

CLASSROOM LAW PROJECT proudly sponsors the 31st annual statewide

2016-2017 Oregon High School Mock Trial Competition



LANDRY LOPEZ, plaintiff

v.

BUDDIE'S BURGERS LLC, defendant

Did the plaintiff, a high school student working at a popular hangout, get fired because of clocking out early or because of reporting a theft thought to be an inside job?

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a case written by committee
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Heartfelt appreciation is extended to all **teacher and attorney coaches, regional coordinators, county courthouse personnel, attorneys and other volunteers** whose dedication and hard work make the regional and state competitions successful. Without the efforts of volunteers like these, this event would not be possible.



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November 2016

Dear Students, Coaches, Parents, Judges and Volunteers:

Welcome to this year's mock trial competition! This is our 31st annual competition and this year's trial promises to be one of Oregon's best.

The case was authored by a committee made up of experienced lawyers and teachers. The committee's aim was to craft a case that is relevant in students' lives, while being balanced and engaging. I hope we have hit the mark.

As you may already know, mock trial is an extraordinary activity. It demands intense pretrial preparation and spur-of-the-moment adjustments in the courtroom; pure legal knowledge and real-world practicality; individual excellence and an unwavering commitment to teamwork; and, above all else, the desire to have fun and learn something new.

At Classroom Law Project we are committed to the best in civic education, and that includes the mock trial competition. Mock trial is unique in that it offers the benefits of a team activity and interactions with community leaders, all while learning about the justice system and practicing important life skills. Plus, it is an opportunity in which young women and men compete on equal footing.

I ask for your help in continuing this successful program. Please give to Classroom Law Project, the sponsor of the Oregon High School Mock Trial Competition. The program costs more than \$35,000 per year; less than half comes from registration fees. We know that you have been asked many times to give and understand that your ability to do so may be limited. But to the extent that you can, please consider how valuable this program is to the young people in your life. Any amount you can give is appreciated. Information about giving is available at our website, www.classroomlaw.org. Classroom Law Project is a non-profit organization and your donation is tax deductible to the extent permitted by applicable law.

I look forward to seeing you in the courtroom. Thank you, and good luck with this year's case!

Sincerely,

Marilyn R. Cover
Executive Director

2016-2017 Oregon High School Mock Trial Competition

Landry Lopez v. Buddie's Burgers

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CLASSROOM LAW PROJECT

2016-2017 OREGON HIGH SCHOOL MOCK TRIAL COMPETITION

I. INTRODUCTION

This packet contains the official materials that student teams will need to prepare for the 31st annual Oregon High School Mock Trial Competition.

Each participating team will compete in a regional competition. Winning teams from each region will be invited to compete in the state finals in Portland on March 17-18, 2017. The winning team from the state competition will represent Oregon at the National High School Mock Trial Competition in Hartford, Connecticut, May 11-13, 2017.

The mock trial experience is designed to clarify the workings of our legal institutions. Students take on the roles of attorneys, witnesses, court clerks and bailiffs. As they study a hypothetical case, consider legal principles and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, students learn about our judicial system and develop valuable life skills (public speaking, team building, strategizing and decision making to name a few) in the process.

Since teams are unaware of which side of the case they will present until minutes before the competition begins, they must prepare for both the plaintiff and defense. All teams will present each side at least once.

Mock trial judges are instructed to follow the evaluation criteria when scoring teams' performances. However, just as the phrase "beauty is in the eye of the beholder" underscores the differences in human perceptions, a similar subjective quality is present when scoring mock trial. Even with rules and evaluation criteria for guidance, not all scorers evaluate a performance identically. While CLASSROOM LAW PROJECT and competition coordinators work to ensure consistency in scoring, the competition can reflect otherwise, as in real life.

Each year, the mock trial case addresses serious matters facing society today. By affording students an opportunity to wrestle with large societal issues within a structured format, CLASSROOM LAW PROJECT strives to provide a powerful and timely educational experience. It is our goal that students will conduct a cooperative, vigorous, and comprehensive analysis of these materials with the careful guidance of teachers and coaches. This year's case offers opportunities to discuss issues in the workplace.

By participating in mock trial, students will develop a greater capacity to understand important issues like these.

II. PROGRAM OBJECTIVES

For the **students**, the mock trial competition will:

1. Increase proficiency in basic skills such as reading and speaking, critical thinking skills such as analyzing and reasoning, and interpersonal skills such as listening and cooperating.
2. Provide an opportunity for interaction with positive adult role models in the legal community.

3. Provide an interactive experience where students will learn about law, society, and the connection between the Constitution, courts, and legal system.

For the **school**, the competition will:

1. Promote cooperation and healthy academic competition among students of various abilities and interests.
2. Demonstrate the achievements of high school students to the community.
3. Provide a challenging and rewarding experience for participating teachers.

III. CODE OF ETHICAL CONDUCT

This Code should be read and discussed by students and their coaches at the first team meeting. **The Code governs participants, observers, guests and parents** at all mock trial events.

All participants in the Mock Trial Competition must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism of any kind is unacceptable. Students' written and oral work must be their own.

Coaches, non-performing team members, observers, guests, and parents **shall not talk to, signal, or communicate with** any member of the currently performing side of their team during trial. Likewise, these individuals shall not contact the judges with concerns about a round; these concerns should be taken to the Competition Coordinator. These rules remain in force throughout the entire competition. Currently performing team members may communicate among themselves during the trial, however, no disruptive communication is allowed. Non-performing team members, teachers, coaches, and spectators must remain outside the bar in the spectator section of the courtroom.

Team members, coaches, parents and any other persons directly associated with the Mock Trial team's preparation are **not allowed to view other teams** in competition so long as they remain in the competition themselves. *Except*, the public is invited to attend the final round of the last two teams on the last day of the state finals competition – approximately 2:00 p.m., March 18, in the Hatfield Federal Courthouse, Portland.

Students promise to compete with the highest standards of deportment, showing respect for their fellow students, opponents, judges, coaches, and competition Coordinator and volunteers. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly and with the utmost civility. Students will avoid all tactics they know are wrong or in violation of the rules. Students will not willfully violate the rules of the competition **in spirit or in practice**.

Teacher coaches agree to focus attention on the educational value of the mock trial competition. **Attorney coaches** agree to uphold the highest standards of the legal profession and zealously encourage fair play. All coaches shall discourage willful violations of the rules. Coaches will instruct students on proper procedure and decorum, and will assist their students in understanding and abiding by the competition's rules and this Code. Teacher and attorney coaches should ensure that students understand and agree to comply with this Code. Violations of this Code may result in disqualification from competition. Coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.

Charges of ethical violations involving persons other than the student team members must be made promptly to the Competition Coordinator who will ask the complaining party to complete a dispute form. The form will be taken to the competition’s communication’s center, where a panel of mock trial host sponsors will rule on any action to be taken regarding the charge, including notification of the judging panel. Violations occurring during a trial involving students competing in a round will be subject to the dispute process described in the Rules of the Competition.

All participants are bound by this Code of Ethical Conduct and agree to abide by its provisions.

IV. THE CASE

A. Case Summary

In May 2016, plaintiff Landry Lopez was a senior at Genesee High School in Dillonsboro, Oregon. Landry was working part time at Buddie’s Burgers, known as “BB’s,” to save money for college. Landry planned to enroll in Stanhill College’s honors program the following autumn. On Thursday, May 5, 2016, Landry saw coworker Lincoln Streeter attempting to steal money from the “Genesee Generals Boosters” donation jars that lined BB’s tables, or so Landry thought. The “Genesee Generals Boosters” is a well-known and well-funded charitable partnership between BB’s and the Genesee High School Booster Club to support student sports. Landry promptly reported the matter to Buddie Gartowski, BB’s owner, who became angry.

The next day, Landry clocked out and closed BB’s early because it was a slow night; things were “deader than a doornail.” As a result, Buddie was unable to host a “sportsmanship summit,” a longtime tradition, following a major sports game. Buddie then terminated Landry’s employment with BB’s.

Landry has sued Buddie’s Burgers for unlawful “whistleblower” retaliation under Oregon law.

B. Witness List

For the plaintiff:

Landry Lopez, plaintiff and teen worker at a local restaurant
Sam “Crush” Jackson, former student and restaurant worker
Tyler Erickson, teen friend of plaintiff

For the defense:

Buddie Gartowski, owner of Buddie’s Burgers restaurant
Lincoln Streeter, high school sports standout and restaurant worker
Sandy Singh, Athletic Director from rival school

C. List of Exhibits

The exhibits in this case include the following:

1. Buddie’s Burgers advertisement in Dillonsboro Daily newspaper
2. BB’s Monthly Time Sheets

3. Excerpt from Buddie’s Burgers Employee Handbook

D. Introduction of Complaint, Answer, Stipulations, Jury Instructions

The Complaint, Answer, Stipulations and Jury Instructions appear on the following pages. This is a brief explanation of the information they provide.

The **Complaint** is the formal accusation against the defendant. It is submitted by the plaintiff to the court and the defendant to initiate the legal action. The **Answer** is the formal response by the defendant and it, too, is submitted to the court. These two formal documents set the wheels in motion for a trial.

Stipulations are the facts that both sides agree upon. They are not issues for the trial.

Jury Instructions are issued from the judge to the jury after both sides have completed their case. Jury instructions frame the law for jurors so they can focus on whether the evidence supports – or fails to support – the allegations. Jury Instructions are included for purposes of understanding the plaintiff’s burden of proof as well as the elements that need to be proved or disproved during the trial and, therefore, should be helpful to students’ understanding of the case.

...

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CHINOOK

LANDRY LOPEZ, an individual,

Case No. 16CV10056

Plaintiff,

COMPLAINT

v.

JURY TRIAL DEMANDED

BUDDIE'S BURGERS LLC, an Oregon
limited liability company,

Defendant.

Plaintiff Landry Lopez ("Lopez") alleges the following for Lopez's complaint against Buddie's Burgers LLC ("Defendant"):

NATURE OF THE CASE

1. This lawsuit arises out of Defendant's unlawful retaliation against Lopez, Defendant's former employee. During his employment with Defendant, Lopez opposed what Lopez reasonably believed to be theft, fraud, and embezzlement by a coworker in Defendant's restaurant. Almost immediately after Lopez blew the whistle on the unlawful conduct, Defendant terminated Lopez's employment. Defendant did so solely because of Lopez's protected whistleblower activity.

2. As a result of Defendant's unlawful retaliation, Lopez has suffered substantial economic and noneconomic damages. Accordingly, Lopez brings this action against Defendant.

PARTIES

3. At all relevant times, Lopez was and is a resident of Chinook County in the State of Oregon.

4. At all relevant times, Defendant was and is an Oregon limited liability company with its principal place of business in Chinook County in the State of Oregon.

JURISDICTION AND VENUE

5. This Court has original jurisdiction over this action because Lopez seeks over \$50,000 in damages, exclusive of interest and costs.

6. Venue is proper in this Court because all of the acts alleged in this complaint occurred in Chinook County in the State of Oregon.

FACTS

7. In the spring of 2016, Lopez was a senior at Genesee High School in Dillonsboro, Oregon. Lopez was an academic standout and had been admitted to Stanhill College's Honors program. Lopez had obtained a partial scholarship to Stanhill, but knew that Lopez would need more money to make ends meet when enrolled.

8. For that reason, in April 2016, Lopez sought and obtained a job at Defendant as a server. Lopez planned work part time until Lopez's graduation from Genesee High School, after which Lopez planned to work full time.

9. At all times from the beginning of Lopez's employment with Defendant until Defendant unlawfully terminated Lopez, Lopez met Defendant's reasonable performance expectations.

10. In April and May 2016, Buddie Gartowski ("Gartowski"), Defendant's owner, was running a charity drive for the Genesee Generals Booster Club, an organization that provides financial support to Genesee High School's athletics program, through Defendant. Gartowski set up donation jars in Defendant's restaurant, the proceeds from which ostensibly would go to Genesee High School's athletic program. On multiple occasions, Gartowski represented to Lopez and to the public that Gartowski would personally match whatever donations Gartowski collected in the donation jars.

11. On or about May 5, 2016, Lopez was closing Defendant's restaurant for the night. After Lopez collected customers' tips from the tables, Lopez walked back to Defendant's owner's office to deposit them in Defendant's "tip box." When Lopez opened the door to the office, though, Lopez saw Lincoln Streeter ("Streeter"), a coworker and fellow student at Genesee High School, removing money from the Genesee Booster Club donation jars and placing the money in Streeter's pocket and in Defendant's normal cash box.

12. Lopez reasonably believed that Streeter's conduct was unlawful. Accordingly, the next day, May 6, 2016, Lopez reported Streeter's conduct to Gartowski. When Lopez did so, Gartowski became hostile and told Lopez to "keep [Lopez's] nose out of places it doesn't belong," or words to that effect.

13. The next day, on May 7, 2016, Gartowski terminated Lopez's employment with Defendant. In doing so, Gartowski told Lopez that Gartowski "doesn't like troublemakers," or words to that effect. Gartowski claimed that Gartowski was terminating Lopez for clocking out a few minutes early the night before. However, Gartowski's stated reason was pretext. The real reason for Lopez's termination was that Lopez had previously opposed what Lopez reasonably believed to be unlawful conduct by Streeter.

CLAIM FOR RELIEF
Violation of ORS 659A.199 (Unlawful Whistleblower Retaliation)

14. Lopez incorporates and realleges paragraphs 1 through 13 above.
15. Lopez engaged in protected whistleblower activity when Lopez reported and opposed what Lopez reasonably believed to be unlawful conduct by Streeter.
16. Lopez suffered an adverse employment action when Defendant terminated Lopez's employment.
17. Lopez's termination was causally connected to Lopez's protected activity. Specifically, had Lopez not reported or opposed Streeter's unlawful conduct, Defendant would not have terminated Lopez's employment.
18. As a result of Defendant's unlawful retaliation, Lopez has suffered \$50,000 in economic damages and \$100,000 in noneconomic damages.
19. Additionally, pursuant to ORS 659A.885, Lopez is entitled to recover the reasonable attorneys' fees Lopez incurs in bringing this action.

WHEREFORE, Lopez prays for relief as follows:

1. Awarding Lopez \$50,000 in economic damages and \$100,000 in non-economic damages against Defendant;
2. Awarding Lopez the reasonable attorneys' fees and costs incurred by Lopez in bringing this action; and
3. Granting such other relief as may be just and proper.

DATED: June 2, 2016.

CARLYLE, POLLARD & SCHMIDT LLP
s/Shannon Schmidt
SHANNON T. SCHMIDT, OSB No. 714520
ALLAN M. BEACH, OSB No. 911149
Telephone: (541) 234-4000

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CHINOOK

LANDRY LOPEZ, an individual,

Case No. 16CV10056

Plaintiff,

ANSWER TO PLAINTIFF'S COMPLAINT

v.

BUDDIE'S BURGERS LLC, an Oregon
limited liability company,

Defendant.

For its answer to plaintiff Landry Lopez's ("Plaintiff's") complaint, defendant Buddie's Burgers LLC ("BB's") admits, denies, and alleges as follows:

NATURE OF THE CASE

1. BB's admits that it terminated Plaintiff's employment on or around May 7, 2016. BB's otherwise denies the allegations in paragraph 1.
2. BB's denies the allegations in paragraph 2.

PARTIES

3. BB's admits the allegations in paragraph 3.
4. BB's admits the allegations in paragraph 4.

JURISDICTION AND VENUE

5. BB's admits that this Court has original jurisdiction over this action, but denies that Plaintiff is entitled to the relief that plaintiff requests.
6. BB's admits that venue is proper in this Court.

FACTS

7. BB's admits that, in April 2016, Plaintiff was a senior at Genesee High School in Dillonsboro, Oregon and had been admitted to Stanhill College. BB's is without sufficient information to admit or deny the remaining allegations in paragraph 7, and therefore denies them.
8. BB's admits the allegations in paragraph 8.

9. BB's denies the allegations in paragraph 9.

10. BB's admits the allegations in paragraph 10.

11. BB's denies the allegations in paragraph 11.

12. BB's admits that, on or about May 6, 2016, Lopez reported to Buddie Gartowski, Defendant's sole owner, that Lopez's coworker Lincoln Streeter allegedly was removing money from the Genesee Booster Club donation jars and placing the money in the restaurant's normal cash box. BB's otherwise denies the allegations in paragraph 12.

13. BB's admits that, on May 7, 2016, it terminated Lopez's employment with BB's. BB's otherwise denies the allegations in paragraph 13.

14. Except as expressly admitted herein, BB's denies each and every allegation in plaintiff's complaint.

CLAIM FOR RELIEF
Violation of ORS 659A.199 (Unlawful Whistleblower Retaliation)

15. BB's incorporates and realleges its responses to paragraphs 1 through 13 above.

16. BB's denies the allegations in paragraph 15.

17. BB's admits the allegations in paragraph 16.

18. BB's denies the allegations in paragraph 17.

19. BB's denies the allegations in paragraph 18.

20. BB's denies that Plaintiff is entitled to the attorneys' fees Plaintiff incurs in bringing this action.

WHEREFORE, BB's prays for relief as follows:

1. Dismissing plaintiff's claims with prejudice;
2. Awarding BB's its costs and disbursements in defending this action; and
3. Granting such other relief as may be just and proper.

DATED: July 1, 2016.

McCOY & RUBEROSA LLP

s/Corrina M. Ruberosa

James J. McCoy (OSB No. 750046)

Corrina M. Ruberosa (OSB No. 083376)

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Attorneys for Defendant

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CHINOOK

LANDRY LOPEZ, an individual,

Case No. 16CV10056

Plaintiff,

STIPULATIONS

v.

BUDDIE'S BURGERS LLC, an Oregon
limited liability company,

Defendant.

The parties stipulate and agree to the following, though, as to any facts below, not to the admissibility of those facts at trial:

1. This phase of the trial shall deal with Defendant's liability only. If necessary, a determination as to damages and any other relief to which Plaintiff may be entitled will be made in a separate proceeding.
2. At all times relevant to this lawsuit, Landry Lopez was an employee of Buddie's Burgers LLC.
3. The Chinook County District Attorney's Office has declined to press any criminal charges against Buddie's Burgers LLC, Buddie Gartowski, or Lincoln Streeter arising in any way out of their alleged misuse of the funds collected in connection with the Genesee Booster Club charity drive that took place in April and May 2016.

SO STIPULATED:

CARLYLE, POLLARD & SCHMIDT LLP

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s/Corrina M. Ruberosa

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Attorneys for Defendant

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CHINOOK

LANDRY LOPEZ, an individual,

Case No. 16CV10056

Plaintiff,

FINAL JURY INSTRUCTIONS

v.

BUDDIE'S BURGERS LLC, an Oregon
limited liability company,
Defendant.

The Court will now submit the case to the jury; you need to decide, based on the law and the evidence presented to you at trial, whether the plaintiff has prevailed in proving the plaintiff's claims against the defendant.

PREPONDERANCE OF THE EVIDENCE

The plaintiff must prove the plaintiff's claims by a "preponderance of the evidence." That means that the plaintiff must persuade you by evidence that makes you believe that his claims are more likely true than not true. After weighing all of the evidence, if you cannot decide that something is more likely true than not true, you must conclude that the plaintiff did not prove it. You should consider all of the evidence in making that determination, no matter who produced it.

WHISTLEBLOWER RETALIATION

In this case, the plaintiff has alleged a single claim of "whistleblower" retaliation. To prevail on that claim, the plaintiff must prove three elements by a preponderance of the evidence:

- (1) The plaintiff engaged in protected whistleblower activity.
- (2) The plaintiff suffered an adverse employment action.
- (3) The plaintiff's adverse employment action, if any, was causally connected to the plaintiff's protected whistleblower activity.

To establish that the plaintiff engaged in "protected whistleblower activity," the plaintiff must prove that the plaintiff reported information to the defendant that the plaintiff reasonably and in good faith believed was evidence of a violation of a state or federal law. To qualify as protected activity, a plaintiff's report need not be accurate, *i.e.*, there need not *actually* have been a violation of law.

To establish an "adverse employment action," the plaintiff must prove that the defendant subjected the plaintiff to an action that would deter a reasonable employee from making a future report of information that the employee reasonably and in good faith believes is evidence of a violation of a state or federal law. In this case, the defendant has admitted that the plaintiff's termination was an adverse employment action.

To establish that the plaintiff’s adverse employment action was casually connected to the plaintiff’s protected whistleblowing activity, the plaintiff must prove that the adverse employment action would not have occurred if the plaintiff had not engaged in protected whistleblowing activity.

EVALUATING WITNESS TESTIMONY

The term “witness” includes every person who has testified under oath in this case. Every witness has taken an oath to tell the truth. In evaluating each witness’s testimony, however, you may consider such things as:

- (1) The manner in which the witness testifies.
- (2) The nature or quality of the witness’s testimony.
- (3) Evidence that contradicts the testimony of the witness.
- (4) Evidence concerning the bias, motives, or interest of the witness.
- (5) Evidence concerning the character of the witness for truthfulness.

INFERENCES

In deciding this case you may draw inferences and reach conclusions from the evidence, if your inferences and conclusions are reasonable and are based on your common sense and experience.

DIRECT OR CIRCUMSTANTIAL EVIDENCE

There are two types of evidence. One is direct evidence—such as the testimony of an eyewitness. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of a certain fact. You may base your verdict on direct evidence or on circumstantial evidence, or on both.

WITNESS FALSE IN PART

A witness who lies under oath in some part of his or her testimony is likely to lie in other parts of his or her testimony. Therefore, if you find that a witness has lied in some part of his or her testimony, then you may distrust the rest of that witness’s testimony.

Sometimes witnesses who are not lying may give incorrect testimony. They may forget matters or may contradict themselves. Also, different witnesses may observe or remember an event differently. You have the sole responsibility to determine what testimony, or portions of testimony, you will or will not rely on in reaching your verdict.

Dated _____, 2017

s/Bransen D. Jameson

Hon. Bransen D. Jameson

Judge of the Circuit Court of the State of Oregon

1 job at Rubicon, but it had expired—but, hey, who was I to turn down the extra cash? Plus, it
2 wasn't a big deal, since at the end of the day I knew how to handle food safely.

3 I was so grateful to Buddie, who's a celebrity in town in more than one way. Of course,
4 BB's is a Dillonsboro institution; the "Baconator" is the single best bacon-triple-cheeseburger
5 you'll have anywhere on this side of the Mississippi. Plus, BB's is where everybody at Genesee
6 High hangs out after school. A few years back, Buddie even started what's now become a really
7 fun tradition; after a major Genesee sports game, win or lose, Buddie invites both the Generals
8 and the opposing team over to BB's for burgers and milkshakes. Buddie calls them
9 "sportsmanship summits." Buddie also told me when I began work that all of the proceeds from
10 the food we sell at sportsmanship summits goes directly to the Genesee athletic program.

11 Speaking of sportsmanship summits, Buddie also is legendary around Dillonsboro
12 because Buddie is probably the biggest booster in the history of Genesee High's athletic
13 program. Buddie has raised a ton of money over the years for Genesee athletics, all of which has
14 been really critical for student athletes. For example, it was in no small part because of Buddie
15 that we were able to get a brand-new soccer field last year, which Genesee High decided to name
16 Gartowski Green. You should've seen the old field; it was in such bad shape that it was
17 bordering on unsafe. Over the years, Buddie also has set up funds that cover things like
18 equipment and sign-up fees for student athletes who can't afford them.

19 It was mid-April when Buddie and I finalized things, and since I knew I needed to save as
20 much as possible, I agreed to start working immediately. Buddie gave me a bunch of policies on
21 my first day including the one shown in Exhibit 3, but I didn't really read them. Who has time
22 for that? Anyway, the plan was that I'd work part-time schedule until graduation – the night
23 shift on Thursdays, Fridays, and Saturdays, and then I'd shift to a full-time schedule.

1 Things at BB’s started off great. Lincoln Streeter, who, like me, was a Genesee student
2 at the time, was also working part-time as a server. Since Lincoln was on the lacrosse team and
3 had regular Friday-night games all throughout the spring, Lincoln and Buddie each seemed really
4 grateful that I’d be around to help out on Friday nights. Turns out Buddy had some part-time
5 help right before I started, but Buddie told me Buddie had to let that person go. When I went in
6 to sign all of my new employment paperwork, Buddie told me that the old part-time server had
7 been a “real troublemaker.” I asked Buddie what had happened, and Buddie told me, “Oh, I
8 won’t bore you with the details, but he started sticking his nose where it didn’t belong.” I didn’t
9 really know what Buddie meant by all that, and I didn’t think much of it at the time.

10 During our interview, Buddie also made a special point of mentioning BB’s “Salute the
11 Generals” fundraising drive which, I gathered, was Buddie’s latest idea for raising money for
12 Genesee athletics. Basically, BB’s had set up donation jars in the restaurant, the proceeds from
13 which would go to Genesee athletics. Buddie also agreed to match whatever BB’s collected in
14 those jars. During our interview, though, I learned there was something in this for Buddie, too:
15 BB’s would get some pretty terrific publicity. Buddie showed me a big ad that Buddie had just
16 taken out in the Dillonsboro Daily News, which is shown in Exhibit 1. Buddie pointed at the ad
17 and said, “Listen, kid, there’s always a business opportunity in everything.”

18 Part of my job involved closing up BB’s at the end of the night. That entailed gathering
19 up the donation jars, putting that money in a separate cash box labeled “Genesee Athletics,” and
20 leaving the box in Buddie’s office. When Lincoln and I each were working the night shift, we’d
21 alternate the job of packing up the cash from the donation jars. I don’t know what Buddie did
22 with the box each morning, but it was always empty when I grabbed it and filled it up with each
23 night’s donations. It seemed like the donation jars were a huge success, though, because they

1 were always full at the end of each night. During my first few nights at BB’s, it also seemed like
2 Buddie couldn’t stop talking about the jars with the customers.

3 Thursday, May 5, 2016, is a day I won’t forget anytime soon. I was working at BB’s that
4 night, and, as usual, it was packed. Buddie was there, and, Buddie was bending any ear that
5 would listen; Buddie was talking mainly about the Genesee lacrosse game that was happening
6 the next night—it was against Tilton High School, Genesee’s big rival—and, of course, Buddie’s
7 support of Genesee’s athletic program. Lincoln was working that Thursday night too, and we
8 were both completely slammed. By the end of the night, I think we were both ready to get out of
9 there as soon as we possibly could.

10 Lincoln was taking care of the donation jars, which left me to handle the regular tips that
11 the customers had left for the servers. I collected what was left on the tables and headed back to
12 Buddie’s office to put them in the tip box, but when I opened the door I was shocked. I saw
13 Lincoln standing behind Buddie’s desk with the restaurant’s regular cash box and the “Genesee
14 Athletics” cash box each open. I saw Lincoln take some money out of the “Genesee Athletics”
15 cash box, which had all the proceeds from the “Salute the Generals” donation jars, put some of it
16 in the regular cash box, and then put the rest in Lincoln’s pocket. I couldn’t believe it!
17 Immediately, I demanded to know what Lincoln was doing, and Lincoln muttered something
18 sheepishly about how Lincoln was just “making change” and then rushed out of the office. The
19 ad in the Dillonsboro Daily News made it pretty clear that Buddie would match any and all
20 donations, so if Buddie’s patrons saw what I saw, they’d be furious. I mean, this looked like
21 fraud and embezzlement!

22 I knew I had to tell Buddie what Lincoln was doing. So, on Friday, right before my shift
23 started, I knocked on Buddie’s door and explained everything. I was shocked by Buddie’s

1 response. Rather than thank me, Buddie got really mad! “Dag nabbit!” Buddie yelled, “what did
2 I tell you about keeping your nose out of places it doesn’t belong?” I tried to protest, but Buddie
3 cut me off and said, “Look, sometimes, we just use the money in the donation jars to make
4 change, okay? Nobody has to know, so just drop it.” I was speechless; it sure didn’t look like
5 Lincoln was making change to me. Buddie asked me whether I was going to say anything to
6 anyone at Genesee High, and I was in such shock that I just shrugged my shoulders. Buddie
7 said, “Okay, whatever. You’ve made enough trouble for today.” Buddie then hurried out of the
8 office to greet the first few customers who were coming into BB’s.

9 At that point, I thought the whole thing was over, but was I ever wrong! That night,
10 some of my friends and I had planned on going out to a late movie at this awesome, old-timey
11 drive-in movie theater out on old highway. The movie started at 9:15 p.m. My shift at BB’s
12 usually ended at about 9:30, so I was planning on meeting my friends at the drive-in and catching
13 as much of the movie as I could. I was really looking forward to relaxing a bit after a pretty
14 stressful night. By about 8:30, though, BB’s was *dead*. I mean, there wasn’t a soul in the place
15 other than one of the cooks, me, and my friend Tyler, who had dropped by for help with Tyler’s
16 homework. I had completely forgotten about the big Genesee lacrosse game that night, as well
17 as the possibility that there might be a sportsmanship summit. Buddie usually puts the summits
18 on the office calendar, but there was nothing there for that night. When the cook suggested that
19 we close up shop early, I told him I thought that was a good idea. We had done the same thing
20 the week before. That other night, right as we were closing up early, Buddy dropped by to grab
21 something from the office and said as we were walking out, “Have fun!” So, on the 6th, we
22 wrapped things up, and I was out of there by 9:00 p.m. I didn’t know that both lacrosse teams
23 would be stopping by a little later for milkshakes!

1 Buddie called me the next morning and was really mad. After yelling at me, Buddie told
2 me that my employment was terminated! Buddie said, “Listen, kid, I told you I don’t like
3 troublemakers, and you’ve just made a whole lot of trouble for me. I had two lacrosse teams
4 waiting at the door and they couldn’t get in.” I knew the real reason I was being fired, though,
5 was because I had asked Buddie about the business with Lincoln and the donation money.

6 Because I was fired, I wasn’t able to save enough money to go to Stanhill this year. I
7 tried to find another job, but by that point, all of the good summer jobs were gone. I ended up
8 deferring college for a year with the idea that’d I just spend a year working and saving, but it’s
9 been really tough. If only I could’ve kept my job, I’d be studying history at Stanhill right now.

10 I hereby attest to having read the above statement and swear or affirm it to be my own. I
11 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
12 should contain all relevant testimony, and I followed those instructions. I also understand that I
13 can and must update this affidavit if anything new occurs to me until the moment before I testify
14 in this case.

15 *s/Landry Lopez*

16 Landry Lopez

17 Dated: September 16, 2016

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19 Subscribed and sworn before me on September 16, 2016.

20 *s/Annie Stephens*

21 Annie Stephens

22 Notary Public in and for the State of Oregon

23

1 Buddie, by the way, is one of the biggest Genesee sports fans you'll ever meet; Buddie
2 goes to all the games, knows most of the athletes by name, and is a past president of the official
3 Genesee Athletics Fan Club. You should also see Buddie's ads in the Dillonsboro Daily News; a
4 copy of one from April 2016 is shown as Exhibit 1. In fact, Buddie might sometimes take
5 Genesee sports a little too seriously. One time when I was in high school, I remember Buddie
6 told me that I was going to have to cancel a vacation with my family because of one of Buddie's
7 "sportsmanship summits" was coming up and I was scheduled to work that night. "This stuff's
8 *really* important," I remember Buddie saying. Buddie also said something like, "With the
9 amount of money we're going to raise, we need all hands on deck. You should know, Sam, this
10 is important stuff." Buddie was referring to some financial support that I received in high school
11 from one of Buddie's fundraisers, which helped me cover the cost of sports equipment and the
12 registration fee for the season. Buddie ultimately let me go on the family vacation after I found
13 someone to cover my shift.

14 I knew Landry Lopez first through my little sister Annie. Annie and Landry are friends
15 and both went to Genesee High. I guess you could say Landry and I are just acquaintances,
16 really; I'd say "hi" when Landry would come by the house, but we didn't hang out or anything.
17 Landry would help Annie with AP Government, which she liked, and geometry, which she
18 didn't. Landry was really good at them both and helped Annie a lot. I got the impression that
19 things may have been challenging financially for the Lopez family because Landry seemed to
20 have a lot of other family-type responsibilities. When Landry started working at BB's, our paths
21 crossed from time to time. I got the impression that the job was really important to Landry.

22 Like most everybody else in Dillonsboro, I also know Lincoln Streeter. Lincoln was a
23 Genesee Generals sports phenom from the time Lincoln was a freshman, so basically everybody

1 knows Lincoln. When Lincoln started working at BB's, it was obvious from the get-go how
2 excited Buddie was to have Genesee's "golden child" as an employee. I remember Lincoln
3 moving up the employee pecking order pretty quickly, even though some other employees,
4 myself included, had worked there longer. Buddie once told me that having Lincoln there was
5 "really good for business." Buddie was pretty understanding as far as bosses go, probably
6 because so many students work there. Buddie always tried to accommodate our school
7 schedules, especially if we had sports, exams, or something.

8 I know Lincoln was really busy during the school year given school, sports, and working.
9 Lincoln was basically the star of the entire athletics department. Because of weekend games,
10 Fridays and Saturdays were especially tough to work. A lot of times, I'd see Lincoln's name on
11 the BB's schedule for a Friday or a Saturday, but Lincoln would never show up. I don't know
12 why, though. On top of that, when two-a-day practices started in the summer, getting to work on
13 time to open up shop sometimes seemed like it was impossible for Lincoln.

14 That's why I was kind of surprised when I learned that Lincoln got extra shift manager
15 responsibilities. The shift manager employee at BB's is supposed to be the one who either opens
16 in the morning or closes at night, depending on what shift they're working. When I was in
17 school, I tried to avoid getting scheduled for those shifts because they usually conflict with
18 sports. Sports at Genesee tend to be people's first priority and, no matter how good you are, you
19 might get benched if you don't arrive on time. I spent enough time at BB's to know how long it
20 can take to set up and shut down that place, so I don't get how Lincoln made it work.

21 After Lincoln made shift manager, there were a couple of occasions where I would show
22 up to help Lincoln open, but the doors were locked because Lincoln wasn't there yet. BB's
23 hours are from 10:30 a.m. to 9:30 p.m. I assumed it was probably just taking Lincoln a little

1 extra time to get to work from practice, and it wasn't a big deal at all, since I had a key and knew
2 what to do to open up. Sometimes it meant we opened up kind of late, but it's not like Lincoln
3 ever totally flaked or anything. I told Buddie about it, of course, but Buddie never mentioned
4 anything else to me about it, so I don't think Lincoln ever got in trouble. Buddie always knew
5 how much we worked anyway because of our time cards; all employees have to clock in and out,
6 shown in Exhibit 2. Whenever we had a sportsmanship summit, Lincoln was there, front and
7 center. It was often because Lincoln had just played in a game, but sometimes Lincoln worked
8 during sportsmanship summits, too.

9 I also remember one night during the week leading up to one of the big games. I could
10 tell Lincoln was stressing out about meeting up with teammates later. The restaurant was pretty
11 dead that afternoon and at one point Lincoln said something about closing early. I was a little
12 wary about that, because we tended to get decent business toward the end of the night. I asked
13 Lincoln whether Buddie would be okay with closing up, and Lincoln said, "Sure, when has
14 Buddie ever cared before?" Anyway, Lincoln and I closed up shop and clocked out. It didn't
15 seem like a big deal, which is why I was really surprised when Landry told me that Buddie had
16 yelled at Lincoln when Buddie found out about it. Landry said that Landry saw the whole thing,
17 and that Landry heard Buddie say something like, "Look, Lincoln, I know you're a star, but
18 you've got to stick to your schedule." As far as I knew, that was the end of it, though. I don't
19 think our leaving early really hurt the business in any way. Also, strangely, Buddie never yelled
20 at me at all.

21 I was even more surprised, though, when I heard about Landry getting fired for leaving
22 early one night. I mean, it's not like BB's had to go out of business or anything. I was no longer
23 working for BB's when Landry was fired, but come on, how bad a mistake could Landry have

1 made? It sounds like there probably was something else going on there, although I don't know
2 what it is.

3 I hereby attest to having read the above statement and swear or affirm it to be my own. I
4 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
5 should contain all relevant testimony, and I followed those instructions. I also understand that I
6 can and must update this affidavit if anything new occurs to me until the moment before I testify
7 in this case.

8 s/Sam Jackson

9 Sam Jackson

10 Dated: September 19, 2016

11 Subscribed and sworn before me on September 19, 2016.

12 s/Annie Stephens

13 Annie Stephens

14 Notary Public in and for the State of Oregon

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1 **AFFADAVIT OF TYLER ERICKSON**

2 My name is Tyler Erickson. I'm 18 years old, and I'm a senior at Genesee High School
3 here in Dillonsboro. I'm an okay student, I guess, but my real passion is journalism. Eventually,
4 I want to be a famous journalist. Move over, Woodward and Bernstein, because there's nothing
5 I love more than getting a juicy scoop! Remember the Genesee High Guardian's groundbreaking
6 exposé a few years ago on proper concussion protocols (or, I should say, the lack thereof) in its
7 soccer program? That was me! Given my long line of hard-hitting investigative journalism, I
8 was chosen this year to be the Genesee High Guardian's Editor-in-Chief. That's our school
9 newspaper, by the way. It's a huge honor.

10 Landry Lopez and I have been friends since we were little kids. I would say that few
11 people know Landry as well as I do. Last year, when Landry was a senior and I was a junior,
12 Landry and I hung out after school pretty much every day. Landry also is the smartest kid I
13 know, and sometimes helped me out with my homework. This year, though, we haven't been
14 able to hang out as much because Landry has been working a lot.

15 Next year, Landry will be going to Stanhill College in the Honors program. It's been
16 Landry's dream to go to Stanhill. It is so hard to get into; I'm really proud of Landry for getting
17 admitted. I know Landry is freaked about paying for college, though. No one else from
18 Landry's family has gone to college, and they don't have much money. Last fall, after Landry
19 was admitted, Landry got a job at Buddie's Burgers, BB's, to help save for college.

20 It was really cool that Landry got a job at BB's. Everyone loves it there! It's basically
21 the go-to after-school hangout for everybody who's anybody at Genesee High. When Landry
22 started, Landry worked Thursday, Friday, and Saturday nights. I know because I'd often hang
23 out with Landry at BB's. It can be crazy busy those nights, unless there's a Genesee High sports

1 game. On game days, everyone in town is at the game and BB's is dead. Those nights were
2 tough on Landry because there were no customers and nothing to do. Buddie sometimes let
3 Landry close up early on game days when there wasn't one of those "summit" things scheduled;
4 sometimes I was there when Buddie gave Landry the all-clear to wrap things up. The summits,
5 by the way, usually happen when games end a little early and both teams come by for burgers
6 and shakes; then it's really busy. It can be hard to predict when the sportsmanship summits
7 happen, though, since, according to Landry, they're not always on BB's calendar.

8 Last May, I was hanging out with Landry one Friday night at BB's. I think it was the 6th,
9 or maybe the 13th? Somewhere around there. Anyway, I was trying to get Landry's help with a
10 few math problems I was having trouble with. Landry and I wanted to meet some friends at the
11 old drive-in movie theater later that night and catch as much of the movie as we could. We were
12 worried about being able to make it on time.

13 It was a fairly typical Friday night at BB's. There was a steady stream of customers but it
14 was never really busy. Landry was able to help me finish the last few problems of our math
15 assignment when Landry wasn't helping customers. I could tell something was bothering
16 Landry, though; Landry seemed a bit "off." I asked Landry what was up, and Landry dropped a
17 bombshell. Landry told me that, the night before, Landry had seen Lincoln Streeter stealing
18 from BB's "Salute the Generals" donation jar. That got my attention! I'm not all that into
19 sports, but as the Editor-in-Chief of the Genesee High Guardian, I know that fundraising for the
20 Genesee athletic program is pretty sacrosanct among Genesee athletes. Buddie's reputation
21 could rise or fall on Genesee athletics. And add in Lincoln, Genesee High's poster-child? I
22 couldn't believe this was happening! It seemed like an amazing scoop, but I knew I had to get
23 both sides of the story.

1 So I decided to cool my jets for a bit and do some investigating. I could tell what Landry
2 had seen was really weighing on Landry. Landry is a really honest person. Landry is the type
3 who's bothered when other people lie, cheat, or steal. (A few years back, Landry caused quite a
4 stir at Genesee High when Landry told on this popular kid after hearing the kid talk about
5 cheating on a science test.) Anyway, after asking a few more questions, I learned that Landry
6 had gone to Buddie earlier in the night and that Buddie didn't seem to care. Landry seemed
7 really upset about the brush off. When Landry was complaining to me about what happened, I
8 think some of the other people in the restaurant probably heard us.

9 I eventually opted to skip out on the movie that night because I wasn't quite done with
10 my homework and wanted to finish it up. At around 9:00, though, Landry started to close up
11 shop. I reminded Landry that there was a big lacrosse game that night—we had done a piece
12 about the game in the student newspaper—and asked whether there would be a sportsmanship
13 summit afterward. Landry shrugged and pointed me to BB's "events" calendar which hung on
14 the wall next to the front door. It was blank for that night. That was a little strange; I thought I
15 had heard Buddie mentioning something about a sportsmanship summit earlier that night as
16 Buddie was greeting customers in the restaurant, though I didn't mention that to Landry, who
17 had been nearby at the time. In any case, I was in my car for a few minutes wrapping up my
18 homework after Landry left, plus I was curious to see if there actually would be a summit.

19 Sure enough, about 15 minutes after Landry left, cars started pouring in BB's parking lot.
20 I saw Buddie's bright red pickup at the head of the pack, and when Buddie got out of the truck,
21 Buddie was hopping mad. Buddie saw me and yelled, "Hey, what's going on?" I told Buddie
22 that Landry had closed up and gone to the movies. "Well, that does it," Buddie snarled, "I don't
23 have my keys, so I guess there's not going to be a summit tonight. Genesee athletics is going to

1 miss out because of our resident troublemaker.” Then, though, my journalistic instincts got the
2 better of me. “Hey Buddie,” I asked, “care to comment on the allegation that Lincoln Streeter
3 has been stealing from the till?” When Buddie heard me, Buddie spun around, got really red in
4 the face, and demanded to know where I heard that. “Uh, I can’t reveal my sources,” I sputtered.
5 “Whatever,” Buddie muttered.

6 About a week after that I heard that Landry got fired! To me, the firing was totally out of
7 the blue, although I did hear Buddie talking about it a few days later. When I was at BB’s with
8 my parents one weekend not long after Landry was fired, I heard Buddie talking to a regular
9 about firing an employee recently because the employee didn’t follow the rules. Buddie was
10 telling this customer about how the employee had closed early one night, so BB’s lost a whole
11 bunch of money. I couldn’t really hear anything else, but I think it was about Landry’s firing.

12 I hereby attest to having read the above statement and swear or affirm it to be my own. I
13 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
14 should contain all relevant testimony, and I followed those instructions. I also understand that I
15 can and must update this affidavit if anything new occurs to me until the moment before I testify
16 in this case.

17 s/Tyler Erickson

18 Tyler Erickson

19 Dated: September 20, 2016

20 Subscribed and sworn before me on September 20, 2016.

21 s/Annie Stephens

22 Annie Stephens

23 Notary Public in and for the State of Oregon

1 whole state. The entire operation is built on my reputation for trust, honesty, and integrity;
2 people like to know that they're dealing with someone who's as straight up as jackrabbit's ears,
3 and that's what I aim to give 'em.

4 Once we opened our fourth location, though, I realized something was missing. Sure,
5 sellin' cars is fun, but sometimes it lacks that certain sort of excitement I loved when I was
6 playin' sports for Genesee. That's why I decided to start Buddie's Burgers. See, I realized that
7 after any Genesee sports game—football, basketball, baseball, lacrosse, you name it—people just
8 sort of disperse. What better way to keep our school spirit alive than to relive the glory of a win
9 over milkshakes and burgers after the game? I also saw it as a fundraising opportunity. The last
10 time Genesee got any sort of new sports field or equipment was probably before I went there, so
11 they were long overdue – until I gave 'em Gartowski Green, of course. The more people I could
12 get to my burger joint after the games, the more school spirit we'd all have, and the more school
13 spirit we all have, the more people will donate to the Genesee athletics program! I bought the
14 building back in 1996, and it's been a landmark ever since. Come on by sometime for a BB's
15 Baconator! And if that ain't your thing, don't worry, 'cause we have plenty of veggie options,
16 too. Ever heard of our Veggie Volcano? It's positively erupting with delicious and all-natural
17 flavors!

18 Okay, okay, I'll try to focus, here. Landry Lopez? Yeah, of course, I remember Landry.
19 Good kid. I was really sorry to have to let Landry go, but Landry committed a breach of trust
20 that made it impossible for us to continue. A friend who's a teacher at Genesee High
21 recommended Landry to me sometime last spring. It seemed like pretty good timing because I
22 had to fire one of my part-time servers around the same time. The other kid was also from

1 Genesee and named Tom Griggin. While Tom was a heck of a football player, he was bad news
2 through and through. See, he and Lincoln Streeter—who’s another one of my part-time servers
3 and shift manager—didn’t get along. At one point, Tom accused Lincoln of stealing from our
4 “Salute the Generals” donation jars for Genesee athletics. I couldn’t believe it! Lincoln is one of
5 the most upright and honest people I know, and Tom’s complaint was obviously false. I couldn’t
6 have one of my servers accusing another of such egregious (and obviously false) misconduct, so
7 I had to let Tom go.

8 By the way, the “Salute the Generals” donation jars are my latest business idea and, so
9 far, it’s going great. Last year, a little light went on in my head: why don’t we use BB’s good
10 name to raise money for Genesee sports? Heck, I give a lot of money to the Genesee athletic
11 program anyway, so why not make a dollar-for-dollar match, I thought? For every dollar in the
12 donation jar, I’d put in a dollar, too. Everybody wins and BB’s gets a little free publicity in the
13 process. It wasn’t the business angle that drove me to do it but, hey, the Gartowskis have never
14 been ones to look a gift horse in the mouth. That in mind, I drew up a little ad to put in the
15 Dillonsboro Daily News, which is shown in Exhibit 1. The ad had an immediate effect. The day
16 after it ran, BB’s was packed and just about everybody there was asking about our Genesee
17 Booster Club program. Seemed like the whole thing was going to be a smashing success,
18 particularly from a monetary perspective.

19 Landry seemed like a good kid, and things were going fine until May 6, 2016. That
20 afternoon, right as we were getting going, Landry came barging into my office when I happened
21 to be on the phone with Gwen Swanson, the director of Genesee High’s athletic program.
22 Landry seemed upset about something, so I told Gwen that I’d call back. As soon as I hung up

1 the phone, Landry launched into a diatribe about how Landry had seen Lincoln stealing money
2 from the “Salute the Generals” donation jars and how I should fire Lincoln immediately. I
3 remember Landry specifically telling me that Landry had seen Lincoln with a fist full of money
4 from the jars. Right away, I could tell that Landry was off base. I’m guessing the same thing
5 was going on back when Tom got a bee in his bonnet when he thought he saw Lincoln stealing.
6 See, sometimes we switch out the smaller bills that people stuff in the donation jars for the
7 bigger bills that people give us at the cash register, so we have enough of the smaller bills to
8 make change for people. Nobody’s stealing anything. What’s more, Landry knew that; I
9 explained the whole system to Landry on Landry’s first day, but Landry must have forgotten.

10 Anyway, I told Landry that I highly doubted Lincoln was stealing anything from the
11 donation jars but that I’d look into it. Being thorough, that’s exactly what I did. I walked out of
12 the office and asked Lincoln point-blank what had happened, and Lincoln confirmed that Lincoln
13 had just been changing out the bigger bills for the smaller ones. I figured as much and that was
14 the end of it. I certainly never called Landry (or anyone else) a “troublemaker.”

15 On the afternoon of May 6, 2016, Lincoln and I each left before we got too busy, because
16 the Generals had a big lacrosse game against Tilton, our cross-town rival. It turned out to be a
17 real nail-biter, but in the end we won! As usual, I invited the Tilton kids and our Generals back
18 to Buddie’s for what I like to call a little “sportsmanship summit,” where we all relax over
19 burgers and shakes. We left the stadium around 8:45, and I assumed Landry would be there
20 waiting for us. Landry’s shift was scheduled to end at 9:30. All employees are to check the
21 events calendar where I note when sportsmanship summits are likely to happen, and be sure that
22 supplies are well stocked. I can’t remember whether I marked May 6 for a sportsmanship

1 summit, but Landry knew there was a big game that day; it's all anybody had been talking about
2 at BB's for the entire week. On Thursday, I remember specifically asking Landry if Landry
3 wanted to go to the game the next night because, if so, I was prepared to find a way to give
4 Landry the night off. Landry said no, and that Landry needed the money.

5 Anyway, when we got there the place was deader than a doornail, except for all the cars
6 filled with customers that were pulling in the parking lot. The doors were locked, the lights were
7 off, and Landry was nowhere to be found. I didn't have my keys with me—I didn't bring them
8 on the assumption that I wouldn't need them. I was furious! I decided in that moment that I had
9 had enough with Landry. Based on past sportsmanship summits we'd had, I guessed that Landry
10 had cost the "Salute the Generals" program a few thousand dollars that night. I suppose I didn't
11 mind not having to pony up an extra few thousand dollars myself to match the donations—things
12 at Gartowski Auto Plaza were a little tight financially back then, so in a way, Landry did me a
13 favor—but still, the whole incident really damaged our reputation with the Tilton folks.

14 I called Landry the next morning and fired Landry. Landry seemed to take it pretty well,
15 all things considered. All Landry said was, "Okay, I guess I understand," and then hung up the
16 phone. Landry didn't even offer up any sort of explanation, other than muttering something
17 about how Landry wanted to go to a movie and didn't think it was a big deal! Not a big deal?
18 What was the kid thinking!

19 I gather Landry is now saying that I fired Landry because Landry complained about
20 Lincoln? Nothing could be further from the truth. In all of my businesses, trust is the most
21 important thing in the world to me. If I can't trust an employee to show up, do a good job, and
22 serve our customers and the community in a way that properly reflects BB's good reputation,

1 then that employee can't work for me, period. Landry violated that trust, and that was the end of
2 it. I'm sorry if it ruined Landry's plans, but there were a lot of people depending on Landry that
3 night, and Landry let them down. I just hope Landry learned from the mistake.

4 A few weeks after Landry got fired, it became clear to me that *someone* was stealing
5 from the donation jars. I couldn't tell who it was, but I started doing a rough estimate of the
6 money in the jars at the end of each night I was at BB's. The next morning, I'd compare what
7 was left in the "Genesee Athletics" cash box, and for a few days in a row, we were coming in
8 about \$100 short. I don't know who did it. I had several employees, Lincoln among them.
9 Anyway, rather than continue down that rabbit hole, I decided just to declare the "Salute the
10 Generals" program a success and end it right then and there.

11 I hereby attest to having read the above statement and swear or affirm it to be my own. I
12 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
13 should contain all relevant testimony, and I followed those instructions. I also understand that I
14 can and must update this affidavit if anything new occurs to me until the moment before I testify
15 in this case.

16 *s/Buddie Gartowski*

17 Buddie Gartowski

18 Dated: September 23, 2016

19 Subscribed and sworn before me on September 23, 2016.

20 *s/Atticus Byrd*

21 Atticus Byrd

22 Notary Public in and for the State of Oregon

1 Buddie will often put Buddie’s own money where Buddie’s mouth is, too. Last spring,
2 Buddie started putting donation jars around BB’s and promised to match every donation dollar-
3 for-dollar. In other words, when customers put money in the jars, Buddie takes the same amount
4 out of Buddie’s own pocket and donates it to Genesee athletics. Sometimes, I get the impression
5 that people come to BB’s just to load up the jars. Pretty cool, huh?

6 Buddie is really proud of how much money BB’s raises. All of Buddie’s ads show a
7 goofy picture of the Genesee Generals’ mascot and information about how much money Buddie
8 raises. A copy of one such ad is shown in Exhibit 1. Buddie’s commitment to Genesee athletics
9 helped Buddie develop a really good reputation, and people love going to BB’s because of it.

10 When I turned 16, I asked Buddie if there were any openings at BB’s. I was thrilled
11 when Buddie said yes! I was so happy to be offered a part-time spot on Buddie’s team. Plus,
12 Buddie has been very accommodating of my schedule with all my different early and late sports
13 practices and games all the time. There was just one rule, though, which I did my best to follow.
14 As BB’s employee handbook says, which is shown in Exhibit 3, you *must* be ready and rarin’ to
15 go when the customers get there. I mean, lateness is technically against the rules—and I don’t
16 deny that I’ve been late a few times—but I’ve *never* missed a scheduled shift entirely without
17 first telling Buddie. Besides, everybody’s hours are all clocked on our time sheets, shown in
18 Exhibit 2, so we can’t hide anything from Buddie. During our initial interview, Buddie handed
19 me a copy of BB’s attendance policy and told me that, while Buddie could tolerate some
20 tardiness here and there, if it ever impacted a customer’s experience, it’d be a “flagrant foul.”

21 Sometimes I worked the same shift as Landry Lopez. I don’t know Landry very well.
22 We went to different elementary schools, and I’m more into sports and Landry is more into

1 academics. Landry and I had some classes together in high school, but we never really talked in
2 class. Landry seemed smart and pretty serious about school. I heard that Landry got into
3 Stanhill’s Honor’s College. I used to think Landry seemed like a nice person, at least until
4 Landry accused me of stealing from the donation jars last spring. Now I think Landry is a jerk.

5 Here’s what happened: back on Thursday, May 5, 2016, Landry and I were working
6 together on the night shift. We were scrambling to close for the night—it had been really busy;
7 basically everybody we knew from Genesee High had come out and staged an impromptu pep
8 rally for the lacrosse game against Tilton High, which was happening the next day. I was in
9 Buddie’s office sorting money from the register and donation jar, and changing out big bills
10 (which we often get at the register) for smaller ones (which we usually find in the donation jars).
11 It was standard practice to exchange the little bills from the jar with big bills from the register.
12 That way, change for customers was ready to go in the till.

13 All of a sudden, from out of nowhere, Landry barged into the office, saw me putting one
14 of the smaller bills from the donation jars into the main till, and started screaming at me about
15 how I was stealing money from Genesee athletics. That’s just stupid, and I told Landry as much.
16 Landry didn’t want to listen, though. Landry just said, “Shove it, Lincoln, I’m telling Buddie,”
17 and stormed out of the office. I didn’t think much of it, though, because I had gone through the
18 same rigmarole a few months earlier. We had another server who had done the same thing—
19 falsely accuse me of stealing from the donation jars, that is—and Buddie told me not to worry
20 about it. I don’t know what ended up happening to that server, though. I think he got fired.

21 Landry claims to have seen me put money from the donation jars in my pocket. Well,
22 Landry is wrong. I would never steal; not from Buddie, and certainly not from the Generals!

1 Besides, Landry couldn't have had a good view of me counting the money from the register and
2 donation jar because the jars, the open cash tray, and the pictures of Lolita on Buddie's desk
3 must have partially obstructed Landry's view. Counting the money in the register and donation
4 jars was part of our close up routine. Whoever was on the register that night would count the
5 money and record it. I was shocked when Landry accused me of stealing and then complained to
6 Buddie. It really hurt my feelings and made me mad. As I had predicted, though, Buddie knew
7 that I'm not the stealing type, and believed me when I said I would never steal. I'm still not sure
8 what Landry was thinking. Buddie ended up firing Landry because Landry was breaking the
9 rules. I'm not really sure what rule or rules were broken, though, because Buddie doesn't talk to
10 employees about hiring and firing stuff, and Landry and I aren't really talking now, either.

11 I hereby attest to having read the above statement and swear or affirm it to be my own. I
12 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
13 should contain all relevant testimony, and I followed those instructions. I also understand that I
14 can and must update this affidavit if anything new occurs to me until the moment before I testify
15 in this case.

16 *s/Lincoln Streeter*

17 Lincoln Streeter

18 Dated: September 26, 2016

19 Subscribed and sworn before me on September 26, 2016.

20 *s/Atticus Byrd*

21 Atticus Byrd

22 Notary Public in and for the State of Oregon

1 **AFFIDAVIT OF SANDY SINGH**

2 My name is Sandy Singh. I’m the Athletic Director at Tilton High School, and have been
3 in that position for six years. I’m 36 years old. Our team has a bit of a rivalry with the Genesee
4 Generals, but, then again, Genesee is so good at everything that it seems like most schools
5 consider it a rival these days. We usually play them at least once in every sport every year, and
6 those games tend to draw some of the biggest crowds. Playing at Genesee can be a little
7 intimidating—the fans really go all-out and, from what I can tell, their athletic program has a
8 seemingly endless amount of support. Still, we really enjoy playing over there, and we’ve
9 always been treated with sportsmanship, kindness, and hospitality whether we win or lose.

10 Our lacrosse team was scheduled to play at Genesee High School on Friday, May 6,
11 2016. Our team had a pretty good lineup, so I thought our chances were good, even though we
12 didn’t have the home field advantage. We bussed to the school early so we would have extra
13 time to warm up. On the way there, I saw Buddie’s Burgers and remembered its post-game
14 “sportsmanship summits.” The handful I’d been to in the past were great; they were always
15 packed with athletes and fans from both teams coming together over food. I also confess that,
16 whenever I eat there, my student athletes and I usually go a little overboard with the food. I
17 mean, have you ever had BB’s Baconator? It’s a little pricey—they go for \$14 apiece, last I
18 checked—but it’s enough of a culinary masterpiece that, at the last sportsmanship summit, my
19 athletes, their parents, and I must have collectively downed at least a few dozen of them, not to
20 mention fries, drinks, and shakes. BB’s is located close to Genesee High, so I made a mental
21 note to take the team back to BB’s to celebrate after the game. After all, I’d seen the ads in the

1 Dillonsboro Daily, a copy of which is shown in Exhibit 1, and I'm all for supporting businesses
2 that support community sports.

3 Unfortunately, the game didn't go the way we thought it would. One of our best scorers
4 twisted an ankle early on and it really messed up our game plan. Genesee took control of the
5 game, and that was basically it. In the end, we lost pretty badly, and the team was really
6 dejected. As we were packing up to leave, though, Buddie Gartowski came up to me. Buddie
7 was all dressed up in Generals regalia. Buddie is well known around Dillonsboro (and, for that
8 matter, over in Tilton as well) for being a major Genesee supporter, the owner of Buddie's
9 Burgers, and some car lot, too, I think. Anyway, Buddie shook my hand and offered best wishes
10 for my injured player, which I thought was pretty nice. I told Buddie about my original plan to
11 celebrate at BB's, but since there wasn't a lot to celebrate, we'd probably just head home instead.

12 Buddie's response was a huge surprise. Buddie said, "There's no way y'all are going
13 home like this," and invited the whole team over to BB's as a gesture of good sportsmanship.
14 Buddie even said the first ten milkshakes were going to be on the house; that seemed a little over
15 the top, but I wasn't going to complain. My team, their parents and our fans all were feeling
16 really down, and some free milkshakes seemed like just the thing to cheer everybody up. We
17 were all pretty hungry, too, so we planned on eating. Moreover, I had heard about Buddie's
18 Genesee athletics donation jars from a few of the players on the Genesee team—something about
19 "Salute the Generals"—and to be honest, I was planning on making a pretty sizable donation as a
20 gesture of my gratitude. I think I told Buddie as much (or at least hinted at it) on the way over.

21 Once we got our gear packed up into the bus, we left the school and headed straight for
22 BB's. I think Buddie left at around the same time as us. Once we got to BB's, though, I saw the

1 place was closed and the lights were off. Did I totally misunderstand Buddie’s invitation, or was
2 Buddie just playing me? The team’s spirits had lifted at Buddie’s generosity, but it seemed like
3 Buddie had blown us off. Now my team was really mad. I went up to the entrance to look at
4 BB’s hours, and I was even more surprised to see that the place should have been open for 15
5 more minutes. Now that I think about it, it seemed like lot of cars were pulling in the parking lot
6 and out again when they saw that BB’s was closed. It didn’t seem like it was just us. Surely
7 Buddie wouldn’t have let the employees close early, knowing there would be a “sportsmanship
8 summit,” right? Once again, my team was leaving disappointed.

9 For Buddie’s part, Buddie was pretty mad, too. I heard Buddie talking to some kid who
10 happened to be sitting in a car —the kid said the kid’s name was “Tyler”—and Buddie sounded
11 like Buddie was about to blow a gasket. The kid said something about how the person who was
12 running BB’s that night had closed up shop early, to which Buddie responded, “Well, Genesee
13 athletics is going to miss out, and believe me, Landry is going to be in trouble.” I don’t think I
14 heard Buddie use the word “troublemaker,” but I could be wrong; I was focused mainly on
15 managing the Tilton team. I also heard Buddie mutter something about how at least Buddie now
16 “didn’t have to pony up on the dollar-for-dollar deal” and how the whole thing was costing
17 Buddie “a pretty penny.” The kid in the car then said something about Lincoln Streeter, one of
18 Genesee’s biggest star athletes. I didn’t hear exactly what it was, but it seemed to make Buddie
19 even angrier. “Whatever,” Buddie muttered, and stormed off. We then left without making a
20 donation.

21 Buddie called me the next day and told me that the whole thing had been a big
22 misunderstanding; one of Buddie’s employees, it turns out, had closed up shop early without

1 telling Buddie. Buddie told me that Buddie had “taken care of that employee,” though, and that
2 it would never happen again. I really appreciated the gesture and fully accepted Buddie’s
3 apology, but as for my team, their parents, and their fans, it’s still taking some time for them to
4 get over what they perceived to be a pretty significant snub. We were back at Genesee High
5 earlier this year for our season-opening soccer game, and after the game ended, I suggested that
6 we all head over to Buddie’s for some burgers and shakes. Even though we had won, everybody
7 seemed like they just wanted to go home. One of the parents in our group said, “Why, so Buddie
8 can stiff us again?” I tried to explain that the boondoggle last spring had been an honest mistake,
9 but my group was having none of it.

10 I hereby attest to having read the above statement and swear or affirm it to be my own. I
11 also swear or affirm to the truthfulness of its content. Before giving this statement, I was told it
12 should contain all relevant testimony, and I followed those instructions. I also understand that I
13 can and must update this affidavit if anything new occurs to me until the moment before I testify
14 in this case.

15 *s/Sandy Singh*

16 Sandy Singh

17 Dated: September 30, 2016

18 Subscribed and sworn before me on September 30, 2016.

19 *s/Atticus Byrd*

20 Atticus Byrd

21 Notary Public in and for the State of Oregon

22

BUDDIE'S BURGERS
proud partner of Genessee High School presents

SALUTE THE GENERALS



In support of the GHS Sports Booster Club

BUDDIE'S BURGERS
will match every dollar donated!



Exhibit 1. Buddie's Burgers Ad in Dillonsboro Daily

BB's Employee Monthly Time Sheet

Employee Name Landry Lopez

Date	Time In	Time Out	Hrs. Worked
04/14/16	03:46:00 PM	09:38:00 PM	5.9
04/15/16	03:52:00 PM	09:51:00 PM	6
04/16/16	03:55:00 PM	09:33:00 PM	5.6
04/21/16	03:49:00 PM	09:31:00 PM	5.7
04/22/16	04:01:00 PM	10:08:00 PM	6.1
04/23/16	03:54:00 PM	09:35:00 PM	5.7
04/28/16	03:58:00 PM	09:40:00 PM	5.8
04/29/16	04:00:00 PM	09:09:00 PM	5.2
04/30/16	03:49:00 PM	09:32:00 PM	5.7
05/05/16	03:57:00 PM	09:36:00 PM	5.7
05/06/16	03:53:00 PM	08:57:00 PM	5.1
TOTAL			62.5

Exhibit 2. BB's Employee Monthly Time Sheets (page 1 of 2)

BB's Employee Monthly Time Sheet

Employee Name Lincoln Streeter

Date	Time In	Time Out	Hrs. Worked
04/14/16	03:53:00 PM	09:39:00 PM	5.8
04/15/16	---	---	---
04/16/16	10:42:00 AM	04:04:00 PM	5.4
04/21/16	03:58:00 PM	09:42:00 PM	5.7
04/22/16	09:01:00 PM	10:07:00 PM	1.1
04/23/16	10:58:00 AM	03:56:00 PM	5
04/28/16	03:55:00 PM	09:08:00 PM	5.2
04/29/16	---	---	---
04/30/16	10:27:00 AM	04:06:00 PM	5.7
05/05/16	04:10:00 PM	09:38:00 PM	5.5
05/06/16	---	---	---
TOTAL			39.4

Exhibit 2. BB's Employee Monthly Time Sheets (page 2 of 2)

Buddie's Burgers Employee Handbook

Attendance Policy

- I. Punctuality and missed shifts
 1. All BB's employees are expected to be ready and rearin' to go at the beginning of any scheduled shift.
 2. All BB's employees are expected to work the entirety of their scheduled shift unless otherwise authorized by Buddie.
 3. All BB's employees must notify Buddie of any absences or change in shifts in advance.

- II. Disciplinary action
 1. Habitual lateness will earn you a stern talkin' to, and if the problem persists or affects a customer's experience, possible suspension or termination.
 2. A no-call, no-show absence without a reasonable, verifiable excuse is a flagrant foul in Buddie's book. Such conduct will result in immediate termination, no exceptions.

- III. Exceptions
 1. Pre-approved absences or schedule adjustments are not subject to the Disciplinary Provisions of the Attendance Policy.
 2. In the event of an emergency or other circumstance that affects and employee's ability to comply with the Attendance Policy, notify Buddie immediately.

Exhibit 3. Excerpt from Buddie's Burgers Employee Handbook

V. The Form and Substance of a Trial

A. The Elements of a Civil Case

In civil lawsuit, when a person allegedly commits a wrong against another (other than a breach of contract), it is called a “tort”; a “tort” is a civil wrong committed by one person against another. The injured party (the plaintiff) may sue the wrongdoer (the defendant) in court for a remedy which is usually money damages. In this case, the plaintiff alleges that a tort has been committed and is suing under ORS 659A.199, one of many Oregon statutes governing the relationships between employers and their employees.

In general terms, ORS 659A.199 prohibits an employer for taking any meaningful action against an employee—that is, “retaliating” against the employee—because the employee has, in good faith, reported information to the employer that the employee reasonably believes is evidence of a violation of federal or state law. If an employer “retaliates” (for example, by firing or demoting the employee after the employee makes such a report), the employee may then sue the employer. Such claims are referred to as “retaliation” or “whistleblower” claims. The idea is that the employee has “blown the whistle” on unlawful conduct in the workplace, and is being unfairly penalized as a result. Specific to the facts of this case, the plaintiff has the burden of proving several elements. The essential elements include:

1. **Protected/whistleblowing activity.** The plaintiff first must prove that he or she engaged in “protected” or “whistleblowing” activity, *i.e.*, that he or she actually made a report regarding some sort of unlawful conduct to his or her employer.
2. **Adverse action.** The plaintiff must next prove that he or she suffered some sort of “adverse employment action,” *i.e.*, that he or she was fired, demoted, disciplined, etc.
3. **Causal connection.** Finally, the plaintiff must prove that there exists a causal connection between the protected activity and the adverse action, *i.e.*, that the adverse employment action would not have occurred if the employee had not engaged in the protected activity.

A defendant can defend himself or herself by showing that plaintiff has failed to meet his or her burden of proof on one or more of the elements above.

B. Proof by a Preponderance of Evidence

The standard of proof in a civil case is the preponderance of the evidence. A “preponderance of evidence” means “more likely than not.” This standard requires that more than 50% of the weight of the evidence be in favor of the winning party. This means that Lopez only has to show that it is more likely than not that the harm occurred as a result of actions or inactions of the defendant. Likewise, the defendant need only prove that is more likely than not that Lopez’s harm occurred as a result of Lopez’s own actions or inactions.

C. Role Descriptions

1. Attorneys

Trial attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They introduce evidence and question witnesses to bring out the facts surrounding the allegations.

The plaintiff’s attorneys present the case for the plaintiff, Landry Lopez. By questioning witnesses, they will try to convince the jury that the defendant, Buddie’s Burgers, is liable by a preponderance of the evidence.

The defense attorneys present the case for the defendant, Buddie’s Burgers. They will offer their own witnesses to present their clients’ version of the facts. They may undermine the plaintiff’s case by showing that their witnesses cannot be depended upon, or that their testimony makes no sense, or is seriously inconsistent.

Demeanor of **all attorneys** is very important. On direct examination it is easy to be sympathetic and supportive of your witnesses. On cross-examination it is also to be sympathetic. An effective cross-examination is one in which the cross examiner, the witness, the judge and jury all agree on the outcome. It is bad manners and unethical to be sarcastic, snide, hostile or contemptuous. The element of surprise may, in fact, be a valuable attorney’s tool, but it is best achieved by being friendly and winning in the courtroom, including with the other side.

Attorneys on both sides will:

- conduct direct examination and redirect if necessary;
- conduct cross examination and conduct redirect and re-cross if necessary;
- make appropriate objections (note: only the direct and cross-examining attorneys for a particular witness may make objections during that testimony);
- be prepared to act as a substitute for other attorneys; and
- make opening statement and closing arguments.

a. Opening Statement

The opening statement outlines the case it is intended to present. The attorney for plaintiff delivers the first opening statement and the defense follows with the second. A good opening statement should explain what the attorney plans to prove, how it will be proven; mention the burden of proof and applicable law; and present the events (facts) of the case in an orderly, easy to understand manner.

One way to begin your statement could be as follows:

“Your Honor, my name is (full name), representing the plaintiff/defendant in this case.”

Proper phrasing in an opening statement includes:

- “The evidence will indicate that ...”
- “The facts will show that ...”
- “Witnesses (full names) will be called to tell ...”
- “The defendant will testify that ...”

Tips: You should appear confident, make eye contact with the judges, and use the future tense in describing what your side will present. Do not read your notes word for word – use your notes sparingly and only for reference.

b. Direct Examination

Attorneys conduct direct examination of their own witnesses to bring out the facts of the case. Direct examination should:

- call for answers based on information provided in the case materials;
- reveal all of the facts favorable to your position;
- ask questions which allow the witness to tell the story. Do not ask leading questions which call for only “yes” or “no” answers – leading questions are only appropriate during cross-examination;
- make the witness seem believable;

- keep the witness from rambling.

Call for the witness with a formal request:

“Your Honor, I would like to call (full name of witness) to the stand.”

The clerk will swear in the witness before you ask your first question.

It is good practice to ask some introductory questions of the witness to help him or her feel comfortable. Appropriate introductory questions might include asking the witness’ name, residence, present employment, etc.

Proper phrasing of questions on direct examination include:

- “Could you please tell the court what occurred on (date)?”
- “How long did you remain in that spot?”
- “Did anyone do anything while you waited?”

Conclude your direct examination with:

“Thank you Mr./s. _____. That will be all, your Honor.”

Tips: Isolate exactly what information each witness can contribute to proving your case and prepare a series of clear and simple questions designed to obtain that information. Be sure all items you need to prove your case will be presented through your witnesses. Never ask questions to which you do not know the answer. Listen to the answers. If you need a moment to think, it is appropriate to ask the judge for a moment to collect your thoughts, or to discuss a point with co-counsel.

c. Cross Examination, Redirect, Re-Cross, and Closing

For cross examination, see explanations, examples, and tips for *Rule 611*.

For redirect and re-cross, see explanation and note to *Rule 40* and *Rule 611*.

For closing, see explanation to *Rule 41*.

2. Witnesses

Witnesses supply the facts in the case. As a witness, the official source of your testimony, or record, is your witness statement, all stipulations, and exhibits you would reasonably have knowledge of. The witness statements contained in the packet should be viewed as signed and sworn affidavits.

You may testify to facts stated in or reasonably inferred from your record. If an attorney asks you a question, and there is no answer to it in your official statement, you can choose how to answer it. You may reply, “I don’t know” or “I can’t remember,” or you can infer an answer from the facts you do officially know. Inferences are only allowed if they are *reasonable*. If your inference contradicts your official statement, you can be impeached. Also see Rule 3.

It is the responsibility of the attorneys to make the appropriate objections when witnesses are asked to testify about something that is not generally known or cannot be inferred from the witness statement.

3. Court Clerk, Bailiff, Team Manager

It is recommended that you provide two separate team members for these roles. If you use only one, then that person must be prepared to perform as clerk and bailiff in every trial. The court clerk and bailiff aid the judge during the trial. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff.

The **plaintiff** is expected to provide the **clerk**. The **defense** provides the **bailiff**.

When evaluating the team performance, judges will consider contributions by the clerk and bailiff.

a. Duties of the Clerk – Provided by the Plaintiff

When the judge arrives in the courtroom introduce yourself and explain that you will assist as the court clerk. The clerk’s duties are as follows:

1. Roster and rules of competition: The clerk is responsible for bringing a roster of students and their roles to each trial round. You should have enough copies to be able to give a roster to each judge in every round as well as a few extras. Use the roster form in the mock trial packet. In addition, the clerk is responsible for bringing a copy of the “Rules of Competition.” In the event that questions arise and the judge needs clarification, the clerk shall provide this copy to the judge.
2. Swear in the witnesses: Every witness should be sworn in as follows:
“Do you promise that the testimony you are about to give will faithfully and truthfully conform the facts and rules of the Mock Trial Competition?”
Witness responds, “I do.”
Clerk then says, “Please be seated and state your name for the court and spell your last name.”
3. Provide exhibits for attorneys or judges if requested (both sides should have their own exhibits, however, it is a well-prepared clerk who has spares).

A proficient clerk is critical to the success of a trial and points will be given on his or her performance.

b. Duties of the Bailiff – Provided by the Defense

When the judge arrives in the courtroom, introduce yourself and explain that you will assist as the court bailiff. The bailiff’s duties are to call the court to order and to keep time during the trial.

1. Call to Order: As the judges enter the courtroom, say, “All rise. The Court with the Honorable Judge _____ presiding, is now in session. Please be seated and come to order.”
Say, “all rise” whenever the judges enter or leave the room.
2. Timekeeping. The bailiff is responsible for bringing a stopwatch to the trial. The stopwatch cannot be a cell phone; no electronic devices are permitted (Rule 40) . Be sure to practice with it and know how to use it before the competition. Follow the time limits set for each segment of the mock trail and keep track of the time used and time left on the time sheet provided in the mock trial materials.

Time should stop when attorneys make objections. Restart after the judge has ruled on the objection and the next question is asked by the attorney. You should also stop the time if the judge questions a witness or attorney.

After each witness has finished testifying, announce the time remaining, e.g., if after direct examination of two witnesses, the plaintiff has used twelve minutes, announce “8 minutes remaining” (20 minutes total allowed for direct/redirect, less the twelve minutes already used). When the time has run out for any segment of the trial, announce “Time” and hold up the “0” card.

After each witness has completed his or her testimony, mark on the time sheet the time to the nearest one-half minute. When three minutes are left, hold up “3” minute card, then again at “1” minute, and finally at “0” minutes. Be sure time cards are visible to all the judges as well as to the attorneys when you hold them up.

Time sheets will be provided at the competition. You will be given enough time sheets for all rounds. It is your responsibility to bring them to each round. Time cards (3, 1, 0 minute) will be provided in each courtroom. Leave them in the courtroom for the next trial round.

A competent bailiff who times both teams in a fair manner is critical to the success of a trial and points will be given on his/her performance.

**c. Team Manager, Unofficial Timer – optional
Team Manager (optional)**

Teams may wish to have a person act as its **team manager**. She or he could be responsible for tasks such as keeping phone numbers of all team members and ensuring that everyone is well informed of meeting times, listserv posts, and so on. In case of illness or absence, the manager could also keep a record of all witness testimony and a copy of all attorneys’ notes so that someone else may fill in if necessary. This individual could be the clerk or bailiff. A designated official team manager is not required for the competition.

Unofficial Timer (optional)

Teams may, at their option, provide an unofficial timer during the trial rounds. The unofficial timer can be a Clerk or a currently performing attorney from plaintiff’s side. This unofficial timer must be identified before the trial begins and may check time with the bailiff twice during the trial (once during the plaintiff’s case-in-chief and once during the presentation of the defense’s case). When possible, the unofficial timer should sit next to the official timer.

Any objections to the bailiff’s official time must be made by the unofficial timer during the trial, before the judges score the round. The presiding judge shall determine if there has been a rule violation and whether to accept the Bailiff’s time or make a time adjustment. Only currently-performing team members in the above-stated roles may serve as unofficial timers.

To conduct a time check, request one from the presiding judge and ask the Bailiff how much time was recorded in every completed category for both teams. Compare the times with your records. If the times differ significantly, notify the judge and ask for a ruling as to the time remaining. If the judge approves your request, consult with the attorneys and determine if you want to add or subtract time in any category. If the judge does not allow a consultation, you may request an adjustment. You may use the following sample questions and statements:

“Your Honor, before calling the next witness, may I compare time records with the Bailiff?”

“Your Honor, there is a discrepancy between my records and those of the Bailiff. May I consult with the attorneys on my team before requesting a ruling from the court?”

“Your Honor, we respectfully request that ___ minutes/seconds be subtracted from the plaintiff’s (direct examination/cross-examination/etc.).”

“Your Honor, we respectfully request that ___ minutes/seconds be added to the defense (direct examination/cross-examination/etc.).”

Be sure not to interrupt the trial for minor time differences; your team should determine in advance a minimum time discrepancy to justify interrupting the trial. The unofficial timer should be prepared

to show records and defend requests. Frivolous complaints will be considered by judges when scoring the round; likewise, valid complaints will be considered against the violating team.

Time shall be stopped during the period timekeeping is questioned.

VI. RULES OF THE COMPETITION

A. Administration

Rule 1. Rules

All trials will be governed by the Rules of the Oregon High School Mock Trial Competition and the Federal Rules of Evidence – Mock Trial Version.

Rules of the competition as well as rules of courthouse and courtroom decorum and security must be followed. CLASSROOM LAW PROJECT and Regional Coordinators have the authority to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum that affect the conduct of a trial or that impugn the reputation or integrity of any team, school, participant, court officer, judge, or mock trial program. Questions or interpretations of these rules are within the discretion of CLASSROOM LAW PROJECT; its decision is final.

Rule 2. The Problem

The problem is a fact pattern that contains statement of fact, stipulations, witness statements, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

Rule 3. Witness Bound By Statements

Each witness is bound by the facts contained in his or her own witness statement, also known as an affidavit, and/or any necessary documentation relevant to his or her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question that calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 4, Unfair Extrapolation.

If in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement and does not materially affect the witness' testimony. A witness may be asked to confirm (or deny) the presence (or absence) of information in his or her statement.

Example: A cross-examining attorney may ask clarifying questions such as, "isn't it true that your statement contains no information about the time the incident occurred?"

A witness is **not** bound by facts contained in other witness statements.

Explanation: Witnesses will supply the facts in the case. Witnesses may testify only to facts stated in or reasonably inferred from their own witness statements or fact situation. On direct examination, when your side's attorney asks you questions, you should be prepared to tell your story. Know the questions your attorney will ask and prepare clear and convincing answers that contain the information that your attorney is trying to get you to say. However, do not recite your witness statement verbatim. Know its content beforehand so you can put it into your own words. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your statement.

In cross-examination, anticipate what you will be asked and prepare your answers accordingly. Isolate all the possible weaknesses, inconsistencies, or other problems in your testimony and be prepared to explain them as best you can. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your statement. Witnesses may be impeached if they contradict what is in their witness statements (see Evidence Rule 607).

The stipulated facts are a set of indisputable facts from which witnesses and attorneys may draw reasonable inferences. The witness statements contained should be viewed as signed statements made in sworn depositions. If you are asked a question calling for an answer that cannot reasonably be inferred from the materials provided, you must reply something like, “I don’t know” or “I can’t remember.” It is up to the attorney to make the appropriate objection when witnesses are asked to testify about something that is not generally known or cannot be reasonably inferred from the fact situation or witness statement.

Rule 4. Unfair Extrapolation

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral. Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting unfair extrapolation.

If a witness is asked information not contained in the witness’ statement, the answer must be consistent with the statement and may not materially affect the witness’ testimony or any substantive issue of the case.

Attorneys for the opposing team may refer to *Rule 4* when objecting, such as “unfair extrapolation” or “outside the scope of the mock trial materials.” Possible rulings a judge may give include:

- a) no extrapolation has occurred;
- b) an unfair extrapolation has occurred;
- c) the extrapolation was fair; or
- d) ruling taken under advisement.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings (see FRE 602 and Rule 3). The decision of the presiding judge regarding extrapolation or evidentiary matters is final.

Rule 5. Gender of Witnesses

All witnesses are gender neutral. Personal pronouns in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender. Teams are requested to indicate members’ genders on the Team Roster for the benefit of judges and opposing counsel.

B. The Trial

Rule 6. Team Eligibility, Teams to State

Teams competing in the Oregon High School Mock Trial Competition must register their team(s) by the registration deadline. A school may register one, two or three teams.

To participate in the state finals, a team must successfully compete at the regional level. Teams will be assigned to their regions by CLASSROOM LAW PROJECT in January.

All **regional** competitions are **Saturday, March 4**. Teams should be aware, however, that it is subject to change. The Regional Coordinator has discretion to slightly alter the date depending on scheduling requirements, availability of courtrooms, and needs of teams. If dates change, every effort will be made to notify all times in a timely manner.

Teams will be notified of the region in which they will compete after registration closes in early January. Teams are not guaranteed to be assigned to the same region they were in last year.

All teams participating at the regional level must be prepared to compete at the state level should they finish among the top their region. Students on the team advancing to the state competition must be the same as those in the regional competition. Should a team be unable to compete in the state competition, CLASSROOM LAW PROJECT may designate an alternate team. The **state finals** are scheduled for **March 17-18**, in Portland.

The following formula will be used to determine the number of teams that advance to the state competition:

No. of Teams in Region	No. of Teams to State
4-5	1
6-10	2
11-15	3
16-20	4
21-25	5

Rule 7. Team Composition

A mock trial team consists of a **minimum of eight** and up to a **maximum of 18** students all from the same school. Additional students could be used in support roles as researchers, understudies, photographers, court artists, court reporters, and news reporters. However, none of these roles will be used in the competition. Schools are encouraged to use the maximum number of students allowable, especially where there are large enrollments.

Note: At the National High School Mock Trial Competition, teams shall consist of a maximum of eight members with six participating in any given round. Since teams larger than eight members are ineligible, Oregon's winning team may have to scale back on the number of team members to participate at the national level.

A mock trial team is defined as an entity that includes attorneys and witnesses for both the plaintiff and defense (students may play a role on the plaintiff side as well as on the defense side if necessary), clerk, and a bailiff. One possible team configuration could be:

3 attorneys for the plaintiff
3 attorneys for defense
3 witnesses for the plaintiff
3 witnesses for the defense
1 clerk
1 bailiff
14 TOTAL

All team members, including teacher and attorney coaches, are required to wear name badges at all levels of competition. Badges are provided by the competition coordinator.

All mock trial teams must submit the Team Roster (see appendix) form listing the team name and all coaches and students to the Competition Coordinators at the student orientation. If a school enters

more than one team, **team members cannot switch teams at any time for any round of regional or state competition.**

For schools entering one team, the team name will be the same as the school name. For schools entering two teams, the team names will be your school name plus a school color (for example, West Ridge Black and West Ridge Blue).

For purposes of pairings in the competition, all teams will be assigned letter designations such as AB or CD. This addresses concerns related to bias in judging due to school name. Teams will be assigned letter codes by CLASSROOM LAW PROJECT prior to the competition. Notification of letter code designations will be made via the mock trial listserv.

Rule 8. Team Presentation

Teams must present both the plaintiff and defense sides of the case. All team members must be present and ready to participate in all rounds. The competition coordinators guarantee that both the plaintiff and defense sides of every team will have at least one opportunity to argue its side of the case.

Note: Because teams are power-matched after Round 1, there is no guarantee that in Round 2 the other side of your team will automatically argue. However, if, for example, in Rounds 1 and 2 your plaintiff side argued, then you are guaranteed that in Round 3 the defense side will argue. **Parents should be made aware of this rule.**

Rule 9. Emergencies

During a trial, the presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period to address the emergency.

In the event of an emergency that would cause a team to participate with less than eight members, the team must notify the Competition Coordinator as soon as is reasonably practical. If the Coordinator, in his or her sole discretion, agrees that an emergency exists, the Coordinator shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than eight members. A penalty may be assessed.

A forfeiting team will receive a loss and points totaling the average number of the team ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of ballots and points received by the winning teams in that round.

Final determination of emergency, forfeiture, reduction of points, or advancement will be made by the Competition Coordinator.

Rule 10. Team Duties

Team members should divide their duties as evenly as possible. Opening statements must be given by both sides at the beginning of the trial. The attorney who will examine a particular witness on direct is the only person who may make the objections to the opposing attorney's questions of that witness' cross-examination; and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.

Each team must call all three witnesses; failure to do so results in a mandatory two-point penalty. Witnesses must be called by their own team and examined by both sides. Witnesses may not be recalled by either side.

Rule 11. Swearing In the Witnesses

The following oath may be used before questioning begins:

“Do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?”

The **clerk**, provided by the plaintiff, swears in all witnesses.

Rule 12. Trial Sequence and Time Limits

Each side will have a maximum of 40 minutes to present its case. The trial sequence and time limits are as follows:

- | | |
|-----------------------------------|---------------------------------------|
| 1. Introductory matters | 5 minutes total (conducted by judge)* |
| 2. Opening Statement | 5 minutes per side |
| 3. Direct and Redirect (optional) | 20 minutes per side |
| 4. Cross and re-cross (optional) | 10 minutes per side |
| 5. Closing argument | 5 minutes per side** |
| 6. Judges' deliberations | 10 minutes total (judges in private)* |

*Not included in 40 minutes allotted for each side of the case.

**Plaintiff may reserve time for rebuttal at the beginning of its closing argument. Presiding Judge should grant time for rebuttal even if time has not been explicitly reserved.

The Plaintiff gives the opening statement first. And the Plaintiff gives the closing argument first and should reserve a portion of its closing time for a rebuttal if desired. The rebuttal is limited to the scope of the defense's closing argument.

None of the foregoing may be waived (except rebuttal), nor may the order be changed.

The 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.

Rule 13. Timekeeping

Time limits are mandatory and will be enforced. The official timekeeper is the **bailiff** and is provided by the **defense**. **Timekeepers shall not use a cell phone as a stopwatch.** (No electronic devices are permitted – Rule 40). An optional unofficial timer may also be provided by the plaintiff according to the directions in Section V.E.3.c. Unofficial Timer.

- Timing will halt during objections, extensive questioning from a judge, and administering the oath.
- Timing will **not** halt during the admission of evidence unless there is an objection by opposing counsel.
- Three- and one-minute card warnings must be given before the end of each trial segment.
- **Students will be automatically stopped by the bailiff at the end of the allotted time for each segment.**
- The bailiff will also **time the judges' scoring time** after the trial; the judging panel is allowed 10 minutes to complete their ballots. When the time has elapsed, the bailiff will notify the judges that no time is remaining.

Rule 14. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine individually whether to deduct points because of overruns in time.

Rule 15. Supplemental Material, Illustrative Aids, Costuming

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case materials. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials or CLASSROOM LAW PROJECT. Use of easels, flip charts and the like is prohibited. Violation of this rule may result in a lower team score.

Rule 16. Trial Communication

Coaches, non-performing team members, alternates and observers shall not talk, signal, communicate with or coach their teams during trial. **This rule remains in force during any recess time** that may occur. Performing team members may, among themselves, communicate during the trial, however, no disruptive communication is allowed. **There must be no spectator or non-performing team member contact with the currently performing student team members once the trial begins.**

Everyone in the courtroom shall turn off all electronic devices except stopwatches by the timer(s).

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in the round may sit inside the bar.

There will be an **automatic two-point deduction** from a team's total score if the coach, other team members or spectators are found in violation of this rule by the Judges or Competition Coordinators. Competition Coordinators may exercise their discretion if they find a complaint is frivolous or the conversation was harmless.

Rule 17. Viewing a Trial

Team members, alternates, coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except those authorized by the Coordinator, are **not** allowed to view other teams in competition, so long as their team remains in the competition.

Rule 18. Videotaping, Photography, Media

Any team has the option to refuse participation in videotaping, tape recording, still photography or media coverage. However, media coverage shall be allowed by the two teams in the championship round.

C. Judging and Team Advancement

Rule 19. Decisions

All decisions of the judging panel are FINAL.

Rule 20. Composition of Panel

The judging panel will consist of three individuals: one presiding judge, one attorney judge, and one educator/community member judge. All three shall score teams using ballots that carry equal weight. The presiding judge shall cast a ballot based on overall team performances; the attorney judge shall cast a ballot based on the performance of the attorneys; and the educator/community judge shall cast a ballot based on the performance of the witnesses, clerk and bailiff. All judges receive the mock

trial case materials, a memorandum outlining the case, orientation materials, plus a briefing in a judges' orientation.

During the final championship round of the state competition, the judges' panel may be comprised of more than three members at the discretion of CLASSROOM LAW PROJECT.

Rule 21. Ballots

The term "ballot" refers to the decision made by a judge as to which side had the better performance. Each judge casts a ballot based on specific team members' performances: presiding judge scores overall team performances, attorney judge scores the attorneys, and the educator/community judge scores the performance of the witnesses, clerk and bailiff. Each judge completes his or her own ballot. Ties and fractional points are not allowed. The team that earns the most points on an individual judge's ballot is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The winner of the round shall not be announced during the competition. A sample ballot is included in the Appendix.

Rule 22. Team Advancement

Teams will be ranked based on the following criteria in the order listed:

1. Win/Loss record - equals the number of rounds won or lost by a team;
2. Total number of ballots - equals the number of judges' votes a team earned in preceding rounds;
3. Total number of points accumulated in each round;
4. Point spread against opponents – used to break a tie, the point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

Rule 23. Power Matching

A random method of selection will determine opponents in the first round. A power-match system will determine opponents for all other rounds. The schools emerging with the strongest record from the three rounds will advance to the state competition and final round. At the state competition, as between the top two teams in the final championship round, the winner will be determined by ballots from the championship round only.

Power-matching provides that:

1. Pairings for the first round will be at random;
2. All teams are guaranteed to present each side of the case at least once;
3. Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (1) win/loss record, (2) ballots, and (3) total presentation points. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
4. If there is an odd number of teams in a bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket;
5. Efforts are made to assure that teams do not meet the same opponent twice;
6. To the greatest extent possible, teams will alternate side presentation in subsequent rounds;
7. Bracket integrity in power matching supersedes alternate side presentation.

Competition Coordinators in smaller regions (generally fewer than eight teams) have the discretion to modify power matching rules to create a fairer competition.

Rule 24. Merit Decisions

Judges are not required to make a ruling on the legal merits of the trial. The presiding judge, at his or her discretion, may inform students of a hypothetical verdict. Judges shall **not** inform the teams of score sheet or ballot results.

Rule 25. Effect of Bye, Default or Forfeiture

A “bye” becomes necessary when an odd number of teams compete in a region. The byes will be assigned based on a random draw. For the purpose of advancement and seeding, when a team draws a bye or wins by default, that team will be given a win and the average number of ballots and points earned in its preceding trials.

A forfeiting team will receive a loss and points totaling the average received by the losing teams in that round. If a trial cannot continue, the other team will receive a win and an average number of ballots and points received by the winning teams in that round.

D. Dispute Settlement

Rule 26. Reporting Rules Violation – Inside the Bar

At the conclusion of the trial round, the presiding judge will ask each side if it needs to file a dispute. If any team has serious reason to believe that a material rules violation has occurred including the Code of Ethical Conduct, one of its student attorneys shall indicate that the team intends to file a dispute. The student attorney may communicate with co-counsel and student witnesses before lodging the notice of dispute or in preparing the form, found in the Appendix, Rule 26 form. **At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke dispute procedure.** Teams filing frivolous disputes may be penalized.

Rule 27. Dispute Resolution Procedure

The presiding judge will review the written dispute and determine whether the dispute deserves a hearing or should be denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court, and retire along with the other judges to complete the scoring process.

If the judge determines the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (five minutes maximum) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team’s spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her or his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 28. Effect of Violation on Score

If the presiding judge determines that a substantial rules violation or a violation of the Code of Ethical Conduct has occurred, the judge will inform the scoring judges of the dispute and provide a summary of each team’s argument. The judges will consider the dispute before reaching their final decisions. The dispute may or may not affect the final decision, but the matter will be left to the

discretion of the scoring judges. The decisions of the judges are FINAL.

Rule 29. Reporting Rules Violation – Outside the Bar

Charges of ethical violations that involve people other than performing student team members must be made promptly to a Competition Coordinator, who will ask the complaining party to complete a dispute form, found in the Appendix, Rule 30 form. The form will be taken to the coordinator's communication center, where the panel will rule on any action to be taken regarding the charge, including notification of the judging panel. Violations occurring during a trial involving students competing in a round will be subject to the dispute process described in *Rules 26-28*.

VII. RULES OF PROCEDURE

A. Before the Trial

Rule 30. Team Roster

Copies of the Team Roster form (see Appendix) shall be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by their letter code only; no information identifying team origin should appear on the form. Before beginning a trial, the teams shall exchange copies of the Team Roster Form. Witness lists should identify the gender of each witness for the benefit of the judges and the opposing team.

Rule 31. Stipulations

Stipulations shall be considered part of the record and already admitted into evidence.

Rule 32. The Record

No stipulations, pleadings, or jury instructions shall be read into the record.

Rule 33. Courtroom Seating

The Plaintiff team shall be seated closest to the jury box. No team shall rearrange the courtroom without permission of the judge.

B. Beginning the Trial

Rule 34. Jury Trial

The case will be tried to a jury; arguments are to be made to the judge and jury. Teams may address the scoring judges as the jury.

Rule 35. Motions Prohibited

The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

Rule 36. Standing During Trial

Unless excused by the judge, attorneys will stand while giving opening statements and closing arguments, during direct and cross examinations, and for all objections.

Rule 37. Objection During Opening Statement, Closing Argument

No objections shall be raised during opening statements or during closing arguments.

Note: It will be the presiding judge’s responsibility to handle any legally inappropriate statements made in the closing; all judges may consider the matter’s weight when scoring.

C. Presenting Evidence

Rule 38. Objections

1. **Argumentative Questions:** An attorney shall not ask argumentative questions.
Example: during cross-examination of an expert witness the attorney asks, "you aren't as smart as you think you are, are you? "
2. **Lack of Proper Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. **Assuming Facts Not In Evidence:** Attorneys may not ask a question that assumes unproven facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by the evidence (sometimes called a "hypothetical question").
4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for specific answer.
Example: "tell us what you know about the case."
5. **Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.
Warning: this objection also applies to the witness who talks on and on unnecessarily in an apparent ploy to run out the clock at the expense of the other team.
6. **Repetition:** Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Teams are not precluded from raising additional objections so long as they are based on Mock Trial Rules of Evidence or other mock trial rules. **Objections not related to mock trial rules are not permissible.** Students should request a bench conference (to be held in open court from counsel table) if they think the opposing attorneys are using trial procedures outside the rules.

Rule 39. Procedure for Introduction of Exhibits

As an *example*, the following steps effectively introduce evidence:

Note: Steps 1 - 3 introduce the item for identification.

1. Hand copy of exhibit to opposing counsel while asking permission to approach the bench. "I am handing the Clerk what has been marked as Exhibit X. I have provided copy to opposing counsel. I request permission to show Exhibit X to witness _____."
2. Show the exhibit to the witness. "Can you please identify Exhibit X for the Court?"
3. The witness identifies the exhibit.

Note: Steps 4-8 offer the item into evidence.

4. Offer the exhibit into evidence. "Your Honor, we offer Exhibit X into evidence at this time. The authenticity of the exhibit has been stipulated."

5. Court, “Is there an objection?” If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.
6. Opposing Counsel, “no, your Honor,” or “yes, your Honor.” If the response is “yes,” the objection will be stated on the record. Court, “Is there any response to the objection?”
7. Court, “Exhibit X is/not admitted.”

The attorney may then proceed to ask questions.

8. If admitted, Exhibit X becomes a part of the Court’s official record and, therefore, is handed over to the Clerk. *Do not* leave the exhibit with the witness or take it back to counsel table.

Attorneys do not present admitted evidence to the jury (judges in jury box) because they have exhibits in their case materials; thus, there is no “publishing” to the jury.

Rule 40. Use of Notes; No Electronic Devices

Attorneys may use notes when presenting their cases. Witnesses, however, are **not** permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes. The use of laptops or other electronic devices is prohibited.

Rule 41. Redirect, Re-Cross

Redirect and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version). **For both redirect and re-cross, attorneys are limited two questions each.**

Explanation: Following cross-examination, the counsel who called the witness may conduct re-direct examination. Attorneys re-direct to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination only; they may not bring up other issues. Attorneys may or may not want to re-direct. If an attorney asks questions beyond the issues raised on cross, they may be objected to as “outside the scope of cross-examination.” It is sometimes more beneficial not to conduct it for a particular witness. The attorneys will have to pay close attention to what is said during cross-examination of their witnesses so that they may decide whether it is necessary to conduct re-direct. Once re-direct is finished, the cross examining attorney may conduct re-cross to clarify issues brought out in the immediately preceding re-direct examination only.

If the credibility or reputation for truthfulness of the witness is attacked on cross-examination, during re-direct the attorney whose witness has been damaged may wish to “save” the witness. These questions should be limited to the damage the attorney thinks was done and should enhance the witness’ truth-telling image in the eyes of the Court. Work closely with your attorney coach on re-direct and re-cross strategies. Remember that time will be running during both re-direct and re-cross and may take away from the time needed to question other witnesses.

Note: Redirect and re-cross time used will be deducted from total time allotted for direct and cross-examination for each side.

D. Closing Arguments

Rule 42. Scope of Closing Arguments

Closing arguments must be based on the actual evidence and testimony presented during the trial.

Explanation: a good closing argument summarizes the case in the light most favorable to your position. The plaintiff delivers the first closing argument. The plaintiff side should reserve time for rebuttal before beginning its closing argument and the judge *should* grant it. The closing argument of the defense concludes that side's the presentation.

A good closing should:

- be spontaneous and synthesize what actually happened in court rather than being a rehearsed speech;
- be emotionally charged and strongly appealing (unlike the calm opening statement);
- emphasize the facts that support the claims of your side, but not raise any new facts, by reviewing the witnesses' testimony and physical evidence;
- outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses;
- isolate the issues and describe briefly how your presentation addressed these issues;
- summarize the favorable testimony;
- attempt to reconcile inconsistencies that might hurt your side;
- be well-organized, clear and persuasive (start and end with your strongest point);
- the plaintiff should emphasize that it has proven its case by a preponderance of the evidence;
- the defense should raise questions that show one or more elements were not proven by a preponderance of the evidence.

Proper phrasing includes:

“The evidence has clearly shown that ...”

“Based on this testimony, there is doubt that ...”

“The plaintiff has failed to prove by a preponderance of the evidence that ...”

“The defense would have you believe that ...”

Plaintiff should conclude the closing argument with an appeal, based on a preponderance of the evidence, to find the defendant liable. And the defense should say the plaintiff failed to prove the necessary elements by a preponderance of the evidence.

E. Critique

Rule 43. The Critique

There is **no oral critique** from the judging panel. At the conclusion of the trial, each judge may offer a general, brief congratulatory comment to each team. Substantive comments or constructive criticism from judges may be included in judges' ballots, at their discretion. Judges' written comments will be given to teams in the week following the competition.

VIII. FEDERAL RULES OF EVIDENCE – Mock Trial Version

To assure each party of a fair hearing, certain rules have been developed to govern the types of evidence that may be introduced, as well as the manner in which evidence may be presented. These rules are called the “rules of evidence.” The attorneys and the judge are responsible for enforcing these rules. Before the judge can apply a rule of evidence, an attorney must ask the judge to do so. Attorneys do this by making “objections” to the evidence or procedure employed by the opposing side. When an objection is raised, the attorney who asked the question that is being challenged will

usually be asked by the judge why the question was not in violation of the rules of evidence.

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes. These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. 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 evidence will probably be allowed by the judge. The burden is on the mock trial team to know the Federal Rules of Evidence (Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence, and its numbering system. **Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure.** Text in italics represents simplified or modified language.

Not all judges will interpret the Rules of Evidence (or procedure) the same way and mock trial attorneys should be prepared to point out specific rules (quoting if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate.

The mock trial Rules of Competition and these Federal Rules of Evidence - Mock Trial Version govern the Oregon High School Mock Trial Competition.

Article I. General Provisions

Rule 101. Scope

These Federal Rules of Evidence - Mock Trial Version govern the trial proceedings of the Oregon High School Mock Trial Competition.

Rule 102. Purpose and Construction

These Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.

Article IV. Relevancy and Its Limits

Rule 401. Definition of “Relevant Evidence”

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible

Relevant evidence is admissible, except as otherwise provided in these Rules. Irrelevant evidence is not admissible.

Explanation: Questions and answers must relate to an issue in the case; this is called “relevance.” Questions or answers that do not relate to an issue in the case are “irrelevant” and inadmissible.

Example: (in a traffic accident case) “Mrs. Smith, how many times have you been married?”

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, if it confuses the issues, if it is misleading, or if it causes undue delay, wastes of time, or is a needless presentation of cumulative evidence.

Rule 404. Character Evidence Not admissible to Prove Conduct; Exceptions; Other Crimes

- (a) Character Evidence. – Evidence of a person’s character or character trait, is not admissible to prove action regarding a particular occasion, except:
- (1) Character of accused. – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
 - (2) Character of victim. – Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
 - (3) Character of witness. – Evidence of the character of a witness as provided in Rules 607, and 608.
- (b) Other crimes, wrongs, or acts. – Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

- (a) Reputation or opinion. – In all cases where evidence of character or a character trait is admissible, proof may be by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.
- (b) Specific instances of conduct. – In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person’s conduct.

Rule 407. Subsequent Remedial Measures

When measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence or subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusions of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to

obstruct investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

Rule 411. Liability Insurance (civil case only)

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 3.)

Example: "I know Harry well enough to know that two beers usually make him drunk, so I'm sure he was drunk that night, too."

Rule 607. Who May Impeach

The credibility of a witness may be attacked or challenged by any party, including the party calling the witness.

Explanation: On cross-examination, an attorney wants to show that the witness should not be believed. This is best accomplished through a process called "impeachment," which may use one of the following tactics: (1) asking questions about prior conduct of the witness that makes the witness' truthfulness doubtful (e.g. "isn't it true that you once lost a job because you falsified expense reports?"); (2) asking about evidence of certain types of criminal convictions (e.g. "you were convicted of shoplifting, weren't you?); or (3) showing that the witness has contradicted a prior statement, particularly one made by the witness in an affidavit, also called witness statements.

In order to impeach the witness by comparing information in the affidavit to the witness' testimony, attorneys should use this procedure:

Step 1: Introduce the affidavit for identification (see Rule 38).

Step 2: Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

Example: "Now, Mrs. Burns, on direct examination you testified that you were out of town on the night in question, didn't you?"

Witness responds, "yes."

Step 3: Ask the witness to read from his or her affidavit the part that contradicts the statement made on direct examination.

Example: “All right, Mrs. Burns, will you read line #18?” Witness reads, “Harry and I decided to stay in town and go to the theater.”

Step 4: Dramatize the conflict in the statements. Remember, the point of this line of questioning is to demonstrate the contradiction in the statements, not to determine whether Mrs. Burns was in town or not.

Example: “So, Mrs. Burns, you testified that you were *out* of town in the night in question didn’t you?”

“Yes.”

“Yet in your affidavit you said you were *in* town, didn’t you?”

“Yes.”

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character. – The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific instances of conduct. – Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’ credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness’ character for truthfulness or untruthfulness, or (2) concerning the character of truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused’s or the witness’ privilege against self-incrimination with respect to matters related only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General rule. For the purpose of attacking the character for truthfulness of a witness,

(1) evidence that a witness other than an accused been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

Rule 610. Religious Beliefs or Opinions. Not applicable.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court. -- The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to:

(1) make the questioning and presentation effective for ascertaining the truth,

(2) avoid needless use of time, and

(3) protect witnesses from harassment or undue embarrassment.

(b) Scope of cross examination. -- The scope of cross examination **shall not** be limited to the scope of the direct examination, but **may inquire into any relevant facts or matters contained in the witness' statement**, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

Explanation: Cross examination follows the opposing attorney's direct examination of his/her witness. Attorneys conduct cross examination to explore weaknesses in the opponent's case, test the witness's credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross examination should:

- call for answers based on information given in witness statements or fact situation;
- use leading questions which are designed to get "yes" or "no" answers;
- never give the witness a chance to unpleasantly surprise the attorney;
- include questions that show the witness is prejudiced or biased or has a personal interest in the outcome of the case;
- include questions that show an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience;

Examples of proper questions include: "Isn't it a fact that ...?" "Wouldn't you agree that ...?" "Don't you think that ...?"

Cross examination should conclude with:

"Thank you Mr./s _____ (last name). That will be all, your Honor."

Tips: Be relaxed and ready to adapt your prepared questions to the actual testimony given during direct examination; always listen to the witness's answer; avoid giving the witness an opportunity to re-emphasize the points made against your case during direct examination; don't harass or attempt to intimidate the witness; and do not quarrel with the witness. **Be brief; ask only questions to which you already know the answer.**

(c) Leading questions. -- Leading questions are **not** permitted on direct examination of a witness (except as may be necessary to develop the witness' testimony). Leading questions **are** permitted on cross examination.

Explanation: A "leading" question is one that suggests the answer desired by the questioner, usually by stating some facts not previously discussed and then asking the witness to give a yes or no answer.

Example: "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?" This is an appropriate question for cross-examination but not direct or re-direct.

(d) Redirect/Re-Cross. -- After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition. **For both redirect and re-cross, attorneys are limited to two questions each.**

Explanation: A short re-direct examination will be allowed following cross-examination if an attorney desires, and re-cross may follow re-direct. But in both instances, questions must be on a subjects raised in the immediately preceding testimony. If an attorney asks questions on topics not raised earlier, the objection should be "beyond the scope of re-direct/cross." See

Rule 44 for more discussion of redirect and re-cross.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Explanation: Unless a witness is qualified as an expert in the appropriate field, such as medicine or ballistics, the witness may not give an opinion about matters relating to that field. But a witness may give an opinion on his/her perceptions if it helps the case.

Example - inadmissible lay opinion testimony: "The doctor put my cast on wrong. That's why I have a limp now."

Example - admissible lay opinion testimony: "He seemed to be driving pretty fast for a residential street."

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise.

Note: The usual mock trial practice is that attorneys qualify a witness as an expert by asking questions from the list suggested above. After establishing the witness as an expert by asking about his or her background, the attorney then asks the judge to qualify the witness as an expert.

Note: In criminal cases, witnesses, including experts, cannot give opinions on the ultimate issue of the case, that is, whether the defendant was guilty. This is a matter for the judge or jury to decide.

Rule 703. Bases of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Explanation: Unlike lay witnesses who must base their opinions on what they actually see and hear, expert witnesses can base their opinions on what they have read in articles, texts, or records they were asked to review by a lawyer, or other documents which may not actually be admitted into evidence at the trial. **These records or documents may include statements made by other witnesses.**

Rule 704. Opinion on Ultimate Issue

(a) opinion or inference testimony otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact. (b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Note: In criminal cases, witnesses, including experts, cannot have opinions on the guilt or innocence of the defendant. This is a matter for the judge or jury to decide.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

- (a) Statement -- A *statement* is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) Declarant -- A *declarant* is a person who makes a statement.
- (c) Hearsay -- *Hearsay* is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Explanation: If a witness tries to repeat what someone has said, the witness is usually stopped from doing so by the hearsay rule. Hearsay is a statement made by someone other than the witness while testifying. Because the statement was made outside the courtroom, usually a long time before the trial, it is called an “out-of-court statement.” The hearsay rule also applies to written statements. The person who made the statement is referred to as the “declarant.” Because the declarant did not make the statement in court under oath and subject to cross examination, the declarant’s statement is not considered reliable.

Example: Witness testifies in court, “Harry told me the blue car was speeding.” What Harry said is hearsay because he is not the one testifying. He is not under oath, cannot be cross-examined, and his demeanor cannot be assessed by the judge or jury. Further, the witness repeating Harry’s statement might be distorting or misinterpreting what Harry actually said. For these reasons, Harry’s statement, as repeated by the witness, is not reliable and therefore not admissible. The same is true if Harry’s prior written statement was offered.

Only out-of-court statements which are offered to prove what is said in the statements are considered hearsay. For example, a letter that is an out of court statement is not hearsay if it is offered to show that the person who wrote the letter was acquainted with the person who received it. But if the letter was offered to prove that what was said in the letter was true, it would be hearsay.

- (d) Statements which are not hearsay -- A statement is not hearsay if:
 - (1) Prior statement by witness -- the declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is
 - (A) inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition or
 - (B) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or
 - (C) one of identification or a person made after perceiving the person; or

Explanation: If any witness testifies at trial, and the testimony is different from what the witness said previously, the cross-examining lawyer can bring out the inconsistency. In the witnesses’ statements in the mock trial materials (considered to be affidavits), prior inconsistent statements may be found (see Impeachment Rule 607).

- (2) Admission by a party-opponent -- The statement is offered against a party and is (A) the party’s own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement

by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Explanation: A statement made previously by a party (either the prosecution or defendant) is admissible against that party when offered by the other side. Admissions may be found in the prosecution's or defendant's own witness statements. They may also be in the form of spoken statements made to other witnesses.

Rule 802. Hearsay Rule

Hearsay is not admissible, except as provided by these rules.

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present sense impression -- A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

Example: As the car drove by Janet remarked, "wow, that car is really speeding."

(2) Excited utterance -- A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

Example: the witness testifies, "Mary came running out of the store and said, 'Cal shot Rob!'"

(3) Then existing mental, emotional, or physical conditions -- A 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), but not including a statement of memory of belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of a declarant's will.

Example: A witness testifies, "Mary told me she was in a lot of pain and extremely angry at the other driver."

(4) Statements for purposes of medical diagnosis or treatment -- Statements made for the purpose of medical diagnosis or treatment.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity.

(21) Reputation as to character. Reputation of a person's character among associates or in the community.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

Example: A police report contains a notation written by the officer, "Harry told me the blue car was speeding." The report might be admissible as a business record but Harry's statement within the report is hearsay.

IX. NOTES TO JUDGES

A. Note to Judges

To ensure that the mock trial experience is the best it can be for students, please familiarize yourself with both affidavits and the rules of competition. Mock trial rules sometimes differ with what happens in a court of law. Particular attention should be paid to the simplified rules of evidence. The students have worked hard for many months and are disappointed when judges are not familiar with the case materials.

Please note that the mock trial competition differs from a real trial situation in the following ways:

1. Students are prohibited from making objections or using trial procedures not listed in the mock trial materials. Students should request a bench conference (to be held in open court from counsel table) if they think the opposing attorneys are using trial procedures outside the rules.
2. Students are limited to the information in the witness statements and fact situation. If a witness invents information, the opposing attorney may object on the grounds that the information is beyond the scope of the mock trial materials. The presiding judge is encouraged request a bench conference (to be held in open court from counsel table) and ask the students to find where the information is included in the case materials.
3. Bailiffs are the official timekeepers. The defense team is responsible for providing the bailiff (plaintiff/prosecution provides the clerk). Bailiffs time all phases of the trial.
4. Students have been instructed to address their presentations to the judge and jury. The students will address the presiding judge as the judge in the case and the other judges as jurors since they are in the jury box.
5. Each trial round should be **completed in less than two hours**. To keep the competition on schedule, please keep within the time limits set out in Rule 12.
6. Judges shall not give an oral critique at the end of the trial. At the conclusion of the trial, each judge may offer a general congratulatory comment to each team. Substantive comments or constructive criticism from judges may be included in judges' ballots, at their discretion. Judges' written comments will be given to teams in the week following the competition. (Rule 43)

Each courtroom will be assigned a panel of three judges. The judging panel will usually be comprised of two representatives from the legal field and one educator or community representative. The presiding judge will sit at the bench and the other two judges will sit in the jury box.

B. Introductory Matters

The presiding judge should handle the following introductory matters prior to the beginning of the trial:

1. Ask each side if it is ready for trial. Ask each side to provide each judge with a copy of its Team Roster. Ask each member of a team to rise and identify himself/herself by name and role, and their team by their assigned letter designation (not by school name).
2. If video or audio recorders are present, inquire of both teams whether they have approved the taping of the round.
3. Ask if there are people present in the courtroom who are connected with other schools in the competition (other than the schools competing in this courtroom). If so, they should be asked to

leave. They may contact the sponsor's communication center to determine the location of the courtroom in which their school is performing.

4. Remind spectators of the importance of showing respect for the teams. **Silence electronic devices.** Judges may remove spectators who do not adhere to appropriate courtroom decorum.
5. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonably inferred from the information.
6. Remind teams that they must complete their presentations within the specified time limits. The bailiff will signal you as the time for each segment of presentation runs out (3 and 1 minute warning and then 0 minute cards will be held up). At the end of each segment you will be stopped when your time has run out whether you are finished or not.
7. All witnesses must be called.
8. Only the following exhibits may be offered as evidence at the trial:
 1. Buddie's Burgers Ad in Dillonsboro Daily
 2. BB's Employee Monthly Time Sheets
 3. Excerpt from Buddie's Burgers Employee Handbook

Finally, before you begin, indicate that you have been assured that the Code of Ethical Conduct has been read and will be followed by all participants in the mock trial competition. Should there be a recess at any time during the trial, the communication rule (see third paragraph of Code of Ethical Conduct) shall be in effect. If there are no other questions, begin the trial.

At the end of the trial, the presiding judge shall ask teams if either side wishes to make a Rule 26 Violation. If so, resolve the matter as indicated in the rule. Then judges complete their ballots.

Judges shall NOT inform the students of results of their scores or results from their ballots.

The presiding judge may, however, announce a ruling on the legal merits of the case – that is, which side would have prevailed if the trial were real – being careful to differentiate that winning the trial has no bearing on which side won on performance (on judges' ballots).

C. Evaluation Guidelines

All teams will compete in all three rounds (unless a team has a bye). Teams are randomly matched for Round 1 and then power matched based on win/loss record, total ballots (which is the number of scoring judges' votes), and total number of points.

Teams will provide Team Rosters to each judge. The rosters are helpful for note-taking and reference when evaluating performances.

Judges will be provided with individual ballots by the Competition Coordinator. Ballots shall be completed and given to the Clerk to deliver to the scoring room **immediately** following completion of the round. Judges will **not** provide oral critique. Judges shall score and provide any comments on their ballot. Teams will be provided photocopies of judges' ballots after the competition, usually the following week. Scoring duties among the three judges shall be distributed as follows:

- The presiding judge shall score based on overall strategy and performance – the “big picture.”
- The attorney-judge shall score the attorneys' performances.
- The educator-community judge shall score the witnesses', clerk's and bailiff's performances.

Judges should use the following evaluation guidelines when scoring.

EVALUATION GUIDELINES

Each judge shall assign a score of 1-5 to each team with presiding judge scoring on overall performance, attorney-judge on attorneys, and educator-community judge on witnesses, clerk and bailiff. This score, minus any penalty points, is the score that should be written on the official ballot to be turned in for scoring purposes. Judges shall score each team based on the following guidelines:

- 1 pt Not effective.** Unsure, illogical, uninformed, unprepared, ineffective communication skills.
- 2 pts Fair.** Minimally informed and prepared; passable performance but lack of depth in terms of knowledge of task and materials. Communication lacked clarity and conviction.
- 3 pts Good.** Good, solid but not spectacular; can perform outside script but with less confidence; logic and organization adequate but not outstanding. Grasp of major aspects of case. Communications clear and understandable but could be more fluent and persuasive.
- 4 pts Excellent.** Fluent, persuasive, clear, understandable; organized material and thoughts well and exhibited mastery of case and materials.
- 5 pts Outstanding.** Superior in qualities listed in above. Demonstrated ability to think on feet, poised under duress; sorted out essential from nonessential, used time effectively to accomplish major objectives. Demonstrated unique ability to utilize all resources to emphasize vital points of trial. Team members were courteous, observed proper courtroom decorum, spoke clearly and distinctly. All team members were involved in the presentation and participated actively in fulfilling their respective roles, including the Clerk and Bailiff. The Clerk and Bailiff performed their roles so that there were no disruptions or delays in the presentation of the trial. Team members demonstrated cooperation and teamwork.

D. Penalty Points

Points should be deducted if a team member:

1. Uses procedures beyond the mock trial rules.
2. Goes beyond the scope of the mock trial materials.
3. Does not follow mock trial rules in any other way.
4. Talks to coaches, non-performing team members or other observers. This includes breaks or recesses, if any should occur, in the trial: **mandatory 2-point penalty**. The Competition Coordinator and judge have discretion to determine whether a communication was harmful.
5. Does not call all witnesses: **mandatory 2-point penalty**.

Judges may assign the number of penalty points at their discretion except where otherwise indicated. **Use whole numbers only (no fractions!).** A unanimous decision among the three judges is not required.

Note: The behavior of teachers and attorney coaches may impact a team's score.

The judges' decision is final.

Judges shall not engage in any discussion with students or coaches about scoring after the trial. Any questions from teams about scoring should be referred to the Competition Coordinators.

APPENDICES

Notes:

Often Used Objections in Suggested Form

Note: This exhibit is provided to assist students with the proper form of objections. It is NOT a comprehensive list of all objections. Permissible objections are those related to a rule in the mock trial material (examples below). Impermissible objections are those not related to mock trial rules (example: hearsay based on business records exception). That is to say, an objection must be based on a rule found in the Mock Trial materials, not additional ones even if they are commonly used by lawyers in real cases.

The following objections are often heard in mock trials but do not represent an exhaustive list.

Note: Objections during the testimony of a witness will be permitted only by the direct examining and cross-examining attorneys for that witness.

1. Leading Question (see Rule 611)

Objection: "Objection, Your Honor, counsel is leading the witness." (Opposing Attorney)

Response: "Your Honor, leading is permissible on cross-examination," or "I'll rephrase the question." For example, the question would not be leading if rephrased as: "Mr. Smith, where did you and Ms. Jones go that night?" (This does not ask for a yes or no answer.)

2. Relevance (see Rule 402)

Objection: "Your Honor, this question is irrelevant to this case."

Response: "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

3. Hearsay (see Rules 801, 802, 803, 805)

Objection: "Objection, Your Honor, this is hearsay."

Response: "Your Honor, this is an exception/exclusion to the hearsay rule." (Explain applicable provisions.)

4. Personal Knowledge (see Rule 602)

Objection: "Your Honor, the witness has no personal knowledge of Harry's condition that night."

Response: "The witness is just generally describing her usual experience with Harry."

5. Opinions (see Rule 701)

Objection: "Objection, Your Honor, the witness is giving an opinion."

Response: "Your Honor, the witness may answer the question because ordinary persons can judge whether a car is speeding."

6. Outside the Scope of Mock Trial Materials/Rules (see Rule 4)

Objection: "Objection, Your Honor. The witness is testifying to information not found in the mock trial materials."

Response: "The witness is making a reasonable inference."

The presiding **judge** may call a bench conference for clarification from both attorneys.

Team Roster

~complete both sides~

Team Code _____

Submit copies to: (1) Competition Coordinator before trials begin, (2) every judge in every round, and (3) opposing team in each round (19 copies not including spares). For the benefit of judges and the opposing team, please indicate gender by including Mr. or Ms.

Plaintiff/Prosecution

Opening Statement

attorney - student's name

P Witness #1

witness' name

student's name

Direct examination of W#1

attorney - student's name

P Witness #2

witness' name

student's name

Direct examination of W#2

attorney - student's name

P Witness #3

witness' name

student's name

Direct examination of W#3

attorney - student's name

Cross examining D's W#1

witness' name

attorney - student's name

Cross examining D's W#2

witness' name

attorney - student's name

Cross examining D's W#3

witness' name

attorney - student's name

Closing Argument

attorney - student's name

Clerk

student's name

Team Roster, continued,

Team Code _____

Defense

Opening Statement

attorney - student's name

Cross examining P's W#1 _____
witness' name

attorney - student's name

Cross examining P's W#2 _____
witness' name

attorney - student's name

Cross examining P's W#3 _____
witness' name

attorney - student's name

D Witness #1 _____
witness' name

student's name

Direct examination of W#1

attorney - student's name

D Witness #2 _____
witness' name

student's name

Direct examination of W#2

attorney - student's name

D Witness #3 _____
witness' name

student's name

Direct examination of W#3

attorney - student's name

Closing Argument

attorney - student's name

Bailiff

student's name



2016-17 HIGH SCHOOL MOCK TRIAL BALLOT PRESIDING JUDGE

Presiding Judge shall score based on overall strategy and performance - the "big picture."

Round 1

P=Plaintiff/Prosecution AB
Team Code

D=Defense CD
Team Code

*Using a scale of 1-5, rate P and D in the categories below.				
*DO NOT use fractions nor award zero points.				
*DO NOT leave any categories blank.				
*Total points possible for winning team: 40.				
Not Effective 1	Fair 2	Good 3	Excellent 4	Outstanding 5

		P		D
Opening Statement		4		3
P Witness #1 <i>Lopez</i>	Direct Examination	3	Cross-Examination	3
P Witness #2 <i>Jackson</i>	Direct Examination	3	Cross-Examination	3
P Witness #3 <i>Erickson</i>	Direct Examination	4	Cross-Examination	4
D Witness #1 <i>Gartowski</i>	Cross-Examination	3	Direct Examination	3
D Witness #2 <i>Streeter</i>	Cross-Examination	4	Direct Examination	3
D Witness #3 <i>Singh</i>	Cross-Examination	3	Direct Examination	4
Closing Arguments & Rebuttal		3		3
Subtotal from above (NO ties in this category):		27		26
Penalty Deduction:		0		0
TOTAL POINTS (NO TIES!):		27		26

BEST OVERALL PRESENTATION: Write P or D



P

OPTIONAL: *I favored this team because...*
*Solid throughout. Particularly good opening-
 great blueprint for P's theory of the case.*

J. Smith

 Judge's Name: please print

Please deliver ballot to clerk before adjourning!



**2016-17 HIGH SCHOOL
MOCK TRIAL BALLOT
ATTORNEY JUDGE**

The Attorney Judge shall score the attorneys' performances.

Round 1

P=Plaintiff/Prosecution AB
Team Code

D=Defense CD
Team Code

***Using a scale of 1-5, rate P and D in the categories below.**
***DO NOT use fractions nor award zero points.**
***DO NOT leave any categories blank.**
***Total points possible for winning team: 40.**

Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

	P		D
Opening Statement	4		4
P Witness #1 <i>Lopez</i>	3	Cross-Examination	3
P Witness #2 <i>Jackson</i>	3	Cross-Examination	3
P Witness #3 <i>Erickson</i>	3	Cross-Examination	4
D Witness #1 <i>Gartowski</i>	3	Direct Examination	4
D Witness #2 <i>Streeter</i>	3	Direct Examination	3
D Witness #3 <i>Singh</i>	3	Direct Examination	4
Closing Arguments & Rebuttal	3		4
Subtotal from above (NO ties in this category):	25		29
Penalty Deduction:	0		0
TOTAL POINTS (NO TIES!):	25		29

BEST OVERALL PRESENTATION: Write P or D

OPTIONAL: *I favored this team because...
D's lawyers knew when to object and how to
object. Well done!*

S. Brown

Judge's Name: please print

Please deliver ballot to clerk before adjourning!



2016-17 HIGH SCHOOL MOCK TRIAL BALLOT EDUCATOR/COMMUNITY JUDGE

The Educator/Community Judge shall score the witnesses', clerk's and bailiff's performances.

Round 1

P=Plaintiff/Prosecution AB
Team Code

D=Defense CD
Team Code

- * Using a scale of 1-10 (1-5 on direct; 1-5 on cross), rate P and D witnesses in the categories below.
- * Using a scale of 1-5, rate Clerk and Bailiff below.
- * DO NOT use fractions nor award zero points.
- * DO NOT leave any categories blank.
- * Total points possible for winning team: 35

Not Effective	Fair	Good	Excellent	Outstanding
1	2	3	4	5

	P		D
P Witness #1 <i>Lopez</i> Direct: <input type="text" value="4"/> + Cross: <input type="text" value="3"/> =	7		
P Witness #2 <i>Jackson</i> Direct: <input type="text" value="4"/> + Cross: <input type="text" value="4"/> =	8		
P Witness #3 <i>Erickson</i> Direct: <input type="text" value="5"/> + Cross: <input type="text" value="4"/> =	9		
D Witness #1 <i>Gartowski</i> Direct: <input type="text" value="3"/> + Cross: <input type="text" value="3"/> =		=	6
D Witness #2 <i>Streeter</i> Direct: <input type="text" value="3"/> + Cross: <input type="text" value="3"/> =		=	6
D Witness #3 <i>Singh</i> Direct: <input type="text" value="4"/> + Cross: <input type="text" value="4"/> =		=	8
Clerk	5		
Bailiff			4
Subtotal from above (NO ties in this category:)	29		24
Penalty Deduction:	0		0
TOTAL POINTS:	29		24

BEST OVERALL PRESENTATION: Write P or D



P

OPTIONAL: *I favored this team because...*

*Lopez: so believable, so strong.
Held firm on cross examination*

A. Jackson

Judge's Name: please print

Please deliver ballot to clerk before adjourning!

Rule 26 - Reporting Rules Violation Form
FOR TEAM MEMBERS INSIDE THE BAR
(PERFORMING IN THIS ROUND)

THIS FORM MUST BE RETURNED TO THE TRIAL COORDINATOR ALONG WITH THE SCORESHEETS OF THE SCORING JUDGES.

Round (circle one) **1 2 3** **Pros/Plaintiff:** team code _____ **Defense:** team code _____

Grounds for Dispute: _____

Initials of Team Spokesperson: _____ Time Dispute Presented to Presiding Judge: _____

Hearing Decision of Presiding Judge (circle one): **Grant Deny** Initials of Judge: _____

Reason(s) for Denying Hearing: _____

Initials of Opposing Team's Spokesperson: _____

Presiding judge's notes from hearing and reason(s) for decision: _____

Signature of Presiding Judge

**RULE 29 - REPORTING RULES VIOLATION FORM
FOR USE BY PERSONS BEHIND THE BAR
(NOT PERFORMING IN THIS ROUND)**

*Non-Performing team members wishing to report a violation must promptly
submit this form to competition coordinator*

Date: _____ **Time Submitted:** _____

Person Lodging: _____ **Affiliated With:** (Team Code) _____

Grounds for Dispute: _____

Initials of Competition Coordinator: _____ Time Dispute Presented to Coordinator: _____

Notes From Hearing: _____

Decision/Action of Coordinator: _____

Signature of Competition Coordinator

Date /Time of Decision

DIAGRAM OF A TYPICAL U.S. COURTROOM

