

# 2005 FLORIDA HIGH SCHOOL MOCK TRIAL CASE

**State of Florida**  
**v.**  
**Toni Menendez**



*Case materials developed by:*

**Laurie Chane**

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# The 2005 Florida High School Mock Trial Competition

## The State of Florida

**V.**

**Toni Menendez**

**Version 2, November 2004**

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Julie Scott, attorney for the Guardian Ad Litem Program  
Ray Velboom, Florida Department of Law Enforcement  
Scott Grant, Pasco County Sheriff's Office*

*While their names or variations of their names appear throughout the case materials,  
the characters in the case are fictitious.*



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2005 Florida Mock Trial Competition Case Materials  
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## TRIAL OVERVIEW

- I. The presiding judge will ask each side if they are ready for trial. Team rosters/roles should be presented to the judges.
- II. Presiding judge announces that all witnesses are assumed to be sworn.
- III. Opening Statements - no objections allowed, however, after each opening has concluded, the opposing counsel may raise his/her hand to be recognized and state that if they could have objected they would have objected to...The presiding judge does **not** need to rule on this. No rebuttals allowed.
- IV. Cases presented. **Rule XV** lists the trial sequence and time limitations.
- V. Closing Statements - no objections allowed; however, after each closing statement has concluded, the opposing counsel may raise his/her hand to be recognized and state that if they could have objected - they would have objected to...The presiding judge does **not** need to rule on this. No rebuttals allowed.
- VI. No jury instructions need to be read at the conclusion of the trial.
- VII. Judges should complete score sheets **before** debriefing. This is crucial and ensures completed score sheets.
- VIII. If a material rules violation is entered, scoring judges should exit the courtroom but stay in the vicinity. The presiding judge will follow the rules for this type of dispute. Scoring judges will return to the courtroom to determine if the presiding judge feels the dispute may be considered in scoring. Specific forms are needed. See Rule XVII - DISPUTE SETTLEMENT.
- IX. ALL DECISIONS OF THE JUDGES ARE FINAL. Debrief/Critique ONLY.  
**JUDGES DO NOT ANNOUNCE SCORES OR PERFORMANCE DECISIONS!**

## **Participants Code of Ethical Conduct**

The purpose of the Florida High School Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the American legal system by providing students the opportunity to participate actively in the legal process. The education of young people is the primary goal of the mock trial program. Healthy competition helps to achieve this goal. Other important objectives include improving proficiency in speaking; listening, reading, and reasoning skills; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting tolerance, professionalism, and cooperation among young people of diverse interests and abilities.

As a means of diligent application of the Florida High School Mock Trial Competition's Rules of the Competition, the Mock Trial Advisory/Policy Committee has adopted the following Code of Ethical Conduct for all participants.

1. Team members promise to compete with the highest standards of ethics, showing respect for their fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches, and mock trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know are wrong or in violation of the rules, including the use of unfair extrapolations. Members will not willfully violate the rules of the competition in spirit or in practice.
2. Teacher coaches agree to focus attention on the educational value of the Mock Trial Competition. They shall discourage willful violations of the rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition's rules and this Code of Ethical Conduct.
3. Attorney coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition's rules and this Code of Ethical Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.
4. All participants (including observers) are bound by all sections of this code and agree to abide by the provisions. Teams are responsible for insuring that all observers are aware of the code. Students, teacher coaches, and attorney coaches will be required to sign a copy of this code. This signature will serve as evidence of knowledge and agreement to the provisions of the code. Teams will receive scores on ethical conduct during each round.
5. Staff and Mock Trial Advisory Committee members agree to uphold the rules and procedures of the Florida High School Mock Trial Competition while promoting ethical conduct and the educational values of the program.

# 2005 Florida Mock Trial Case

## INTRODUCTION

On March 16, 2004 at approximately 6:30 p.m., a silver 2004 Chevrolet Avalanche with Texas license plate YBZ-427 was seen driving south on Interstate I-75 toward Tampa, Florida. The vehicle was driven by what appeared to be a Hispanic male and a second person was riding in the front passenger seat. The vehicle was traveling approximately 75 mph or approximately five mph in excess of the posted speed limit. Trooper R. Velboom, a field- training officer for the Florida Highway Patrol was parked in the median of the interstate with his/her headlights shining toward the southbound traffic to allow him/her to see within the passing vehicles. Using radar he/she tracked the Avalanche's speed. (Stipulation that the radar is accurate). Riding with Trooper Velboom was Trooper Pat Van Allen, a recent graduate of the police academy and a trainee.

Trooper Velboom initiated the stop of the speeding vehicle. The driver of the vehicle Juan Valdez, pulled over to the right, and parked the vehicle promptly. Trooper Velboom pulled up behind him and ran the tags through dispatch. The tags were registered to a Maria Valdez of Brownsville, Texas. Trooper Velboom and Trooper Van Allen exited the vehicle and approached the driver's side door. Mr. Valdez rolled his window down and offered his driver's license, registration and insurance information. Juan's driver's license showed the same Brownsville, Texas address that the truck was registered to.

The troopers questioned the driver and passenger. They noticed discrepancies in their statements. The driver Juan Valdez was taken to the patrol car. Trooper Van Allen stayed close to Valdez near the patrol vehicle. The passenger identified him/herself to Trooper Velboom as Toni Menendez. Menendez provided a driver's license that showed an address of 123 Main Street,

Brownsville, Texas, a different address than the driver and owner of the car. The passenger while providing some answers appeared evasive to the trooper. Trooper Velboom looked inside the vehicle, a four-door truck and did not see any luggage. The trooper was familiar with this truck as it was often used in drug trafficking because it had a cover for the bed and there were compartments that closed on the sides of the bed. The trooper asked Menendez to remain inside the truck and the trooper walked around to the driver's side and removed the keys. The trooper then walked back to his/her vehicle to talk with dispatch.

Trooper Jules Scott, a K-9 officer, arrived at the scene. Trooper J. Scott is regularly partnered with Trooper Velboom. They are one of several teams of troopers who operate as a part of the Contraband Interdiction Program and coordinate the stops of persons on the interstate suspected of trafficking drugs. On this date, Trooper Scott heard on the radio that Trooper Velboom had made a stop nearby on the interstate. Trooper Scott arrived at the scene unsolicited. He/she parked the vehicle behind Trooper Velboom's and took out his/her K-9 Zöe to do a walk around the vehicle. The dog alerted for narcotics.

Dispatch revealed that both Valdez and Menendez's licenses were valid. However, Trooper Velboom also asked the dispatcher to run a criminal history check on the occupants. Valdez had a criminal history that included two prior DUI's (one in Florida) and a Driving While License Suspended or Revoked charge also in Florida. Menendez's criminal history revealed that he/she was currently on probation from the State of Texas for trafficking cocaine. There were no active warrants on either of the occupants.

Trooper Scott advised Trooper Velboom of the K-9 alert and they then asked Menendez to get out of the vehicle. He/she was placed in the back of Trooper Scott's car. Trooper Velboom approached Valdez and asked him/her for consent to search the vehicle. Valdez refused to give consent. They removed the bed topper and did not find anything. Then they took notice of the compartments on the sides of the beds. The compartments were locked. As Trooper Velboom had previously removed the keys to the ignition of the truck and the same key opened the compartments, he/she was able to open these compartments. Inside the compartments they found what appeared to be several kilos of cocaine wrapped in cellophane. A search of the passenger compartment of the truck revealed a .9 mm Glock Semi Automatic Pistol in the glove box.

A presumptive test was performed on the substance found in the truck and it tested positive for cocaine. Valdez and Menendez were both arrested and charged with one count of possession of cocaine with the intent to distribute, one count of trafficking cocaine and one count of felonious possession of a firearm.

After their arrest, Valdez and Menendez were booked into the county jail and a bond was set at \$500,000.00 each. The following morning they were taken to an advisory hearing. The judge reduced the bond on Valdez (as he had no prior felony history and no history of failing to appear) to \$50,000.00. However, Menendez violated his/her Texas probation by violating the law and thus immediately had an outstanding warrant from Texas. He/she also had a prior history of felonies including a charge of trafficking cocaine so the judge refused to reduce his/her bond. Shortly after Valdez's bond was reduced, he disappeared. Since he, as of the date of this trial, has not been apprehended, his testimony is unavailable.



**IN THE CIRCUIT COURT  
FOR THE TWENTY-FIFTH JUDICIAL CIRCUIT OF FLORIDA  
IN AND FOR CHASE COUNTY**

FALL TERM, 2004

**FELONY INFORMATION**

**CRC04-07735CFAES**

***STATE OF FLORIDA***

*VS.*

TONI MENENDEZ  
DOB 8/5/70

1. TRAFFICKING IN COCAINE, 1<sup>o</sup>F
2. FELONIOUS POSSESSION OF  
FIREARMS, 2<sup>o</sup>F

***IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA;***

CLARENCE E. SMITH, State Attorney for the Twenty Fifth Judicial Circuit of Florida, in and for Chase County, prosecuting for the State of Florida, in the said County, under oath, Information makes that

TONI MENENDEZ

in the County of Chase and State of Florida, on the 16TH day of March, in this year of our Lord, two thousand four, in the County and State aforesaid, unlawfully and knowingly did sell or knowingly be in actual or constructive possession of cocaine or a mixture containing cocaine; said cocaine or mixture thereof weighing 28 grams or more but less than 200 grams; contrary to Chapter 893.135 (1} (b) , Florida Statutes, and. against the peace and dignity of the State of Florida. [G10]

COUNT TWO

And the State Attorney aforesaid, under oath as aforesaid, further information makes that TONI MENENDEZ, in the county of Chase, State of Florida, on the 16TH day of March, in the year of our Lord, two thousand four, in the County and State aforesaid, having been convicted and adjudged guilty on the 16th day of August, 2003, c.£ a felony, to-wit: Trafficking of

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Cocaine, in the Circuit Court of the Sixth Judicial Circuit of the State of Texas in and for Cameron County, the said TONI MENENDEZ did unlawfully have in his/her care, custody, possession or control, a firearm; contrary to Chapter 790.23, Florida Statutes, and against the peace and dignity of the State of Florida. [H2]

STATE OF FLORIDA  
CHASE COUNTY

Personally appeared before me CLARENCE E. SMITH, the undersigned State Attorney for the Chase County, Big City, Florida, or his duly designated Assistant State Attorney, who being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which if true, would constitute the offense therein charged; hence this information is filed in good faith in instituting this prosecution, and that he has received testimony under oath from the material witness or witnesses for the offense,

Assistant State Attorney for the  
Twenty-Fifth Judicial Circuit of the  
State of Florida,  
Prosecuting for said State

The foregoing instrument was acknowledged before me this  
day of \_\_\_\_\_, 2004

by \_\_\_\_\_  
\_\_\_\_\_, is personally known to me and who did take  
an oath

NOTARY PUBLIC



## Witnesses

The following witnesses shall be called by the parties.

<b>For the Prosecution</b>	<b>For the Defense</b>
Jules Scott	Toni Menendez
Pat Van Allen	Terry Grant
Raye Velboom	Sandy Menendez

## Statement of TROOPER VELBOOM

1. My name is Raye Velboom. The Florida Highway Patrol has employed me for the past five years. I graduated from the Police Academy and have current certification as a police officer with the State of Florida. For the last year, I have been assigned to the Contraband Interdiction Program where I work with my partner, Trooper Scott and K-9 Zoe. I attended a 40-hour FHP certification along with the DEA interdiction program certification. Trooper Scott and I have made 25 arrests for trafficking controlled substances since I have been assigned to this unit.
2. On March 16, 2004, I was working on the Interstate I-75 north of Tampa at approximately 6:30 p.m. It was still daylight. I was sitting in the median of the interstate in my assigned marked FHP unit. I observed a silver 2004 Chevrolet Avalanche traveling southbound on the interstate. I clocked the vehicle on my radar at 75 mph (my radar has current calibration and I possess certification in the use of radar). I activated my overhead lights and sirens and stopped the vehicle. I exited my vehicle and approached the truck on the driver's side and requested the driver's license, registration, and proof of insurance. The driver was identified as Juan Valdez. The vehicle had a Texas plate and the interior of the vehicle seemed as if they were living in the vehicle. There were food wrappers - some still with food in it, drink bottles and various other debris throughout the cab of the truck.
3. Mr. Valdez provided his driver's license, registration, and proof of insurance, but appeared nervous and concerned. I placed the driver of the truck into the backseat of my

patrol vehicle for officer safety. The passenger remained inside the truck. The passenger identified as Toni Menendez said he/she was traveling to Wimauma to find work. The driver however, said they were traveling to Tampa to see his sister. Menendez stated that s/he had just met Valdez the night before they left Texas.

4. Based on my experience and training, my suspicions were elevated due to the conflicting stories, the lack of luggage in vehicle, and the overall general appearance of the vehicle. Additionally based upon my experience, these vehicles are known to be used by narcotic-traffickers as they have numerous compartments both hidden and otherwise.
5. Also on this date, I was acting as a field-training officer for a new hire, Trooper Pat Van Allen. Trooper Van Allen was riding in my vehicle on this day. Trooper Van Allen initially walked with me to the vehicle and stood by while I spoke to the driver. We both agreed that the driver appeared nervous and thought it a good idea to separate the driver and the passenger while we questioned them. We placed the driver in the rear of the patrol vehicle. Trooper Van Allen stayed with the driver while I questioned the passenger. I removed the keys from the truck and walked back to call dispatch. Trooper Scott had arrived with the K-9 and did an external walk around the vehicle. We had no direct contact between the time I initiated the stop and the time Trooper Scott pulled up with the K-9; however, he/she could hear my contacts with the dispatcher.
6. Trooper Scott had removed the K-9 from the vehicle and performed a walk around of the vehicle. I was not involved with that search as I was speaking to dispatch. About the time the walk-around was being performed, dispatch returned the information that the



passenger had a prior conviction for trafficking. Shortly after I received this information, Trooper Scott advised me of the positive alert. He also told me that the passenger had spontaneously stated, "The cocaine is not mine."

7. We secured both the passenger and the driver and began a search of the vehicle. I had in my possession the keys to the vehicle. As the K-9 had alerted to the rear of the truck, I used the keys to open the locked compartments in the side of the beds. There we discovered three kilos of what later tested positive for cocaine and a gun in the glove box. The passenger and driver were arrested and the vehicle was secured. The cocaine and gun were placed into evidence.

---

Raye Velboom

SIGNED AND SWORN to this 10th day of April 2004.

---

Katie Ryan, Notary Public  
State of Florida

My Commission Expires: 11/02/05

### Statement of TROOPER VAN ALLEN

1. My name is Trooper Pat Van Allen. I am employed as a Florida Highway Patrol Trooper. On March 16, 2004, I had been employed by the FHP for two months. I was working as a trainee under Trooper Velboom. On the date in question, Trooper Velboom and I were patrolling the area of Interstate 75 near Brooksville, Florida as part of the drug interdiction effort. We encountered the vehicle occupied by the defendant at approximately 6:34 p.m. Trooper Velboom clocked the vehicle with his radar traveling 75 mph. As the defendant's vehicle passed by, Trooper Velboom stated, "Look there, two Mexicans in a brand new pick up truck - that could only mean three things Trainee - Methamphetamine, Cocaine or Marijuana - and a lot of it. That Avalanche has a built in bed cover and that is where they usually hide their drugs in those little compartments on the side. You are going to get a real show tonight. We have to keep them there long enough for Scott to arrive with the dog."
2. The Defendant's vehicle pulled over without incident. I did not observe any furtive movements by either the driver or the passenger. We ran the tags through dispatch. Upon our exiting the vehicle, I positioned myself near the passenger side so I could observe the defendant for officer safety. Trooper Velboom approached the driver and requested identification and asked him to exit the vehicle. My field- training officer took the driver to the vehicle and I stayed with him near the vehicle while Trooper Velboom questioned the passenger. Trooper Velboom had asked the driver if there were any drugs in the car and he answered, "Hell no." Velboom said, "Then you have nothing to hide, mind if I

search the bed of your pick up truck.” The driver, later identified as Juan Valdez, refused consent to search. I heard him tell my training officer to “hurry up,” because he had to be somewhere.

3. As time passed, the defendant began to get nervous while seated in the passenger side of the Avalanche. He/she was drumming his/her fingers on the door frame. Trooper Velboom asked for his/her name and he/she said, “Toni Menendez.” When asked where they were going, Menendez said, “Wimauma for work.” What seemed like an eternity later, Trooper Scott pulled up with his/her K-9. The dog went around the truck one time and stopped near the passenger door and tried to get in the open door. The passenger seemed to get real nervous and saying, “Get that dog away from me. He can have the burger.”
4. Trooper Scott reprimanded the dog and then started around the vehicle again. This time, the K-9 started barking at the rear of the truck. Trooper Velboom said, “I told you so.” We began a search of the vehicle and discovered the narcotics in the compartments on the side of the bed. I performed the presumptive test and it was positive for cocaine. A gun was also found in the truck.

---

Pat Van Allen

SIGNED AND SWORN to this 12th day of April 2004.

---

Katie Ryan, Notary Public  
State of Florida

My Commission Expires: 11/02/05

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## Statement of TROOPER SCOTT

1. My name is Jules Scott. I have been employed by the Florida Highway Patrol for 8 years. I graduated from the Police Academy and worked as a trooper for 3 years. At that time I attended the specialized K-9 handling program consisting of three months training and am a graduate of the K-9 Detection Team Certification Program. Additionally throughout my time as a K-9 officer, I have maintained my certification. My current K-9 is Zöe who is a German Shepherd Dog and certified as a patrol and narcotics detection dog.
2. I have been working K-9 Zöe for a little more than one year. K-9 Zöe has been through basic patrol and narcotics school (making it a dual purpose dog) and completed both 2003 and 2004 Narcotics Training consisting of 480 hours of actual school. K-9 Zöe completed basic training successfully. Zöe has State Certification for the following narcotics: Marijuana, Hashish, Heroine, Cocaine and Methamphetamine. K-9 Zöe and I have conducted approximately 40 narcotics sniffs with 16 alerts and 14 times we have found narcotics. Zöe has not received any awards or special recognitions. On this date we had conducted five previous narcotics sniffs in motor vehicles with no positive alerts on any of them.
3. March 16, 2004, I was parked at the truck stop, patrolling the truck stop area. I heard the traffic stop on the interstate and the first trooper advised there was more than one subject in the vehicle so I went up there for officer safety. When I arrived, I observed Trooper Velboom behind a late model Chevrolet Avalanche in the southbound lanes of traffic. I

observed Trooper Velboom speaking with an unknown Hispanic male. Trooper Van Allen, was standing alongside Trooper Velboom. As we are a drug task force, I deployed K-9 Zöe.

5. K-9 Zöe is an aggressive alert K-9 which means that she scratches, bites, and barks when encountering the presence/odor of narcotics. She went around the vehicle two different times. The first was a cursory search, where the dog is not given a command to find narcotics, and the second time Zöe was given the command to locate narcotics. The dog gave a positive alert on the right rear turn signal area for the presence of narcotics. The suspects had been separated with the driver placed into Trooper Velboom's car with Trooper Van Allen. The passenger was still seated in the vehicle when Zöe alerted. It was apparent that the dog was responding and I noted to the passenger, that the dog alerted. The passenger spontaneously stated, "The cocaine is not mine."
6. I put up K-9 Zöe and advised Trooper Velboom of Zöe's alert. A manual search was conducted during which I observed rear bed lockable compartments where Zöe had been alerting. Trooper Velboom had possession of the keys and opened the compartment at which time we observed multiple packages wrapped in cellophane with duct tape. I assisted Trooper Velboom with securing both subjects and assisted in taking three kilos with narcotics packaging. Trooper Van Allen conducted a presumptive test and it was determined the substance was cocaine. We also found a gun during the search of the vehicle. Trooper Van Allen placed the property into evidence and the suspects were

transported to the county jail. I waited for the department wrecker to seize the vehicle for civil forfeiture.

---

Jules Scott

SIGNED AND SWORN to this 16th day of April 2004.

---

Katie Ryan, Notary Public  
State of Florida  
11/02/05

My Commission Expires:



### Statement of Toni Menendez

1. My name is Toni Menendez. I have been married to Sandy Menendez for fourteen years. We have three children, ages twelve, nine and three. My usual place of residence is 755 Old River Lane, Brownsville, Texas. Sandy and I have lived at this address at least part of each year through most of our marriage but, since we are migrant workers, we often travel to follow the work, even if we do not have a specific job to go to.
2. In late February, Sandy took the kids and headed to Wimauma, Florida to look for work. I stayed behind in Texas to work at a plant that we work at out in Texas. There was still some work to be done at the plant and the money is pretty good. We work very hard and it is hard to get enough money to raise a family.
3. After Sandy left, my friend Maria (from the plant) was really nice to me. She invited me over to her house for dinner a few times. I met her brother Juan there. I know that people talk about him. He was slick and always seemed to have a lot of money. The truck that Maria drove was a lot nicer than anything we ever had. I think Juan may have had something to do with that nice truck, but I don't know and since they treated me nicely after Sandy left being lonely for my family, I didn't think much more about it.
4. One night while at Maria's house, I was talking to Juan and told him that my family needed me in Wimauma and I wanted to leave to join them as soon as the plant closed. My family was having a real tough time and they needed me. Juan said that he was going to be headed down that way soon and that I could catch a ride with him. A few days later

he called me and said he was leaving in the morning if I wanted a ride. It was my only chance to get to my family. I didn't have time to pack or even let the plant know I was leaving.

5. We drove down in Maria's truck and I was in the passenger seat while Juan drove. I really didn't think about the truck or Juan or anything until after we got into Florida. We were going to pull into a rest area. As we began to slow down in the rest area there were a bunch of cops parked there. When Juan saw the cops he kept going. I asked him what the deal was and he told me there was cocaine in the back of the truck. I freaked and I asked Juan to pull over and let me out. He told me to quit worrying. We had almost gotten to my family and we were only a few hours from Wimauma. He even told me he would give me a few hundred dollars if I just sort of kept an eye out for him.
6. The next thing I knew there was a cop behind us trying to stop the car. Other than the fact that we were going a few miles an hour over the speed limit, I don't know why we were pulled over. Juan pulled the car over and he was acting pretty normal to the cops.
7. The cops asked me where we were going. I told them I was headed to Wimauma to be with my family. I thought the cops were going to let us go with a warning. Juan had gone to the police car to sign the warning and the next thing I know there was another cop at the car and he/she had a dog. I got really nervous then. I remembered what happened the last time a police dog came near my car and I am still on probation for that.
8. The cop walked the dog around the truck and the dog seemed a lot more interested in the sandwich that I had on my seat than the back of the truck. I was kind of laughing about it

and then the cop started walking the dog around the truck again and the dog started really barking. I knew I was in for it then.

9. When he/she came back around my side I tried to tell him/her that the coke wasn't mine and I didn't even know it was there until a few miles back at the rest stop. I should have known he/she wouldn't believe me. Then the cop started to ask me if I was legal. The cop said that they knew we were Mexicans as soon as they saw the truck and that we were up to no good. They think just because I have a Mexican last name I couldn't be born here and I had to be doing something wrong. It kind of burned me up.
10. I know I did the wrong thing back in Texas when I got caught with coke. I was out of work and had a sick baby and if we didn't get some money we would be out in the street in the middle of winter. When we got to the jail, Juan swore he would tell the cops the truth. The next day he got out and here I am.

---

Toni Menendez

SIGNED AND SWORN to this 10th day of April 2004.

---

Katie Ryan, Notary Public

State of Florida

My Commission Expires: 11/02/05

## Statement of TERRY GRANT

1. My name is Terry Grant I am a retired New York Police Sergeant. I worked 25 years for the City of New York, the last 18 training detection dogs for the police department. I have trained in excess of 100 dogs for narcotics, for explosives and cadaver detection as well as patrol work. I am currently retired. I also personally worked two patrol dogs and two narcotics detection dogs. I am a certified K-9 trainer for the State of New York.
2. I have testified as an expert witness in over 50 trials in eleven states including the State of Florida. I have been declared an expert witness in the 25<sup>th</sup> Circuit on two occasions the last being in 2003. In 35 of the trials, I have offered expert testimony. I was retained in this case by the defendant and have been paid five thousand dollars for consultation and testimony.
3. You can use any kind of K-9 for detection work; however, I have been most successful with the following breeds: German Shepherds, Labrador Retrievers, Irish Setters and Belgian Malinois. Dogs have the ability to smell approximately 40 times more accurately than humans due to their olfactory cells. Humans possess approximately 5 million olfactory cells whereas dogs possess 220 million olfactory cells. This allows them to smell more accurately than humans. A properly trained narcotics detection dog can search either “cursory” or “point to point” depending upon the situation. At a traffic stop, it is most accurate for the dog to search “point to point.” This is searching particular areas on the vehicle or object and requesting the dog to place their nose at specific locations. A

properly trained police dog should be able to pin point where the narcotic scent is coming from and depending upon their alert, either passive (sit response) or aggressive (scratch, bark or bite), a K-9 can search inside or outside a vehicle or both.

4. In evaluating a K-9 and his/her handler's performance, I consider several factors. First and foremost, I look to see if the handler "keyed" the K-9 in any way. A handler can key his/her K-9 partner if s/he is not careful. Keying is giving the dog a signal to alert to an area regardless of the presence of narcotics. Additionally, I review the records of the dog and handler to see if there was a history of false alerts, either false negatives or false positives. A properly trained detection dog should only alert on narcotic odor and not packaging i.e. duct tape or food sources. The records of the K-9 are important because it should show how many times the dog was wrong or gave false positive alerts. All this should be documented in the handler's records. The handler's logs should be detailed as to each search and the results, both those performed in the line of duty and those performed as training exercises.
5. I have reviewed the police report and testimony of Trooper Scott as well as having reviewed the work logs as well as training records of K-9 Zöe. Based upon my experience and expertise I have come to the opinion that neither K-9 Zöe nor her handler, Trooper Scott, is reliable. In the training records I have found inconsistencies as to the actual training. Those inconsistencies include the basic training which was only 100 hours. The reoccurring training logs show Zöe has been disinterested. She has walked away from a narcotics hide and refused to work around vehicular traffic. I find nowhere

in the training records of any corrective actions for any of the previous problems, all of which could have been corrected with proper training.

6. Zöe was not subjected to control negative testing, in which all objects or locations have no drugs present. This type of testing indicates a false response rate and reveals whether the handler or the dog is guessing. Preventing the handler from knowing whether drugs will be present during a training exercise reveals whether the handler is consciously or unconsciously prompting the dog to alert.
7. In looking at the traffic stop itself, I found nowhere where the K-9 team was requested to conduct an exterior sniff of the vehicle. In addition, in the work logs I find where Zöe only went around the vehicle one time and alerted. It does not show the previous search where she gave no indication. When Zoe alerted, she barked several times at the rear area of the vehicle not pin pointing the location of the odor. I also did not see in the police report where Zöe was introduced to the bed area or interior of the motor vehicle. Inside the vehicle were food remnants; fast food wrappers and the like. I find no place in her records where she was proofed off of such items.

---

Terry Grant

SIGNED AND SWORN to this 28th day of April 2004.

---

Katie Ryan, Notary Public  
State of Florida

My Commission Expires: 11/02/05



### Statement of SANDY MENENDEZ

1. My name is Sandy Menendez. I am 35 years old. I am married to Toni Menendez and have been for 14 years. Together, we have 3 children ages 12, 9 and 3. Our primary residence is 755 Old River Lane, Brownsville, Texas. For the past 14 years, we have resided at this address for at least part of the year. We travel the country as migrant workers following the work as it comes. We rarely have a specific new job to go to, we just head in the direction that we know by the seasons we will be picking fruit or vegetables.
2. In late February, I took the children and left for Wimauma. We had spent the last three springs there picking tomatoes. When we left Texas for Florida I drove our only car, a 1989 Buick LeSabre. I had most of our belongings with us. Toni stayed behind as there was still work to be done at the plant we worked at during the winter. The money there was pretty good and we needed some extra money because the heat had gone out in our trailer in Texas. It had to be fixed before the next winter.
3. I had called my spouse a few weeks before his/her arrest and told him/her that I really needed him/her to get down here. I was really having a hard time making ends meet with my housekeeping job at the Holiday Inn. Plus with my working so many hours, the kids were not doing too well. The oldest child had really stepped up to the plate and was helping around the house and with the baby. My middle son however, had started running with a rough crowd.

4. The kids always have a tough time moving from school to school in the middle of the school year. Coming back to Wimauma wouldn't have been so bad because they had attended school here in the past, but this year, the districts changed and he was with a whole new group of kids.
5. I had never met this guy Juan before. I knew his sister, Maria from Texas but I had never met her brother before. Maria worked at the plant with Toni and me. I knew she had a brother that lived with her but I didn't know much about him. A few weeks before the arrest, I knew that Toni and Juan were spending time together. I heard Juan was willing to drive Toni to us here in Florida because he had someone he wanted to see here - family or something. Next thing I know, Toni is calling me from the jail telling me he/she has been arrested. He/she swears that he/she didn't know anything about the cocaine until the cops started to pull them over. That is when he/she said Juan told him/her about the drugs. He/she was really trying hard to stay out of trouble.
6. I have talked to Maria about this and she swears she doesn't know where her brother is. I am not sure that I believe her. Juan was driving her truck. I know that if they find Juan, he would admit that my spouse didn't know anything about the drugs.
7. I was in the truck in 2003 when Toni got caught with cocaine. I knew nothing about it until after we were stopped. That's when Toni told me there was cocaine in the tool box. The cops had a dog then too. I really didn't know it was there. Toni had been out of work, times were tough and the baby, Guillermo, was a sickly baby and we were going to be out

on the streets in December. He/she only did it that one time and I know it was to help feed this family.

---

Sandy Menendez

SIGNED AND SWORN to this 20th day of April 2004.

---

Katie Ryan, Notary Public  
State of Florida

My Commission Expires: 11/02/05

## Exhibit 1

April 2, 2004

To: Sandy Menendez, Wimauma, Florida  
From: Toni Menendez, 25<sup>th</sup> Circuit Correction Center

*Dear Sandy:*

*I am so sorry for what I have done to you and the kids. I hope you can forgive me. You know I love you and the kids more than life itself. You will have to believe me when I tell you that I really didn't know what was going on until it was too late.*

*You remember, Maria from the plant. Well after you left, she was really nice to me. She invited me over to her house for dinner a few times. I met her brother Juan there. I know - people talked about him. He was slick and always seemed to have a lot of money. That truck Maria drove was a lot nicer than anything we ever had. But you know they were good to me and I was lonely after you guys left. I was talking to him one night at her house and telling him that I had to get down to you as soon as the plant closed because you were having a real rough time of it alone with the kids. He said he was heading down that way soon and I could catch a ride with him. A few days later he called me and said he was leaving in the morning if I wanted a ride. I didn't have time to let the P.O. know I was going - oh well that is the least of my problems now.*

*I didn't really think anything of it until after we got into Florida. There were a bunch of cops parked at a rest area we pulled into. Once we pulled in and he saw them, he kept going. I asked him what the deal was and he told me that they had cocaine in the back of the truck. I really freaked on him and even asked him to pull over*

*and let me out. He told me to quit worrying we had gotten this far and were only a few hours from you. He even told me that he would give me a few hundred dollars if I just sort of kept an eye out for him - so I stayed.*

*Next thing I knew there was a cop behind us trying to stop the car. He pulled over and was acting pretty normal to the cops. I told the cop that I was going to meet you and it looked like he was going to let us go on a warning. We were only going a few miles over the speed limit and all. Juan had gone to the car to sign the warning. When I looked up there was another cop there this time he had a dog. I got really nervous then. I remember the last time they pulled a dog to my car.*

*That cop walked the dog around and he seemed more interested in the sandwich on my seat than the back of the truck. I was kind of laughing and then he started walking the dog around and the dog started really barking. I knew I was in for it then. When he came back around my side I tried to tell him that the coke wasn't mine that I didn't even know it was there until a little while ago. I should have known he wouldn't believe me. Then he started asking me if I was legal. They think just because I have a Mexican last name - I couldn't be born here. It kind of burned me up.*

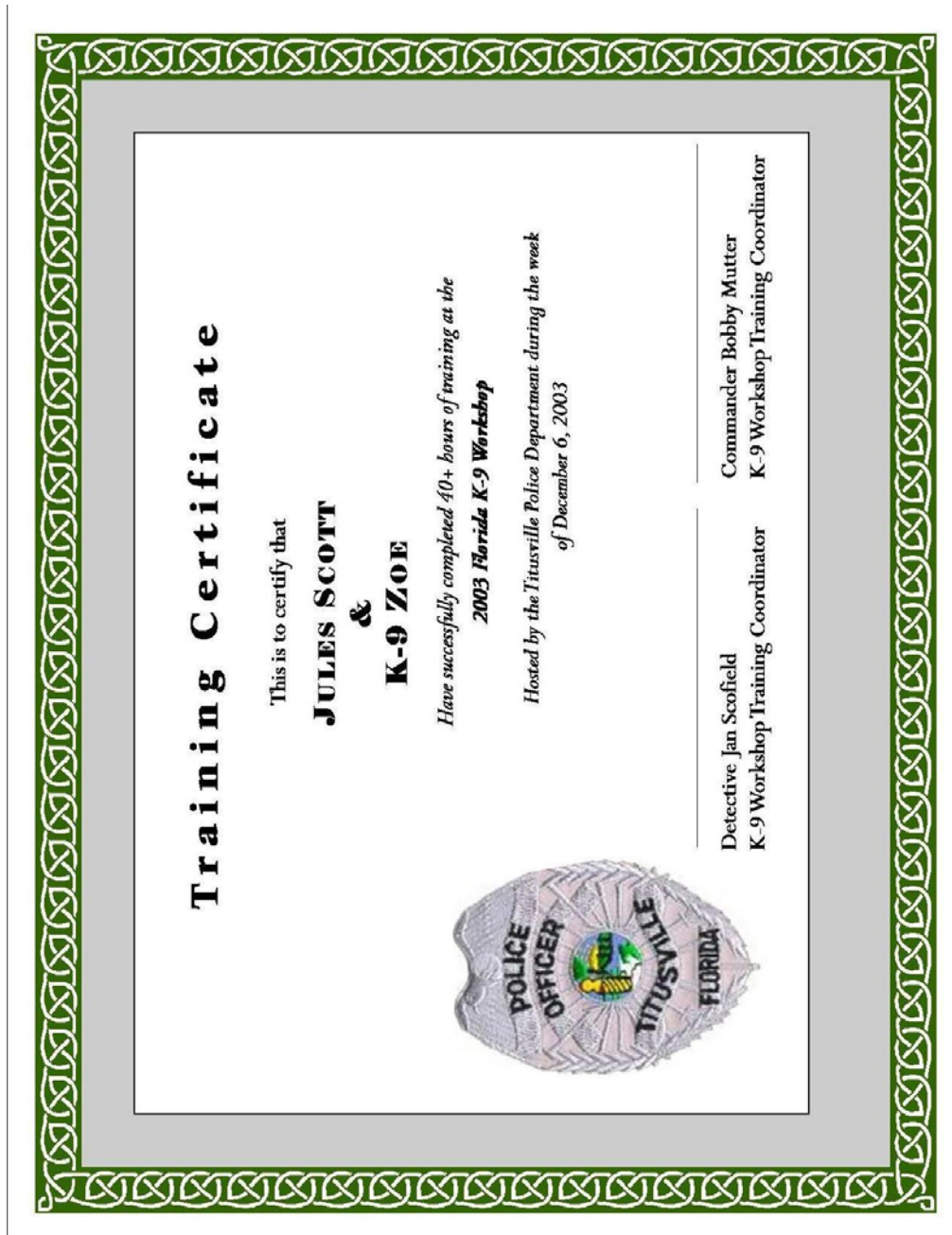
*When we got to the jail, Juan swore he would tell the cops the truth. The next day he got out and here I am. Can you please see if Maria knows where he is???? Everyone in here tells me I am a goner if we don't find him. I can't live without you.*

*I love you,*

*Toni.....*

This letter was intercepted by the correctional facility and listed as evidence by the State Attorney.

## Exhibit 2



# Exhibit 3

(Dated 12-5-03)





**Exhibit 4**






# Exhibit 5

*North American Police Work Dog Association*  
*This is to certify that*

**Jules Scott & K-9 Zoe**

*has achieved the high standards set forth by, and to the satisfaction of the North American Police Work Dog Association. This accreditation is only valid when this Police K-9 Team is being utilized through direct assignment from their law enforcement employer.*



Let it be known that on the  
\_\_\_\_\_ day of \_\_\_\_\_, 2001  
We do approve accreditation for

NARCOTIC DETECTION—MARIJUANA, COCAINE, HEROIN, METHAMPHETAMINE.....

J SCOFIELD, P MALONEY, M.T.'S  
*Master Trainer*

\_\_\_\_\_  
*President*

12/13

Void if membership not current. Expires 2 yrs. From accreditation date.

# Exhibit 6

## Pinellas County Sheriff's Office Narcotic Detection Test

Name Jules Scott K9 Zoe

Agency Chase County S/O Date 11-21-01

THE TEST WILL CONSIST OF TWO PARTS, BUILDINGS AND VEHICLES. THERE WILL BE FOUR SEPARATE HIDES. TWO HIDES MUST BE A SOFT NARCOTIC, MARIJUANA, HASHISH, OR CERTIFIED DERIVATIVE. THE REMAINING TWO HIDES WILL BE HARD NARCOTICS, COCAINE, HEROIN, METHAMPHETAMINE, OR ANY DERIVATIVE. THE AMOUNTS OF THE HIDES WILL BE A MINIMUM OF 5 GRAMS WITH THE SECOND HIDE BEING GREATER THAN 10 GRAMS. HIDES WILL BE PLACED TO ASSURE SCENT AVAILABILITY.

### INDOOR TEST

1. THE INDOOR SEARCH WILL CONSIST OF THREE ROOMS. EACH ROOM WILL BE A MINIMUM OF 200 SQUARE FEET.
2. THERE WILL BE A TIME LIMIT OF ONE AND HALF MINUTES PER 100 SQUARE FEET. LARGE ROOMS CAN BE SECTIONED OFF TO THE 200 SQUARE FEET.
3. THE ROOMS MUST BE FURNISHED AND CAN BE KITCHENS, WORKSHOPS OR OTHER ROOMS CONTAINING FURNITURE.
4. THERE WILL BE TWO HIDES WITHIN THE THREE ROOMS. ONLY ONE HIDE IN EACH ROOM.

### VEHICLE TEST

1. FIVE VEHICLES SHALL BE USED. THE VEHICLES MAY BE ANY TYPE OR MODEL. ANY MAY INCLUDE AUTOMOBILES, TRUCKS, BUSES, AIRPLANES, BOATS, ETC.
2. THE VEHICLES MAY BE PLACED IN ANY ORDER POSITION AS LONG AS THE TEAMS HAVE ACCESS TO THEM.
3. THE NARCOTICS CAN BE PLACED INSEIDE OR OUTSIDE OF THE VEHICLE.
4. NO TWO HIDES WILL BE PLACED IN THE SAME VEHICLE.
5. IF ONLY THE OUTSIDE OF VEHICLE IS SEARCHED THERE WILL BE A TEN MINUTE TIME LIMIT WITH A TWO MINUTE WARNING AT THE EIGHT MINUTE MARK. IF BOTH THE OUTSIDE AND INSIDE ARE UTILIZED THEN AN ADDITIONAL MINUTE PER VEHICLE WOULD BE ADDED TO TEST TIME.

### **VEHICLE TEST**

#### **LOCATION-TRI-J'S TOWING**

#### **SOFT TEST**

#### **HIDE #1 BROWN DODGE PASS REAR HUBCAP**

**NARCOTIC 28.0 GRAMS MARIJUANA**

#### **HIDE #2 BLUE TOYOTA LEFT FRONT HOOD AREA**

**NARCOTIC 5.0 GRAMS OF HASH**

#### **HARD TEST**

#### **HIDE #1 BLUE GMC PICK UP IN TOOL BOX IN BED OF TRUCK**

**NARCOTIC 28 GRAMS OF COCAINE**

(contd)

**Exhibit 6.2**

HmE #2 WHITE PONTIAC PASS REAR DOOR

NARCOTIC 5.0 GRAMS OF HEROIN

BU...DING SEARCH

LOCATION ST PETE PD K9

SOFT

NARCOTIC 28.0 GRAMS OF MARIJUANA HIDE#2

FILING CABINET IN CLASSROOM

NARCOTIC 5.0 GRAMS HASH

HARD  
TEST

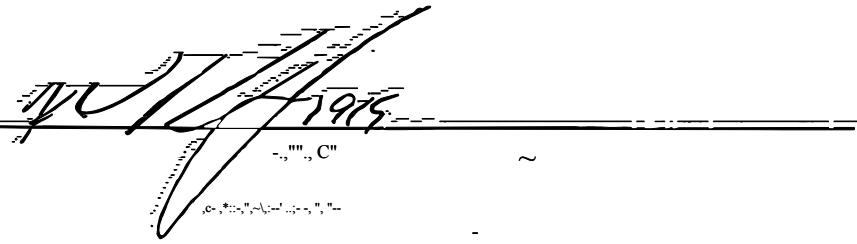
HmE#1 STORAGE ROOM IN BLE SUITCASE

NARCOTIC 28.0 GRAMS OF COCAINE

HmE # 2 WEIGHT ROOM UNDER 45LB PLATES ON FLOOR

NARCOTIC 5.0

TRAINER



**Exhibit 7**  
(Dated 12-5-03)



# Exhibit 8



## THE NATIONAL NARCOTIC DETECTOR DOG ASSOCIATION, INC.

379 C. R. 105, CARTHAGE, TEXAS 75633  
ATTN: Ronnie LaGrone, Treasurer

Phone: 1-888-289-0070

### MEMBERSHIP APPLICATION AND RECEIPT

FEE: 1 or A \$30.00  
2 or 3 \$50.00

New  Renewal  
(Please TYPE or PRINT Clearly)

Visit our Site  
[www.nndda.org](http://www.nndda.org)

NAME: (LAST) SCOTT (FIRST) J (M.I.) S

ADDRESS: 7501 Miller Rd. CITY: Big City

STATE: FLA. ZIP: 30101 EMAIL: none

DATE OF BIRTH 12/10/69 SSN 223-45-6789 PUBLISHED phone NO: (352)

WORK PHONE NUMBER: (352) 965 HOME PHONE NO: ( )

AGENCY: Chase County Sheriff ADDRESS: 147 Citizens Dr.

CITY: Big City STATE: FL ZIP: 30101

POSITION AND TITLE OF APPLICANT: Cpl K.9 SRU

IF CORPORATE, NATURE OF BUSINESS \_\_\_\_\_

SEND NNDDA MAIL TO MY:  Business  Residence

CANINE NAME: Zoe AGE: \_\_\_\_\_ BREED: \_\_\_\_\_

HOW LONG ON ACTIVE DUTY: \_\_\_\_\_ CANINE OWNED BY: \_\_\_\_\_

### MEMBERSHIP CATEGORIES

(Check appropriate box below, MAKE CHECKS PAYABLE TO THE NNDDA)

- Active member dues \$30.00 annually, shall be full time paid law enforcement officer, or corrections officer either local, state or federal.
- Corporate members dues \$50.00 annually, shall be private industry companies and must send a copy of the license from appropriate state agencies, if required by the state where the firm has offices. DEA license for controlled substance required.
- Active associate members dues \$30.00 annually, shall be any non-law enforcement person whom is gainfully employed by a company that is a corporate member of this association.
- Associate sponsor member dues \$50.00 annually, shall be any person or company desiring to be associated with this organization.

\*\*\*\*\* CERTIFYING OFFICIAL USE ONLY \*\*\*\*\*

TYPE OF PAYMENT:  CHECK #  CASH  P. O. # 2176

CERTIFICATION FEES  Narcotics (25.00)  PSDog (25.00)  Other (25.00 each)

MEMBERSHIP FEES: 30.00 CERTIFICATION FEES \_\_\_\_\_

TOTAL: 55.00 Collected BY: \_\_\_\_\_ C/O # \_\_\_\_\_

MY SIGNATURE BELOW CERTIFIES THAT THE ABOVE STATEMENT ARE TRUE AND CORRECT.

APPLICANT'S SIGNATURE: \_\_\_\_\_ DATE: 7



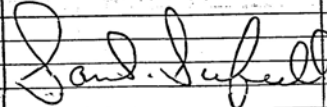
# Exhibit 9

## NAPWDA K-9 Team Certification Test Sheet

\*\*\* Note \*\*\* **PRINT CLEARLY**

Certification Test(s) Date(s): 12-3-26-09 Certificate Number(s): 12183  
 Type Member? Regular:  Associate:  Status? New  Current   
 Is this K-9 used directly by your law enforcement employer? Yes  No

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ MI: S  
 Home Address: 7501 Miller Road  
 City: Big City State: FL Zip: 30101 Home Phone: unpublished  
 Employer Name: Chase County Sheriff Your Assignment: Cpl K-9 Sec  
 Employer Address: 147 Citizens Drive  
 City: Big City State: FL Zip: 08 Work Phone: 905-7925  
 K-9 Name: Boe K-9 age: 2 1/2 K-9 Breed: German Shepherd  
 K-9 sex: F K-9 colors: BLK/Brn

Phases Tested In:	PASS	FAIL	MASTER TRAINER SIGNATURE	FAILURE FEE PAID
"Police Utility Dog Title":				
Obedience:				
Agility:				
Article Search:				
Area Search:				
SAR Area Search:				
Tracking:				
Building Search:				
Aggression Control:				
Trailing: circle one:				
Novice - Expert - Distinguished :				
Accelerant Detection Team:				
Cadaver Detection Team:				
Explosive Detection Team:	<input checked="" type="checkbox"/>			
Narcotic Detection Team:				
Wildlife Detection Team:				

LIST EACH Accelerant, Explosive, Narcotic or Wildlife Odor Sensed: Marijuana, Cocaine, Heroin + Meth

Master Trainer Comments: \_\_\_\_\_

Master Trainer Assisted by: [Signature]

\*\*\* NOTE \*\*\*

**Void if membership not Current !**

*Specialty Detection Tests are on the Reverse Side of this Sheet*

# Exhibit 10

Definition: Team miss = Any incorrect response by the team.

#1. Building Search Test			#2. Vehicle Search Test		
Location: <u>Murphy, N.C.</u>			Location: <u>1200 East 2nd St</u>		
No. of Rooms: <u>2</u> No. of Blank Rooms: <u>1</u>			No. of Vehicles: <u>1</u> No. of Blank Vehicles: <u>0</u>		
Set time: <u>1:18</u>			Set time: <u>1:18</u>		
Odor Type	Amount	Location of Aid	Odor Type	Amount	Location of Aid
1. Marijuana	33g	Success	1. Marijuana	33	Grilla
2. Cocaine	20g	Door	2. Marijuana	10	Rose over Hamper
3. Heroin	16g	Wange	3. Marijuana	32	Grilla
4. Heroin	15g	Cupboard	4. Cocaine	59g	Under Back Seat
5. Marijuana	5g	13	5. Heroin	10g	Glove Box
6. Marijuana	15g	Cupboard	6. Heroin	20g	Motor
7. Marijuana	10g	Cupboard	7. Marijuana	10g	1st Row Behind
8.			7. Marijuana	5g	Over Console
9.					
10.					
11.					
12.					
Team Misses:			Missed:		
Team Rating:			Rating:	Satisfactory	
M.T. Signature:			Signature:	<u>James Clifton</u>	
Comments:			Comments:	<u>Good team</u>	

**THE NATIONAL NARCOTIC DETECTOR DOG ASSOCIATION, INC.**

THIS IS TO CERTIFY THAT

J. SCOTT and K-9 Wade County Sheriff Dept

are members in good standing of

The National Narcotic Detector Dog Association

12-05-01

North American Narcotic Detector Dog Association			#4. Open Area Search Test		
Location: <u>Big City, FL</u>			Location: <u>Food Pantry</u>		
Set time: <u>1:18</u>			Set time: <u>1:18</u>		
No. of Rooms: <u>1</u> No. of Blank Rooms: <u>0</u>			Area Size: <u>100</u> Sq. Ft.		
No. of Vehicles: <u>0</u> No. of Blank Vehicles: <u>0</u>			Blank Area Size: <u>0</u> Sq. Ft.		
Odor Type	Amount	Location of Aid	Type	Amount	Location of Aid
1. Marijuana	14g	Weeds	1. Marijuana	14g	Weeds
2. Cocaine	5g	Weeds	2. Marijuana	5g	Weeds
3. Heroin	9g	Weeds	3. Marijuana	9g	Weeds
4. Marijuana	6g	Back	4. Marijuana	6g	Back
5.			5.		
6.			6.		
7.			7.		
8.			8.		
9.			9.		
10.					
11.					
12.					
Team Misses:			Missed:		
Team Rating:	Satisfactory		Rating:	Satisfactory	
M.T. Signature:			Signature:	<u>James Clifton</u>	
Comments:			Comments:	<u>Good team</u>	

**THE NATIONAL NARCOTIC DETECTOR DOG ASSOCIATION, INC.**

THIS IS TO CERTIFY THAT

J. SCOTT and K-9 Wade County Sheriff Dept

are certified for

12-05-01



## Exhibit 10.2

Definition: Team miss = Any incorrect response by the team.

#1. Building Search Test				#2. Vehicle Search Test			
Location: <i>Muscle Mod</i>		No. of Rooms - <i>2</i>		Location: <i>12-01 Fuel center</i>		No. of Blank Rooms - <i>1</i>	
Set time: <i>1:6</i>				Set time: <i>1:16</i>			
Odor Type	Amount	Location of Aid		Odor Type	Amount	Location of Aid	
1. <i>Marijuana</i>	<i>43g</i>	<i>Secceler</i>		1. <i>Marijuana</i>	<i>33</i>	<i>Grills</i>	
2. <i>Cocaine</i>	<i>28g</i>	<i>Roof</i>		2. <i>Marijuana</i>	<i>10</i>	<i>Back seat Area/Seat</i>	
3. <i>Heroin</i>	<i>16g</i>	<i>Trunk area</i>		3. <i>Cocaine</i>	<i>31</i>	<i>Grills</i>	
4. <i>Heroin</i>	<i>15g</i>	<i>Cupboard</i>		4. <i>Cocaine</i>	<i>59g</i>	<i>Under Back Seat</i>	
5. <i>Meth</i>	<i>59g</i>	<i>13g</i>		5. <i>Heroin</i>	<i>10g</i>	<i>Glass Box</i>	
6. <i>Meth</i>	<i>59g</i>	<i>Cupboard</i>		6. <i>Heroin</i>	<i>20g</i>	<i>Motors</i>	
7.				7. <i>Marijuana</i>	<i>10g</i>	<i>Back Seat</i>	
8.				8. <i>Marijuana</i>	<i>59g</i>	<i>Under Console</i>	
9.				9.			
10.				10.			
11.				11.			
12.				12.			
Team Missed - <i>0</i>				Team Missed - <i>0</i>			
Team Rating: <i>Satisfactory</i>		<i>Unsatisfactory</i>		Team Rating: <i>Satisfactory</i>		<i>Unsatisfactory</i>	
M.T. Signature: <i>James [Signature]</i>				M.T. Signature: <i>James [Signature]</i>			
Comments:				Comments: <i>Good team</i>			
#3. Luggage - Locker - Other Search Test				#4. Open Area Search Test			
Location: <i>Ford Dealer</i>		Type Search:		Location: <i>Ford Dealer</i>		Area Size: <i>100</i> Sq. Ft.	
Set time: <i>0:21</i>		No. of Luggages -		Set time: <i>0:21</i>		Blank Area Size: <i>100</i> Sq. Ft.	
No. of Blank Luggages -				No. of Blank Luggages -			
Odor Type	Amount	Location of Aid		Odor Type	Amount	Location of Aid	
1.				1. <i>Marijuana</i>	<i>14g</i>	<i>weeps</i>	
2.				2. <i>Cocaine</i>	<i>5g</i>	<i>weeps</i>	
3.				3. <i>Heroin</i>	<i>5g</i>	<i>weeps</i>	
4.				4. <i>Marijuana</i>	<i>5g</i>	<i>Roof</i>	
5.				5.			
6.				6.			
7.				7.			
8.				8.			
9.				9.			
10.				10.			
11.				11.			
12.				12.			
Team Missed - <i>0</i>				Team Missed - <i>0</i>			
Team Rating: <i>Satisfactory</i>		<i>Unsatisfactory</i>		Team Rating: <i>Satisfactory</i>		<i>Unsatisfactory</i>	
M.T. Signature: <i>James [Signature]</i>				M.T. Signature: <i>James [Signature]</i>			
Comments:				Comments: <i>Team finished 12-06-03 James [Signature]</i>			



### Exhibit 10.3

<p><i>T. Russell</i> 12-05-01          Location Date</p> <p>Marijuana <input type="checkbox"/> Fail <input type="checkbox"/></p> <p>Cocaine <input checked="" type="checkbox"/> N/A <input type="checkbox"/></p> <p>Heroin <input checked="" type="checkbox"/> <input type="checkbox"/></p> <p>Methamphetamine <input checked="" type="checkbox"/> <input type="checkbox"/></p> <p>Other <input type="checkbox"/></p> <p>Other <input type="checkbox"/></p> <p>Other <input type="checkbox"/></p> <p><i>[Signature]</i> 8643          Certification Official Number</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;">Location</th> <th style="width: 10%;">Pass</th> <th style="width: 10%;">Fail</th> <th style="width: 10%;">N/A</th> <th style="width: 10%;">Date</th> </tr> <tr> <td>Marijuana</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td></td> <td></td> </tr> <tr> <td>Cocaine</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td></td> </tr> <tr> <td>Heroin</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td></td> </tr> <tr> <td>Methamphetamine</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td></td> </tr> <tr> <td>Other</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td></td> <td></td> </tr> <tr> <td colspan="4">Certification Official</td> <td>Number</td> </tr> </table>	Location	Pass	Fail	N/A	Date	Marijuana	<input type="checkbox"/>	<input type="checkbox"/>			Cocaine	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		Heroin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		Methamphetamine	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		Other	<input type="checkbox"/>	<input type="checkbox"/>			Other	<input type="checkbox"/>	<input type="checkbox"/>			Other	<input type="checkbox"/>	<input type="checkbox"/>			Certification Official				Number																																													
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**THE NATIONAL NARCOTIC DETECTOR  
DOG ASSOCIATION, INC.**

THIS IS TO CERTIFY THAT

*J. K. Scott* and *K. P. T.*  
of *Chickasaw County Sheriff's Dept*  
are certified for *Marijuana*

12-05-01

Expires 1 Year From Above Date

**THE NATIONAL NARCOTIC DETECTOR  
DOG ASSOCIATION, INC.**

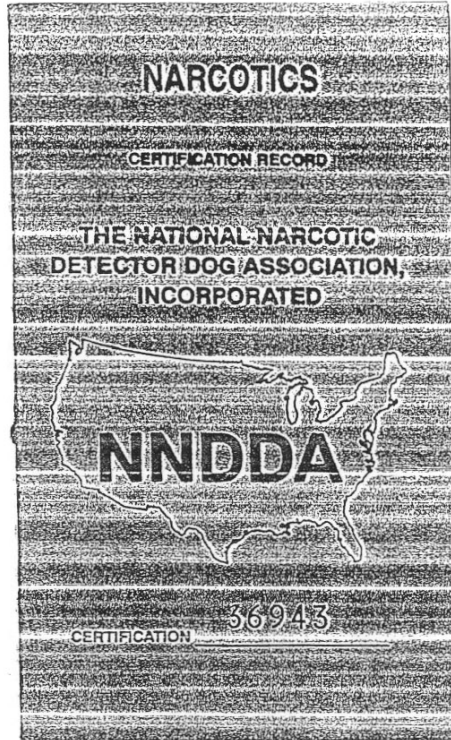
THIS IS TO CERTIFY THAT

*J. K. Scott* and *K. P. T.*  
of *Chickasaw County Sheriff's Dept*  
are members in good standing of  
The National Narcotic Detector Dog Association

12-05-01

Expires 1 Year From Above Date

## Exhibit 11



**Exhibit 11.2**

To all present: Greetings

BE IT KNOWN THAT:

Trooper SCOTT  
whose signature appears below, and the dog

ZOE

Breed: German Shepherd

Sex: Female

has met the standards established by NNDDA, Inc.  
for the year indicated and for the drugs listed on  
the qualification records.

[Signature]  
Signature

Page 1

# Exhibit 11.3

The endorsements on the following pages indicate the certification of Handler and Dog for a period of one (1) year from the date of the last certification.

Any tampering or changes to this Certification Record will invalidate the total record.

This record is the total property of NNDDA, Inc. and may be recalled for any reason by an elected officer or ANY CERTIFYING OFFICIAL who has signed this record. The name of the Handler appearing in this record agrees without reservation to all rules and standards by NNDDA, Inc.

After initial certification a stamp will be used on the blank pages in this CERTIFICATION RECORD to indicate Officer and Recording Secretary's signature.

To replace lost book, there is a surcharge of \$25.00.

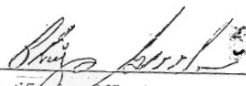
Date: 12-05-03

Place: J. tusville, Fl.

Handler: Trooper Scott

Dog: Zoo

This is to certify that the aforementioned Handler and Dog are certified for a period of one (1) year from the date listed on last certification.

  
Certification Official

Page 2 Page 3

## Exhibit 11.4

Titusville, FL 12-05-02

Location	Pass	Fail	Date
Marijuana	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Cocaine	<input checked="" type="checkbox"/>	<input type="checkbox"/>	N/A
Heroin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Methamphetamine	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	
<i>Tom Jones</i> Certification Official		Number <u>8123</u>	

Location	Pass	Fail	Date
Marijuana	<input type="checkbox"/>	<input type="checkbox"/>	
Cocaine	<input type="checkbox"/>	<input type="checkbox"/>	N/A
Heroin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Methamphetamine	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Certification Official		Number	

Location	Pass	Fail	Date
Marijuana	<input type="checkbox"/>	<input type="checkbox"/>	
Cocaine	<input type="checkbox"/>	<input type="checkbox"/>	N/A
Heroin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Methamphetamine	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Certification Official		Number	

Location	Pass	Fail	Date
Marijuana	<input type="checkbox"/>	<input type="checkbox"/>	
Cocaine	<input type="checkbox"/>	<input type="checkbox"/>	N/A
Heroin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Methamphetamine	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Other	<input type="checkbox"/>	<input type="checkbox"/>	
Certification Official		Number	



# Exhibit 12

BBF FORM FL-1 TO RECORD THIS FORM  
PLEASE CALL (727) 545-8783

## CHASE COUNTY COMPLAINT AFFIDAVIT

PCSO FL0 510000  
 Other Agency **FHP**

ARREST NUMBER	FELONY	CO OFF	DEPT	SECTION	TO	BY	DATE
03162004	<input checked="" type="checkbox"/>	2	8	TO	DL		0400799
ARREST ALL THIS	<input checked="" type="checkbox"/> FELONY	<input type="checkbox"/> MISD	<input type="checkbox"/> CIV IN	<input type="checkbox"/> CHRONIC	<input type="checkbox"/> 7. Y.O.P.	<input type="checkbox"/> CIV IN	<input type="checkbox"/> CIV IN
NOTICE TO APPEAR	<input type="checkbox"/> MANDATORY APPEARANCE	<input type="checkbox"/> JUVENILE	<input type="checkbox"/> REQUEST FOR	<input type="checkbox"/> CAPAS	<input type="checkbox"/> RAMPONE	<input type="checkbox"/> REVIEWED BY ASSISTANT STATE ATTORNEY	
03162004	<input type="checkbox"/> NON-MANDATORY APPEARANCE	<input type="checkbox"/> NON-ARREST REF.	<input type="checkbox"/> CHECK ONLY ONE	<input type="checkbox"/> INQUIRY	<input type="checkbox"/> JUV. PICKUP		
LOCATION OF ARREST (INCLUDE NAME OF BUSINESS)	1-75 - 2 MILES SOUTH BIG CITY EXIT						
LOCATION OF OFFENSE (BUSINESS NAME, ADDRESS)	SAME						
DATE OF ARREST	TIME OF ARREST	BOOKING DATE	BOOKING TIME	JAIL DATE	JAIL TIME	WEAPON TYPE	FP.S.S. Notified <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Elderly <input type="checkbox"/> Handicap
03162004	0830	03162004	2030	031604	2029	9mm Glock	<input type="checkbox"/> Domestic Related <input type="checkbox"/> Y <input type="checkbox"/> N
JAIL NUMBER	SPL NUMBER	FILE NUMBER	DOC NUMBER	FINGERPRINT			
28982	333666	21798-W					
NAME (LAST, FIRST, MIDDLE)	MENEDEZ, TONI						
RACE	DATE OF BIRTH	AGE	HEIGHT	WEIGHT	EYE COLOR	HAIR COLOR	COMPLEXION
W. WHITE	08051970	34	5'11"	155	BROWN	BLACK	MED
H. HISPANIC							
N. BLACK							
O. ORIENTAL/ASIAN							
MARKS/SCARS/PIGMENTS, ETC.	DRAGON - LOWER BACK SNAKE RIGHT CALF						
PHYSICAL ADDRESS (STREET & APPT)	(CITY)	(STATE)	(ZIP)	PHONE	EDUCATION TYPE	FLORIDA & OUT-OF-STATE	CODE
123 MAIN ST	Brownsville	TX		NONE			1
MAILING ADDRESS (STREET & APPT)	(CITY)	(STATE)	(ZIP)	PHONE	ADDRESS SOURCE		
SAME							
PREVIOUS BUSINESS NAME & STREET	(CITY)	(STATE)	(ZIP)	PHONE	OCCUPATION		
UNEMPLOYED					LABORER		
HOME ADDRESS (STREET, FIRST, MIDDLE)	(CITY)	(STATE)	(ZIP)	SOCIAL SECURITY NUMBER	RES NUMBER	PLACE OF BIRTH	
M261084630 TX				352 56 0055		TEXAS	
CO-COMPLAINANT (LAST, FIRST, MIDDLE)	VALDEZ, Juan						
CO-DEFENDANT (LAST, FIRST, MIDDLE)							
SEX	DATE OF BIRTH	AGE	ARRESTED AT LARGE	FLORIDA & OUT-OF-STATE	CODE		
H					3		
NAME OF PARENT OR CUSTODIAN (LAST, FIRST, MIDDLE)							
RESIDENTIAL PHONE							
NOTIFIED BY (NAME)	DATE	TIME	AVAILABLE (DISPOSITION)	TURNED OVER TO MIB/CY	INCARCERATED (COUNTY & JAIL)	CODE	
RELEASED TO (NAME)	DATE	TIME	AVAILABLE (DISPOSITION)	TURNED OVER TO MIB/CY	INCARCERATED (COUNTY & JAIL)	CODE	
CHARGE DESCRIPTION	OFFENSE NUMBER	TYPE	AMOUNT	COURT CASE #			
TRAFFICKING COCAINE	843.1350	T	350,000				
ACTIVITY	AMOUNT	TYPE	AMOUNT	COURT CASE #			
POSSESSION WITHOUT DISTRIBUTION	843.13	T	100,000				
ACTIVITY	AMOUNT	TYPE	AMOUNT	COURT CASE #			
THE UNDERSIGNED (SHERIFF) SWEARS THAT HE/SHE HAS JUST AND REASONABLE CAUSE TO BELIEVE THAT THE ABOVE NAMED DEFENDANT COMMITTED THE FOLLOWING VIOLATION OF LAW:							
ON THE 16 <sup>th</sup> DAY OF MARCH 2004 AT 1830 (A.M.) (SPECIALLY INCLUDE FACTS CONSTITUTING CAUSE FOR ARREST)							
THE DEFENDANT DID UNLAWFULLY POSSESS 3 KILOGRAMS OF COCAINE. WHILE ON ROUTINE PATROL AS PART OF A DRUG INTERDICTION EFFORT, THE UNDERSIGNED DID OBSERVE A 2004 CHEVROLET AVALANCHE PICK UP TRUCK PRECEDING SOUTHBOUND ON 1-75 JUST SOUTH OF THE BIG CITY EXIT AFFIANT WAS OPERATING RADAR AND DID OBSERVE SAID VEHICLE TRAVELING AT A HIGH RATE OF SPEED - RADAR 75MPH IN 70 MPH ZONE. AFFIANT ACTIVATED TAILE DOWN LIGHTS AND STARTED PURUIT. AFTER ONE MILE, SAID VEHICLE							
I AGREE TO APPEAR AS THE TIME AND PLACE DESIGNATED WHEN I AM NOTIFIED TO ANSWER THE OFFENSE CHARGED UN TO PAY THE FINE SUBSCRIBED. I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COUNTY COURT OR COMPLY WITH THE REQUIREMENTS FOR PAYING THE FINE AND MEETING ANY OTHER SPECIFIED CONDITIONS AS INDICATED ON THE BACK SIDE OF THIS AFFIDAVIT.						DATE	
SIGNATURE OF DEFENDANT (PRINT NAME)						DATE	
SIGNATURE OF AFFIANT (PRINT NAME)						DATE	
SIGNATURE OF SHERIFF (PRINT NAME)						DATE	
SIGNATURE OF JUDGE (PRINT NAME)						DATE	
SIGNATURE OF CLERK (PRINT NAME)						DATE	
SIGNATURE OF PROSECUTOR (PRINT NAME)						DATE	
SIGNATURE OF DEFENSE ATTORNEY (PRINT NAME)						DATE	
SIGNATURE OF WITNESS (PRINT NAME)						DATE	
SIGNATURE OF NOTARY (PRINT NAME)						DATE	

# Exhibit 12.2

133287

BBF Form FL - TO REORDER THIS FORM  
PLEASE CALL (771) 545-8703

## CHASE COUNTY COMPLAINT AFFIDAVIT PCSO FL0 510000 **FHP** Other Agency

ADMINISTRATIVE	ORTS NUMBER _____ FELONY <input type="checkbox"/> CO ORD <input type="checkbox"/> MISC <input type="checkbox"/> CIV IN <input type="checkbox"/> SECTOR _____ SEC. _____ TWP. _____ NO. _____ AGENCY REPORT NUMBER _____ ARREST CHECK ALL THAT APPLY: 1. FELONY _____ 2. TRAFFIC FELONY _____ 3. MISC _____ 4. MISC TRAFFIC _____ 5. ORDINANCE _____ 6. OTHER _____ 7. V.D.P. _____ 8. CIVIL INF _____ 9. ADULT _____ 10. JUVENILE _____ AGENCY ARREST NUMBER _____ NOTICE TO APPEAR CHECK: 1. MANDATORY APPEARANCE _____ 2. JUVENILE REQUEST FOR CHECK _____ 3. CAPAS _____ 4. BARRONS _____ REVIEWED BY ASSISTANT STATE ATTORNEY _____ LOCATION OF ARREST (INCLUDE NAME OF BUSINESS) _____ LOCATION OF OFFENSE (BUSINESS NAME, ADDRESS) _____ DATE OF ARREST _____ TIME OF ARREST _____ BOOKING DATE _____ BOOKING TIME _____ JAIL DATE _____ JAIL TIME _____ WEAPON SEIZED _____ WEAPON TYPE _____ JAIL NUMBER _____ I.P.N. NUMBER _____ FILE NUMBER _____ DOC NUMBER _____ FBI NUMBER _____ F.P.S.S. Notified <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Juv. <input type="checkbox"/> Elderly <input type="checkbox"/> Handicap Domestic Related <input type="checkbox"/> Y <input type="checkbox"/> N
DEFENDANT	NAME (LAST, FIRST, MIDDLE) _____ ALIAS _____ RACE: R - HISPANIC _____ I - AMERICAN INDIAN _____ W - WHITE _____ B - BLACK _____ O - ORIENTAL / ASIAN _____ CODE _____ SEX _____ DATE OF BIRTH _____ AGE _____ HEIGHT _____ WEIGHT _____ EYE COLOR _____ HAIR COLOR _____ COMPLEXION _____ BUILD _____ SCARS, MARKS, TATTOOS, ETC. _____ INDICATOR OF ALCOHOL INFLUENCE <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> UNK <input type="checkbox"/> O <input type="checkbox"/> D <input type="checkbox"/> O PHYSICAL ADDRESS (STREET & APT#) _____ (CITY) _____ (STATE) _____ (ZIP) _____ PHONE _____ RESIDENCE TYPE: 1. CITY _____ 2. COUNTY _____ 3. FLORIDA _____ 4. OUT-OF-STATE _____ CODE _____ MAILING ADDRESS (STREET & APT#) _____ (CITY) _____ (STATE) _____ (ZIP) _____ PHONE _____ ADDRESS SOURCE _____ BUSINESS ADDRESS (NAME & STREET) _____ (CITY) _____ (STATE) _____ (ZIP) _____ PHONE _____ OCCUPATION _____ DRIVER'S LICENSE STATE / NUMBER _____ SOCIAL SECURITY NUMBER _____ I.N.S. NUMBER _____ PLACE OF BIRTH _____ CITIZENSHIP _____ CO-DEFENDANT NAME (LAST, FIRST, MIDDLE) _____ RACE _____ SEX _____ DATE OF BIRTH _____ AGE _____ 1. ARRESTED _____ 2. FELONY _____ 3. FELONY _____ CO-DEFENDANT NAME (LAST, FIRST, MIDDLE) _____ RACE _____ SEX _____ DATE OF BIRTH _____ AGE _____ 1. ARRESTED _____ 2. FELONY _____ 3. FELONY _____ <input type="checkbox"/> PARENT _____ NAME OF PARENT OR CUSTODIAN (LAST, FIRST, MIDDLE) _____ 4. MIDDLE INITIAL _____ 5. JUVENILE _____ CODE _____ <input type="checkbox"/> LEGAL CUSTODIAN _____ RESIDENTIAL PHONE _____ <input type="checkbox"/> OTHER _____ ADDRESS (STREET, APT NUMBER) _____ BUSINESS PHONE _____ NOTIFIED BY: (NAME) _____ DATE _____ TIME _____ JUVENILE DISPOSITION: 1. HANDLED / PROCESSED WITH DEF. AND RELEASED _____ 2. TURNED OVER TO MRS / CIV _____ CODE _____ RELEASED TO: (NAME) _____ RELATIONSHIP _____ DATE _____ TIME _____
CHANGE	CHANGE DESCRIPTION: <b>Possession Cocaine - Felony</b> TYPE: A. COCAINE _____ B. BARBITURATE _____ C. COCAINE _____ D. HEROIN _____ E. HEROIN _____ F. HEROIN _____ G. HEROIN _____ H. HEROIN _____ I. HEROIN _____ J. HEROIN _____ K. HEROIN _____ L. HEROIN _____ M. HEROIN _____ N. HEROIN _____ O. HEROIN _____ P. HEROIN _____ Q. HEROIN _____ R. HEROIN _____ S. HEROIN _____ T. HEROIN _____ U. HEROIN _____ V. HEROIN _____ W. HEROIN _____ X. HEROIN _____ Y. HEROIN _____ Z. HEROIN _____ ACTIVITY: A. SELL _____ B. BUY _____ C. DELIVER _____ D. DELIVER _____ E. USE _____ F. USE _____ G. USE _____ H. USE _____ I. USE _____ J. USE _____ K. USE _____ L. USE _____ M. USE _____ N. USE _____ O. USE _____ P. USE _____ Q. USE _____ R. USE _____ S. USE _____ T. USE _____ U. USE _____ V. USE _____ W. USE _____ X. USE _____ Y. USE _____ Z. USE _____ AMOUNT: <b>\$50,000</b> TYPE: A. STATUTE VIOLATION NUMBER _____ COUNTS _____ HCCP _____ COURT CASE # _____ CHANGE DESCRIPTION: _____ F.A. _____ STATUTE VIOLATION NUMBER _____ COUNTS _____ HCCP _____ COURT CASE # _____
PROBABLE CAUSE STATEMENT	THE UNDERSIGNED CERTIFIES AND SWears THAT HE / SHE HAS JUST AND REASONABLE GROUNDS TO BELIEVE, AND DOES BELIEVE THAT THE ABOVE NAMED DEFENDANT COMMITTED THE FOLLOWING VIOLATION OF LAW: ON THE _____ DAY OF _____ AT _____ (SPECIFICALLY INCLUDE FACTS CONSTITUTING CAUSE FOR ARREST) <b>STOPPED ON PAVED SHOULDER. WHILE CONDUCTING A TRAFFIC INVESTIGATION, K-9 ZOE AND Trooper Scott arrived on the scene. Trooper Scott advised affiant that K-9 ZOE alerted to the vehicle and a probable cause search for narcotics was conducted. 3 kilograms of cocaine was located in the bed of said vehicle. Defendant, the passenger of the vehicle, spontaneously stated "that's not my cocaine" before being told what was discovered. Defendant and co-defendant were both arrested.</b> P. C. EXISTS FOR CHARGE(S) _____ DATE _____
NOTICE	I AGREE TO APPEAR AT THE TIME AND PLACE DESIGNATED WHEN I AM NOTIFIED TO ANSWER THE OFFENSE CHARGE(S) OR TO PAY THE FINE IMPOSED. I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED ONCE I AM NOTIFIED THAT I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST SHALL BE ISSUED. IF CITED FOR A CIVIL INFRACTION I AGREE TO APPEAR BEFORE THE COUNTY COURT OR COMPLY WITH THE REQUIREMENTS FOR PAYING THE FINE AND MEETING ANY OTHER SPECIFIED CONDITIONS AS INDICATED ON THE BACK SIDE OF THIS AFFIDAVIT. SIGNATURE OF DEFENDANT / JUVENILE AND PARENT OR CUSTODIAN _____ DATE _____ <input type="checkbox"/> MIRANDA WARNINGS _____ HOLD FOR OTHER AGENCY _____ VERIFIED BY _____ BOOKING TIME _____ DATE _____ VICTIM NOTIFIED _____ BOND CHARGE # _____ BOND CHARGE # _____ ADULTS ONLY <input type="checkbox"/> HOOKS FOR FIRST APPEARANCE <input type="checkbox"/> DO NOT SEND OUT - REASON: _____ BOND TYPE: A. SURETY _____ B. CASH _____ C. OTHER _____ TYPE _____ RETURNABLE COURT DATE _____ RETURNABLE COURT TIME _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. RELEASE DATE _____ RELEASE TIME _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.
ADJ. AFFIRMATIVE	UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE FOREGOING (COPIES) AND THAT THE FACTS STATED IN IT ARE TRUE, TO THE BEST OF MY KNOWLEDGE AND BELIEF. SIGNATURE _____

# Exhibit 13

STATE OF TEXAS  
vs.  
TONI MENENDEZ

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL  
CIRCUIT IN AND FOR CAMERON COUNTY, TEXAS

CASE NO. 03-1234CFAES  
SPN.  
DOC NUM:

Community Control Violator     Retrial  
 Probation Violator                     Resentence

**JUDGMENT**

The Defendant, TONI MENENDEZ, being personally before this court represented by RICHARD DEPIPPA, the attorney of record, and the State represented by SANDRA DUNLAP and having

been tried and found guilty by jury/by court of the following crime(s)  
 entered a plea of guilty to the following crime(s)  
 entered a plea of nolo contendere to the following crime(s)

Count	Crime	OBTS Num.	Statute & Degree
1	TRAFFICKING COCAINE		971.23

And no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

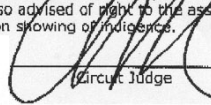
And pursuant to section 943.325, 1991 Statutes, having been convicted of attempts or offenses relating to sexual battery (ch 794) or lewd and lascivious conduct (ch. 800) the defense shall be required to submit blood specimens.

And good cause being shown; IT IS SHOW THAT ADJUDICATION OF GUILT BE WITHHELD. The Court hereby stays and withholds the imposition of sentence as to count(s) \_\_\_\_\_ And places the defendant on \_\_\_\_\_ under the supervision of the Department of Corrections (conditions of probation and/or community control set forth in a separate order).

The Court defers imposition of sentence until \_\_\_\_\_

The Court finds that the defendant violated all the conditions alleged in the affidavit, a copy of which is attached as exhibit 1.

The defendant in open court was advised of his right of appeal from this judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The defendant was also advised of right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

  
Circuit Judge



## **Jury Instructions**

### 1 INTRODUCTION TO FINAL INSTRUCTIONS

Members of the jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

### 3.2 STATEMENT OF CHARGE

As to Count I, Toni Menendez, the defendant in this case, has been accused of the crime of Trafficking Cocaine.

### 25.10 TRAFFICKING IN COCAINE

F.S. 893.135(1)(b)

Certain drugs and chemical substances are by law known as "controlled substances." Cocaine or any mixture containing cocaine is a controlled substance.

Before you can find the defendant guilty of Trafficking in Cocaine, the State must prove the following four elements beyond a reasonable doubt:

#### *Elements*

1. Toni Menendez knowingly

[sold]

[purchased]

[manufactured]

[delivered]

[brought into Florida]

[possessed]

a certain substance.

2. The substance was [cocaine] [a mixture containing cocaine].
3. The quantity of the substance involved was 28 grams or more.

See *State v. Dominguez*, 509 So.2d 917 (Fla. 1987)

4. Toni Menendez knew that the substance was [cocaine] [a mixture containing cocaine].

*Note to Judge:*

If applicable under the facts of the case and pursuant to F.S. 893.135(2), the following bracketed language should be given instead of element above. For example, if it is alleged that the defendant intended to sell heroin but actually sold cocaine, the alternate element 4 would be given.

### **Definitions; give as applicable**

#### **Sell**

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

#### **Manufacture F.S. 893.02(12)(a)**

"Manufacture" means the production, preparation, packaging, labeling or relabeling, propagation, compounding, cultivating, growing, conversion or processing of a controlled substance, either directly or indirectly. Manufacturing can be by extraction from substances of natural origin, or independently by means of chemical synthesis. It can also be by a combination of extraction and chemical synthesis.

#### **Deliver**

#### **F.S. 893.02(5)**

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

#### **Possession**

To "possess" means to have personal charge of or exercise the right of ownership, management or control over the thing possessed.

Possession may be actual or constructive.

Actual possession means

- (a) the thing is in the hand of or on the person, or
- (b) the thing is in a container in the hand of or on the person, or
- (c) the thing is so close as to be within ready reach and is under the control of the person.

**Give if applicable**

Mere proximity to a thing is not sufficient to establish control over that thing when the thing is not in a place over which the person has control.

Constructive possession means the thing is in a place over which the person has control, or in which the person has concealed it.

**Give if applicable**

See *Chicone v. State*, 684 So.2d 736 (Fla. 1996)

If a thing is in a place over which the person does not have control, in order to establish constructive possession the State must prove the person's (1) control over the thing, (2) knowledge that the thing was within the person's presence, and (3) knowledge of the illicit nature of the thing.

Possession may be joint, that is, two or more persons may jointly have possession of an article, exercising control over it. In that case, each of those persons is considered to be in possession of that article.

If a person has exclusive possession of a thing, knowledge of its presence may be inferred or assumed.

If a person does not have exclusive possession of a thing, knowledge of its presence may not be inferred or assumed.

### 3.4 WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crimes of which h/she is accused, there may be evidence that h/she committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of Trafficking of Cocaine are:

Possession of cocaine

Attempted Trafficking

### 5.1 ATTEMPT TO COMMIT CRIME

F.S. 777.04(1)

Before you can find the defendant guilty of an Attempt to Traffick Cocaine, the State must prove the following two elements beyond a reasonable doubt:

1. Toni Menendez did some act toward committing the crime of Trafficking Cocaine that went beyond just thinking or talking about it.
2. H/She would have committed the crime except that someone prevented him from committing the crime of Trafficking Cocaine

or

h/she failed.

It is not an attempt to commit trafficking cocaine if the defendant abandoned his/her attempt to commit the offense or otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of his/her criminal purpose.

### **Note to Judge:**

The Florida Supreme Court, in Chicone v. State, 684 So. 2d 736 (Fla. 1996) and Scott v. State, 808 So. 2d 166 (Fla. Jan. 3, 2002), held that knowledge of the illicit nature of a controlled substance is an element under the statute which must be added to the following standard jury instruction. However, on May 13, 2002, in response to Chicone and Scott, the legislature enacted section 893.101, Florida Statutes, which declares that knowledge of the illicit nature of a controlled substance is not an element under the statute but is rather an affirmative defense.

The jury instruction committee has not yet issued a standard jury instruction reflecting the change enacted by section 893.101, Florida Statutes.

The date of offense is controlling. Section 893.101, Florida Statutes, is not retroactive. Therefore, if the defendant committed the crime prior to May 13, 2002 (the effective date of section 893.101, Florida Statutes), the knowledge element must be included as a fourth element in the following instruction. Whitehurst v. State, 852 So. 2d 902 (Fla. 2d DCA 2003).

Note that in either instance (whenever lack of knowledge is presented to the jury, whether as the fourth element or as an affirmative defense), either in actual or constructive possession cases, there is a presumption that the possessor knew of the illicit nature of the substance. The jury must be advised of this presumption. See ' 893.101(3), Florida Statutes; State v. Medlin, 273 So. 2d 394 (Fla. 1973).

### 25.7 DRUG ABUSE -- POSSESSION

#### F.S. 893.13(6)(a)

Certain drugs and chemical substances are by law known as "controlled substances." Cocaine is a controlled substance.

Before you can find the defendant guilty of possession of cocaine, the State must prove the following three elements beyond a reasonable doubt:

#### *Elements*

1. Toni Menendez possessed a certain substance.
2. The substance was cocaine.
3. Toni Menendez had knowledge of the presence of the substance.

*Definition*

To "possess" means to have personal charge of or exercise the right of ownership, management or control over the thing possessed.

Possession may be actual or constructive.

Actual possession means

- (a) the thing is in the hand of or on the person, or
- (b) the thing is in a container in the hand of or on the person, or
- (c) the thing is so close as to be within ready reach and is under the control of the person.

*Give if applicable*

Mere proximity to a thing is not sufficient to establish control over that thing when the thing is not in a place over which the person has control.

Constructive possession means the thing is in a place over which the person has control, or in which the person has concealed it.

*Give if applicable*

See *Chicone v. State*, 684 So.2d 736 (Fla. 1996)

If a thing is in a place over which the person does not have control, in order to establish constructive possession the State must prove the person's (1) control over the thing, and (2) knowledge that the thing was within the person's presence.

Possession may be joint, that is, two or more persons may jointly have possession of an article, exercising control over it. In that case, each of those persons is considered to be in possession of that article.

If a person has exclusive possession of a thing, knowledge of its presence may be inferred or assumed.

If a person does not have exclusive possession of a thing, knowledge of its presence may not be inferred or assumed.

*Notes to Judge*

1. If the defense seeks to show a lack of knowledge as to the nature of a particular drug, an additional instruction may be required. See *State v. Medlin*, 273 So.2d 394 (Fla. 1973).
2. Note *F.S. 893.13(1)(g)* if the charge involves possession or delivery without consideration of not more than 20 grams of cannabis.

3.2 STATEMENT OF CHARGE

As to Count 2, Toni Menendez, the defendant in this case, has been accused of the crime of Felonious Possession of a Firearm.

10.15 FELONS POSSESSING WEAPONS

F.S. 790.23

Before you can find the defendant guilty of Felonious Possession of a Firearm, the State must prove the following two elements beyond a reasonable doubt:

*Elements*

1. Toni Menendez had been convicted of (prior offense).
2. After the conviction Toni Menendez knowingly

*Give 2a or 2b as applicable*

a. [owned] [had in [his] [her] care, custody, possession or control]

[a firearm.]

[an electric weapon or device.]

b. [carried a (weapon alleged), which was concealed from the ordinary sight of another person.]

*Defense*

If you find that the defendant's civil rights had been restored at the time of the offense, you shall find the defendant not guilty.

## *Definitions*

"Convicted" means that a judgment has been entered in a criminal proceeding by a competent court pronouncing the accused guilty.

A ["firearm"] ["electric weapon or device"] ["concealed weapon"] is legally defined as (adapt from F.S. 790.001 as required by the allegations).

### *Give if 2a alleged*

"Care" and "custody" mean immediate charge and control exercised by a person over the named object. The terms care, custody and control may be used interchangeably.

To "possess" means to have personal charge of or exercise the right of ownership, management or control over the thing possessed.

Possession may be actual or constructive. If a thing is in the hand of or on the person, or in a bag or container in the hand of or on the person, or is so close as to be within ready reach and is under the control of the person, it is in the actual possession of that person.

If a thing is in a place over which the person has control or in which the person has hidden or concealed it, it is in the constructive possession of that person.

Possession may be joint, that is, two or more persons may jointly have possession of an article, exercising control over it. In that case, each of those persons is considered to be in possession of that article.

If a person has exclusive possession of a thing, knowledge of its presence may be inferred or assumed.

If a person does not have exclusive possession of a thing, knowledge of its presence may not be inferred or assumed.

## 3.7 PLEA OF NOT GUILTY; REASONABLE

### DOUBT; AND BURDEN OF PROOF

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the information through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.



To overcome the defendant's presumption of innocence the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.

The defendant is not required to present evidence or prove anything.

Whenever the words "reasonable doubt" are used you must consider the following:

A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or the lack of evidence.

If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

### 3.9 WEIGHING THE EVIDENCE

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which the best evidence is, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorneys' questions?

4. Did the witness have some interest in how the case should be decided?
5. Does the witness' testimony agree with the other testimony and other evidence in the case?
6. Did the witness at some other time make a statement that is inconsistent with the testimony he or she gave in court?
7. Was it proved that the witness had been convicted of a crime?
8. Was it proved that the general reputation of the witness for telling the truth and being honest was bad?

You may rely upon your own conclusion about the witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

### 3.9(a) EXPERT WITNESSES

Expert witnesses are like other witnesses, with one exception -- the law permits an expert witness to give her opinion.

However, an expert's opinion is only reliable when given on a subject about which you believe her to be an expert.

Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

### 3.9(d) DEFENDANT NOT TESTIFYING

The constitution requires the State to prove its accusations against the defendant. It is not necessary for the defendant to disprove anything. Nor is the defendant required to prove his innocence. It is up to the State to prove the defendant's guilt by evidence.

The defendant exercised a fundamental right by choosing not to be a witness in this case. You must not view this as an admission of guilt or be influenced in any way by his decision. No juror should ever be concerned that the defendant did or did not take the witness stand to give testimony in the case.

### 3.9(c) DEFENDANT TESTIFYING

The defendant in this case has become a witness. You should apply the same rules to consideration of [his] [her] testimony that you apply to the testimony of the other witnesses.

### 3.9(e) DEFENDANT'S STATEMENTS

A statement claimed to have been made by the defendant outside of court has been placed before you. Such a statement should always be considered with caution and be weighed with great care to make certain it was freely and voluntarily made.

Therefore, you must determine from the evidence that the defendant's alleged statement was knowingly, voluntarily and freely made.

In making this determination, you should consider the total circumstances, including but not limited to:

1. Whether, when the defendant made the statement, he had been threatened in order to get him/her to make it, and
2. Whether anyone had promised him/her anything in order to get him to make it.

If you conclude the defendant's out of court statement was not freely and voluntarily made, you should disregard it.

### 3.10 RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.
2. This case must be decided only upon the evidence that you have heard from the testimony of the witnesses and have seen in the form of the exhibits in evidence and these instructions.
3. This case must not be decided for or against anyone because you feel sorry for anyone, or are angry at anyone.

4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.
5. Your duty is to determine if the defendant has been proven guilty or not, in accord with the law. It is the judge's job to determine a proper sentence if the defendant is found guilty.
6. Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.
7. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about the witness' testimony.
8. Your verdict should not be influenced by feelings of prejudice, bias or sympathy. Your verdict must be based on the evidence, and on the law contained in these instructions.

### 3.11 CAUTIONARY INSTRUCTION

Deciding a verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

### 3.12 VERDICT

You may find the defendant guilty as charged in the information or guilty of such lesser included crime as the evidence may justify or not guilty.

If you return a verdict of guilty, it should be for the highest offense which has been proven beyond a reasonable doubt. If you find that no offense has been proven beyond a reasonable doubt, then, of course, your verdict must be not guilty.

Only one verdict may be returned as to each crime charged. This verdict must be unanimous, that is, all of you must agree to the same verdict. The verdict must be in writing and for your convenience the necessary forms of verdict have been prepared for you. They are as follows (read verdict forms):

3.12(a) SINGLE DEFENDANT, MULTIPLE COUNTS  
OR INFORMATIONS

A separate crime is charged in each count of the information and while they have been tried together each crime and the evidence applicable to it must be considered separately and a separate verdict returned as to each. A finding of guilty or not guilty as to one crime must not affect your verdict as to the other crimes charged.

3.13 SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreperson who will preside over your deliberations, like a chairperson of a meeting. It is the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict in this case and to bring the verdict back to the courtroom when you return.

Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a whole.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have lived by the constitution and the law. No juror has the right to violate rules we all share.

2.7 CLOSING ARGUMENT

Both the State and the Defendant have now rested their case.

The attorneys will now present their final arguments. Please remember that what the attorneys say is not evidence. However, do listen closely to their arguments; they are intended to aid you in understanding the case. Each side will have equal time, but [the State] [the Defendant] is entitled to divide this time between an opening argument and a rebuttal argument after the opponent has spoken.

**NOTE TAKING BY JURORS**

If you took notes, your notes should be used only as aids to your memory.

Whether or not you took notes, you should rely on your memory of the evidence and the notes of other jurors should not unduly influence you. Notes are not entitled to any greater weight than each juror's memory of the evidence.

## Rules of the Competition

### A. **Rule I: Team Composition/Presentation**

- a) The competition is open to students currently enrolled in grades 9-12 in Florida schools. All students on a team must be enrolled in the same school in the district they are representing.
- b) **Only one team may represent a high school at any level of competition.**
- c) Teams shall consist of six to eight students including alternates to be used in any manner deemed appropriate by the teacher and coach, as long as the distribution of duties does not conflict with competition Rule IV. For each trial round, teams shall use three students as attorneys and three students as witnesses.
- d) Students may switch roles for different **rounds** of trials (i.e. a student may be an attorney for the defense and a witness for the plaintiff during separate rounds).
- e) Each team must be fully prepared to argue both sides of the case. (Prosecution/Plaintiff and Defense/Defendant) using six team members.
- f) Students of either gender may portray the role of any witness. The competition will strive to make roles gender neutral. However, some cases will warrant a specific gender role. In such cases, students of either gender may portray the role but the gender of the witness may not change from the case as presented.
- g) Team Roster/"Roll" Call

Copies of the Team Roster form must be completed and returned prior to arrival at the competition site. Teams should be identified by the code assigned at registration.

Before beginning a trial, teams will be asked to prepare a "Roll Call" list to identify the students participating in each round and their corresponding roles. No information identifying team origin should appear on the list.

- h) All teacher coaches and students must attend the mandatory general assembly/orientation. Attorney coaches who accompany their team must also be present.

**B. Rule II: The Case**

- a) The case may contain any or all of the following stipulations: documents, narratives, exhibits, witness statements, etc.
- b) The stipulations (and fact statements, if any) may not be disputed at the trial. Witness statements may not be altered.
- c) All witnesses must be called.

**C. Rule III: Trial Presentation**

- a) The trial proceedings will be governed by the Florida Mock Trial Simplified Rules of Evidence. Other more complex rules may not be raised at the trial. Questions or interpretations of these rules are within the discretion of the State Mock Trial Advisory Committee, whose decision is final.
- b) Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/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 which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection outside the scope of the problem.

If, on 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 or affidavit and does not materially affect the witness' testimony.

Adding facts that are inconsistent with the witness statement or with the Stipulated Facts and which would be relevant with respect to any issue in the case is not permitted. Examples include, but are not limited to (a) creating a physical or mental disability, (b) giving a witness a criminal or bad record when none is suggested by the statements, (c) creating facts which give a witness standing as an expert and (d) materially changing the witness' profession, character, memory, mental or physical ability from the witness' statement by testifying to "recent changes."

- c) If certain witnesses are stipulated to as experts, their expert qualifications may not be challenged or impeached by the opposing side. However, their testimony concerning the facts of the case may be challenged.

- d) On direct examination, the witness is limited to the facts given. If a witness testifies in contradiction to the facts given in the witness statement, that testimony may be impeached on cross-examination by the opposition through the correct use of the affidavit. The procedure is outlined in the Rules of Evidence.
- e) On cross-examination, no restrictions will be made on the witness or the cross-examination, except that the answer must be responsive and the witness can be impeached.

If the attorney who is cross-examining the witness asks a question, the answer to which is not contained in the stipulations or affidavit then the witness may respond to that question with any answer as long as the answer **does not contradict or materially change** the affidavit.

If the answer by the witness is contrary to the stipulations or the affidavit, the cross-examination attorney may impeach the witness.

- f) Use of **voir dire** examination of a witness is not permitted.

#### **D. Rule IV: Student Attorneys**

- a) Team members are to evenly divide their duties. During any single round, each of the three attorneys will conduct one direct and one cross; in addition, one will present the opening statements and another will present closing arguments. In other words, the attorney duties for each team will be divided as follows:
  - 1. Opening Statements
  - 2. Direct/Re-direct Examination of Witness #1
  - 3. Direct/Re-direct Examination of Witness #2
  - 4. Direct/Re-direct Examination of Witness #3
  - 5. Cross/Re-cross Examination of Witness #1
  - 6. Cross/Re-cross Examination of Witness #2
  - 7. Cross/Re-cross Examination of Witness #3
  - 8. Closing Arguments
  - 9. Prosecution's/Plaintiff's optional closing rebuttal (see rule XV)

Opening statements must be given by both sides at the beginning of the trial.

**The attorney who will examine a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness on 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 the three witnesses listed in the case materials. Witnesses must be called only by their own team and examined by both sides. Witnesses may not be recalled.

- b) Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial.
- c) To permit judges to hear and see better, attorneys will stand during opening and closing statements, direct and cross-examinations, all objections, and **whenever addressing the presiding judge**. Students may move from the podium only with the permission of the presiding judge.

**E. Rule V: Swearing of Witnesses**

The presiding judge will indicate that all witnesses are assumed to be sworn.

**F. Rule VI: Case Materials**

Students may read other cases, materials, and articles in preparation for the mock trial. **However, students may cite only the case materials given, and they may introduce into evidence only those documents given in the official packet.** In addition, students may not use, even for demonstrative purposes, any materials that are not provided in the official packet. **The following are not permitted: props, costumes, enlargements, computers, phones, or electronic devices of any kind.**

**G. Rule VII: Trial Communication**

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any recess time that may occur. Team members within the bar area may, among themselves, communicate during the trial; however, no disruptive communication is allowed.

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

**H. Rule VIII: Trial Start Time**

The starting time of any trial will not be delayed for longer than ten minutes unless approved by the Mock Trial Coordinator. Incomplete teams will have to begin without their other members or with alternates.

**I. Rule IX: Conduct/Attire**

**All participants are expected to demonstrate proper courtroom decorum and display collegial sportsmanlike conduct. Appropriate courtroom attire is required. Adherence to the Code of Ethics is expected of all participants.**

**J. Rule X: Videotaping/Photography**

Cameras and recording devices are permitted in certain courtrooms; however, the use of such equipment may not be disruptive **and must be approved in advance of the competition by The Florida Law Related Education Association, Inc.** When one team requests to videotape during a trial, the opposing team must be consulted and their permission granted prior to taping.

**K. Rule XI: Witnesses**

Witnesses are to remain in the courtroom during the entire trial.

**L. Rule XII: Jury Trial**

For purposes of the competition, students will assume this is a jury trial. The scoring judges will act as the jury. The presiding judge is the trial judge. Students should address the scoring judges and the presiding judge.

**M. Rule XIII: Viewing a Trial**

Team members, alternates, attorney coaches, teacher coaches, and any other persons directly associated with a mock trial team, except those authorized by the State Advisory Committee, are not allowed to view other teams in competition so long as their team remains in the competition. Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to vacate the premises.

N. **Rule XIV: Decisions**

**ALL DECISIONS OF THE JUDGES ARE FINAL.**

O. **Rule XV: Time Limits**

- a) A total time will be given to each side for direct, cross, re-direct, and re-cross.

The sequence and time limits are:

Opening Statements	5 minutes per side
Direct Examination and Re-direct Examination (optional)	24 minutes total per side
Cross Examination and Re-cross Examination (optional)	21 minutes total per side
Closing Argument	5 minutes per side

None of the foregoing may be waived **except the optional times**, nor the order changed.

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; **the Prosecution/ Plaintiff may reserve one minute or less of the closing time for a rebuttal.** Prosecution/Plaintiff must notify the judge before beginning closing argument if the rebuttal time is requested. The Prosecution's/Plaintiff's rebuttal is limited to the scope of the defense's closing argument.

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.

- b) Timing will halt during objections and responses to objections. **Timing will not halt during the admission of documentary evidence, unless there is an objection by opposing counsel.** In the interest of fairness, time extensions may be granted at the discretion of the presiding judge. All objections should be argued in open court, not at the bench. Timing will resume after the judge has ruled on the objection. Students should avoid the use of tactics to "run out the clock" during the admission of

evidence. Judges will be instructed to consider this in the Team Ethics scoring category.

- c) A "timekeeper" will be provided and will keep the official time of the trial. The timekeeper's role will be expanded to time the 10 minute debrief session for each side. This will help ensure that the schedule is maintained. The timekeeper will announce to the court when time has expired in each of the separate segments of the trial. Further, the timekeeper will bring a calculator to each courtroom and double check the scores of scoring judges to ensure **no ties**. Judges will be instructed **not** to tie the teams during any round. This will eliminate the issue of vote assignments during ties.
- d) Teams are permitted to keep their own time. However, this will **not** be considered the official time of the trial. **Teams are not permitted to have an extra person be the timekeeper.** One of the six participants may be the timekeeper. Team timekeepers must not interfere with the trial or obstruct the view of any witness.

**P. Rule XVI: Judging**

- a) The **presiding judge** provides a mandatory performance vote during each round/trial for the team that he or she feels gave the better performance during that round/trial.

The presiding judge does not award points to the teams. The presiding judge's score sheet is a short form on which the judge declares which team in his or her opinion exhibited the best performance.

The presiding judge **should not** announce the mandatory performance vote.

- b) The **scoring** judges (jury) will utilize prepared score sheets to **rate** the quality of the students' **performances** in the round/trial. The judges will be instructed to rate the performance of all witnesses and attorneys on the team. Judges will **not** announce the **presentation decision**. Judges should make field notes on students' performances during the round/trial.
- c) Judges will be instructed not to tie teams in any round/trial. In the event scores are computed by the judges and errors are found in the computations, score room staff will correct the errors and the corrected scores will be the official scores after adding the individual categories/assessments.
- d) The team receiving the majority of the performance votes from the three judges is declared the winner of the trial/round.

- e) To enhance the students' learning experience, the judges will be instructed to give each team an **oral critique** after their deliberation. The decision on **which team** gave the better performance will **not** be given to the participants. Students and their coaches will have the opportunity to meet informally with all the judges for 20 minutes (10 minutes per team) immediately following the round/trial. Score sheets should be completed **before** the debriefing. Debriefing sessions will be timed by the timekeepers to avoid lengthy debriefs.
- f) **ALL DECISIONS OF THE JUDGES ARE FINAL.**
- g) The **Team Ethics** category will score students on the standards recognized in the **Code of Ethical Conduct**.
- h) Attorney coaches of mock trial teams that do not advance from the local competition may **not** serve as a judge in any capacity at any level of competition during the remainder of the competition year.  
Teacher coaches of mock trial teams may **not** serve as judges in any capacity. Teacher coaches may serve as timekeepers if their team does not advance from their local competition.

**Q. Rule XVII: Dispute Settlement**

**a) Reporting a Rules Violation Inside the Bar**

If any team has serious reason to believe that a **material rules violation** has occurred during a trial round, one student attorney member of the team shall communicate that a dispute exists to the presiding judge **immediately after** the trial is over and before the critique begins. The scoring judges will be excused from the courtroom, but should remain in the vicinity.

- b) The presiding judge will ask that both teams remain in the courtroom. A dispute form shall be completed by the student attorney to record in writing the nature of the dispute. The student attorney may communicate with other student attorneys and witnesses on the team before preparing the form. No more than 3 minutes may be taken to complete the form.

**At no time** in this process may **team sponsors or coaches communicate or consult** with the students. Only student attorneys may invoke the dispute procedure.

**c) Dispute Resolution Procedure**

The presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the presiding judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing student 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 (not to exceed three minutes) to prepare their arguments, the presiding 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 presiding 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/his ruling on the dispute. The judge will make a final decision as to whether or not a rules violation has occurred. That decision will be recorded in writing on the dispute form. The presiding judge is **not** required to announce his/her decision to students.

**d) Effect of Violation on Score**

**If** the presiding judge determines that a substantial rules violation has occurred, the presiding judge will inform the **scoring** judges of the dispute and provide a summary of each team's argument. The scoring judges will consider the dispute before finalizing their scores. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges. All decisions of the judges are **FINAL**.

**R. Rule XVIII: Reporting a Rules Violation Outside the Bar**

- a) Disputes that (a) involve people other than student team members and (b) occur outside the bar only during a trial round may be brought by teacher or attorney-coaches exclusively. Such disputes must be entered on a complaint form and turned in to the registration area. The Mock Trial State Coordinator and/or Advisory Committee will review the dispute for appropriate action, if needed. Decisions and actions of the coordinator and/or committee are **FINAL**.

**S. Rule XIX: Score Sheets/Ballots**

- a) Score sheets will be completed individually by scoring judges. The presiding judge will cast a **mandatory** performance vote, but no points for each round. Judges may **not** inform students of score sheet results.
- b) The term “ballot” will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term “score sheet” is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge. **The team that earns the highest points on an individual judge’s score sheet is the winner of that ballot.** The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards (i.e., Outstanding Attorney/Witness) the judging panel should not deliberate on individual scores.
- c) Individual assessment categories **including team ethics and team performance** shall be judged on a 1-10 scale **by scoring judges only.**
- d) In the event of a mathematical error in tabulation by scoring judges, score room staff will enter the **correct tabulation** of the scores.

**T. Rule XX: Power Matching/Seeding**

- a) The Florida High School Mock Trial Competition uses a *power matching* system.
- b) A random method of selection will determine the opponents in the first round. A power match system will determine opponents for all other rounds. The two schools emerging with the strongest record from the four rounds will advance to the final round. **The first-place team will be determined by ballots from the championship round only.**
- c) Power matching will provide 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; (3) total points; then (4) point spread. 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 are 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. Teams will not meet the same opponent twice.
6. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Bracket integrity in power matching will supersede alternate side presentation.

**U. Rule XXI: Completion of Score Sheets**

- a) Each scoring judge shall record a number of points (1-10) for each presentation of the round/trial. At the end of the trial, each scoring judge shall total the sum of each team's individual points and place this sum in the **column totals** box. The team with the greater number of points wins that scoring judge's performance vote/ballot for that trial/round.
- b) The presiding judge shall circle either prosecution/plaintiff or defense/defendant on his or her score sheet/ballot to indicate which team the presiding judge feels gave the better performance during the trial/round. The team that the presiding judge circles on their score sheet/ballot receives that presiding judge's performance vote/ballot for that trial/round.

**V. Rule XXII: 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 total number of judge's votes a team earned in preceding rounds.



3. Total Number of Points Accumulated in Each Round.
4. Point Spread Against Opponents – 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 that largest cumulative point spread.

**W. Rule XXIII: Effect of a Bye/Default**

- a) A “bye” becomes necessary when an odd number of teams are present for the tournament. For the purpose of advancement and seeding, when a team draws a bye or wins by default, the winning team for that round will be given a win and the number of ballots and points equal to the average of all winning team’s ballots and points of that same round. The Mock Trial State Coordinator may, if time and space allow, arrange for a “bye round” to allow teams drawing a bye to compete against one another in order to earn a true score.
- b) The Mock Trial State Coordinator has the discretion on how to handle a bye in all rounds of the tournament.

**X. Rule XXIV: Eligibility**

- a) All students on a team must be enrolled in the same public or private school in the district for which they are competing.
- b) Each judicial circuit may send only one team to compete in the Florida High School Mock Trial State Finals.
- c) The Mock Trial State Coordinator reserves the right to enlist participation from each district and circuit.

**Y. Rule XXV: Awards**

Trophies will be awarded to the top five teams. Four best witness awards and four best attorney awards will also be presented. Both the presiding judge and the scoring judges will vote on the best witness and best attorney awards. Additionally, two professionalism awards will be awarded based upon team recommendations. Student certificates and school plaques will be presented to all participants.

**Z. Rule XXVI: Interpretation of State Competition Rules**

- a) All rules of competition for the Florida High School Mock Trial Competition, as set forth above, are subject to the interpretation of the Advisory Committee of the Florida High School Mock Trial Competition.
- b) No exceptions are permitted at the competition site unless approval has been given by the Advisory Committee prior to the competition.
- c) The Advisory Committee and/or State Mock Trial Coordinator will serve as the final arbiter at the competition site.

## Simplified Rules of Evidence and Procedure

In American courts, elaborate rules are used to regulate the kind of proof (i.e., spoken testimony by witnesses or physical evidence) that can be used in trials. These rules are designed to ensure that both parties receive a fair hearing. Under the rules, any testimony or physical objects deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial may be kept out of the trial.

If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. Usually, the attorney stands and says, "I object, your honor," and then gives the reason for the objection. Sometimes the attorney whose questions or actions are being objected to will then explain why he or she thinks the rule was not violated. The judge then decides whether the rule has been violated and whether the testimony or physical items must be excluded from the trial.

Official rules of evidence are quite complicated. They also differ depending on the kind of court where the trial occurs. For purposes of this mock trial competition, the rules of evidence you will use have been made less complicated than those used in actual courts. The ideas behind these simplified rules are similar to actual rules of evidence.

### **A. Witness Examination/Questioning**

#### **1. Direct Examination**

Attorneys call and question their own witnesses using direct as opposed to leading questions.

Example:

Elyse Roberts is called by her attorney to explain the events leading up to her filing suit against Potomac County.

*"Ms. Roberts, where do you work? How long have you worked there? Please describe your working relationship with Mr. Kevin Murphy during the first month of employment. Why did you meet with your supervisor, Fran Troy? Did you seek advice from a therapist during this time?"*

Questions such as the above do not suggest the answer. Instead, they introduce a witness to a particular area of importance, leaving the witness free to relate the facts. Obviously, the witness will have been prepared to answer such questions in a particular way. But the question by its terms does not "lead" to the answer.

**a) Leading Questions**

A **leading question** is one that suggests the answer. It does not simply call the witness' attention to a subject. Rather, it indicates or tells the witness what the answer should be about that subject. **Leading questions** are **not** permitted on direct examination, but questions on cross-examination should be leading.

Examples:

*“Mrs. Roberts, despite repeated invitations, you chose not to participate in office social functions, correct?”*

*“Isn't it true, that due to all the stress from work you decided to go to a therapist?”*

These questions are obviously in contrast to the direct examination questions in the preceding section. **Leading questions** suggest the answer to the witness. This is **not** proper for direct examination when a party is questioning its own witness.

**b) Narration**

While the purpose of direct examination is to get the witness to tell a story, the questions must ask for **specific information**. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. At times, the witness' answer to a direct question may go beyond the facts asked for by the question asked. Narrative questions are objectionable.

Example Narrative Question:

*“Ms. Roberts, please tell the court about the events that contributed to your decision to sue the county.”*

Narrative Answer:

*“It all began the night I found out that it was the county that was dumping on my land. At first I thought it was my neighbors, but they denied having any part in the dumping. I decided to watch my vacant lot and see if I could catch the person responsible. I drove down to my lot the night of the 13<sup>th</sup> and parked in a place where I could see the lot but no one could see me...”*

**c) Scope of Witness Examination**

Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge.

**d) Character**

For the purpose of this mock trial, evidence about the character of a party may not be introduced unless the person's character is an issue in the case.

**i. Methods of Proving Character (Section 90.405)**

1. Reputation: When evidence of the character of a person or of a trait of his/her character is admissible, proof may be made by testimony about his/her reputation.
2. Specific Instances of Conduct: When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of his/her conduct.

**e) Refreshing Recollection**

When a witness uses a writing or other item to refresh his/her memory while testifying, an adverse party is entitled to have such writing or other item produced at the hearing to inspect it, to cross-examine the witness thereon, and to introduce it, or in the case of writing, to introduce those portions which relate to the testimony of the witness, in evidence.

**2. Cross Examination (questioning the opposing side's witnesses)**

Cross-examination **should** involve leading questions. In fact, it is customary to present a witness with a proposition and ask the witness to either agree or disagree. Thus, good cross-examination calls only for a yes or no answer.

Examples:

*“Mr. Roberts, in direct examination you testified that litigation was very stressful for you, correct? In fact you were so stressed that you did work at home or called in sick. Isn't this true?”*

*“As an assistant district attorney, you knew that trying only three cases while settling 75 cases was not a job performance your supervisor would rate highly, didn't you?”*

*“Thus given the stress you felt, your poor attendance at work and poor job performance, it was not unusual for your supervisor to transfer you to another Bureau, was it?”*

Leading questions are permissible on cross-examination. Questions tending to evoke a narrative answer should be avoided.

#### **a) Scope of Witness Examination**

Cross-examination is not limited. Attorneys may ask questions of a particular witness that relate to matters brought out by the opposing side on direct examination of that witness, matters relating to the credibility of the witness, and additional matters otherwise admissible, that were not covered on direct examination.

#### **b) Impeachment**

On cross-examination, the attorney may want to show the court that the witness should not be believed. A witness' credibility may be impeached by showing evidence of the witness' character and conduct, prior convictions, and prior inconsistent statements. If the witness testifies differently from the information in their sworn affidavit, it may then be necessary to "impeach" the witness. That is, the attorney will want to show that the witness previously said something that contradicts the testimony on the stand.

##### **i. Impeachment Procedure**

Impeachment may be done by comparing what a witness says on the witness stand at trial to what is contained in the witness' affidavit. By pointing out the differences between what a witness now says and what the witness' affidavit says, the attorney shows that the witness has contradicted himself or herself.

##### **ii. Who May Impeach?**

Any party, including the party calling the witness, may attack the credibility of a witness by:

- a. Introducing statements of the witness which are inconsistent with his/her present testimony;
- b. Showing that the witness is biased;
- c. Attacking the character of the witness in accordance with the state mock trial competition rules of evidence and procedure;

- d. Showing a defect of capacity, ability, or opportunity in the witness to observe, remember, or recount the matters about which he/she testified;
- e. Proof by other witnesses that material facts are not as testified to by the witness being impeached;

### **iii. Section 90.610 Conviction of Certain Crimes as Impeachment**

A party may attack the credibility of any witness, including an accused, by evidence that the witness has been convicted of a crime if the crime was punishable by death or imprisonment in excess of 1 year under the law under which he was convicted, or if the crime involved dishonesty or a false statement regardless of the punishment, with the following exceptions:

- 1) Evidence of any such conviction is inadmissible in a civil trial if it is so remote in time as to have no bearing on the present character of the witness.
- 2) Evidence of juvenile adjudications is inadmissible under this subsection.

### **iv. Section 90.614 Prior Statements of Witness**

- 1) When witness is examined concerning his prior written statement or concerning an oral statement that has been reduced to writing, the court, on motion of the adverse party, shall order the statement to be shown to the witness or its contents disclosed to him.
- 2) Extrinsic evidence of a prior inconsistent statement by a witness is inadmissible unless the witness is first afforded an opportunity to explain or deny the prior statement and the opposing party is afforded an opportunity to interrogate him on it, or the interests of justice otherwise require. If a witness denies making or does not distinctly admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. This subsection is not applicable to admissions of a party-opponent.
- 3) Re-direct and re-cross examination/questioning. If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination. Re-cross examination follows re-direct examination but is



limited to the issues raised on re-direct only and should avoid repetition. The presiding judge may exercise reasonable control over questioning so as to make questioning effective to ascertain truth, avoid needless waste of time, and protect witnesses from harassment.

## B. Objections

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should **stand up and do so at the time of the violation**. When an objection is made, the judge may ask the reason for it. Then the judge may turn to the attorney whose question or action is being objected to, and that attorney usually will have a chance to explain why the judge should not accept the objection. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence or whether to allow the question or answer to be considered as evidence. The legal term “objection sustained” means that the judge agrees with the objection and excludes the testimony or item objected to. The legal term “objection overruled” means that the judge disagrees with the objection and allows the testimony or item to be considered as evidence.

### 1. Standard Objections on Direct and Cross Examination

- a) **Irrelevant Evidence:** *“I object, your honor. This testimony is irrelevant to the facts of this case.”*
- b) **Leading Questions:** *“Objection. Counsel is leading the witness.”* Remember, this is **only** objectionable when done on direct examination (Ref. Section A)
- c) **Narrative Questions and Answers:** may be objectionable (ref. Section A1.b).
- d) **Improper Character Testimony:** *“Objection. The witness’ character or reputation has not been put in issue or “Objection. Only the witness’ reputation/character for truthfulness is at issue here.”*
- e) **Hearsay:** *“Objection. Counsel’s question/the witness’ answer is based on hearsay.”* If the witness makes a hearsay statement, the attorney should also say, *“and I ask that the statement be stricken from the record.”*
- f) **Opinion:** *“Objection. Counsel is asking the witness to give an opinion.”*

- g) Lack of Personal Knowledge:** *“Objection. The witness has no personal knowledge that would enable him/her to answer this question.”*
- h) Lack of Proper Predicate:** Exhibits will not be admitted into evidence until they have been identified and shown to be authentic (unless identification and/or authenticity have been stipulated). Even after proper predicate has been laid, the exhibits may still be objectionable due to relevance, hearsay, etc.
- i) Ambiguous Questions:** An attorney shall not ask questions that are capable of being understood in two or more possible ways.
- j) Non-responsive Answer:** A witness’ answer is objectionable if it fails to respond to the question asked.
- k) Argumentative Question:** An attorney shall not ask a question which asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.
- l) Unfair Extrapolation/Beyond the Scope of the Statement of Facts**

**Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an 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.**

**Note: Fair extrapolations may be allowed, provided reasonable inference may be made from the witness’s statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection Outside the Scope of the Problem. 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 or affidavit and does not materially affect the witness’ testimony.**

- m) Asked and Answered:** *“Objection. Your honor, the question has already been asked and answered.”*

- n) **Objections Not Recognized in This Jurisdiction:** An objection which is not contained in these materials shall not be considered by the Court. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objection.

**Note:** Attorneys should stand during objections, examinations, and statements. No objections should be made during opening/closing statements but afterwards the attorneys may indicate what the objection would have been. The opposing counsel should raise his/her hand to be recognized by the judge and may say, “If I had been permitted to object during closing arguments, I would have objected to the opposing team’s statement that \_\_\_\_.” The presiding judge will not rule on this objection individually and no rebuttal from the opposing team will be heard.

## 2. Opinions of Witnesses

### a) Expert Opinion

#### i. Section 90.702 Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

#### ii. Section 90.703 Opinions on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it included an ultimate issue to be decided by the trier of fact.

#### iii. Section 90.704 Basis of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, him at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.

#### iv. Expert Opinion (additional information)

An expert shall not express an opinion as to the guilt or innocence of the accused.

**b) Lay Opinion**

**i. Section 90.701 Opinion Testimony of Lay Witnesses**

If a witness is not testifying as an expert, his testimony about what he perceived may be in the form of inference and opinion when:

- 1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he has perceived to the trier of fact without testifying in terms of inferences or opinions and his use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and
- 2) The opinions and inferences do not require a special knowledge, skill, experience, or training.

**ii. Lay Opinion (additional information)**

All witnesses may offer opinions based on the common experience of laypersons in the community and of which the witnesses **have first-hand knowledge**. A lay opinion may also be obtained. For example, Sandy Yu, as the personnel director, would know of other complaints of sexual harassment in the office and any formal reprimands, even though he is not an expert in sexual harassment. They may be asked questions within that range of experience. No witness, not even an expert, may give an opinion about how the case should be decided.

The cross-examination of opinions proceeds much like the cross-examination of any witness. Questions, as indicated above, may be based upon the prior statement of the witness. Inconsistencies may be shown. In addition, the witness may be asked whether he or she has been employed by any party, to show bias or interest. Or a witness giving an opinion may be asked the limits of certainty in that opinion, as follows:

*“Dr. Isaacs, please read this portion of your sworn statement to the court.”*

*"I have studied the records of this case, and have conducted two one-hour interviews with Elyse Roberts on March 29 and 31st. In those interviews, she described to me her family history, her work environment, the actions of her co-workers and supervisor and her resulting feelings."*

*“This is your statement, is it not, Dr. Isaacs? Ms. Roberts selected you because of your expertise in sexual harassment in the workplace, correct? During your two-hour interview you were only concerned with evaluating Ms. Roberts’ working environment and not other psychological factors that may have caused her problems. Thus you really can’t say that Ms. Roberts’ difficulty on the job was only caused by the actions of Mr. Murphy, can you?”*

The point of these questions is not to discredit the witness. Rather, the objective is simply to treat the witness as a responsible professional who will acknowledge the limits of her or his expertise and testimony. If the witness refuses to acknowledge those limits, the witness then is discredited.

It is always important in cross-examination to avoid arguing with the witness. It is particularly important with an expert. Thus, the cross-examination should be carefully constructed to call only for facts or to draw upon statements the witness has already made.

### **c) Lack of Personal Knowledge**

A witness may not testify to any matter of which the witness has no personal knowledge. The legal term for testimony of which the witness has no personal knowledge is "incompetent."

## **3. Relevance of Testimony and Physical Objects**

Generally, only relevant testimony may be presented. Relevant evidence is physical evidence and testimony that makes a fact that is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. Such relevant but excludable evidence may be testimony, physical evidence, or demonstrations that have no direct bearing on the issues of the case or do not make the issues clearer.

### **a) Introduction of Non-documents, Exhibits, Items, and Other Physical Objects Into Evidence.**

There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case, and the attorney must be prepared to its

use on that basis. Below are the basic steps to use when introducing a physical object or document for **identification and/or use as evidence**.

- i. Show exhibit and have it marked by the judge. Say “Your Honor, I ask that this \_\_\_ be marked for identification as Plaintiff’s/Defendant’s Exhibit No. \_\_\_”
- ii. Show the exhibit to opposing counsel for possible objection. Ask the witness to identify the exhibit. “I now hand you what is marked as Exhibit No. 1. Do you recognize this document?”
- iii. At this point the attorney may proceed to ask the witness a series of questions about the exhibit.
- iv. If the attorney wishes to place the document into evidence, say, “Your Honor, I offer this \_\_\_ marked as Plaintiff’s/Defendant’s Exhibit No. 1 into evidence and ask the Court to so admit it.”

Court: *“Is there any objection?”*

Opposing Counsel: *“No, your Honor.” or “Yes, your Honor.”* (then state objection).

Court: *“Plaintiff’s/Defendant’s Exhibit No. 1 is (is not) admitted.”*

**NOTE: A witness may be asked questions about his/her statement without its introduction into evidence; but to read from it or submit it to the judge, it must first be admitted into evidence. Exhibits can be pre-marked.**

#### **4. Hearsay and Exceptions to this Ruling**

##### **a) What is Hearsay?**

Hearsay evidence is normally excluded from a trial because it is deemed untrustworthy. “Hearsay” is a statement other than one made by the witness testifying at the trial, offered in evidence to prove that the matter asserted in the statement is true. An example of hearsay is a witness testifying that he heard another person saying something about the facts in the case. The reason that hearsay is untrustworthy is because the opposing side has no way of testing the credibility of the out-of-court statement or the person who supposedly made the statement. Thus, for example, the following questions

would be objectionable as “hearsay” if you are trying to prove that the color of the door was red:

*“Mr. Edwards what color did Bob say the door was?”*

This is **hearsay**. Mr. Edwards is using Bob's statement for him to prove the color of the door. Instead, Bob or someone who saw the door needs to be called to testify as to the color of the door.

**b) Reasons for Prohibiting Hearsay**

Our legal system is designed to promote the discovery of truth in a fair way. One way it seeks to accomplish this goal is by ensuring that the evidence presented in court is “reliable”; that is, we can be fairly certain the evidence is true. Hearsay evidence is said to be “unreliable” for four reasons:

- i. The hearsay statement might be distorted or misinterpreted by the witness relating it in court.
- ii. The hearsay statement is not made in court and is not made under oath.
- iii. The hearsay statement is not made in court, and the person who made it cannot be observed by the judge or jury (this is important because the judge or jury should be allowed to observe a witness' behavior and evaluate his/her credibility).
- iv. The hearsay statement is not made in court and the person who made it cannot be challenged by cross-examination.

**c) When Can Hearsay Evidence Be Admitted?**

Although hearsay is generally not admissible, there are certain out-of-court statements that are treated as not being hearsay, and there are out-of-court statements that are allowed into evidence as exceptions to the rule prohibiting hearsay.

Statements that are not hearsay are prior statements made by the **witness himself** and admissions made by a **party opponent**.

**i. Exceptions**



Hearsay is not admissible, except as provided by these rules. For purposes of this mock trial, the following exceptions to the hearsay rule will be allowed; even though the declarant is available as a witness.

**1) Spontaneous Statement**

A statement describing or explaining an event or condition made while the declarant perceived the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

**2) Excited Utterance**

A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

**3) Medical Statements**

Statements made for the purpose of medical diagnosis or treatment by a person seeking the diagnosis, or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment.

**4) Recorded Recollection**

A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.

**5) Records of a Regularly Conducted Activity**

- a. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, 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 and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by testimony of the custodian or other qualified witness, unless the sources of information or other circumstances show lack of trustworthiness. The term “business” as used in this paragraph includes a business, institution, association, profession, occupation, and calling for every kind, whether or not conducted for profit.
- b. No evidence in the form of an opinion or diagnosis is admissible under paragraph (a) unless such opinion or diagnosis would otherwise be admissible if the person whose opinion is recorded were to testify to the opinion directly.

#### **6) Learned Treatises**

To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in public treatises, periodicals or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, or by other expert testimony, or by judicial notice.

#### **7) Then Existing Mental, Emotional, or Physical Condition**

- a. A statement of the declarant's then existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:
  1. Prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action.

2. Prove or explain acts of subsequent conduct of the declarant.
- b. However, this subsection does not make admissible:
1. An after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such a statement relates to the execution, revocation, identification, or terms of the declarant's will.
  2. A statement made under circumstances that indicate its lack of trustworthiness.

**C. Trial Motions**

**No trial motions are allowed except for special jury instructions as permitted in these case materials.**

**Examples:**

Directed verdict, dismissal, acquittal, motion in limine, motion to sequester witnesses.

**Exception:**

**Motion for Recess may only be used in emergency situations.**

**D. Attorney Demeanor**

**\*\*See Code of Ethical Conduct**

**Note: Please refer to Official Case Materials for any specific additions relative to this trial.**

## Guidelines for Teacher Coaches

### A. Role of the Teacher Coach

The teacher coach is expected to help the team members decide which students will play which parts in the mock trial and to assist the students in playing those roles. As part of the sizeable responsibility of acting as team coaches, teachers are responsible for the following areas:

1. **Rules of the Program:** All teachers and teams are expected to adhere to the rules, facts and all other materials provided in the 2005 Mock Trial Competition Case Materials. Therefore, please make sure you are familiar with the Competition rules.
2. **Role Assignments:** Team members should be strongly encouraged to select roles based on their interests and abilities and not on the basis of any gender or cultural stereotypes which might be drawn from the characterizations in the fact pattern.
3. **Team Preparation:** Attorneys will also help coach each team. Teams should prepare both sides of the case and are strongly urged to arrange and conduct preliminary mock trials with other teams prior to competing in the district and circuit competition. Preliminary trials require only one attorney or judge to act as the presiding judge, as it is not necessary to award points to the teams during these practice rounds.
4. **Education:** Education of the students is the primary goal of the Mock Trial Competition. Healthy competition helps to achieve this goal, but teachers are reminded of their responsibility to keep the competitive spirit at a reasonable level. The reality of the adversarial system is that one party wins and the other loses, and teachers should be sure to prepare their teams to be ready to accept either outcome in a mature manner. Teachers can help prepare students for either outcome by placing the highest value on excellent preparation and presentation, rather than on winning or losing the trial.
5. **Observers:** Other classes, parents and friends of the participants are welcome to attend the trials. **However, please note that space in the courtroom is limited.** The presiding judge may ask overflow observers to leave the courtroom. All observers must be seated during the trial.
6. **Arrival Times:** Teachers are responsible for getting their teams to the assigned courtroom 15 minutes prior to the starting time of each trial.

### Guidelines for Attorney Coaches

1. Much as you will want to help the students, point them in the right direction and give them the benefit of your experience, remember that the students will develop a better understanding of the case and learn more from the experience if the attorney coaches do not dominate the preparation phase of the tournament. The preparation phase of the contest is intended to be a cooperative effort of students, teacher and attorney coaches.
2. Avoid (even the appearance of) “talking down” to students and/or stifling discussion through the use of complicated “legalese.”
3. The first session with a student team should be devoted to the following tasks:
  - a. Answering questions that students may have concerning general trial practices;
  - b. Explaining the reasons for the sequence of events/procedures found in a trial;
  - c. Listening to the students’ approach to the assigned case; and
  - d. Emphasizing the key points, such as the elements to be proved, and the relevance and importance of available legal authority.
4. Subsequent sessions with students should center on the development of proper questioning techniques by the student attorneys and sound testimony by the witnesses. Here an attorney can best serve as a constructive observer and teacher...listening, suggesting and demonstrating to the team.
5. Attorney coaches **should not** prepare opening statements, closing statements, or questions for the students. Students should be encouraged to do as much of their own preparation as possible.

## Florida High School Mock Trial Competition SCORE SHEET/BALLOT

P = Prosecution: \_\_\_\_\_ D = Defense: \_\_\_\_\_  
(Team Code) (Team Code)

Date: \_\_\_\_\_ Round: (circle one)    1    2    3    4    F

Using a scale of **1 to 10**, rate the **P** and **D** in the categories below.  
Do **NOT** use fractional points. Please use a ballpoint pen.

Not Effective      Fair      Good      Excellent      Outstanding  
 1    2    3    4    5 6    7    8    9    10

Score Sheet/ Ballot	P		D
Opening Statement	(    )		(    )
Prosecution's First Witness	(    )	Direct Examination	
	(    )	Witness Presentation	(    )
Prosecution's Second Witness	(    )	Direct Examination	
	(    )	Witness Presentation	(    )
Prosecution's Third Witness	(    )	Direct Examination	
	(    )	Witness Presentation	(    )
Defense's First Witness		Direct Examination	(    )
	(    )	Cross Examination	(    )
Defense's Second Witness		Direct Examination	(    )
	(    )	Cross Examination	(    )
Defense's Third Witness		Direct Examination	(    )
	(    )	Cross Examination	(    )
Closing Argument	(    )		(    )
Ethical Conduct	(    )		(    )
Team Performance	(    )		(    )
<b>Column Totals: DO NOT TIE TEAMS</b>	(    )		(    )

Note: Any errors in *ADDITION* will be corrected by score room staff. Please review your individual scores and return to trial coordinator.

\_\_\_\_\_  
Judge's Signature

**EXPLANATION OF THE PERFORMANCE  
RATINGS USED ON THE SCORE SHEET**  
**Florida High School Mock Trial Competition**

Participants will be rated in the categories on the ballot on a scale of 1-10 points (10 being the highest), according to their roles in the trial. The Scoring Judges are scoring **STUDENT PRESENTATION** in each category. The Scoring Judges are **NOT** scoring the legal merits of the case. Each category is to be evaluated separately and fractional points **ARE NOT** to be awarded. One team **MUST** be awarded more total points than the other. The team winning the majority of the ballots shall win the round.

Judging panels also may recognize outstanding individual presentations by selecting one **MOST EFFECTIVE ATTORNEY** and/or one **MOST EFFECTIVE WITNESS** per round. The decision must be representative of the majority of the panel members.

Judges may **NOT** disclose the score sheet/ballot results or the identities of the Most Effective Attorney and/or Witness to anyone other than the mock trial coordinator. Sign your score sheet/ballot before turning it over to the presiding judge on your panel. **DO NOT ANNOUNCE SCORES OR RESULTS TO THE TEAMS DURING THE CRITIQUE!**

POINT(S)	PERFORMANCE	CRITERIA FOR EVALUATING STUDENT PERFORMANCE
1-2	Not Effective	<ol style="list-style-type: none"> <li>1. Exhibits lack of preparation/understanding of the case materials.</li> <li>2. Communication unclear, disorganized, and ineffective.</li> <li>3. Unsure of self, does not think well on feet, depends heavily on notes.</li> </ol>
3-4	Fair	<ol style="list-style-type: none"> <li>1. Exhibits minimal preparation/understanding of the case materials.</li> <li>2. Communication minimally clear and organized, but lacking in fluency and persuasiveness.</li> <li>3. Minimally self-assured, but lacks confidence under pressure.</li> </ol>
5-6	Good	<ol style="list-style-type: none"> <li>1. Exhibits adequate preparation/understanding of the case materials.</li> <li>2. Communications are clear and understandable, but could be stronger in fluency and persuasiveness.</li> <li>3. Generally self-assured, reads from notes very little.</li> </ol>
7-8	Excellent	<ol style="list-style-type: none"> <li>1. Exhibits mastery of the case materials.</li> <li>2. Communication is clear, organized, fluent and persuasive.</li> <li>3. Thinks well on feet, poised under pressure, does not read from notes.</li> </ol>
9-10	Outstanding	<ol style="list-style-type: none"> <li>1. Superior in qualities listed for 7-8 points' performance.</li> </ol>



**Florida High School Mock Trial Competition**  
**Presiding Judge Ballot**

Prosecution: \_\_\_\_\_ Defense: \_\_\_\_\_  
(Team Code) (Team Code)

Round#: \_\_\_\_\_

Please make your decision, offer some written comments, and hand in this score sheet to the Timekeeper as soon as possible. Thank you for participating.

**I. Performance Evaluation - MANDATORY**

Performance Decision: In my opinion the better mock trial performance was shown by  
the

**PROSECUTION / DEFENSE (Circle One)**

This is a team performance score based on the clarity and effectiveness of arguments presented and the professional demeanor exhibited by team members.

**Note: Do not announce your performance decision.**

**II. Comments**

\_\_\_\_\_  
Judge's Signature & Date

98

# Florida High School Mock Trial Competition

## MOST EFFECTIVE ATTORNEY FORM (Mandatory)

This form is to be completed by **All Judges**

---

Date of Competition Round

---

Enter Team Code

---

Round

### ATTORNEY

*I wish to award the following team  
member the title of*

### ***MOST EFFECTIVE ATTORNEY***

*For this round:*

---

Name of Team Member from Team Roster

*Prosecution's or Defense's Attorney  
(Circle One)*

---

Judge's Signature

99

2005 Florida Mock Trial Competition Case Materials  
The Florida Law Related Education Association, Inc.  
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Tallahassee, Florida 32308 • (850) 386-8223  
Fax (850) 386-8292 • E-mail: [SHarrell@flrea.org](mailto:SHarrell@flrea.org) • [Http://www.flrea.org](http://www.flrea.org)

# Florida High School Mock Trial Competition

## MOST EFFECTIVE WITNESS FORM (Mandatory)

This form is to be completed by **All Judges**

\_\_\_\_\_  
Date of Competition Round

\_\_\_\_\_  
Enter Team Code

\_\_\_\_\_  
Round

### WITNESS

*I wish to award the following team  
member the title of*

***MOST EFFECTIVE  
WITNESS***

*For this round:*

\_\_\_\_\_  
Name of Team Member from Team Roster

*Prosecution's or Defense's Witness  
(Circle One)*

\_\_\_\_\_  
Judge's Signature

100

## **Florida High School Mock Trial Competition** **Legal Professionalism Award Ballot**

Teachers: Please complete this ballot as your official recommendation for the Legal Professionalism Award. Only one entry per school will be accepted. You may wish to discuss with your students their feelings about the professionalism, spirit, and ethical conduct of other teams to aid in your decision. Please refer to the definition and quotes about professionalism.

**Teams should NOT nominate themselves.**

Recommendation #1: \_\_\_\_\_

Comments:

Recommendation #2: \_\_\_\_\_

Comments:

Submitted By: \_\_\_\_\_

School: \_\_\_\_\_

District: \_\_\_\_\_

Signature: \_\_\_\_\_

**Two awards will be presented.**

**Florida High School Mock Trial Competition**  
**Complaint Form**

(Please Print)

Date: \_\_\_\_\_

Person Lodging Dispute/Complaint: \_\_\_\_\_

Affiliated With: \_\_\_\_\_ **(Enter Team Code Only)**

Nature of Dispute/Complaint:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NOTE:** This form may be used to inform the Mock Trial Coordinator and Advisory Committee of any disputes or recommendations relating to the competition including complaints regarding judges. Please be specific regarding the nature of the dispute. This form in **no way** replaces the dispute resolution process as outlined in the rules.

\_\_\_\_\_  
Signature

**Return to Box at Information Desk in Courthouse**



**Team Roster**  
**Florida High School Mock Trial Competition**

Each Prosecution and Defense team should complete this sheet in triplicate. Copies are to be made available to the judging panel (3 copies) before each round. The team code can be filled in after registration at the competition site.

**Note:** Do not place team or attorney coach or teacher coach identifying information on the forms used in competition rounds.

**Please print or type**

\_\_\_\_\_  
Team Code

In this round, students listed on this roster represent the:  
*(Circle One)*

**Prosecution**

**Defense**

**Names of Team Attorneys**

**Identify Tasks to be Presented**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Names of Team Witnesses**

**Identify Roles to be Performed**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## **Professionalism**

The Florida Bar's Standing Committee on Professionalism's working definition of professionalism:

**Professionalism is the pursuit of practice of the highest ideals and tenets of the legal profession. It embraces far more than simply complying with the minimal standards of professional conduct. The essential ingredients of professionalism are character, competence, and commitment.**

Other thoughts on professionalism:

*"...To me, the essence of professionalism is a commitment to develop one's skills and to apply that responsibility to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and willingness to subordinate narrow self-interest in pursuit of the more fundamental goal of public service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. At the same time, lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all."*

Justice Sandra Day O'Connor

*"Professionalism is no more, and no less, than conducting one's self at all times in such a manner as to demonstrate complete candor, honesty, and courtesy in all relationships with clients, associates, courts, and the general public. It is the personification of the accepted standard of conduct so long recognized and observed by able lawyers throughout history, that a lawyer's word is his bond. It encompasses the fundamental belief that a lawyer's primary obligation is to serve his or her client's interests faithfully and completely, with compensation only a secondary concern, and with ultimate justice as the final goal."*

Don Jackson, former chair of  
the Senior Lawyer Division  
of the American Bar  
Association

## **Oath of Admission to The Florida Bar**

The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following oath of admission to the Bar, which the lawyer is sworn on admission to obey and for the willful violation to which disbarment may be had.

“I do solemnly swear:

“I will support the Constitution of the United States and the Constitution of the State of Florida;

“I will maintain the respect due to courts of justice and judicial officers;

“I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

“I will employ for purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

“I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

“I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

“I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone’s cause for lucre or malice. So help me God.”