ISBA High School
Mock Trial Invitational

HOW A MOCK TRIAL WORKS

PLEASE NOTE: This brochure is designed to supplement the ISBA High School Mock Trial Invitational Handbook of Rules and Procedures (the "Handbook"). All teams must consult the Handbook for governing rules and procedures.

This brochure is for informational purposes only and is designed to assist teams and volunteers in understanding how high school mock trial rounds work. Any inconsistency between this brochure and the Handbook will be resolved in favor of the Handbook.

A Project of the ISBA Standing Committee on
Law-Related Education for the Public and
Illinois LEARN, Inc.

ILLINOIS STATE
BAR ASSOCIATION

Illinois State Bar Association
424 South Second Street
Springfield, IL 62701
Tel: 1-217-525-1760

INTRODUCTION

This brochure provides an overview of the ISBA's High School Mock Trial Invitational (the Invitational)'s competition rounds, as well as tips for attorneys and witnesses.

At the end of this brochure, there are samples of the score sheets that are used to score teams at the Invitational. Teams should be familiar with the score sheets, time constraints, and rules.

All trials during the Invitational will be conducted as jury trials. However, students do not have to concern themselves with the additional steps involved in a jury trial such as *voir dire* (jury selection) and jury instructions (when the judge explains the law to the jury).

Jury instructions may be provided in the case materials as a guideline on what needs to be proven. For purposes of these trials, please address the evaluators (scoring judges) as the jury. Please address the presiding judge when addressing remarks to the Court.

TABLE OF CONTENTS

Page

I. COURTROOM LAYOUT 4

II. MOCK TRIAL PARTICIPANTS AND ORDER OF A MOCK TRIAL ROUND 5

III. MOTIONS 6

IV. TRIAL DECORUM AND BREAKS 7

V. ATTORNEYS 8

VI. WITNESSES 14

VII. EXHIBIT EVIDENCE & PRESENTATION 16

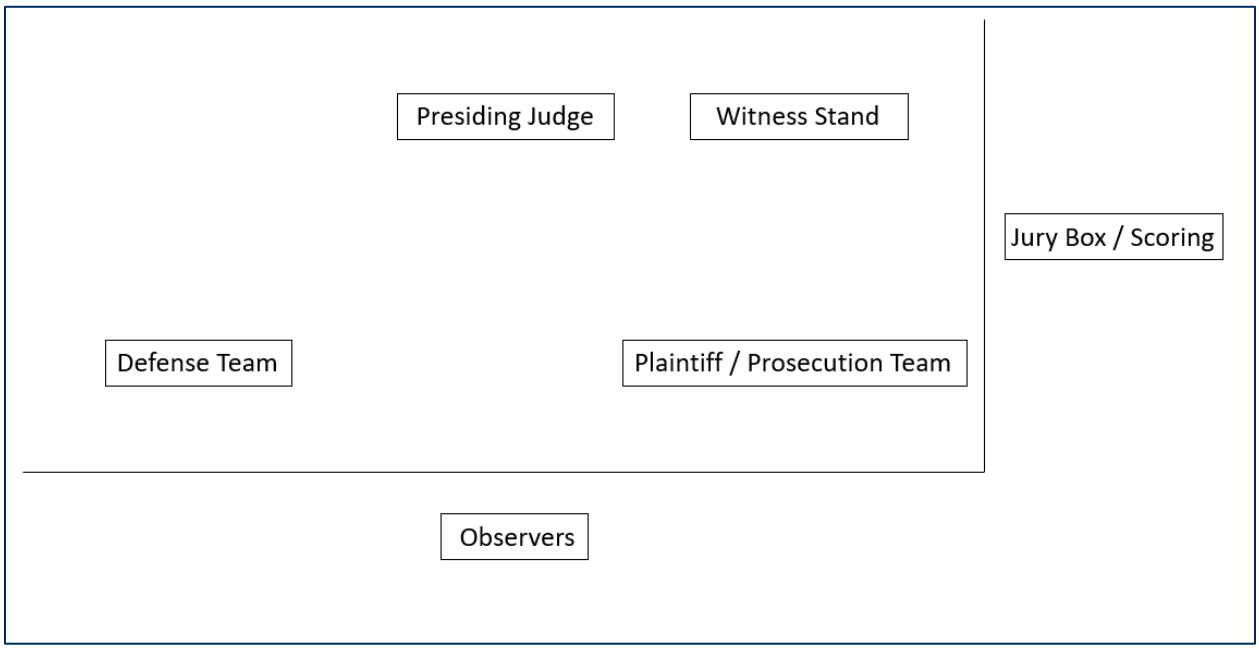
VIII. OBJECTIONS 20

ISBA MOCK TRIAL TIME SHEET 23

IX. SAMPLE FORMS AND SCORESHEETS 24

ISBA MOCK TRIAL JUDGE'S SCORESHEET 25

I. COURTROOM LAYOUT



1. A typical courtroom layout is depicted above. However, not all competition rooms will look exactly as pictured above.

2. Whenever possible, the Prosecution / Plaintiff Team should sit nearest the witness stand, with the Defense Team seated at the other counsel table.

II. MOCK TRIAL PARTICIPANTS AND ORDER OF A MOCK TRIAL ROUND

Trial Participants:

- Judge and Evaluators/Jurors;
- Attorneys for each side;
    - Prosecution (criminal case) or Plaintiff (civil case); and
    - Defendant (criminal case) or Defense (civil case)
- Witnesses for each side; and
- Student timekeeper(s).

Trial Order:

1) INTRODUCTIONS AND PRE-TRIAL MOTIONS (both sides of the case)

2) OPENING STATEMENTS

    a. Prosecution / Plaintiff Opening Statement
    b. Defendant / Defense Opening Statement

3) PROSECUTION / PLAINTIFF CASE IN CHIEF

    <u>Prosecution / Plaintiff Witness 1</u>
    a. Prosecution / Plaintiff Direct Examination
    b. Defendant / Defense Cross Examination
    c. Prosecution / Plaintiff Re-Direct Examination (if desired)
    d. Defendant / Defense Re-Cross Examination (if desired and only if a Re-Direct)

    <u>Prosecution / Plaintiff Witness 2</u>
    a. Prosecution / Plaintiff Direct Examination
    b. Defendant / Defense Cross Examination
    c. Prosecution / Plaintiff Re-Direct Examination (if desired)
    d. Defendant / Defense Re-Cross Examination (if desired and only if a Re-Direct)

4) DEFENDANT / DEFENSE CASE IN CHIEF

    <u>Defendant / Defense Witness 1</u>
    a. Defendant / Defense Direct Examination
    b. Prosecution / Plaintiff Cross Examination
    c. Defendant / Defense Re-Direct Examination (if desired)
    d. Prosecution / Plaintiff Re-Cross Examination (if desired and only if a Re-Direct)

    <u>Defendant / Defense Witness 2</u>
    a. Defendant / Defense Direct Examination
    b. Prosecution / Plaintiff Cross Examination
    c. Defendant / Defense Re-Direct Examination (if desired)
    d. Prosecution / Plaintiff Re-Cross Examination (if desired and only if a Re-Direct)

5) CLOSING ARGUMENTS
    a. Prosecution / Plaintiff Closing Argument
    b. Defendant / Defense Closing Argument
    c. Prosecution / Plaintiff Rebuttal Argument

III. MOTIONS

1. **Pre-Trial Motions:** When specifically allowed by the judge, pre-trial motions are limited to two minutes. Pre-trial motions may include entering stipulations and any other pre-trial motions that are specifically listed for the case. No other pre-trial motions are allowed.

2. **Pre-Trial Conference:** A pre-trial conference with the presiding judge may be granted if the judge and the parties agree. Student attorneys may request bench conferences during a trial to clear up any procedural or factual questions. Only one representative from each side may be present for bench conferences and conferences should not exceed one minute.

3. **Other Motions Are Not Permitted:** Teams may not make motions in limine, motions to exclude witnesses from the courtroom, or motions for a directed verdict, mistrial, or dismissal of the case.

IV. TRIAL DECORUM AND BREAKS

1. The judge is in control of the courtroom, just as in real life. And just as in real life, each judge will preside over the courtroom a bit differently than the next judge. Participants must be prepared to adjust to the rulings and preferences of the judge.

2. Teams may not request jury and/or witness sequestration, whether actual or constructive. Witnesses are not presumed to be constructively sequestered.

3. **Be courteous to witnesses, other attorneys, the judge, and evaluators.** Carry your professional attitude with you during the trial and the entire mock trial program. During the trial, rise when addressing the judge, direct all remarks to the judge or witnesses, as appropriate, and do not make objections unless you have a sound basis for doing so.

4. During the trial, including recesses or unplanned breaks, coaches and other observers (including those team members who are alternates during a trial) may not talk, signal, pass notes, or otherwise communicate with or coach participating team members.

5. A team may motion for a recess in the event of an emergency. If a recess is called, teams may not communicate with any observers, coaches, or instructors regarding the trial.

6. Student attorneys may use notes during the trial, but not on an electronic device.

7. The use of notes or notecards by a witness is a rule infraction, and it is prohibited, barring exceptional circumstances. However, if restricting a witness from using notes/notecards would unduly harm the opposing team's presentation, the presiding judge, in the judge's sole discretion, may allow the witness to use notes/notecards, but the judge and evaluators should view this as a rule infraction and may penalize with a point reduction that they deem appropriate.

8. Attorney team members actively taking part in any given trial may communicate among themselves during the trial. However, no disruptive communication is allowed, and no communication is allowed between the participating team members and any alternates. Further, participating witness team members may not communicate with participating attorney team members during trial, with the sole exception of a party representative witness (e.g., the defendant). The participating witness playing the party representative may communicate with the participating attorneys. **Absolutely no communication is allowed between participating team members and the lawyer or teacher coaches or parents while the trial is in progress. This includes verbal communications, signals, and notes.**

V. ATTORNEYS

Attorney duties in each trial include:

(i) opening statements;
(ii) direct examination of witness #1;
(iii) cross-examination of witness #1;
(iv) direct examination of witness #2;
(v) cross-examination of witness #2; and
(vi) closing arguments.

Each team must be prepared to argue both sides of the case.

Each team must call two (2) witnesses. Teams may not call the opposing team's witnesses as part of its own case.

A. Call to Order.

1. The judge will call the Court to order and make any necessary announcements. The case will be announced (e.g., "The Court will now hear the case of *State of Illinois v. John Doe*") and the judge will ask the attorneys for each side to confirm that they are ready and to introduce themselves and their team. Teams should designate a participating attorney to conduct such initial introductions.

B. Opening Statements.

1. The objective of the opening statement is to acquaint the judge and the jury with the case and to outline what your side is going to prove through witness testimony and other evidence.

2. NO OBJECTIONS MAY BE MADE DURING OPENING STATEMENTS.

3. ONLY ONE ATTORNEY FOR EACH SIDE MAY PRESENT THE OPENING STATEMENT.

4. Opening statements should include a concise summary of the facts, the burden of proof and which side bears it, a brief discussion of applicable law, and a clear overview of the witnesses' testimony and physical evidence your side will present to support your case.

5. It is essential that you appear confident in your case. Stand before the jury and use eye contact.

6. Students may move about the "well" (the portion of the courtroom that is in front of the jury box) to facilitate expression. Participating attorneys should request permission from the judge prior to moving about the well, however.

C. Direct-Examination.

1. Attorneys call their witnesses and conduct direct examination to present testimony and other evidence to prove their case.

2. The objective of direct examination is to obtain information from a favorable witness to prove the facts of your case (or to disprove the facts of the other side's case). To do so, parties may wish to establish the witness' credibility and to present the witness favorably to the jury.

3. Each team will be assigned and given information about three witnesses and each side must call two of its assigned witnesses. Teams may not present a witness that has been assigned to the other side.

4. You should determine the information that each witness can contribute to proving your case theory and prepare a series of questions designed to obtain that information. You should try to use your witnesses to present evidence demonstrating all elements needed to prove your case.

5. You should use clear, simple, and open-ended questions (i.e., questions that do not suggest an answer and that will require more than a "yes" or "no" in response). You should not ask a question to which you do not know the answer.

6. Attorneys may not ask witnesses leading questions on direct examination, except to lay a foundation for the introduction of an exhibit. A leading question is a question that suggests an answer, such as: "You were at the office that morning, correct?"

7. Be relaxed and ask your questions clearly. Listen to all answers given by the witness. If you need time to think, do not be afraid to ask for a moment to collect your thoughts or to discuss a point with your co-counsel by simply asking the presiding judge, "Your Honor, may I take a moment?" Remember, however, that time will not be stopped when you take time to consult your notes, consult with your teammates or collect yourself.

8. The attorney who conducts the direct examination of a witness will be responsible for (a) responding to any objection made to the direct examination by the opposing side's attorney; and (b) raising objections, if any, during the cross examination of that witness. No other attorney on the team will be allowed to make or respond to objections while that witness is testifying.

9. Consistent with the applicable rules of evidence, direct examination may cover all facts relevant to the case for which the witness has firsthand knowledge.

10. When preparing for trial, the team's questioning attorneys should coordinate with each other to ensure that each witness is given sufficient time to present the witness' testimony. Generally, it is to the benefit of the team calling its witnesses to provide both witnesses about an equal amount of time testifying so that they may be adequately scored by the evaluators.

D. Cross-Examination.

1. After the attorney for the side that has called the witness has completed their direct examination, the judge allows the other side to cross-examine the witness.

2. Generally, cross examination questions should be limited to facts brought out on direct examination. However, for mock trial purposes, attorneys may, in a limited manner, ask questions on matters not brought out during direct examination. This exception to the general rule occurs when the direct examination was inadequate (e.g., when a team asks limited questions on direct as a strategy to undermine the opposing team. Such a strategy may result in a score penalty and may hurt its side of the case when the expanded cross-examination brings out necessary information of value to the opposing team).

3. The objective of cross-examination is to obtain favorable testimony from witnesses called by the opposing side and, if a witness has no testimony favorable to your side, to make that witness' testimony less believable.

4. Impeachment during cross-examination may be used to challenge any creation of material fact that the opposing team may have attempted to enter into evidence.

5. On cross-examination, you may wish to ask questions that undermine the witness' credibility. One way of doing this is by showing that the witness has previously made a contrary statement. Another way of doing this is by asking questions that demonstrate that the witness may be prejudiced or biased. You should ask questions that weaken the witness' testimony that is favorable to the other side by showing that such testimony is questionable or flawed, or that the witness is not competent or qualified to offer such testimony.

6. Attorneys should ask leading questions during cross-examination and should avoid asking questions that tend to evoke a narrative answer. As with direct examination, attorneys should generally not ask questions to which they do not know the answer.

7. Always listen to the witness' answers. You should be prepared to adapt your questions to the actual testimony given during the trial.

8. Avoid giving the witness an opportunity to re-emphasize damaging points that were made against your case during direct examination. But do not harass or intimidate the witness.

9. The attorney who conducts the cross examination of a witness will be responsible for (a) raising objections, if any, during the direct examination of that witness; and (b) responding to any objection made to the cross examination by the opposing side's attorney. No other attorney on the team will be allowed to make or respond to objections while that witness is testifying.

E. Re-Direct Examination.

1. After a cross examination concludes, the attorney who called the witness may, at the judge's discretion, conduct a re-direct examination by asking the witness additional questions.

2. The scope of testimony elicited on re-direct must be limited to those matters raised during the cross examination.

3. As with a direct examination, an attorney conducting a re-direct examination generally may not ask leading questions.

F. Re-Cross Examination.

1. After a re-direct examination concludes, the attorney who conducted the cross-examination of the witness may, at the judge's discretion, conduct a re-cross examination.

2. The scope of testimony elicited on re-cross must be limited to those matters raised during the re-direct examination.

3. Questions asked during a re-cross should not be repetitive of questions asked during the cross examination.

G. Impeachment

1. On a cross-examination or re-cross examination, the questioning attorney may want to demonstrate that the witness' testimony should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that undermine the witness' credibility, by showing that the witness is biased for or against one of the parties, by showing that the witness could not have seen or heard what they have testified to have seen or heard, or by asking about certain types of prior criminal convictions. Impeachment questions should only be asked if the attorney has information indicating that the impeaching conduct actually happened. Several examples are provided below.

    (i) Example (Prior conduct): "Isn't it true you were kicked out of college for having falsified your college application?"
    (ii) Example (Past conviction): "Isn't it true that you have been convicted of a criminal offense?"
    (iii) Example (Bias): "You do a lot of business with the defendant, don't you?"
    (iv) Example (Perception): "Isn't it true that you were at a loud and crowded concert when you supposedly heard the defendant confess?"

2. Another form of impeachment is impeachment by prior inconsistent testimony. This may be done by introducing the witness' affidavit and asking the witness specific questions about whether their testimony at trial contradicts something that the witness specifically stated in their affidavit. It is not effective cross-examination to try to impeach a witness on an entire affidavit. Accordingly, the impeaching attorney should direct the witness' testimony to a specific page and specific line numbers of the witness' affidavit. Alternatively, highlighting

may be used for purposes of impeachment to direct the witness to the appropriate part of the affidavit-at-issue. No other highlighting of affidavits is allowed.

3. Evidence used for the purposes of impeachment is subject to the Rules of Evidence and the Rules provided in the Handbook.

4. Impeachment by Omission is allowed, subject to the Rules of Evidence and the Rules provided in the Handbook.

5. If a witness is asked a question on cross examination, the answer to which is not contained in the witness' affidavit (either explicitly or it is clear from the case materials that the witness would know the answer), as provided for in the Handbook, an attorney should not attempt to later impeach that witness by omission on such an answer. Moreover, and if the witness provides such an answer, it is not necessarily a violation of the Creation of Material Fact Rule in the Handbook. Attorneys should use caution in asking questions on cross examination that exceed the scope of the materials provided.

H. Closing Arguments.

1. The closing argument's objective is to provide a clear and persuasive summary of the evidence that your side has presented, how that evidence proves your case (e.g., by demonstrating each element of the charge(s) / claim(s), if you are the burden-bearing party) or disproves the other party's case (e.g., by demonstrating how some or all of the elements of the charge(s) / claim(s) have not been met, if you are not the burden-bearing party). Closing arguments are also an opportunity to show the weaknesses of the other side's case.

2. NO OBJECTIONS ARE PERMITTED DURING CLOSING ARGUMENT.

3. ONLY ONE PARTICIPANT WILL MAKE THE CLOSING ARGUMENT FOR EACH SIDE. On the Prosecution / Plaintiff side, only ONE attorney will be permitted to make BOTH the "initial-close" and the "rebuttal-close" (if that attorney elects to present a "rebuttal-close" and time allows).

4. Be an advocate--forcefully urge your point of view and avoid a boring review of the facts. Adapt your closing argument to reflect what evidence was actually presented to the jury--what testimony the witnesses actually provided and what physical evidence was actually admitted.

5. It is not appropriate to cite case law or statutes provided in the mock trial material. These materials are provided as background information to facilitate development of case strategy.

6. The Prosecution / Plaintiff's attorney may, if there is time remaining in their time allotted for closing argument, present a rebuttal closing. The attorney may wish to reserve a specified portion of their closing time for rebuttal in advance.

    (i) Time-permitting, a rebuttal may only address matters that were addressed in the Defendant / Defense's closing.

(ii) The time for the closing and the rebuttal combined may not exceed the time allowed for closing.

(iii) Teams are not required to ask the judge to reserve time for rebuttal in advance. If an attorney has time remaining, he or she may present a rebuttal argument.

7. The Prosecution / Plaintiff's attorney should stand, address the jury, and review the evidence. The review should indicate how the evidence has satisfied the elements of the charge(s) or claim(s), point out the law applicable to the case, and ask for a favorable verdict.

8. The Defendant / Defense's attorney should stand, address the jury, and review the evidence, stressing the evidence and the law favorable to their case, showing how the Prosecution / Plaintiff failed to prove its case and asking for a verdict favorable to the Defendant / Defense.

9. If a participant would have objected during closing arguments had they been permitted to under the Rules, after the end of closing arguments, that participant may address the court and advise that "If permitted to do so, I would have objected to (state the objectionable behavior) because (state reason)." The trial judge may comment on the objection. The evaluators may take the objection into consideration in their evaluation.

VI. WITNESSES

A. Direct Examination.

1. Learn the case thoroughly, especially your witness statement.

2. Know the questions that the attorney conducting your direct examination will ask you and prepare clear and convincing responses that contain responsive information.

3. Try to be as relaxed but in control as possible. Convey confidence and truthfulness.

4. Do not recite your witness statement verbatim. Know the content of your witness statement prior to trial so you can paraphrase it but be sure that your testimony is entirely consistent with, and not a material departure from, the facts set forth in your affidavit.

B. Cross-Examination.

1. Anticipate the types of questions or areas of questioning that you will be asked on cross-examination and prepare answers accordingly. Consider the possible weaknesses, inconsistencies, or problems in your testimony and be prepared to explain them. Practice with the attorneys on your team, asking them to act as opposing counsel.

2. At the hearing, do not be afraid to take a moment by saying something like, “Excuse me, just a moment while I try to remember,” or “let me take another look at that exhibit, please.” Be sure that your testimony is consistent with the facts set forth in your witness statement. Testimony is acceptable so long as it can be reasonably inferred from your witness statement or it is apparent from the other case materials that this witness would have known that testimony. Creation of material fact may result in impeachment.

3. If an attorney asks a witness on cross-examination to testify about information that is not a part of the case materials, the witness may invent an answer that is consistent with the other affidavits and the trial facts. A witness’ invention of a material fact, however, may be grounds for impeachment. The witness may also choose, if asked a question to which the witness’ statement provides no answer, to respond with an innocuous answer such as, “I don’t remember” or “I don’t believe I can answer that question, would you please rephrase it?”

C. Other Tips

1. If you are going to testify about records or documents, you should familiarize yourself with them thoroughly before coming to trial.

2. When answering questions, project your voice and speak clearly so that you will be heard.

3. Listen carefully to the questions.

4. Before you answer, make sure you understand what has been asked. If you do not understand, ask that the question be repeated or clarified.

5. If the judge interrupts or an attorney objects to your answer, stop answering immediately. Likewise, if an attorney objects to a question, do not begin your answer until the judge tells you to do so.

6. Witnesses may not use costumes, accents, dialect, etc., but should dress appropriately for the courtroom.

VII. EXHIBIT EVIDENCE & PRESENTATION

A. Students may read materials other than those provided in preparation for the mock trial; however, they may only cite materials included in the ISBA mock trial packet, and they may only introduce into evidence those exhibits given in the case materials. Teams may NOT cite as authority any material that may be referred to in citations or footnotes in the materials. Teams are prohibited from using costumes, accents, use of dialect, etc. or other props. Teams may use either color or black-and-white copies of exhibits in preparing and presenting their cases. **Exhibits may not be enlarged, laminated, highlighted, or otherwise enhanced or modified.**

B. During the trial, a team's attorney may want to introduce and use as evidence a document (e.g., a statement, a letter, or a map) or a physical item (e.g., a photograph). Introducing evidence may occur during direct or cross examination. When used correctly, exhibits make the trial more efficient for both a judge and jury. You must be careful to use your exhibits in a way that does not detract from your presentation of your case.

C. It is strongly encouraged that, before you arrive at your courtroom, your trial team take the following steps to save time for everyone at the event and so that you will not be unnecessarily distracted by these tasks while you are trying your case:

1. Because you may not know whether you will use the mock trial materials as evidence either in direct or cross examination, a good practice is to be prepared to use every document and physical item in the mock trial materials as evidence.

2. Each exhibit in the Mock Trial Problem will already be marked with an exhibit number. These are the exhibit numbers that should be used to reference exhibits when they are used at trial. It is not necessary to introduce the exhibits in any particular order or to use all of the available exhibits.

3. Teams may not alter the exhibit numbers provided in the Mock Trial Problem.

4. Have at least four copies per trial of each marked exhibit: one to give as a courtesy to the judge, one to give/show to the opposing team, one for the attorney to use who is offering the exhibit, and one to provide to the witness. The original marked exhibit will be used during the examination of the witness. Keep the original and all copies of the exhibit either clipped together or in a single folder so that you can easily access the exhibit at trial.

D. There are necessary steps that the attorney must take to introduce a document or an item as evidence. Adherence to these steps will be considered in the evaluation of an attorney's performance. The proper technique for entering evidence is set forth below:

1. When you are ready to introduce an exhibit, first state that you now intend to show the witness "what has been previously marked **for identification** as [Plaintiff's / Defendant's] Exhibit number ____".

2. State for the record that you are handing the judge and opposing counsel a "courtesy copy of that exhibit." Hand a copy of the marked exhibit to the judge and if necessary to opposing counsel.

3. Pause to allow the judge and opposing counsel to view the exhibit, and then ask the judge for permission to proceed.

4. If the judge or opposing counsel indicates an objection to your use of the exhibit, be prepared to defend your right to show the exhibit to the witness and to examine the witness about the exhibit.

5. **[[For direct examination]]**: If you are allowed to proceed, show the exhibit to the witness and state: "I am now showing you an exhibit that has been marked as [Plaintiff's / Defendant's] Exhibit number ____." Do you recognize this [document/item]?"

6. If the witness testifies that he or she recognizes the exhibit, continue questioning the witness about the exhibit **solely to lay a sufficient foundation to allow you to offer the exhibit into evidence (*see below about foundation*)**. You are permitted to ask leading questions to lay a foundation for the introduction of an exhibit. For example, after the witness testifies that he or she recognizes the exhibit as a letter that he or she wrote, you may ask: "Is that your signature on the second page of the letter?" **However, at this point, the exhibit has not yet been entered into evidence. Thus, you may not at this point have the witness read from or discuss the substance of the exhibit, nor may you ask any substantive questions about the exhibit.**

7. **[[For cross examination]]**: You do not have to ask the witness if they recognize the exhibit. Rather, you can directly ask the witness to identify the exhibit. For example: "Ms. Smith, Defendant's Exhibit 3 is a letter which you wrote to the Plaintiff, is it not?" As with a direct examination, on a cross examination, you can ask leading questions to establish the foundation about the exhibit.

E. **Laying a Foundation for an Exhibit:** When you first show an exhibit to a witness, you must have the witness testify to facts that establish: (a) the exhibit is what the witness claims the exhibit to be; (b) the exhibit is authentic; and (c) the exhibit is relevant evidence. To establish these facts, you must first establish that the witness has a foundation to answer questions about the exhibit. To do this, you must ask the witness a series of questions to establish that the witness has personal knowledge about the exhibit. Additional information is below.

1. As an example of how to establish that an exhibit is authentic: the witness identifies a letter that he or she wrote because the document bears the witness' printed stationary letterhead and bears the witness' signature and the person to whom the letter is addressed is the witness' mother; that the witness wrote the letter on or about the date stated at the beginning of the letter; and that the witness recalls mailing the letter to the witness' mother.

2. If the exhibit sought to be introduced is a business record, you should establish the necessary evidentiary basis to have the exhibit admitted as a business record (i.e., that the exhibit is a document or thing that is created and stored in the ordinary course of business for the organization that has created or stored it).

3. Assuming you establish the proper foundation, authenticity, and relevance of the exhibit, you should then offer the exhibit into evidence by stating: "I offer [Plaintiff's / Defendant's] Exhibit number ____ into evidence." Be prepared to defend the basis for entering the exhibit into evidence.

4. If the judge admits the exhibit into evidence, you are then free to have the witness read from the exhibit and you can also then ask substantive questions about what is stated in the exhibit.

5. You are permitted to show any admitted exhibit to the evaluators / jury. To do this, you must ask the judge permission "to publish [Plaintiff's / Defendant's] Exhibit number ____ to the jury." A closing argument may refer to any admitted exhibit.

F. **Using an exhibit to refresh recollection:** If you are using a document or physical item **solely** for the purpose of refreshing a witness' recollection, then you **do not** have to follow the steps set forth above. The judge may, however, ask you to mark the document or physical item as a numbered exhibit for identification. A document or physical item that is used to refresh a witness' recollection is not introduced into evidence, and it is not evidence that can be referred to during examination of a witness or in closing argument to the jury. Such a document or physical item is used solely to aid the witness' recollection so that the witness can then continue to give testimony about the matter.

G. **Using an exhibit to establish past recollection recorded:** If in the course of examining a witness you establish: (a) that the witness has no present and independent recollection of the occurrence or event or matter that is recorded in the exhibit; (b) that the witness' recollection cannot be refreshed by use of any document or physical item; (c) that the witness created, prepared, or wrote a document or physical item at or about the time of the events or matters of which you are asking questions; and (d) the document or physical item is an accurate recording of those events, you may then offer the document or physical item into evidence by following the foundational steps above and then offering the exhibit as the past recollection recorded of the witness. If the exhibit is admitted, you may not ask any further questions of the witness about the events or matter which are recorded or depicted in the exhibit, however, you may otherwise use the admitted exhibit just as you use any other admitted exhibit.

H. All exhibits that are marked for identification and shown to a witness, whether admitted or not, should be left on the judge's table after the attorney finishes the examination.

VIII. OBJECTIONS

A. One of the obligations of an attorney at trial is to make objections when the attorney believes that the question asked of a witness, the testimony being elicited from a witness, or an item being offered into evidence is improper.

B. An objection can be made whenever the question asked, the testimony elicited, or the item offered into evidence is not proper under the Mock Trial Rules of Evidence. But just as in the real courtroom, an attorney should give serious consideration before making an objection. The presiding judge and evaluators may view excessive or unnecessary objections negatively, especially if the question or evidence is not significantly consequential. A similar negative view can arise where an attorney makes numerous objections that unduly lengthen the trial or cause an unnecessary disruption to the other side's evidence presentation.

C. An attorney must be prepared to object. Sustained objections prevent improper evidence from being received by the jury and thereby protect the interest of the attorney's client. Well-taken objections may, thus, enhance the attorney's presentation in the view of the judge and/or jury.

D. Objecting is at the attorney's discretion. Generally, an attorney should make objections when needed, not simply because there is a basis to object.

E. It is important that teams consider the fact that the presiding judge and evaluators take objections into consideration when making their evaluations. The nature, manner, and frequency of objections can enhance or detract from an evaluation.

F. To make an objection, the following steps should be used:

1. The objecting attorney should stand and state simply "Objection" or "Objection, ___," with a short statement of the nature of the objection (e.g., "Objection, Hearsay").

   Note: Only the questioning attorney for that witness may object during the opposing counsel's examination of that witness.

2. If the attorney does not state the basis for the objection or does not state the basis clearly, the judge may ask the reason for the objection. The objecting attorney must be prepared to state the basis for the objection clearly and succinctly.

3. The presiding judge may then ask the other attorney to respond to the objection. The attorney whose question or proffered evidence is objected to must be prepared to clearly and succinctly defend the question or offered evidence. As examples: "The party admission exception permits the question;" "This is not hearsay because I am offering the testimony for the purpose of what the witness heard and not for the truth of what was said;" or "The question is relevant because it seeks information about the witness' bias."

4. The presiding judge will then either sustain or overrule the objection. If the objection is overruled, the questioning attorney may continue. If the answer to a question was given before the objection, the presiding judge will allow the answer to remain on the record. If the objection is sustained, the question or proffered exhibit will be disallowed. If the answer to the question had already been given, the presiding judge will strike the answer. The judge may direct the jury to disregard the stricken information.

G. Below are examples of standard forms of objections. Objections should be limited to those permitted by the Mock Trial Rules of Evidence. Teams should NOT go beyond the provided materials. If an opposing team violates these rules, this paragraph may be brought to the attention of the presiding judge. Judges and evaluators may deduct points for inappropriate objections.

1. Irrelevant evidence: "Objection, relevance." For support: "This testimony is not to the issues of this case because it does not have a tendency to make any material fact at issue more or less probable."

2. Leading questions: "Objection, leading." For support: "Counsel's question suggests an answer." (This is only objectionable when done on direct examination.)

3. Improper character testimony: "Objection, improper character testimony." For support: "The witness' character (or reputation) has not been put in issue."

4. Hearsay: "Objection, hearsay." For support: "Counsel's question calls for hearsay testimony /the witness' answer is based on hearsay, because it concerns an out of court statement offered for the truth of the matter asserted."

5. Opinion: "Objection, improper opinion." For support: "Counsel is asking the witness to give an opinion that he/she is not qualified to give," or "Counsel is asking a lay witness to provide an expert opinion." Keep in mind that witnesses may give opinions provided they have the personal knowledge and level of expertise to give such an opinion.

6. Lack of Personal Knowledge: "Objection, lack of personal knowledge." For support: "The witness has no personal knowledge to answer the question."

7. Lack of Foundation: "Objection, lack of foundation." For support: "No foundation has been laid to show that this witness is qualified to respond to that question," or "No foundation has been laid for this exhibit." This might arise, for example, if a witness is asked to testify to a fact, such as the color of a car, without first showing that the witness saw the car at some point, or if an expert is asked to give an opinion before their qualifications are established.

H. NOTE: There is no "creation of material fact" objection. If, on direct examination, a team attempts to elicit testimony that is not contained within the witness' affidavit or is not a fact from the trial materials that the witness would have known (such knowledge must be apparent from the trial materials), teams are encouraged to impeach the witness on cross-examination. Teams are not permitted to create material facts. Witnesses who create material facts should be impeached on cross examination, and the creation of material fact should be brought to the judge's attention. Creation of material facts may cause point deductions for the creating team. For additional information, see Section VII.B.

ISBA MOCK TRIAL TIME SHEET

Each trial must be limited to one hour. A breakdown of how the trial should proceed is listed below. Time violations may cause a deduction in scoring.

YOU SHOULD STOP TIMING ONLY FOR: (A) WITNESSES BEING SWORN, (B) OBJECTIONS, (C) JUDGE'S RULINGS ON OBJECTIONS, (D) BENCH CONFERENCES, OR (E) IF TOLD TO STOP BY THE JUDGE.

EVALUATOR: _____

SCHOOL NAMES: _____ Plaintiff

_____ Defendant

P Opening Statement (3 minutes) _____
D Opening Statement (3 minutes) _____

P - Case in Chief

P Direct Examination of both witnesses (including optional re-direct) – 15 mins _____
D Cross Examination of both witnesses (including optional re-cross) - 11 mins _____

D - Case in Chief

D Direct Examination of both witnesses (including optional re-direct) - 15 mins _____
P Cross Examination of both witness (including optional re-cross) - 11 mins _____

Closings

P Closing Arguments (including optional rebuttal) - 5 minutes _____
D Closing Arguments - 4 minutes _____

Prosecution/Plaintiff gives opening statement first. Prosecution/Plaintiff gives closing argument first; Prosecution/Plaintiff may reserve a portion of its closing time for a rebuttal. Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

Round off times to the nearest one-half minute:
Examples: 3 minutes, 10 seconds = 3 minutes
4 minutes, 15 seconds = 4 1/2 minutes
2 minutes, 45 seconds = 3 minutes

AT THE CLOSE OF THE TRIAL, TIMEKEEPERS WILL SUBMIT THE TIME SHEET TO THE PRESIDING JUDGE WHO WILL SHARE IT WITH THE EVALUATORS.

IX. SAMPLE FORMS AND SCORESHEETS

Illinois State Bar Association High School Mock Trial Score Sheet
JUDGES AND EVALUATORS PLEASE NOTE:
Re-direct, re-cross and Plaintiff's rebuttal in closing are now allowed in this program, though not required.

Plaintiff _____ Defense _____
On a scale of 1-5, please rate the teams for all categories below, recording a score in each box provided. No fractions please.
1-Not effective 2-Fair 3-Good 4-Excellent 5-Outstanding

SCORING CHART		PLAINTIFF/PROSECUTION	DEFENSE/DEFENDANT
Opening Statement			
Plaintiff's 1st Witness	Direct & Redirect Exam by Atty (P)		
	Cross & Recross Exam by Atty (D)		
	Witness Performance (P)		
Plaintiff's 2nd Witness	Direct & Redirect Exam by Atty (P)		
	Cross & Recross Exam by Atty (D)		
	Witness Performance (P)		
Defendant's 1st Witness	Direct & Redirect Exam by Atty (D)		
	Cross & Recross Exam by Atty (P)		
	Witness Performance (D)		
Defendant's 2nd Witness	Direct & Redirect Exam by Atty (D)		
	Cross & Recross Exam by Atty (P)		
	Witness Performance (D)		
Closing Arguments & Plaintiff's Rebuttal			
General Team Presentation			
TOTAL POINTS			

I award this ballot to: _____ Prosecution _____ Defense
Nomination for Outstanding Attorney _____ P / D
Nomination for Outstanding Witness _____ P / D
Evaluator's Printed Name:_____
Evaluator's Signature: _____

Do not show scores to the students, teachers or guests. Please return all completed score sheets to the Mock Trial Coordinator at the conclusion of each trial.

ISBA HIGH SCHOOL MOCK TRIAL PROGRAM

JUDGE'S SCORESHEET

Please indicate the school/team name for the:
Petitioner/Plaintiff/Prosecution:_____
Respondent/Defendant/Defense:_____

Please rate the teams using the following scale for overall achievement. Please do NOT use fractional points.

Points awarded may not exceed 45 for each team.

I AWARD THE PETITIONER TEAM _____ OVERALL ACHIEVEMENT POINTS.

I AWARD THE RESPONDENT TEAM _____ OVERALL ACHIEVEMENT POINTS.

1-9 Not effective
10-18 Fair
19-27 Good
28-36 Excellent
37-45 Outstanding

I award this ballot to:

_____Plaintiff Team **_____Defense Team**

_____

Nomination for OUTSTANDING ATTORNEY _____

Nomination for OUTSTANDING WITNESS _____

Judge's Signature _____

Thank you.

Explanation of the Performance Ratings Used on the Presiding Judge and Evaluator Mock Trial Score Sheets

Participants should be rated on a scale of 1-5, with five being the highest level of achievement. Remember, you are NOT scoring on the merits of the case; rather, you are scoring on student achievement, understanding, presentation, conduct, etc. Evaluators may individually consider penalties for violations of the mock trial rules. Penalties may reduce point awards in appropriate categories. Do not indicate separately any penalties you may give.

1-9 on Presiding Judge Scoresheet/1 on Evaluator Score sheet - Not Effective/Poor

Attorneys: Unsure of self, illogical, uninformed, not prepared, speaks incoherently, ineffective presentation of case materials, no strategy evident. Poor speaking voice, no eye contact, excessive use of notes. Questions irrelevant, leading or repetitive.

Witnesses: Witness presentation inadequate; reliance on reminders from lawyers. Witness uncooperative.

10-18 on Presiding Judge Scoresheet/2 on Evaluator Score sheet - Fair/Needs Improvement

Attorneys: Minimally informed and prepared. Performance is passable but lacks depth in terms of knowledge of appropriate tasks and materials. Communications lack clarity and conviction. Exhibits some case strategy. Questions somewhat irrelevant and often misleading. Minimal use or overuse of objections. Only fair response to objections from opposing counsel.

Witnesses: Witness exhibits fair understanding of affidavit and responds appropriately but needs assistance or seems to falter.

19-27 on Presiding Judge Scoresheet/3 on Evaluator Score sheet - Good

Attorneys: Good, solid, but less than spectacular performance. Logic and organization are adequate but could have been better. Grasps major aspects of the case but does not convey mastery. Communications are clear and understandable but could be more fluent and persuasive. Deals with objections adequately. Good control of witness. Questions not leading.

Witnesses: Witness exhibits good knowledge of role and tells story in coherent manner. Needs few reminders from lawyers. Good eye contact.

28-36 on Presiding Judge Scoresheet/4 on Evaluator Score sheet - Very Good/Excellent

Attorneys: Fluent, persuasive, clear and understandable. Organizes materials and thoughts well and exhibits mastery of case and materials. Asks suitable questions and follows through with appropriate questions on cross. Evidences a clear case strategy and controls the witnesses very well.

Witnesses: Excellent knowledge of role and good speaking voice. Answers were responsive. Answers questions from both sides appropriately. Believable; does not appear to be too staged.

37-45 on Presiding Judge Scoresheet/5 on Evaluator Score sheet - Outstanding

Attorneys: Superior in qualities listed for Excellent performance. Thinks well on feet, is logical, and keeps poise under duress. Can sort out the essential from the nonessential and use time effectively to accomplish major objectives. Demonstrates the unique ability to utilize all resources to emphasize vital points of the trial.

Witnesses: Exceptional knowledge of roles Persuasive and believable. Responds effectively to questions from lawyers on both sides. Eye contact. Absolutely believable in role.



ILLINOIS STATE
BAR ASSOCIATION

Illinois State Bar Association
424 South Second Street, Springfield, IL 62701
Tel.:217-525-1760
Fax: 217-525-9063
www.isba.org