



## North Carolina Mock Trial Program Suggestions for Student Attorneys

This outline offers various "helpful hints" for preparing students to be attorneys in mock trials. Included are tips and techniques for both pre-trial preparation and the presentation at trial of the opening statement, direct and cross-examinations, and closing argument.

### 1. General Suggestions

- Always be courteous to witnesses, other attorneys, and the judge.
- Always stand when talking in court and when the judge enters or leaves the room.
- Dress appropriately and professionally.
- Always say, "Yes, Your Honor" or "No, Your Honor" when answering a question from the judge.
- If the judge rules against you on an objection, take the adverse ruling gracefully and be cordial to the judge and the other team. Do not take rulings personally; accept them and move forward accordingly and adapt as you can. Learn as much as you can and have fun while participating in the project.

### 2. Opening Statements

- Objective: To acquaint the judge and jury with the case and to give a forecast of what you anticipate that the evidence will show. Argument is not permitted during opening. Objections are not permitted during opening.
- Advice in Preparing:
  - *What should be included*:
    - Case theme: short memorable word or phrase to introduce the jury to your case theory
    - Names of attorneys (you and your colleagues)
    - Name of client
    - Name of opponent
    - A short summary of the facts: the "story" of the case from your side's perspective
    - A clear and concise overview of the witnesses, testimony and physical evidence that you will present;
    - Mention of the burden of proof (the amount of evidence needed to prove a fact) and who has it in this case
    - Conclusion and request for relief ("at the end of the trial, my co-counsel will ask you to find the defendant guilty/liable/not guilty/not liable")
  - *What to avoid*:
    - Too much detail, which can tire or confuse the jury.

- Exaggeration and overstatement.
- Argument, which violates the function of the opening statement (ie, to provide a forecast of what the evidence will show from your client's viewpoint). You are “arguing” when you state a conclusion or inference based on a list of facts.
- Advice in presenting:
  - Use the future tense in describing what you will do (e.g., "The facts will show," or "Our witnesses' testimony will prove," etc.)
  - Do not read the entire presentation; try to look at the jury and tell your story, preferably without relying on notes. If you can deliver it without notes at all, even better.
  - First and last sentences should be the strongest, to capture the jurors' attention and leave them with a lasting impression.
  - Be earnest, loud and clear.
- Other suggestions:
  - Learn your case thoroughly (facts, law, burdens, etc.).
  - Never promise to prove anything that you will not or cannot.
  - Write a clear, concise, and well-organized statement.

### 3. Direct Examination

- Objectives: To obtain information from favorable witnesses you call in order to prove the facts of your case; to present enough evidence to warrant a favorable verdict; to present facts with clarity and understanding; to present your witness to the greatest advantage; and to establish your witness's credibility.
- Advice in preparing:

***What should be included:***

  - Isolate the information that each witness can contribute to your case and prepare a series of questions designed to elicit that information.
  - Make sure all items that you need to prove your case will be presented through your witnesses.
  - Use clear and simple questions.
- Advice in Presenting:
  - Be a "friendly guide" for the witness as s/he tells their story. Let the witness be the star.
  - Ask only the questions which are necessary to elicit the desired testimony; and stay within your time limits.
  - Be prepared to think and respond quickly to an unexpected answer from a witness and add a short follow-up to be sure you obtained the testimony you wanted.
  - Present your questions in a relaxed and clear fashion; be conversational.
  - Be sure to listen to the witness's answers and adjust your questions as needed.
  - If you need a moment to think, ask the judge if you can discuss a point with your co-counsel.
  - Refer to exhibits by their designation (“Exhibit 1”, etc.).

- Other suggestions:
  - Ask open-ended questions. These usually begin with "who," "what," "when," "where," "why," or "how," or by asking the witness to "explain" or "describe."
  - Avoid asking leading questions.
  - Practice with your witness.
  - Don't ask questions requiring opinion testimony, unless the witness has been certified as an expert by the court.
  - Remember that in the event your witness's memory fails, you may refresh their memory using their witness statement. (Refer to the NCHSMT Rules of Evidence).
- What does the opposing attorney do during this time?
  - Objects to testimony or introduction of evidence when necessary.
  - Writes down pertinent information and prepares for cross-examination of witnesses.

#### **4. Cross-Examination**

- Objectives: To make the other side's witnesses less believable in the eyes of the trier of fact (jury); to negate your opponent's case; to discredit the testimony of your opponent's witnesses; and to discredit evidence that has been presented.
- Advice in Preparing:
  - Carefully analyze all possible adverse testimony and other evidence to find weaknesses; an attorney should attempt to explain, modify, or discredit the opponent's evidence by exposing its weaknesses.
  - Jot down ideas or key words which may be used to write out the cross-examination questions later. Prepare short questions using easily understood language.
  - Use narrow, leading questions (ones that suggest the answers and normally require only a yes or no answer). Each question should only introduce one fact.
  - Pick two to three main "lines of questioning" to structure your cross-examination. Think of each line of questions as a chapter in a book. Use transitions to signal when you are moving to a different "chapter."
- Types of Questions to Ask:
  - Questions that establish that the witness is inaccurate or untruthful on important points (e.g., the witness first testifies to not being at the scene of the accident and soon after admits to being there).
  - Questions to show that the witness is prejudiced or biased (e.g., the witness testifies that s/he has hated the defendant since childhood).
  - Questions to weaken the testimony of the witness by showing his/her opinion is questionable because of poor circumstances such as location or lighting (e.g., a witness who has poor eyesight claims to have observed all the details of a fight that took place 100 feet away in a crowded bar).
  - Questions to show that an expert witness is not competent or qualified because s/he does not have the proper training or experience (e.g., a psychiatrist testifying to the defendant's need for dental work).

- Questions to reflect on a witness' credibility by showing that s/he gave a contrary statement earlier (e.g., the witness' testimony is different from what s/he testified to in the affidavit).
- Advice in Presenting:
  - Eye contact with the witness is recommended.
  - Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.
  - Always listen to the witness's answer.
  - Be fair and courteous; don't quarrel with the witness.
  - Use narrow, leading questions that suggest an answer to the witness (these are questions that require a "yes" or "no" answer). Avoid allowing the witness to explain anything (i.e., by refraining from using “why” as an open-ended question).
  - Save the ultimate point for closing; do not try to get the opposing witness to admit to committing the murder, etc. Use cross-examination to bring in key facts which the closing attorney can “tie together” in closing argument.
- Other Suggestions:
  - Anticipate each witness's testimony and write your questions accordingly. Be ready to adapt your questions at the trial depending on the actual testimony.
  - Be brief. Don't ask so many questions that well-made points are lost in the shuffle.
- What does opposing counsel do during this time?
  - Listens carefully, objecting when appropriate and noting pertinent testimony to prepare for re-direct, if necessary.

## 5. Closing Arguments

- Objective: To provide a clear and persuasive summary of: (1) the evidence you need to prove the case, and (2) the weaknesses of the other side's case.
- Advice in Preparing:

***What should be included:***

  - Isolate the issues and describe how your presentation resolved those issues.
  - Review the witnesses' testimony. Outline the strengths of your side's witnesses and also the weaknesses of the other side's witnesses. (Remember to adapt your final statement to reflect what the witnesses actually said rather than relying on just the anticipated weaknesses of the other side.)
  - Closing arguments can be composed before trial, but students should be prepared to adapt their closing to the developments and evidence in that specific trial. Relaxed and informal statements are more effective.
  - Review the physical evidence. Outline the strengths of your evidence and also outline the weaknesses of the other side's evidence. (This section too must be adapted at trial.)
  - State the applicable statutes which support your side.

- Remind the jury of the required burden of proof. If you are the plaintiff's or prosecution's lawyer, you must tell and convince the jury that you have met that burden. If you are the attorney for the defense, you must inform and convince the jury that the other side has failed to meet its burden.
- Argue your case by stating how the law applies to the facts as you have proven them.
- Don't forget to confidently request the verdict/remedy you desire.
- Advice in Presenting:
  - You must always be flexible. Adjust your statement to the weaknesses, contradictions, etc. in the other side's case that actually came out during the trial. You can't anticipate everything perfectly before the actual presentation of the case.
  - Argue your side, but don't appear to be vindictive. Fairness and professionalism are important.
  - Do not read throughout your presentation. It is much easier to avoid reading if your notes contain only a brief outline/list of the important points you want to remember to cover. If you are using notes, make eye contact with the jury as often as possible.
  - Rehearse as much as possible (this will help you feel comfortable presenting your closing without reading it).
  - Make sure your closing argument is well organized.