, we had nothing. We really had to struggle. It seemed like all we did was work. It was worth it to both of us, because we knew we wanted a family, and we wanted to be able to provide a nice life for them. When Sasha, our second child, was born, Lee quit work outside the home and stayed with the kids. It was tough to go without Lee's income, but we thought Lee would be able to work at home and take care of the kids as well. Unfortunately, Lee never could make much money at home, so things were really tight.

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

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

4. Anyway, Macca just rose like a shooting star. When our child came in third in the 2016 NASS! Competition, it was just incredible. All that sacrifice for ten years, not just by Macca, but by all of us, had paid off. Lots of times during that ten years, Lee and I wondered whether we were being fair to Sasha and Jenna by putting so much time and money into Macca's talents. You see, Sasha and Jenna are really talented, too. We thought that, at last, we'd be able to make it up to them, too.

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

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

7. We called Tony Triacon to get a recommendation of somebody to manage Macca's career. Tony volunteered. Well, not volunteered exactly – Tony wanted to be hired as Macca's manager. We owed Tony some money from when Lee and Tony had been in business, so it seemed like we owed it to Tony to give it a try. Tony told us to sign the Wooly Mammoth contract. Tony also said we needed to get court approval so the contract would be binding. So, we signed the contract and went to court. The court directed us to set aside half of Macca's earnings for Macca's use as an adult. Tony hadn't told us about that possibility. Our attorney told us that we could use the money for Macca's and the family[5]s needs. I wanted to just put the money in a savings account, but our friends said that the law requires us to invest it wisely so that Macca would have as much as possible as an adult.

8. I should say that one of the things we were so anxious to do was to make everything up to Sasha and Jenna. The first thing we did when Macca got some money from the NASS! and the Peptarts tour was to buy a new house so that each of the kids could have their own room. We put $1,000,000 down – that was the competition prize and tour money – and we borrowed $1,000,000. Can you imagine we live in a two-million-dollar house?! We joined a golf and tennis club so that all the kids could enjoy it. Later, we got two great cars, a Mercedes Benz and a BMW. We also made it up to Sasha and Jenna by buying them lessons to support their talents. They really wanted to follow in Macca's footsteps. We got them the best lessons we could buy. This time we could afford real professionals to help the kids.

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

10. A couple of years ago, we made what turned out to be a big mistake, but we had no way of knowing that at the time. There just wasn't a good place to put the money Macca had earned, and we knew we had a responsibility to make that money grow. About that time, some friends we met at the club were talking about an IPO that they were all determined to be a part of. It was for a company named Odyssey Omni. The company had developed a new search engine for the Web that was supposed to be better than Google and Bing. Everything that they told us made us think that this stock was a sure bet. I've studied the stock market a lot and know the risk, but I did my homework on this company and it seemed solid. We also knew that one of the people at the club was an expert on technology companies. And all those folks at the Club were backing up their optimism with their money. We asked Sammy to ask her stockbroker, and she said the broker told her it was a golden opportunity. Sammy told us, "Go for it – Macca will thank you for it later." So, we took Macca's account and participated in the IPO. At first it seemed like it was going to be a winner. We didn't tell Macca about our good fortune, because we were having trouble with Macca's attitude.

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

Robbie McLaughlin

Robbie McLaughlin 7/13/2020

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AFFIDAVIT OF TONY TRIACON

Witness for the Defense

1. My name is Tony Triacon. I am 52 years old, and I've been an entrepreneur all my life. In high school, not only was I the President of the Future Business Persons of America, but I was also voted "Most likely to be a Millionaire" by my class in our senior year. I've just always had a knack for business. Of course, not every venture a businessperson enters into is a winner, but I've had my share. I graduated from high school in 1985. I got my B.A. in Business in 1990. It took five years of college, because I took one year off to run a coffee business on my college campus between my sophomore and junior years. I called the business "The Bean Scene", and I served specialty coffees. I really think I could have made a go of it if I'd just had a little more capital to develop the business. But nobody knew my talent then, and I had to fold the company after nine months. Every time I drive by a Starbucks, it sort of makes me sick because I was onto the coffee business before anyone else. Howard Schultz had backers, that's why he became a billionaire with Starbucks. That's all I lacked – some backers.

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

3. Anyway, the '**90s** were big for me. I started my own business, this time with some backers. I leased entertainment equipment for home use. That's when I was first in the entertainment business. I made over a million dollars a year with that business in the first five years. I guess my classmates in high school had me pegged. The next five years weren't so great. The sales prices on a lot of the kinds of equipment I leased came down so far that people could afford to buy instead of lease. So, I had to lower my leasing prices, and that really cut into the profits. I knew a bit about accounting, so I was able to structure the financials so that they reflected what I knew to be the true value of the company. I sold the company in 2004 to a national outfit.

4. Then I hit a few of those bumps that every successful businessperson hits. First, a couple years after I sold the business, the company that bought it sued me, saying that I had "doctored" the

financial books. I didn't do anything that most other entrepreneurs don't do – it's just the way business is done. But I didn't want my reputation to be ruined, so I settled out of court for a couple of hundred thousand. Then, the feds came after me, claiming that I didn't pay all the taxes due on the business. Give me a break – no business owner can survive if they pay all the taxes the government would demand. I didn't do anything wrong, but the court found me guilty of tax evasion in 2007. Having a felony on my record still frosts me. I didn't serve time, but I did have to pay a fine of something like half a mil.

5. When you know business like I do, you know that when you feel like you just can't win is about the time that you do. That was true of 2007. I decided to open a "grunge" club. Grunge had been around for a while, and I just knew it could still be a "go." I was a little short of funds by then because of the settlement and fine. I got some financing from friends and took on a couple of business partners, Lee McLaughlin and Shorty Simons. Shorty threw in $50K to the project and knew the entertainment business even better than I did, and Lee and Robbie had been my neighbor years before. Lee didn't have any money to contribute but had a lot of time since deciding to stay home with the kids. Lee promised to kick in $50K when their money wasn't so tight. Till then, Lee was going to do the promoting of the club with the media. Promotion is everything in the entertainment business. The first months we were open were fantastic. Courtney Love, the wife of grunge legend Kurt Cobain, even dropped in one night. Once that word got around, every grunger in the area just hung out at the club.

6. A lot of the grunge groups that appeared at our club had managers and promoters who were useless. They had no vision for how to promote their groups. I mean, you don't have to be in the music business as long as I have to know that musicians aren't businesswise. Heck, you think the Beatles would have made it without George Martin? No matter how good a group is, they need a promoter with vision. They need someone who can push. And if there are two things I have, and there are – it's vision and push. So, I formed my own managing company. I signed four of the best grunge groups I heard at the club. I think everything would have really taken off if Kurt and Layne Staley had not died. All the kids I represented just didn't have the vision and gave it up after Kurt and Layne were no longer around to lead the way. What losers. If you want something to keep going, you've got to keep it going. I thought about changing the grunge club to something else, but grunge has a life to it. I know it does. Anyway, if my backers had just stayed with me, I'd have made the club go, but they didn't. I ended up losing a lot of money. Lee felt bad about not being

able to kick in the $50 thousand, but it wouldn't have helped that much anyway.

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

8. My opportunity came when Lee McLaughlin called out of the blue looking for a manager/promoter for their Macca. They knew I had a lot of contacts in the entertainment industry. Why, I thought, should I recommend one of the losers I'd seen along the way, when I knew I was the best person for the job. I asked **for** 10% of Macca's earnings and a guaranteed minimum of $185,000 a year because I'm worth it. Besides, Lee still owed me the **$50K**, but I didn't bring that up.

9. Well, Macca was just impossible to work with. You'd think there was no other kind of music than pop music. I told Macca, over and over again, that musicians have to grow, and that each CD must be different, or you lose your fan base. I really believe it is time for a comeback of grunge, and I think Macca could have led the way. But Macca just wouldn't put his/her heart into it. If Macca had put heart into *Lord of the Grunge,* it would have taken off, and Macca would have led the rebirth of the grunge culture. Professionals can hear when there is no heart in music, so I'm not surprised that Wooly Mammoth rejected the CD. That didn't have to be the end of it, though. If Macca had just worked with me, we could have been ready to go as soon as the Wooly Mammoth contract expired. I had all kinds of plans. Instead, Macca fired me. Kids these days don't know the meaning of gratitude.

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

Tony Triacon
Tony Triacon July 16, 2020

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AFFIDAVIT OF ANDY ANDERSON

Witness for the Defense

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

2. I have advised clients for two decades about the risks and rewards of investing in the stock market. Before I ever talked about the rewards, I talked about the risks. People have to know that there are ups and downs and that the best you can do is educate yourself before you invest, and only invest an amount that you are comfortable with. One of my pet peeves with those who criticize market players is that they comment from perfect 20/20 hindsight. It is easy to criticize a stock choice that has turned out to be a bad one, just as it is easy to praise a stock choice once it has turned out to be a winner. But no one can know which a stock will be – winner or loser – before they invest. There is really not that much difference between those who earn money on stocks and those who lose, at least among those wise people who seek stock advice. It is always funny to me to hear people criticize stocks as an investment now. You certainly didn't hear that in the '90s and the early 2000s when people were routinely increasing their portfolios by 20% a year without investing an additional dime. Even in this decade, when the stock market ride can be a little rough at times, there is still very, very good value in the stock market. And, despite some real loser IPOs, there have been some great opportunities there as well. In fact, without our investment in IPOs, my family would not have the considerable wealth we've amassed.

3. Let me talk specifically about Odyssey Omni and how Robbie and Lee got involved. A number of stock investment firms, including my own, had been carefully watching the technology companies in 2017 and 2018. Some of them were dogs, and some looked very promising. The companies that I am talking about are not the big boys, like Microsoft, Apple or Dell. I am talking about the dot.coms and particularly the search engine companies. Everyone had been keeping a particularly close eye on Zahoo! – an incredibly valuable search engine company, essentially owned by just two individuals. A couple of us, myself and Kelsey English at Stanley Morgan – Kelsey also belongs to the Club – had our eyes on Odyssey Omni. Although Odyssey Omni did not get the press that Zahoo! did, all our research suggested that the company had tremendous value. It hadn't launched its search engine yet, but the concept looked good. Kelsey's company had issued an internal report that I was able to get my hands on, suggesting that, if Odyssey Omni went public, it would be the opportunity of the year.

4. Well, you can imagine that this was all the talk at the Great Wessex Club when our golf foursome got together. That is one of the great things about golf, it really gives you a chance to do business and learn a lot about how others are doing business if you just keep your eyes and ears open, which I do, believe me. Kelsey, Robbie, Alex Johnson and I played about once a month back then. Robbie and Lee were very popular at the Club, not only because they are great people but because of Macca's fame. All our kids hung out at the Club constantly hoping to get a glimpse of Macca. I think it drove Lee and Robbie a little crazy at times, always being bugged by the kids. At any rate, we did a lot of talking, over our gold rounds, about Odyssey Omni. Kelsey and I made it clear that we wanted to be in on the IPO when it came. I remember Robbie taking me aside, maybe in July 2018; I remember it was really hot. Robbie wanted to talk to me about investing Macca's money in the stock market. I told Robbie I would put together a suggested portfolio of long-term investments. Robbie told me that long-term investments were out, because as guardian of Macca's funds, Robbie couldn't tie up those funds after Macca turned 18. The funds would become Macca's then. Robbie was feeling that the interest Macca's money was making in the bank, which was about nothing, really suggested irresponsible stewardship on Robbie's part. So, we talked more about it over the next few days, and Robbie became increasingly interested in Odyssey Omni. I told Robbie that IPOs are generally risky, but I thought Odyssey Omni was a sure bet. I cautioned Robbie not to hold it too long as IPOs did tend to jump up and then fall back. Robbie understood.

5. Robbie asked me a week or so later whether there was anything I saw in the market that made more sense, and I could only say that Odyssey Omni looked like the best deal coming down the pike. The IPO for Odyssey Omni was in September 2018. The stock was trading at $25 per share at the end of the first day of trading. I bought shares for myself – I'm uncomfortable saying how many, and I bought 54,000 shares for Robbie. About one week later, when the share price had risen to $28, Robbie bought an additional 5,500 shares. I sold all my shares when the price hit $28, because that is what I always do with IPOs. I was kicking myself because about a month after that the share price went to $31.

6. Much to our surprise, Odyssey Omni folded in May 2019, less than one year after the IPO. What none of us knew was that the CEO and CFO of Odyssey Omni were nothing better than crooks. They'd lied from the beginning about their technology and how close they were to be able to launch it. They'd done all kinds of off-balance-sheet transactions to hide the extent of their losses and a whole lot of other misleading and illegal things. The Securities Exchange Commission caught them, but not before Robbie, Kelsey and thousands of other investors lost every cent they invested. There is a civil suit by the investors to try to get some of their money back, but those suits rarely result in any recovery for the shareholders. Only the lawyers get rich in those suits.

7. I feel truly sorry for Robbie and Lee, and for Macca as well. Kelsey asked me the other day if I felt any guilt for recommending the stock to Robbie. What could I say? If people in the investment business took their clients' losses to heart, they'd never sleep. My advice to Robbie was sound when I gave it. It was a good, solid, smart investment for Robbie to make. It just didn't work out, that's all. It happens in the market. I sleep just fine.

Andy Anderson
Andy Anderson 7/21/2020

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NEW YORK STATE HIGH SCHOOL MOCK TRIAL TOURNAMENT EVIDENCE

PART V

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EXHIBIT _____

Order Approving Infant's Contract for Artistic or Professional Services

SURROGATE'S COURT, Kings County, STATE OF NEW YORK

(In the Matter of the Application)
(MACCA MCLAUGHLIN, an infant of the age of)
(fourteen years, to obtain an order of)
(Court approving contract of said infant services)

Present: Honorable Anne Hartsfeld Hohnreit, Judge.

This matter having come on before me to be heard on this 15th day of July 2016 upon the order to show cause dated June 20, 2016 and the petition of Robbie and Lee McLaughlin, verified June 15, 2016, and the proposed contract annexed thereto, and sufficient service of the aforesaid order to show cause according to its terms having been shown by the affidavit sworn to the 30th day of June 2016.

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

ORDERED:

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

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

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

IV. That Wooly Mammoth Records, the employer under said contract, pay over as follows, the sums to become due under said contract to the infant for services:

a. Fifty percent (50%) of net earnings to be set aside for the infant under Paragraph II of the order, after computation of net earnings of each such contract payment, to Robbie McLaughlin, as limited guardian appointed by this order, at such place as Robbie McLaughlin shall thereafter designate in writing from time to time.
b. The balance of each such contract payment to Robbie and Lee McLaughlin, parents of said infant.

Signed this 15th day of July 2016 at Kings County, New York.

Enter:

Anne Hartsfield Hohnreit
Anne Hartsfield Hohnreit
Kings County Surrogate

EXHIBIT _____

CERTIFICATE OF CERTIFIED COPY

STATE OF NEW YORK
SURROGATE'S COURT
COUNTY OF KINGS

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

[RAISED SEAL] John Smith

John Smith, Chief Clerk

DATED: January 4, 2020

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EXHIBIT _____

Agreed Financial Statement
Earnings of Macca Elery McLaughlin
2016-2019

Credits

NASS! Third Place Prize	$500,000
PepTarts Tour Share	$500,000
Wooly Mammoth	
Distribution:	
12/31/16	$0.00
3/31/17	$23,240.00
6/30/17	$877,510.00
9/30/17	**$913,322.00**
12/31/17	$958,404.00
3/31/18	**$337,294.00**
6/30/18	$108,666.00
9/30/18	$52,200.00
12/31/18	$40,008.00
Total	$4,310,644.00

Assignment to Accounts:

Robbie and Lee McLaughlin

$2,655,322 (Nass!, Peptarts, 50% Wooly Mammoth Distribution)

Robbie McLaughlin in trust for Macca McLaughlin @ Court Order

$1,655,322 (50% Wooly Mammoth `Distribution)

Debits:

Robbie and Lee McLaughlin Accounts

$1,000,000	Down payment on 16 Meadow Hill Road, Great Wessex, NY
$ 200,000	Initial Membership, Great Wessex Country Club
$ 75,000	Dues and expenses, Great Wessex Country Club - **2016**
$ 205,000	2018 Mercedes Benz AMG S65 Sedan
$ 95,000	2018 BMW 740i Sedan
$ 561,084	Salary and Percentage to Tony Triacon
$ 355,000	Salary to Sammy Wright
$ 54,000	Sasha Expenses
$ 48,000	Jenna Expenses

Robbie McLaughlin In Trust for Macca Elery McLaughlin

$1,504,000	Investment: Odyssey Omni
$ 80,000	Misc. Expenditures for Stage Costumes

EXHIBIT _____

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

Dear Macca,

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

All our love,

Mom and Dad

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

PART VI

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PERTINENT LAW AND RELATED CASES
Pertinent Law

NEW YORK MOCK TRIAL PRUDENT INVESTOR ACT

(a) Prudent investor rule

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

(b) Prudent investor standard

(1) The prudent investor rule requires a standard of conduct, not outcome or performance. Compliance with the prudent investor rule is determined in light of facts and circumstances prevailing at the time of the decision or action of a trustee. A trustee is not liable to a beneficiary to the extent that the trustee acted in substantial compliance with the prudent investor standard or in reasonable reliance on the express terms and provisions of the governing instrument.

(2) A trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument.

(3) The prudent investor standard requires a trustee:

(A) to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio;

(B) **to consider, to the extent relevant to the decision or action**, the size of the portfolio, the nature and estimated duration of the fiduciary relationship, the liquidity and distribution requirements of the governing instrument, general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of

(C) investment decisions or strategies and of distributions of income and principal, the role that each investment or course of action plays within the overall portfolio, the expected total return of the portfolio (including both income and appreciation of capital), and the needs of beneficiaries (to the expected total return of the portfolio (including both income and appreciation of capital), and the needs of beneficiaries (to the extent reasonably known to the trustee) for present and future distributions authorized or required by the governing instrument;

(D) to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes and terms and provisions of the governing instrument; and

(E) within a reasonable time after the creation of the fiduciary relationship, to determine whether to retain or dispose of initial assets.

(4) The prudent investor standard authorizes a trustee:

(A) to invest in any type of investment consistent with the requirements of this paragraph, since no particular investment is inherently prudent or imprudent for purposes of the prudent investor standard;

(B) to consider related trusts, the income and resources of beneficiaries to the extent reasonably known to the trustee, and also and **asset's** special relationship or value to some or all of the beneficiaries if consistent with the trustee's duty of impartiality;

(C) to delegate investment and management functions if consistent with the duty to exercise skill, including special investment skills; and

(D) to incur costs only to the extent they are appropriate and reasonable in relation to the purposes of the governing instrument, the assets held by the trustee and the skills of the trustee.

(c) As used in this section:

(1) the term "trustee" includes a personal representative, trustee, guardian, donee of a power during minority, guardian under article eighty-one of the mental hygiene law, committee of the property of an incompetent person, and conservator of the property of a conservatee;

(2) the term "trust" includes any fiduciary entity with property owned by a trustee as defined in this section;

(3) the term "governing instrument" includes a court order; and

(4) the term "portfolio" includes all property of every kind and character held by a trustee as defined in this section.

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BREACH OF FIDUCIARY DUTY BY A COURT-APPOINTED GUARDIAN

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

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

Commentary: Nature of Fiduciary Duty

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

Commentary: The Trustee

The trustee is judged by his conduct, not by the outcome. No investment is intrinsically imprudent. Prudence is gauged by the trustee's overall investment strategy, not by individual investments viewed outside the context of the whole portfolio. Substantial compliance with the Prudent Investor rule is enough. The fiduciary must consider the needs of the beneficiary, the size of the trust corpus, the duration of the trust, the condition of the economy, the projected distribution, inflation, tax consequences, the overall return, the amount of income and the appreciation. The trustee may take appropriate risks "reasonably suited to the entire portfolio," and said trustee must diversify the trust assets unless the trustee makes a reasoned decision that diversification is not in the beneficiary's best interest.

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RELATED CASES

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

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

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

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

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

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

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

The court noted that substantial losses are not per se evidence of gross mismanagement or imprudence. Further, the court described the trustees, in the early stages of their trust position, as having no malice in their actions but rather as being "misguided and uncertain of what to do." Nonetheless, the court

found the trustees to have breached their duties by engaging in speculative "day trading," a practice of buying and selling a stock on the same day.

NEW YORK STATE HIGH SCHOOL MOCK TRIAL APPENDICES

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POINTS	MOCK TRIAL TOURNAMENT PERFORMANCE RATING GUIDELINES
1 Ineffective	• 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
2 Fair	• 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
3 Good	• 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
4 Very Good	• 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
5 Excellent	• 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
Professionalism of Team Between 1 to 10 points per team	• 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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2021 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

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→) • 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

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.

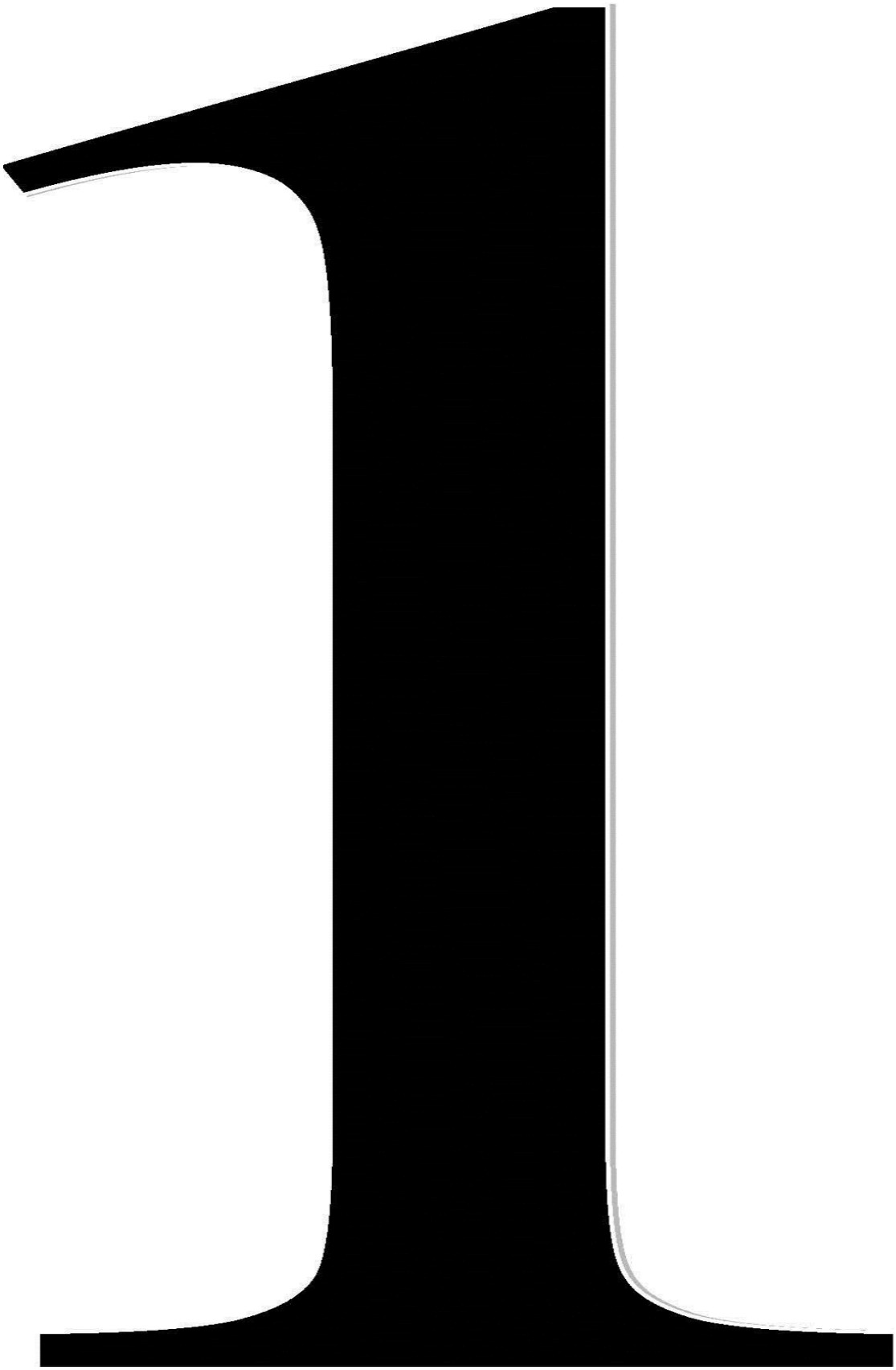
3. Teachers should assign students their respective roles (witness or attorney).

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.



(over)

TIME LIMITS

OPENING STATEMENTS
5 minutes for each side

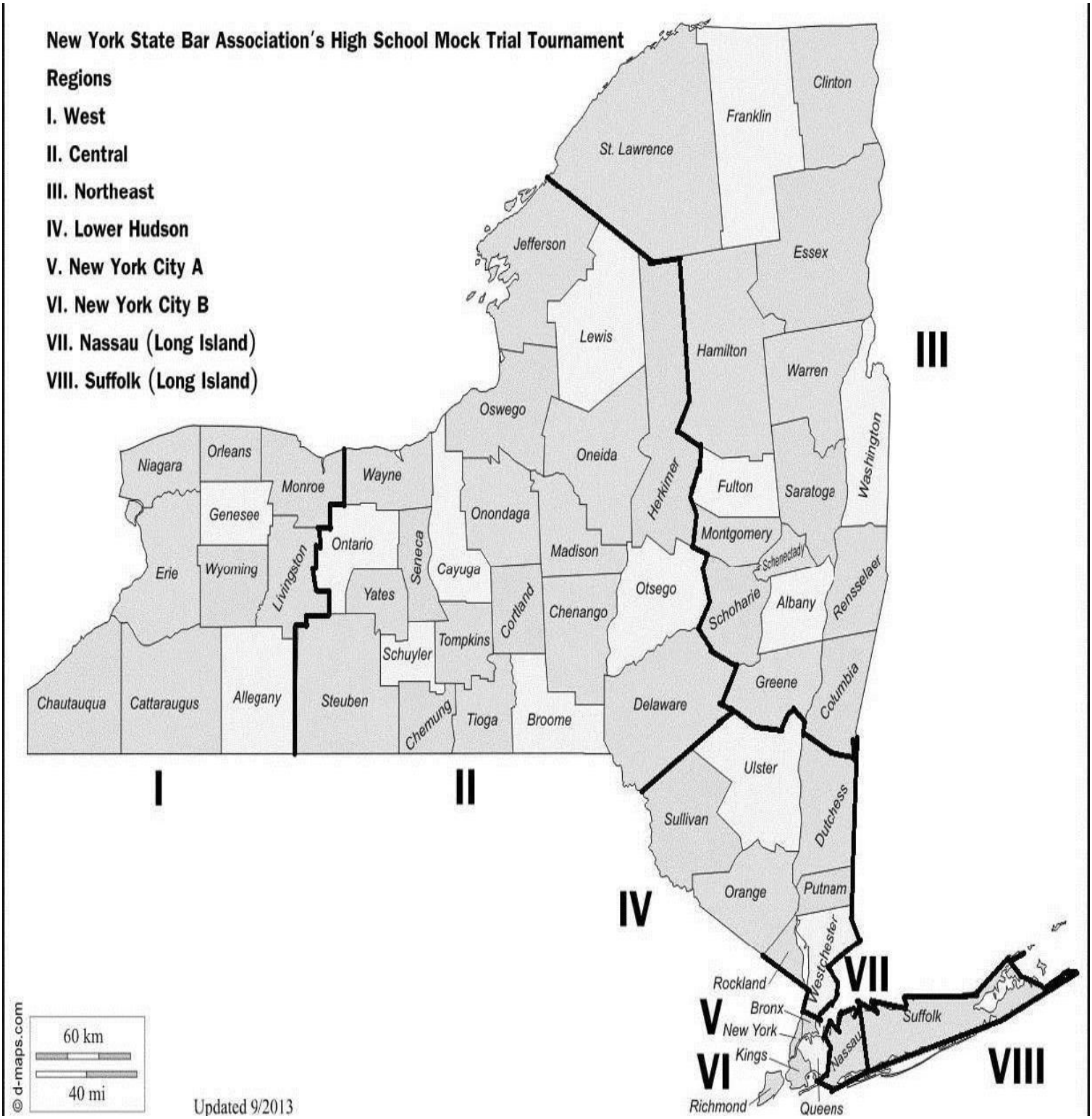
DIRECT EXAMINATION
10 minutes for each side

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



2019 NEW YORK STATE BAR ASSOCIATION HIGH SCHOOL MOCK TRIAL CHAMPIONS

(The 2020 tournament was cancelled in March due to COVID-19. The State Finals did not take place, so there was no State Champion in 2020).

FAYETTEVILLE-MANLIUS HIGH SCHOOL

Manlius, NY / Onondaga County

Faculty Coach
Joseph Worm

Attorney Coach
Danielle Fogel

Team Members

Briana Amador
Nicholas Bissell
Cecilia Byer
Maria Costello
Matthew Crovella
Jayden Davis
David Haungs
Candace Kim
Jordan Krouse
Emily Ledyard
Michelle Lim
Rachel Liu
Nathan Montgomery
Joshua Ovadia
Michael Reikes
Flavia Scott
Kathryn Yang
Rebecca Ziobro