

UPDATE MEMORANDUM
2012 Illinois State Bar Association High School Mock Trial Case
Estate of Heeney-Potter

Amendments to the Problem and Handbook are **highlighted** and underlined.
Please see both documents at <http://www.isba.org/teachers/mocktrial>.

First Update Memo 12/13/11

1. Should Everly Noble be considered a beneficiary of the Will of Estelle Heeney-Potter if his organization is gaining money from the Will? Isn't that illegal under Illinois law?

This is a matter of strategy and not illegal under Illinois law.

2. The affidavit of Riley Rendlow makes it seem as if Riley began working for Estelle a week before Estelle left for Europe and would be hired full time after Estelle came back. But the Will of Estelle Heeney-Potter stated that Riley had been the live in caregiver for the animals since 2006, meaning Riley had been working for Estelle for more than a year. Is this inconsistency intentional?

Please re-read the problem; it stands as drafted.

3. Can you please let us know if the Dead Man's Act applies to the mock trial?

See the ISBA Mock Trial Rule Handbook – Simplified Rules of Evidence, Section VIII., Pages 23-32.

4. Page 13, second paragraph, says that Addison would like a new trust to be established although that remedy is not specified in the petition. Are we to assume that Petitioners are asking the Court to create a new trust as opposed to amending the current one?

See paragraph F of the Petition.

5. Page 22 refers to leaving the property to "her daughters". We are to assume Estelle's children can be male or female, correct?

Yes, either. See page 21.

6. In the current Will (exhibit A), Estelle mentions that Riley is/was a live in caregiver since 2006. The Will is dated 7/5/07. In Riley's affidavit, he/she mentions in paragraph 9 that he/she moved into the garage apartment a week before Estelle left for Europe. Are we to assume that Riley has just been living in the main house? Also, is there a date of death for Estelle?

See response to question #2 above as well as the added stipulations.

7. Past practice was to number all the paragraphs in the affidavits. Is it possible to do that for this year's case?

The paragraphs are now numbered. Please see updated problem at <http://www.isba.org/teachers/mocktrial>.

8. Past practice was to have the case being tried in "real time" meaning March 2012. That seems incompatible with the facts of this case for the reasons identified below:

A. The will is executed July 5, 2007 and specifically mentions the cats by name.

B. Dr. Noble's names the cats in his affidavit and says they are under 1 year old. In other words, this affidavit could not have been given any later than July 2008. What is the time setting for this trial?

The problem is real time as usual and stands as scripted.

Second Update Memo 01/11/2012

9. Can you clarify the last update on the mock trial memo about "real time" versus Dr. Noble's affidavit? Are we to assume the affidavit was written in 2008 & 3 years have passed? If so, were all the affidavits written 3 years ago as well, or does that even matter?

Yes, the affidavits were written in 2008. The problem is real time and stands as scripted.

10. In last year's case, certain witnesses were identified as "expert witnesses" in the stipulations. This year, the stipulations do not identify any witness as an "expert." Was this deliberately omitted from the stipulations or is this an oversight?

This is not an oversight. No witnesses have been stipulated to be “expert witnesses” in this problem. See also the response to Question 11 below.

11. As the team has practiced, issues have arisen around the expert witnesses, Doctors McKay and Fielding. Specifically, we are concerned about their testimony as expert witnesses. Much of their testimony involves their expert opinions, Dr. McKay’s being almost entirely opinion. Although I believe that their education and experience easily qualifies them as experts, it is possible that a mock trial judge may not agree, leaving us without their expert opinions and, basically, limiting Dr. McKay’s testimony to his name, education and experience.

As you know, in real life, the issue of their qualifications would be dealt with pretrial in Frye/Daubert Motions *in limine*. Also, since it is not known whether either expert is being paid to testify and/or if they have testified previously, opposing counsel could make a solid argument that it’s not fair for the judge to recognize them as experts since important impeachment information is not provided. We’re concerned that one judge might find that they are experts, while another may not, making the outcome of the trials too arbitrary. Without knowing ahead of time whether their expert testimony is admissible, we may be forced to call the other fact witnesses, rather than risk exclusion and losing the match.

In past Mock Trials, experts have routinely been stipulated as experts. Also, since Daubert/Frye rulings are very discretionary in real life, the lack of a stipulation increases the risk some judges will allow the expert testimony while others may not. Every trial attorney who has made or defended against a Daubert/Frye motion knows what it’s like to sit with fingers crossed.

Proper stipulations would prevent arbitrary outcomes that depend on the draw of the presiding judge. We are asking the committee to consider adding a stipulation that Doctors McKay and Fielding are experts in their respective fields.

No stipulations will be made on whether or not any of the witnesses are offering expert opinions. This is a matter of mock trial strategy, and it is up to the individual teams as to how they wish to examine witnesses under the Mock Trial Rules. The Judges will rule on a case by case basis on such a matter. See also the response to Question 10 above.