The success of the Mock Trial program depends heavily on informed and effective judging. The Law-Related Education Committee offers this tip sheet as a guide, but it is no substitute for reading the case, the competition rules, the modified rules of evidence and the bench brief.

Your responsibilities as a presiding judge include guiding the trial process, ruling on objections, ensuring a fair trial, creating a positive competition experience, handling disputes, providing positive comments, and collecting all needed paperwork from teams and scoring judges.

NEW for 2012/13 Competition Year:

- **JUDGES' BENCH BRIEF** Please do not discuss contents of bench brief to teams before, during or after competition. The document is for judges only.
- JUDGE'S COMMENTS are no longer provided at the end of trial. Instead congratulate both teams.
- A PRESIDING JUDGE CHECK LIST is used for each round. You can start the check list even if teams are still completing practice scoresheets and then come back to distributing them before the trial starts.
- **TIME EXTENSIONS** may be granted up to 30 seconds. There is no penalty unless this extension is exceeded.
- COMPETITION HANDBOOK / CASE MATERIALS / EXHIBITS are provided in a neutral location for both teams and in the witness box. A set of exhibits will also be in a neutral location for both teams. Teams cannot show personal copies of materials to judges.
- MOST EFFECTIVE NOMINATIONS BY STUDENTS are done at the end of the round by completing certificates.
- **DISTRIBUTION OF ATTORNEY ROLES –** HS ONLY require three attorneys on each side.
- ANNOUNCE RULINGS regarding a filed dispute before dismissing the teams.
- **PROPS OR DEMONSTRATIVE OBJECTS** may only be used if those items are officially provided by the SC Bar as part of the case materials. Teams may not bring to court any other items to use as props for demonstrative devices. Nor may teams use loose items that they may find in the courtroom (e.g., pens, water bottles, flip charts, etc.) for props, exhibits for demonstrative purposes.
- TEAMS MUST CALL ALL WITNESSES including their third witness even if the team runs out of time. In that event, the team will be allotted a maximum of three minutes for direct examination of its third witness and will receive a time penalty of ten points in the penalty box. You will need to note this on a dispute form to have this penalty tracked and signed off on by all the judges.

Important Notes for New and Experienced Presiding Judges:

- To ensure independent and impartial scoring, do not talk to your fellow scoring judges about your scoring decisions, either during a round or between rounds.
- Do NOT discuss scoring issues with students, coaches and/or spectators during or after the competition.
- Attendance at the judges' orientation on the day of competition is mandatory, even for experienced judges. Any last minute issues, case corrections and judging conflicts will be discussed at the orientation.

Preparation for the Trial Prior to Competition Day:

- Review: Tip Sheet, Scoring Matrix, Bench Brief, Case, Competition Rules and Rules of Evidence
- Arrive at scheduled time. If lost or delayed, please contact regional coordinator with number provided.
- Move to the front of courthouse entrance lines. (Teams know judges have priority.)
- Presiding judges may bring their personal robes or wear robes provided on-site.

Differences Between Mock Trial and Real Trial:

- a) REAL TRIAL LAWYER STANDARDS NOT THE SAME: Judges should not impose the standards of real trial lawyers on the students who are competing in Mock Trial. Please consult the Mock Trial Modified Rules of Evidence, which differ from "real" evidence rules in at least the following ways:
 - Exceptions to hearsay and other evidence rules are limited.
 - Not all objections are available to Mock Trial teams.
 - Check the rules before ruling on an objection that is unfamiliar.
- b) **WITNESS AFFIDAVITS:** Witnesses are limited to what is in their affidavits. There are two ways for an attorney to deal with a witness who testifies outside of his/her affidavit:
 - · Impeach the witness with the affidavit, or
 - Creation of material facts objection (aka unfair extrapolation).

A "creation of material facts" or "unfair extrapolation" objection is not an evidentiary objection, but an allegation that the lawyer/witness on the other side has violated the rules by making up facts favorable to his/her side.

When a creation of material facts objection is made, you must resolve whether the objecting attorney's position is correct or whether the testimony offered is a "reasonable inference" from the materials provided. To rule on this quickly, you can require the attorney who is offering the allegedly "created material fact" to point to where this testimony, or the testimony from which it may be reasonably inferred, appears in the witness's affidavit.

After hearing from both sides, you rule on the "creation of material fact" objection. If the objection is sustained, the scoring judges <u>individually</u> must assess the team against whom the objection is sustained a penalty of 3 to 7 points, which is reflected in that attorney's score. If the objection is overruled, you must immediately declare whether or not, in your judgment, the objection was made in good faith. If you determine the objection was not made in good faith, the scoring judges <u>individually</u> must assess against the team that made the objection a penalty of 3 to 7 points.

Making up materials facts is <u>cheating</u>. The team doing so must be penalized and not rewarded for creativity. All judges must be familiar with the affidavits in order to identify the created facts.

At the Competition, Before the Trial Starts:

Judging / Scoring Conflicts:

- The Mock Trial Regional Coordinator announces the teams competing. If you have a conflict (relative on the team, you know the attorney coach, etc.), please let the coordinator know prior to judges' assignments.
- Upon entering the courtroom, if a judge recognizes a school and thinks they
 - o <u>may have a conflict</u>; they should ask the presiding judge to recess and then speak with the coordinator. Do not make an announcement of this conflict, simply leave courtroom.
 - o can judge fairly without bias, the trial can proceed.

Judging and Courtroom Assignments:

- The coordinator announces judging teams and room assignments.
- Judging teams meet and stay together as a group once assigned. Do not leave individually to the assigned courtroom as looking for a missing judge can delay the start time.
- Scoring judges sit in the jury box behind or off to the side of the timekeepers, who will also be in the jury box. (For High School Mock Trial, the jury box will also have a courtroom artist and sitting off to the side or in front of the scoring judges.)

Practice Scoresheet:

- Teams will complete practice scoresheets with student names, roles and gender prior to each round. (A sample practice scoresheet is at the end of this document.)
- The Plaintiff/Prosecution team is responsible for collecting the completed practice sheets and distributing them to the presiding and scoring judges *prior to the trial starting*.
- The practice scoresheet will have the exact order of students and witnesses performing in the trial.
- In rare cases, you may be asked to serve as a scoring judge in the event a courtroom has only two scoring
 judges on the scoring team. All efforts to reduce multi-tasking will be made. Should you be asked to score,
 it will be helpful to have read the scoring judges' tip sheet as well.

At Assigned Courtroom with Team of Scoring Judges:

- **BAILIFF:** You will have cards to provide the bailiff, which will have your name printed. You meet with the Plaintiff/Prosecution's bailiff prior to starting the round and provide them with the card. Bailiffs may need help pronouncing your name.
- BAILIFF OPENS COURT AND INTRODUCES PRESIDING JUDGE: Take this role very seriously. The bailiffs have very few duties and are eager to perform the duties they are assigned.
- **CONFIRM TEAM CODES:** Judges will know which two team codes they are assigned to judge. Team codes are in place of school names. Prior to beginning any introductions or housekeeping, please confirm the two teams seated in the courtroom are correct by asking for their team codes -- not their school names.

General Housekeeping Items to Review in the Courtroom:

The presiding judge should try to run these housekeeping items as quickly as possible.

- VISITOR / OBSERVER BADGES: Everyone behind the bar should be wearing coded visitor badges
 matching the teams in front of the bar. Observers connected with other schools are <u>not</u> allowed to observe
 the trial. You ask if anyone not connected with either team to leave courtroom and find the Coordinator.
- **LIMITED SEATING:** If limited seating exists in the courtroom. Ask observers of the students not competing in that round to give up their seats to the observers of the performing students. The excused observers will receive the same courtesy when their students perform. Teams only have 24 visitor badges.
- SHARING OF GALLERY SEATING: Ask coaches if their team and guests are seated on the correct side
 of the courtroom. Sitting on the opposing side should only be with the other team's permission. No team is
 permitted to dominate gallery space.
- NO STANDING PERMITTED: All spectators behind the bar must be seated during the trial. No obstruction
 of aisles or doorways is permitted.
- **LIMIT MOVEMENT DURING TRANSITIONS:** If it is necessary to enter or exit the courtroom during the trial, it should be done during a transition between witnesses. (Teachers have been prompted to have someone not viewing the trial be placed outside the courtroom door(s) to assist with guests.)
- **NO COMMUNICATION WITH JUDGES:** Attorney/teacher coaches, parents and students are not allowed to have contact with all judges on the day of the competition to prevent the appearance of impropriety.
- NO COMMUNICATION OVER THE BAR: Remind everyone the rules prohibit communication between team members and the coaches, non-competing students and observers during the trial, including during the five minute recess. Team members in front of the bar are the only ones who may confer with one another.
- NO BENCH CONFERENCES: Everything is done in the presence of the judges.
- COURTROOM SKETCH ARTIST AND COURTROOM JOURNALIST HS ONLY: Acknowledge and
 welcome the courtroom sketch artists and journalists seated in the jury box either in front or off to the side
 of the scoring judges. They are to be reminded that no communication will take place with other team
 members and their area is to be cleaned up after the competition with all trash disposed.

- **PHOTOGRAPHY AND VIDEOTAPING:** Ask both teams if they permit the opposing team to take pictures or video tape the round.
 - If both teams approve, the use of video/cameras is permitted from a seated position with no flash.
 - Should a team object to this, no explanation is required.
 - It is possible that a parent or guest enters the courtroom with a video camera after this discussion. If ruled no videotaping, at a break, instruct that guest to put the camera away.
 - o If in the Federal Courthouse, teams do not need to be asked about videotaping or taking pictures because neither courthouse allows cameras or cell phones.
- **NO MOVING FURNITURE:** We cannot move any furniture in the courtrooms for from other rooms.
- TIMEKEEPER PLACEMENT: Identify the timekeepers provided by both teams and make sure they are sitting together in the jury box. They should be seated where the team members can see the time cards.
 - Timekeepers sit in front of or off to the side of scoring judges so they cannot see their scoresheets.
 - If timekeepers are not in the jury box, they are allowed to move to the jury box or another location for an attorney to see their remaining time for their opening statement and closing argument.
- TIMEKEEPERS WORKING SILENTLY AND SIMULTANEOUSLY: Timekeepers only communicate through time cards provided by the SC Bar. They are not permitted to wave their cards or voice, "STOP." They silently/ simultaneously display the applicable "Time Remaining" cards with the same amount of time.
- **STOPWATCHES:** The Mock Trial Regional Coordinator will have backup stopwatches.
- **TIME LIMITS:** Openings, directs, crosses and closings are timed. Although not encouraged, attorneys can ask for more time. Granting additional time is up to you, but no more than 30 seconds should be given. If granting more time, state exactly how much more time is granted to track time overages.
 - Scoring judges independently consider each team's adherence to time limits. You may allow a team to briefly finish its presentation if time elapses and the attorney is in their final sentence - not last few comments.

Some Delay Tactics to Abuse Time:

- Attorneys Every member of counsel looking at evidence prior to approving;
- Witnesses Speaking slowly to the point of being annoying;
 Witnesses Refusing to answer questions until the question is repeated one or more times; and
- Witnesses Answering a yes/no question with lengthy narrative.
- TIME DISCREPANCY VERIFICATION THROUGHOUT TRIAL: Allow timekeepers a brief pause after each segment (both openings, each case in chief, and both closings) to allow them to determine if there are any time discrepancies to report. Then, prompt them to report any time discrepancies of 15 or more seconds. (Any discrepancies less than 15 seconds are not entertained.)

In the event of a time discrepancy, the official timekeeper is with the Prosecution/Plaintiff side. Possible contributions to a time discrepancy that you will want to inquire about include the following:

- "Did the stopwatch stop during objections?" (Objections are not timed.)
- "Did the stopwatch stop during the swearing in of the witnesses?" (Swearing of witnesses are not timed.)
- "Did the stopwatch stop for the attorneys to confer with co-counsel?" (Conferring with co-counsel is timed.)
- Was the introduction of co-counsel and witnesses timed?
 - o before the opening statement is NOT timed.
 - o during the opening statement is timed.
- COSTUMING: Costuming (wigs, uniforms, badges, etc.) is not permitted. Make-up for purposes of showing disfigurement or scarring is not permitted. Using accents is NOT costuming.
- PROPS: Teams may not bring any other items to use as props or demonstrative devices. Nor may teams use loose items found in the courtroom (e.g., pens, water bottles, flip charts, etc.) for props, exhibits or demonstrative purposes. Teams may use as props or demonstrative objects only if provided by the SC Bar as part of the case materials.
- JURY CHARGES are NOT read to the students.
- **EMERGENCIES:** If an emergency occurs, the teams report it immediately to you and coordinator. Communication in the courtroom should be minimal with no communication across the bar unless the emergency requires such. Except in an emergency, no one may address you except for team members participating in the round.

In the event of an emergency with a scoring judge who needs to leave the courtroom, ask for a brief recess, have both teams' bailiffs monitor for non-communication, assess whether the judge will return in a reasonable amount of time, or needs to be replaced. Everyone else remains seated and quiet.

- CODE OF ETHICAL CONDUCT: All teams (coaches & students) sign a Code of Ethical Conduct agreement in order to compete. Remind them that the agreement applies before, during, and after the competition and also applies to respecting the courthouse property. Any violation can bring harsh penalties up to and including immediate expulsion from the competition.
- PRACTICE SCORESHEETS: Inquire if the practice scoresheets were completed by both teams and distributed accordingly. The trial cannot proceed unless you, the three scoring judges and both teams have a copy with first three columns completed.
- **INTRODUCTIONS SCORING JUDGES:** The scoring judges introduce themselves without indicating if they are a new judge, do not do trial work, just passed the Bar exam, or did not read the case materials.
- **INTRODUCTIONS EACH TEAM:** Team members introduce themselves with their name and role without identifying the school they represent. Introductions are in the order written on the practice scoresheet.

Starting the Trial:

- **OPENING STATEMENTS: (5 Minutes Per Side)** Both sides deliver their opening statements. Any time remaining from openings is <u>NOT</u> carried over to the closing arguments; there are <u>NO REBUTTALS</u> to the opening statements; and <u>NO OBJECTIONS</u> may be raised during or following opening statements. If a team believes there should have been an objection, it should be addressed during the presentation of the evidence or within the closing argument, but not as an objection.
- ANY TIME VIOLATIONS? The timekeepers are given a few seconds to check their timesheets. You ask if there are any time violations of 15 seconds or more. If there are time violations, the timekeepers report them to you right then and not at end of trial. Acknowledge the violation; ask for stopwatches be cleared back to zero, and state that the violation will be handled at the end of trial when it is filed as a dispute.
- BAILIFF SWEARS IN ALL WITNESSES: Witnesses are asked to stand. Plaintiff/Prosecution's Bailiff will be asked to swear in all witnesses at once.
- PLAINTIFF / PROSECTION'S CASE IN CHIEF DIRECT / CROSS EXAMINATIONS: (TIME LIMITS: 25 minutes direct total / 20 minutes cross total) Witnesses are called in the order they are listed on the practice scoresheet. A cross examination is not limited to direct examination. Redirect and re-cross are permitted. If a team rests and it has not called all of their witnesses, do NOT let the team rest. Teams can be severely penalized if all witnesses are not called. In the event time runs out before all witnesses are called, that team is required to call their remaining witnesses with no more than three minutes added to the clock. (Scoring judges will penalize the team being awarded the additional three minutes ten points in the penalty box. A dispute form will need to be completed for this penalty to be tracked and signed off by all the judges.)
- ANY TIME VIOLATIONS? Follow time violation procedure above.
- DEFENSE'S CASE IN CHIEF DIRECT / CROSS EXAMINATIONS:
 (TIME LIMITS: 25 minutes direct total / 20 minutes cross total) Follow the same procedure for the Plaintiff / Prosecution's Case in Chief.
- ANY TIME VIOLATIONS? Follow time violation procedure above.

RULINGS / PROCEDURE: Be as nice as possible as this is not a real trial, the students are not real lawyers and the students and their parents are watching. Make accurate rulings, not favoring one side over the other.

It can be very tempting to want to help underperforming teams in order to facilitate the momentum of the trials; however, there is a difference between moving a trial along and helping a team. It is the responsibility of the coaches to prepare a team for the trial. Helping an underperforming team on the day of the competition shows favoritism to one team. Examples of helping a team incorrectly would be:

- "What you are trying to say is....."
- "Did you mean to say?"
- "Are you sure you don't want to"
- Sustaining or overruling an objection for the wrong reason is considered helping a team.
- You have to rule on the arguments made.

OBJECTIONS:

You <u>may not</u> exclude evidence without an objection, even if you believe that it is not relevant or otherwise inadmissible. It is up to the students to object to questions, testimony and exhibits.

If you are not familiar with the Modified Rules of Evidence, you may ask the student to refer to the rule that applies to the objection. If in doubt, err on side of letting evidence in.

Control the objections. The process should allow for an objection to be made, the opposing counsel responds, and the motioning attorney responds with follow-up. Any narrative after this point is ceased and a ruling is made unless additional narrative is needed to rule. Encourage quality objections instead of quantity.

Timing stops during objections, but time is still important. Trials need to conclude on time for the competition to stay on schedule. Simply rule on an objection. It is not necessary to explain the ruling as no record is being made and there is no appeal.

Re-direct and re-cross are allowed, but nothing further. Re-cross IS LIMITED to matters addressed in re-direct. No extra time is allowed. (Teams may ask for permission to ask the timekeeper how much time is remaining prior to proceeding with redirect or re-cross.)

There are two unusual objections that the presiding judge may encounter:

- (1) TESTIMONY / QUESTION OUTSIDE THE WITNESS AFFIDAVIT: The witness has "created" facts which are not contained in the rules and the creation helps/hurts a team's position." (Some students might refer to this as "unfair extrapolation.") Should this occur, the presiding judge can either:
 - Ask the witness if s/he can testify to the fact based on personal knowledge, or
 - Ask the attorney presenting the facts to show where those facts are contained in the witness's affidavit.

You rule on whether or not the facts were created and then on whether or not those facts were material. If ruling material facts were created, the scoring judges will assess a penalty on their scoresheets. Note that some teams will choose not to make this objection, but will wait until cross and use the witness's affidavit for impeachment. (You must allow this impeachment, subject to any appropriate objection from the other side.)

(2) VIOLATION OF THE MOCK TRIAL RULES: This applies to rules such as communication with members of the audience, costuming, etc. You will make a note and state that the teams will argue the violation at the conclusion of the trial when the scoring judges have been excused from the courtroom.

Other objections should be fairly standard and are set forth in the rules. Teams are limited to the objections contained in the Modified Rules of Evidence.

RECESS PRIOR TO CLOSING ARGUMENTS: (TIME LIMIT: 5 Minutes)

- o Allow a five minute recess and ask the timekeepers to time the recess.
- Students in front of the bar <u>DO NOT</u> leave the courtroom. Guests <u>may leave</u> during the recess.
- The gallery should remain quiet during the recess.
- Students in front of the bar are permitted to confer with one another to adjust their closings.
- o Students in front of the bar should not communicate with coaches or guests behind the bar or with bailiffs, timekeepers, sketch artists or journalists.
- Judges may not talk amongst themselves during the recess to ensure independent scoring.
- CLOSING ARGUMENTS AND REBUTTAL (5 Minutes Per Side) Closing arguments take place with Plaintiff/Prosecution presenting first. Plaintiff/Prosecution can ask you to reserve any remaining time from their closing argument for a rebuttal. You must grant the request once you confirm there is time remaining. The Plaintiff/Prosecution may not rebut if the closing attorney did not reserve time during the closing.
- ANY TIME VIOLATIONS? Follow time violation procedure above.

Ending the Trial

- **RE-INTRODUCTIONS OF TEAM MEMBERS:** To give most effective awards, students re-introduce themselves slowly in the order they performed as well as the role in the trial without identifying their school.
- EXCUSE SCORING JUDGES: The scoring judges are dismissed to complete scoresheets.
- TEAMS CHECK FOR RULES VIOLATIONS BY MEETING WITH COACHES: Teams are allowed to consult with their bailiffs, timekeepers and coaches during the dispute preparation period of two minutes. (Rule 6.1) Let both sides address any violations. If any team believes a substantial rules violation has occurred, one of its student attorneys will present its position by completing a green dispute form provided by you and submits the completed disputed form back to you. (Coaches cannot complete this form.)
- **DISPUTE RESOLUTION:** Procedures for the dispute are on the back of the dispute form. The team that has a dispute raised against them has an additional two minutes to consult with their coaches. The moving party cannot confer further with their coaches. Only team members can argue violations not coaches. Announce your decision on rules violations.
- MOST EFFECTIVE NOMINATIONS MADE BY TEAMS: (TIME LIMIT: 2 Minutes) After dispute
 resolutions, hand each team two certificates (Mose Effective Witness and Attorney). Each team nominates
 a most effective witness and attorney from the opposing team, announces recipients, and awards them
 with their certificates upon completion. The most effective awards determined by the students do not
 replace the most effective awards determined by the scoring judges announced at the end of the
 competition. Nominations made by the students are not shared with the scoring judges.
- **CONGRATULE TEAMS:** Do NOT provide comments, but instead congratulate both teams quickly.
- COLLECT TIMESHEETS: Collect the completed and signed timesheets from both timekeepers.
- **BAILIFFS COLLECT BADGES**: After the last round, ask <u>both bailiffs</u> to stand at exits and collect team and visitor badges.
- **TEAMS EXIT QUIETLY:** Ask teams to exit quietly into the hallways as trials may still be in session.
- **RETURN TO SCORING ROOM:** After collecting the two timesheets, dispute forms, and any judges' material brought into the courtroom you return to the scoring room.
- **DISCUSS DISPUTE(S) WITH SCORING JUDGES:** Share any disputes that were raised, what ruling was made, and if the ruling(s) require penalties. Scoring judges don't have to agree on the same penalty as long as the penalty is within the range posted on the back of the dispute form. You and the scoring judges are required to sign each dispute form even if no disputes were raised.
- MOST EFFECTIVE NOMINATIONS: You and the scoring judges nominate a most effective attorney and
 witness from the round on the ballot form provided. Scoresheets are helpful in this discussion. There is no
 criteria for these awards; however, the awards tend to go to students with the highest scores.
- **COLLECT PAPERWORK:** Collect all three completed official scoresheets, three practice scoresheets, both timesheets, dispute forms, and most effective nomination ballot. The scoring team should not proceed to the next trial until all paperwork is completed and submitted to the coordinator.
- ASK JUDGING TEAM TO STAY: Ask the scoring team to stay together until all scores are verified by the
 coordinator. All judges are welcome to stay for the announcements made at the conclusion of the
 competition day.

Thank you for judging the competition!

Prosecution Witnesses Bailey BrownAssistant Coach Avery AbbottParent Prosecution Witnesses Defense Drew DeLaney Frankie Fulton					CHOOL MOCK TRIAL se WitnessesCoach / DefendantTrack Teammate 1Medical Expert
OPENING STATEME (P) Name of Attorney (D) Name of Attorney	ris Ryan Brown Trevor Burris	GENDER	Р	D	JUDGES' NOTES
(P) 1st Witness Bailey Brown Avery Abbott Chandler Covington (P) 2nd Witness Bailey Brown Avery Abbott Chandler Covington (P) 3rd Witness Bailey Brown Avery Abbott Avery Abbott Avery Abbott	SEINCHIEF (P) Witness - Student Name: Mered ith williams (P) Direct Attorney: Tamika Jacobson (D) Cross Attorney: Beth Florez (P) Witness - Student Name: Coleman Wellman (P) Direct Attorney: Samantha-Davis (D) Cross Attorney: Dylan Knight (P) Witness - Student Name: Logan Valentine (P) Direct Attorney: Ryan Brown (D) Cross Attorney:	F F E F E	P		SAMPLE This is a completed version using the team rosters from CH and MG.
Chandler Covington DEFENSE CASEIN (D) 1st Witness Drew DeLaney Frankie Fulton Emery Erickson	Trevor Burris (D) Witness - Student Name: Brandon Stewart (D) Direct Attorney: Pylan Knight (P) Cross Attorney: Samantha Davis	m m m	<u></u>	D	It is very important to pay attention to the order of the witnesses being called by each side. Notice team MG is calling Frankie Fulton first, which changes the order of how team CH would list their crossing attorneys.
(D) 2nd Witness Drew DeLaney Frankie Fulton Emery Erickson	(D) Witness - Student Name: Davida LanderS (D) Direct Attorney: Beth Florez (P) Cross Attorney: Tamika Jacobson	+ +			
(D) 3rd Witness Drew DeLaney Frankie Fulton Emery Erickson	(D) Witness - Student Name: Maddison Pearson (D) Direct Attorney: Two Burris (P) Cross Attorney: Ry An Brown	F M			
(P) Name of Attorney: Tamika Jacobson F (D) Name of Attorney:		P	D		
OVERALL TEAM PE	AMBYMAMSK	OTAL.			