

**22nd ANNUAL
COLORADO BAR ASSOCIATION
2007 HIGH SCHOOL
MOCK TRIAL PROGRAM**

**Pat and Chris Goodson and
Estate of John Goodson, Deceased
v.
General Palmer Railroad Company**



Presented by the
**COLORADO BAR ASSOCIATION's
Mock Trial Subcommittee,
Public Legal Education Committee, and
Public Legal Education Department
1900 Grant Street, Suite 900
Denver, Colorado 80203-4336**



October 28, 2006

Dear Mock Trial Teacher and Attorney Coaches:

On behalf of the Colorado Bar Association's Mock Trial Subcommittee, we invite and welcome your participation in the 2007 Colorado High School Mock Trial Program. The Mock Trial Subcommittee proudly presents this year's case: a train accident involving three teens before their graduation.

IMPORTANT MESSAGE FOR Teacher and Attorney Coaches: It is your responsibility to review, know, and teach your students the rules of this mock trial program. Each year at our task force meetings, concerns are voiced about issues that are clearly addressed in the rules. The Subcommittee responds to these concerns by closely reviewing and revising the procedures and rules each year. All teams and their coaches are responsible for knowing these rules and teaching them to your students.

We continue our commitment to ensuring professionalism by all participants and supporters of this program. Teachers: It is your responsibility to keep attorney coaches focused on the purpose of this program – education of these students. Attorney coaches: As a representative of the Colorado Bar Association and the legal profession, we strongly remind you that this program's first and foremost purpose is providing the students with a positive educational experience that is focused more on learning and less on winning. Teachers and Attorneys: The CBA expects professional conduct at all times during participation in this program.

Gallery observers and tournament volunteers are expected to conduct themselves inside and outside the courtrooms in the utmost professional manner. They serve as role models of professionalism and representatives of the code of ethics of the legal industry, as well as demonstrating good sportsmanship for our student participants.

The Code of Ethical Conduct memo has been slightly modified again this year. Please share this information and expectation with your students and their parents. Additionally, there is a Code of Ethical and Professional Conduct for both the teachers and attorneys participating in this program. Contentious behavior and poor sportsmanship-like conduct by anyone involved with this program at any related program events will not be tolerated. After serious consideration by the Mock Trial Subcommittee, any team coach that behaves beneath this expectation will subject his or her team to disqualification from current or future mock trial participation.

The Mock Trial Program's Goals remain the same, and are the impetus for all decisions around this program. The Mock Trial Subcommittee reminds all teachers, attorneys, and students involved that although the mock trial program is competitive by nature, it is designed for educational value. The goals of the Colorado High School Mock Trial Competition remain as follows:

- to promote and to further an understanding of and appreciation for American judicial system and court procedures;
- to build and improve basic life skills such as critical thinking, public speaking, reading, reasoning, team collaboration, persuasive argument, and advocacy;
- to increase communication and cooperation between the legal and educational communities;

- to heighten the awareness of current social and legal issues; and
- to provide an educational event that supports communication, cooperation, and respect for students of diverse abilities, backgrounds, and interests.

These goals are consistent with the goals of the National High School Mock Trial Championship, Inc.

We invite returning teachers and attorneys to encourage other peers and schools to participate in this educational program, which encourages greater participation and education of the American Judicial System. We appreciate any support you can offer in promoting this program to other schools, teachers, and attorneys in your immediate and/or surrounding communities.

We also invite you to serve as “mentor” teacher and attorney coaches to new school teams, or to teams that are short-handed or have no attorney coaches. This mentoring pool allows other team coaches to contact you with basic mock trial program questions and/or a request to visit their team for mock trial consultation.

We offer our advance appreciation to all the students, teachers, and attorney coaches, judges, scoring panelists, parents, and community leaders for supporting and participating in this educational event. Your involvement makes this program successful. More important, your participation helps build successful futures for these young participants. We look forward to working with you this year, and wish all of you the best of luck.

Very truly yours,

Honorable Julie Anderson, Co-Chair, CBA Mock Trial Subcommittee
Honorable David P. Cain, Co-Chair, CBA Mock Trial Subcommittee

Special Acknowledgments

CBA Litigation Section

for its continued and generous support of the costs associated with the implementation and coordination of the CBA High School Mock Trial Program.

The Colorado Bar Foundation

for its continued and generous support of the 2007 Colorado State Champion's travel to the National High School Mock Trial Championship, Inc. in Dallas, Texas

Our thanks to both the Colorado Bar Foundation and the CBA Litigation Section for their generous support of this law-related educational program!

2007 COLORADO MOCK TRIAL CASE PROBLEM

Pat and Chris Goodson and
Estate of John Goodson, Deceased
V.
General Palmer Railroad Company

*The 22nd Annual CBA High School Mock Trial Program
is a sponsored activity of the*

**Colorado Bar Association Public Legal Education Committee
Honorable Julie E. Anderson, Co-Chair
Honorable David P. Cain, Co-Chair**

Organized by the
**Colorado Bar Association Mock Trial Subcommittee
Honorable Julie E. Anderson, Co-Chair
Honorable David P. Cain, Co-Chair**

State Tournament Coordinator
Carolyn P. Gravit
Director, Public Legal Education
Colorado Bar Association

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Program Coordinator, Public Legal Education
Colorado Bar Association

Case Materials
Members of the CBA Mock Trial Subcommittee
Illinois State Bar Association

Special thanks to:

Colorado Bar Association Litigation Section

Colorado Bar Foundation

Colorado Bar Association Staff

COLORADO HIGH SCHOOL MOCK TRIAL PROGRAM

Benefits of the mock trial program extend beyond the rewards of competing against one's peers or winning a round of competition. The impact of the program is measured by successfully attaining the following objectives:

- to further the understanding of court procedures and the legal system;
- to improve proficiency in the basic skills of listening, speaking, reading, team collaboration, persuasive argument, and reasoning;
- to promote better communication and cooperation between the educational and legal communities;
- to provide an educational and competitive event in an academic atmosphere;
- to promote cooperation among students of various backgrounds, abilities, and interests;
- to promote ethical and professional sportsmanship within an arena of team and individual competition.

The education of high school students is the primary goal of the mock trial program. Teacher and attorney coaches are reminded of their responsibilities to keep the competitive spirit at a reasonable and professional level before, during, and after tournaments.

In 2006, ninety-five mock trial teams participated in the CBA Mock Trial Program. Only twenty-two teams advanced to the State tournament, and only one of these teams was named the State Champion. We remind teachers and attorney coaches that they must prepare their students to be ready to accept the reality that they may experience disappointment. The expectations of the Colorado Bar Association and its Mock Trial Subcommittee are that students, teacher and attorney coaches, as well as gallery observers, accept the outcome in a mature and professional manner. Coaches can help prepare students for a successful outcome by placing the highest value on excellent preparation and performance, rather than on winning or losing. Students need to be prepared to handle the rigors of the tournament with dignity and class. Anger, bad sportsmanship, and frustration demonstrated by students AND teacher/attorney coaches are not the objectives of the mock trial program, and will not be tolerated by the organizing committee.

Our goal is to create an event in which students and coaches alike approach their participation as an enjoyable and rewarding learning experience.

2006–07 Mock Trial Dates to Remember

Case Announcement Brochure Released	October 2, 2006
Case Materials Available —Hardcopy —Internet/Office Pickup	Mailed October 31, 2006 November 1, 2006
Early Registration (\$75/team) Deadline	December 1, 2006
Late Registration (\$150/team) Deadline	January 3, 2007
Mock Trial Attorney/Teacher Coach Orientation	January 17, 2007
Deadline to Drop a Team	January 31, 2007
Local Tournaments	Between February 3–18, 2007
State Tournament – Brighton, CO	March 2–3, 2007
National Championship – Dallas, TX	May 10–12, 2007

Team Registration: Schools should register only those teams they plan to take to local tournaments. Please do not register multiple teams if the intent is to drop teams as they approach tournament time. Please see Team Drop Penalties below.

The team sponsor is responsible for completing the registration process, *i.e.*, responsible for not only the application but also the registration fee. If your school/district requires an invoice for payment, use the announcement brochure as the invoice for that purpose.

Team Drop Penalties: Dropping teams places a difficult burden on tournament coordinators, especially when doing so results in uneven numbers of teams in tournament fields, as well as volunteer and courtroom issues.

Any schools that drop a registered team prior to the January 31 deadline will be charged a \$35 administration fee that will be deducted from the registration refund. Any teams that drop after the January 31 team drop deadline will forfeit their entire registration fee.

2007 Regional Tournaments Dates and Contact Information

1st JD—Jefferson County North (north of Highway 6)

Date: February 16 & 17, 2007

Coordinator: Tom Walsh, (303) 279-7229

1st JD—Jefferson County South (south of Highway 6)

Date: February 6, 7, 8 & 9, 2007

Coordinators: Magistrate KJ Moore (303) 271-6209; Tom Walsh, (303) 279-7229

Adams/Broomfield Counties

Date: February 16 & 17, 2007

Coordinator: Michael Goodbee, (303) 659-7720

Arapahoe County

Date: February 9 & 10, 2007

Coordinators: Angel McCall, (303) 797-2227; Judge Christine Chauche, (303) 649-6237; Judge Nancy Hopf, (303) 649-6332

Boulder County

Date: February 2 & 3, 2007

Coordinator: Christine Hylbert, (303) 440-4758

Denver City/County

Date: February 9 & 10, 2007

Coordinators: Carolyn Gravit, (303)-824-5323; Meghan Seck, (303) 824-5303

Southern Colorado

Date: February 2, 3 & 6, 2007

Coordinators: Jack Donley, (719) 471-1650; Jason Downie, (719) 579-6500; Patricia Kelly, (719) 385-5909

Northern Colorado

Date: February 9 & 10, 2007

Coordinator: Linda Connors, (970) 481-4796

Western Slope

Date: February 9 & 10, 2007

Coordinator: John Siddeek, (970) 242-4903

Colorado High School Mock Trial State Tournament

Date: March 2 & 3, 2007

Location: Brighton, Colorado

National High School Mock Trial Tournament

Date: May 10 & 12, 2007

Location: Dallas, Texas

CBA Mock Trial State Tournament Coordinator:

Carolyn P. Gravit, (303) 824-5323 or (800) 332-6736

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Tournament Information, Judging, and Competition Rules

General Information

The following rules of the Colorado Mock Trial Competition will govern conduct of competitions at local and state tournaments. However, local tournaments may deviate from these rules. Therefore, it is advisable to check with your regional tournament coordinator prior to local tournaments regarding any unique local changes and/or deviations from these guidelines. For example, the local tournament may or may not power match, and may or may not include a championship round.

A. Local Discretion: Regional tournament coordinators have the liberty and the responsibility to conduct their tournaments as determined by their local bar association and by the needs of the local courts. The manner in which the tournaments are scheduled, teams are matched, teams are scored, teams advance, and winners are named is as determined by the local Tournament Coordinator. However, deviations from the state procedures should be approved by the Colorado Bar Association (CBA) Mock Trial Subcommittee prior to the commencement of the local tournament.

B. Local Media Coverage: Regional tournament coordinators are encouraged to maximize media coverage of mock trial events. In doing so, the media may attend mock trial rounds to cover the event and take pictures, audio and/or videotape. Media representatives must be briefed to minimize disruptions to the trial round in process.

C. Mock Trial Rules: The Colorado mock trial regional and state competitions are governed by the enclosed rules. Any request for clarification of these rules or the case materials shall be submitted to the CBA Mock Trial Subcommittee **in writing no later than January 5, 2007**. Written responses with the posed questions will be provided to all registered teams as soon as practical and prior to the scheduled competition (local or state championship tournament). The regional or state tournament coordinator should distribute any such clarification to each registered team.

D. Competition Conduct: All teams are responsible for the conduct of persons associated with their teams throughout the mock trial event, including parents, peers and other team supporters. Failure of team associates to observe appropriate conduct may subject the team to disqualification at the sole discretion of the local tournament or state coordinator and/or coordinating committees. Inappropriate behavior may include, but is not limited to, coaching (audible or visual) from the gallery, demonstrative reactions to rulings or results, or disruptions from any individual in the courtroom.

Tournament Format

A. Local Tournaments

1. **Tournament Assignments:** After registration closes, teams will be assigned to local tournaments based on both geography and local bar association resources. Some teams may be assigned to different local tournaments to create an even number of teams for the tournament. Each local tournament will advance its fair share of teams to compete in the state tournament. Fair share will be determined by calculating the ratio of the number of teams in the state tournament to the number of teams registered in the state. Each local tournament will advance that same percentage of teams to the state tournament. For example, if there are 72 teams registered statewide and a total of 18 advance to the state tournament, then 25% of a local tournament field will advance. Thus, if a local tournament has 13 teams, that tournament will advance 25% of its field or 3 teams (25% of 13 = 3.25 or 3 teams) to the state tournament.

2. **Minimum Number of Teams:** A regional tournament should have at least six teams registered with the CBA to advance a team to the state tournament. A tournament may be held with fewer than six teams at the discretion of the Committee. The CBA Public Legal Education Committee reserves the right to determine the geographical boundaries for any local tournament, as well as to determine the number of teams local tournaments may advance to the state championship tournament.

3. **Minimum Number of Schools:** A regional tournament must have at least two high schools represented to advance a team to the state tournament. A tournament may be held with only one high school involved; however, such a tournament would not be allowed to advance a team to the state tournament.

4. **Tournament Structure:** Tournament coordinators are encouraged to structure their tournaments to include the following:

a. Four rounds of competition, with a random first round draw and subsequent rounds paired using power matching based on the following criteria used in descending order (wins/losses; total number of ballots won; point spread—margin of victory/defeat; and total points earned);

b. An optional championship round;

c. Keeping the results of individual rounds confidential until completion of the tournament; and

d. State tournament procedures regarding composition of scoring panels, judging, and scoring considerations.

5. Tournaments may be scheduled over several weekdays, over a weekend or during weeknights to take advantage of local resources (e.g., judges, courtrooms, and scoring panelists).

6. Regional tournaments must be scheduled to conclude no later than two weeks prior to the state tournament.

7. Tournament coordinators are encouraged to provide judge and scoring panelist training prior to each round in the tournament. Areas to emphasize include: scoring ranges and definitions, disputes, performance vs. merit scoring, technical vs. performance scoring, unfair extrapolations, witnesses bound by statements, and material omissions.

8. Regional Tournament coordinators should restrict gallery attendance of the championship round to teams (members and coaches) that will NOT be advancing to the state tournament and family, friends, and supporters of the competing teams.

9. Tournament coordinators are encouraged to send copies of score sheets to the competitors following the conclusion of their tournaments.

10. Tournament coordinators will notify the CBA Mock Trial Subcommittee of the teams they are advancing to the state tournament and which team is their number one seed by certification.

11. Certification requires that the tournament coordinators collect an official team roster (submitted upon the start of the local tournament) from each team competing in a local tournament. The official team rosters of those teams advancing to the state tournament must be forwarded to the State Coordinator immediately upon completion of the local tournament. This procedure will verify that only the team members listed on the local tournament roster will be allowed to compete in the state tournament.

12. Tournament Coordinators are encouraged to provide students with certificates of participation.

13. Local bar associations may deviate from these guidelines as required by limitations on local facilities and volunteer resources. Deviations from these guidelines should be approved by the CBA Mock Trial Subcommittee prior to the commencement of the local tournament.

B. State Tournament

1. **Maximum Number of Teams:** The number of teams advancing to the state tournament will be determined after the total number of teams competing at the local levels throughout the state has been solidified. If a school/team that has earned the chance to compete at the state tournament chooses not to advance to the state tournament, the host of the local tournament will select the team next in line of succession to advance to the state tournament.

2. **Maximum Number of Teams from One School:** No more than two teams from any one school may advance to the state tournament.

3. **Tournament Structure:** The state tournament shall be conducted as follows:

a. Four rounds of competition, with a random first round draw (with the exception that no regional number one seed will be paired against another regional number one seed) and subsequent rounds paired using power matching based on the following criteria used in descending order (wins/losses; total number of ballots won; point spread—margin of victory/defeat; and, total points earned);

b. A championship round;

- c. The results of individual rounds will be kept confidential until completion of the tournament;
 - d. State tournament procedures regarding composition of scoring panels, judging, and scoring considerations; and
 - e. The winner of the championship round will be eligible to represent Colorado at the National High School Mock Trial Tournament on Mother's Day weekend.
4. **Tournament Dates:** The state tournament will be a two-day tournament, preferably Friday and Saturday, with two trial rounds of competition on Friday afternoon and two rounds of competition and the championship round on Saturday.
5. **Tournament Results:** Copies of score sheets and final team standings will be mailed to the competitors following the conclusion of the competition.
6. **Advancement to Nationals:** If, for any reason, the Colorado champion cannot participate at Nationals, the second place team will be eligible. If neither of these teams can participate, the CBA Mock Trial Subcommittee may select a representative team.
7. **Team Composition at Nationals:** At the national tournament, each state is limited to eight students (six participating as witnesses and attorneys, and two alternates). The Colorado Bar Association, thanks to a grant from the Colorado Bar Foundation and the Colorado Bar Litigation Section, normally will make a financial donation to the team participating in the national championship to help defray travel expenses; however, the team and its school will be primarily responsible to raise funds as needed.

Rules of the Competition

A. Administration

Rule 1.1 Rules

All trials will be governed by the Rules of the Colorado High School Mock Trial Competition, the Colorado High School Rules of Evidence, and the specific courtroom location rules of decorum and security.

Questions or request for interpretation of these rules shall be submitted to the State Coordinator and the CBA Mock Trial Subcommittee.

Rule 1.2 Code of Ethical Conduct

The Rules of Competition, the attached Code of Ethical Conduct, as well as the rules of the specific courthouse for decorum and security, must be followed by all team participants, coaches, non-participating team members, and observers. The State Tournament Coordinator and the CBA Mock Trial Subcommittee possess discretion to impose sanctions, up to and including forfeiture of a round or disqualification from the tournament, for any disruptive behavior occurring while a team is present for the state tournament including, but not limited to: flagrant rule violations; horseplay; inappropriate comments; inappropriate reactions to judges' rulings, team pairings or team results; other unprofessional conduct; property damage; and/or, breaches of decorum that affect the conduct of a trial or that impugn the reputation or integrity of any team, school, participant, court officer, judge, or the mock trial program.

Excessive littering of, or property damage to, a courtroom will result in an automatic cleaning and/or replacement fee. Cleaning fees generally run a minimum of \$250. Should the assessed team refuse to pay, an assessment of the costs will be added to the next year competition registration fee.

Food and beverages are not allowed in the courtrooms or any area of the courthouse not designated as an eating area. Teams bringing food or beverages into the courtrooms or any area not designated for consuming food are subject to sanctions up to and including forfeiture of a round or disqualification from the tournament. Additionally, any offending team may be charged a cleaning fee as described above.

Rule 1.2.1 Team Conduct

Team members are bound by the Rules of Competition, the Code of Ethical Conduct, and the rules of the specific location courthouse. Students also shall strive to model the highest standards of sportsmanship and ethical conduct at all times.

Rule 1.2.2 Coaches Conduct

Attorney and teacher coaches shall uphold the Rules of Competition, the Code of Ethical Conduct and the rules of the specific location courthouse. Additionally, coaches shall comply with their own employment professional codes, rules, and

ethical standards. Finally, coaches shall instill in their student team members, team parents, and other team gallery observers the highest standards of sportsmanship and ethical behavior.

Rule 1.2.3 Gallery Conduct

Gallery observers shall uphold the Code of Ethical Conduct and the rules of the specific location courthouse.

B. Teams

Rule 2.1 Team Composition

Each team shall consist of a minimum of six students and a maximum of twelve students. Only six students on a team may compete in any given round (three attorneys and three witnesses). Each team member shall be listed on the official team roster submitted at the local tournament level. The team roster will become official at the time of its submission at the local tournament level and thereafter remain fixed through the state and national tournaments. At no time will a student who is not listed on the local tournament team roster be allowed to compete at the state or national tournaments.

Rule 2.1.1 Student Eligibility

Students must be currently enrolled as full-time students in their schools in order to participate in the state and national tournaments. There is one exception to this rule for students who have graduated from their school early. To be eligible under this exception, the student must have graduated in good standing within one semester of the mock trial competition and have been a full-time student of the current senior class at the beginning of the current school year.

Teams must be comprised of students from the same high school.

Requests for exceptions to this rule must be submitted to the CBA Mock Trial Subcommittee.

Rule 2.1.2 Timekeeper

Each team shall provide a timekeeper. The timekeeper may not be a participating team member or a team teacher coach or team attorney coach.

Rule 2.2 General Team Duties

Teams shall present both sides of the case. For each trial round, teams shall use three students as attorneys and three students as witnesses.

In the event that a team is missing one of its participating team members in a trial round, for example, due to illness or failure to appear, the missing participating team member will receive a "0" point score for each performance part he/she misses in that trial round and the opposing team member(s) impacted by the missing person will receive a "10" point score

for their role(s). This rule applies even if another participating team member stands-in for the missing member. A non-participating member may fill in for the missing participating member with no penalty. See Rule 8.1.2 for more details.

Team members shall evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross-examination. In addition, one attorney will present the opening statement and another attorney will present the closing argument.

The attorney who examines a particular witness on direct examination is the only team member who may make objections to the opposing attorney's cross-examination questions. The attorney who cross-examines a witness will be the only team member permitted to make objections during the direct examination of that witness.

Each team shall call all of their witnesses. The order of the witnesses being called to the stand is at the discretion of the team. Witnesses may be called to the stand only by their own team attorney conducting that witness's direct examination (case-in-chief). Once direct examination is completed, the opposing team may cross-examine the witness. Re-direct and re-cross will be permitted only at the discretion of the presiding judge. Witnesses may not be recalled by either side.

Rule 2.2.1 Code of Ethical Conduct (Team Roster)

The original Code of Ethical Conduct must be signed by each member of the team, the timekeeper(s), and coach(es) and submitted at the time of the tournament check-in. **Teams shall use the Code of Ethical Conduct Team Roster attached to these rules.** Copies of the Code of Ethical Conduct should not be provided to the presiding judges or scoring panelists during the rounds of competition.

Rule 2.2.2 Trial Rosters

Copies of the trial roster must be completed and duplicated by each team prior to arrival at the courthouse. Teams must be identified on the roster by the code assigned to them at registration. No team origin identifying comments, symbols, or pictures shall appear on the form. Before the beginning of the trial, the teams must exchange copies of the trial roster. Teams shall use the Trial Roster attached to these rules.

C. The Problem

Rule 3.1 The Problem

The problem will consist of a fact pattern that may contain any or all of the following: statement of facts, indictment, stipulations, witness statements, affidavits, jury instructions, exhibits, case law, etc.

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics that would allow them to be played by either males or females (gender neutral). Each side shall call each of their three witnesses to testify during their case-in-chief.

Rule 3.1.1 Stipulations

Stipulations may not be disputed at trial.

Rule 3.1.2 Witness Statements

Witness statements may not be altered.

D. Trial Logistics

Rule 4.1 Scoring Panel Composition

The scoring panel shall consist of at least three individuals. The composition of the panel and the role of the presiding judge will be set at the discretion of the State Tournament Coordinator. The State Tournament Coordinator is encouraged to integrate educators and community representatives onto scoring panels. However, each panel shall have at least one attorney as a scoring judge. The following are examples of potential scoring panels.

One presiding judge and three attorneys as scoring judges

One presiding judge and two attorneys and one educator/community representative as scoring judges

One presiding/scoring judge and two attorneys as scoring judges

One presiding/scoring judge and one attorney and one educator/community representative as scoring judges

Rule 4.2 Videotaping/Photography

Any team has the option to refuse participation in videotaping, tape recording, and still photography by opposing teams. However, videotaping, tape recording, and still photography by the media and the Colorado Bar Association will be allowed.

If either competing team videotapes or tape-records a trial round, the trial tapes are to be used by the two competing teams only. These tapes shall not be given to, traded, exchanged, or sold to another team under any circumstances without the express written consent of the CBA Mock Trial Subcommittee. Violations of this rule may result in sanctions up to and including disqualification.

Rule 4.3 Viewing a Trial

Non-participating team members (team members outside the bar), alternates, coaches, teacher-sponsors, parents, siblings, or any other persons directly associated with a mock trial team are not allowed to view another team's performances even if the team is from the same school, so long as the individual's team remains in the competition. The one exception to this rule is that teacher or attorney coaches who are the parents of students competing on a team different

from the team the teacher or attorney are coaching may watch their own child during the fourth round and the championship round of competition.

Rule 4.3.1 Exception 1: Teacher or attorney coaches who are the parents of students competing on a team different than the team the teacher or attorney are coaching may watch their own child during the fourth round and the championship round of competition.

Rule 4.3.2 Exception 2: Any attorney coach, teacher-sponsor, parent, sibling or other spectator associated with the school of a mock trial team may observe another team's round if they obtain permission from each team participating in that round. This exception must be disclosed to the presiding judge during preliminary matters.

Rule 4.4 Trial Communication

Coaches, teachers, non-participating team members, and observers shall not talk to, signal, hand notes to, communicate with, or coach their teams during trial. This rule remains in force during any recess taken. Participating team members (those inside the bar) may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Coaches, teachers, non-participating team members (those outside the bar), and observers must remain outside the bar in the gallery of the courtroom at all times during the trial, even if an emergency recess is taken.

If the CBA Mock Trial Subcommittee does not provide a timekeeper and a team chooses to use their own timekeeper, they may place the timekeeper inside the bar. Signaling of time by the team's timekeeper shall not be considered a violation of this rule.

Rule 4.5 Courtroom Seating

The Plaintiff/Prosecution shall be seated closest to the jury box. No team shall rearrange the courtroom without prior permission of the presiding judge or courtroom monitor. Each team shall have all three witnesses and three attorneys seated inside the bar. It is up to the Defense team whether the Defendant sits at the counsel table during the trial.

Rule 4.6 Jury Trial

The case will be tried to a jury. Presentations are to be made to the presiding judge and scoring panelists. Teams may address the scoring panel as the jury.

Rule 4.7 Precursory Documents

Copies of the trial roster shall be provided to the presiding judge and the scoring panelists at the commencement of the trial. Additionally, the Prosecution/Plaintiff's attorney presenting the opening statement shall provide a copy of the stipulations to

the presiding judge and the scoring panelists just prior to beginning the opening statement.

Team members may collect these documents at the end of the trial for use in subsequent rounds.

The stipulations, indictment, or the charge to the jury shall not be read into the record. Stipulations shall be considered part of the trial record and can be discussed accordingly throughout the trial.

The teams shall not provide copies of the Code of Ethical Conduct (Team Roster) to the presiding judge or the scoring panelists.

Rule 4.8 Supplemental Material/Costuming

Teams may refer only to material provided in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless specifically authorized in the case materials. Costuming is defined as hairstyles, clothing, accessories and make-up that are case specific.

The only documents that teams may present to the presiding judge or scoring panelists are the trial rosters and the individual exhibits provided in the case material. These exhibits may be tendered to the presiding judge and scoring panelist at the discretion of the team. Exhibit notebooks are not permitted.

In the event a team member appears at trial in costume or uses a prop, at the presiding judge's discretion, the team may be disqualified. If the presiding judge decides to proceed with the trial, the presiding judge will meet with the scoring panel to discuss the penalty assessed against the team. The minimum penalty imposed for use of costumes or props is two ballots (not points).

Rule 4.9 Courtroom Decorum

All team members will act in a polite and professional manner at all times.

Rule 4.9.1 Attorney Demeanor

Unless excused by the presiding judge, attorneys will stand during opening statements, direct and cross-examinations, objections, and closing arguments.

Rule 4.9.2 Addressing Opposing Counsel

Attorneys should not address opposing counsel directly during the trial.

Rule 4.9.3 Addressing the Presiding Judge

Attorneys shall address the presiding judge as “Your Honor” or “Judge _____.”

Rule 4.9.4 Witness Demeanor

Witnesses are not permitted to read their statements/affidavits verbatim in the trial. Additionally, the witnesses are not permitted to refer to their written statements/affidavits during the trial, except to refresh recollection (direct) or impeach (cross). If asked questions outside the scope of their statements/affidavits, they may respond in accordance with Rule 6.5. Testimony must not be inconsistent with facts set forth in the witness' statements/affidavits.

E. Presiding Judge Pre-Trial Procedures

At the beginning of the trial, the presiding judge will handle the following pretrial matters:

1. Ask each side if it is ready for trial.
2. Ask each side to provide the judge and scoring panelists with copies of its trial roster with the team's code. No words, symbols, or other marks that identify the team by their school shall be on the trial roster.
3. Confirm that if video recorders are present and being used, then both teams have approved the taping of the round. (Coaches/gallery are not permitted to tape the trials without permission.)
4. Inform teams, as well as gallery members, that the Colorado Bar Association may be taking photographs of the competition during the round, and that team participation in the state tournament grants automatic permission and the use of these photos by the Colorado Bar Association.
5. Ask anyone in the gallery who is connected with teams not competing in that round (student members and coaches of other schools or of the same school but a different team) to leave the courtroom. There is one exception to this rule. Teacher or attorney coaches who are the parents of students competing on a team different than the team the teacher or attorney is coaching may watch his/her own child during the fourth round and the championship round of competition.
6. Remind the teams that no recesses will be allowed, with the exception of those for a health emergency, and especially not between the end of witness examination and the beginning of closing argument.
7. Ask the scoring panelists if they recognize either team or any of the team members. If any panelist recognizes a team or a team member, the judge will notify the courtroom monitor, the State Tournament Coordinator, or a CBA Mock Trial Subcommittee member, and arrangements may be made to replace the panelist. (Team members and team coaches may raise an objection regarding a particular scoring panelist at this time as a preliminary matter. The objection is deemed waived if it is not made as a preliminary matter.)

8. Remind the teams and their coaches that any disputes arising out of this competition must be reported in accordance with the competition rules.
9. Remind the teams that their compliance with time requirements will be considered in scoring individual performances.
10. Confirm that no coach or team member (other than a timekeeper, if a timekeeper is not provided by the competition committee) is seated in the jury box.
11. Ask each side to introduce the participating team members (attorneys and witnesses).
12. Swear in the team members, the gallery, the scoring panelists, and the witnesses.

The presiding judge will ask all members in the courtroom to stand for the swearing in and explain that, in an effort to maintain a level of professionalism and to uphold the Code of Ethical Conduct during and after these mock trial proceedings, all members of the gallery, scoring panels, and teams shall stand for the swearing in to the oath of the Code of Ethical Conduct.

“Team members, please raise your right hands. Team members, do you promise that the presentation you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?”

“Gallery members, including teacher and attorney coaches, family members and friends, please raise your right hands. Do you promise to represent yourselves as positive role models, and to behave in a manner that exemplifies ethical and professional sportsmanship during and after this mock trial round?”

“Scoring Panelists, please raise your right hands. Do you promise to adjudicate the mock trial competition as fairly and objectively as possible in accordance with the facts, procedures and rules of the mock trial competition?”

Once all have been sworn to the Code of Ethical Conduct, the presiding judge will ask all but the witnesses to sit. Then the witnesses shall be sworn in as follows:

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

F. General Trial Information

Rule 5.1 Sequestration

The teams may not invoke the rule of witness sequestration.

Rule 5.2 Bench Conferences

Teams should not request bench conferences. However, if a bench conference is requested and granted by the presiding judge, it shall be held in open court for educational and scoring purposes. Time will stop for bench conferences. The timekeeper shall resume time upon the presiding judge's order to proceed.

Rule 5.3 Motions

No motions may be made except a motion for an emergency recess.

Rule 5.3.1 Emergencies

A motion for a recess may be used only in the event of a health emergency. Should the recess be granted, to the greatest extent possible, the team members are to remain in place. Teams are not to communicate with anyone outside the bar during the recess.

Rule 5.4 Offers of Proof

No offers of proof may be requested or tendered.

Rule 5.5 *Voir Dire*

Voir dire examination of a lay witness is not permitted. The presiding judge may allow brief *voir dire* of an expert witness regarding the witness's qualifications. Time used for *voir dire* is chargeable time, *i.e.*, counts toward total time limit of the team's direct and cross-examinations.

Rule 5.6 Use of Notes

Attorneys are not restricted from the use of notes while presenting any segment of their case. Additionally, participating attorneys and witnesses may communicate during the trial with each other verbally or through the use of notes.

G. Trial

Rule 6.1 Trial Sequence

The trial sequence is as follows:

1. Plaintiff/Prosecution Opening Statement
2. Defense Opening Statement
3. Plaintiff/Prosecution Case-in-Chief
 - a. Plaintiff/Prosecution direct examination of their first witness.
 - b. Defense cross-examination of the first witness.

- c. Plaintiff/Prosecution re-direct examination of first witness (optional and only with permission of presiding judge).
 - d. Defense re-cross-examination of the first witness (optional and only if re-direct has occurred). Re-cross will be limited to the scope of re-direct.
 - e. Same process as steps a-d for the second witness.
 - f. Same process as steps a-d for the third witness.
4. Defense Case-in-Chief
- a. Defense direct examination of its first witness.
 - b. Plaintiff/Prosecution cross-examination of the first witness.
 - c. Defense re-direct examination of first witness (optional and only with permission of presiding judge).
 - d. Plaintiff/Prosecution re-cross-examination of the first witness (optional and only if re-direct has occurred). Re-cross will be limited to the scope of re-direct.
 - e. Same process as steps a-d for the second witness.
 - f. Same process as steps a-d for the third witness.
5. Prosecution/Plaintiff Closing Argument
6. Defense Closing Argument
7. Prosecution/Plaintiff Rebuttal Argument if properly reserved (optional)

If the Prosecution/Plaintiff reserved a portion of its closing time for a rebuttal, the rebuttal argument shall be 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.

Rule 6.2 Re-Direct and Re-Cross-Examinations

Re-direct and re-cross-examinations are permitted at the discretion of the presiding judge. If re-direct examination is permitted, the scope of the re-cross-examination will be limited to the scope of the re-direct examination.

Rule 6.3 Scope of Closing Arguments

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

Rule 6.4 Time Keeping

Time limits are mandatory and will be strictly enforced. Only non-participating student timekeepers are allowed to keep time for teams.

When a student timekeeper displays the time remaining to a student performer, the student timekeeper shall also display the time remaining to the presiding judge. Both student timekeepers should track time for both sides and show their time cards during the trial round. Both student timekeepers should confer with each other after each trial segment to ascertain time discrepancies. If student timekeepers have a time discrepancy greater than 15 seconds, they should notify the presiding judge. When time runs out for a specific segment of the trial, the student timekeepers must stand and say "STOP" in a voice loud enough to be heard by the performing student, the presiding judge and the scoring panelists. Failure to do so may subject the violating team to disqualification. The following time limits shall be used.

Opening statement -	5 minutes per side
Direct examination and optional Re-direct -	25 minutes per side
Cross examination and optional Re-cross -	20 minutes per side
Plaintiff/Prosecution Closing Argument and Optional Rebuttal Argument -	5 minutes
Defense Closing Argument	5 minutes

Rule 6.4.1 Time Extensions

The presiding judge shall not grant time extensions.

If time for a specific segment of the trial has expired and an attorney continues, the scoring panelists will determine individually the impact on the individual's performance score.

Rule 6.4.2 Timing Objections, Delays or Bench Conferences

Time for objections, extensive questioning by the presiding judge or administering of the oaths will not be counted as part of the allotted time during examination of witnesses, opening statements or closing arguments.

Time does not stop for introduction of exhibits.

Time shall stop for bench conferences. Please see Rule 5.2.

Rule 6.4.3 Time Keeping Aids

Student timekeepers should use time keeping place cards. These cards may not exceed 8 1/2 X 11" in size. Additionally, student timekeepers should use a stopwatch or similar timing device. All timekeepers should have time keeping place cards in the following increments: 20 minutes, 15 minutes, 10 minutes, 5 minutes, 4 minutes, 3 minutes, 2 minutes, 1 minute, 40 seconds, and 20 seconds. Teams may use additional place cards at different increments at their discretion. Please see attachment for additional timekeeping tools for use at each team's discretion.

Rule 6.4.4 DISCREPANCIES IN TIME BETWEEN TEAM TIMEKEEPERS

If timing variations of 15 seconds or more occur at the completion of any segment of the trial, timekeepers are to notify the presiding judge that a time discrepancy has occurred.

The presiding judge will rule on any time discrepancy before the trial continues. Timekeepers will synchronize stop watches to match the presiding judge's ruling (for example if the Plaintiff/Prosecution stop watch indicates 2 minutes left on a direct examination and the Defense stop watch indicates time is expired, the presiding judge might decide to split the difference in the timing variation and give Plaintiff/Prosecution 1 minute to conclude the direct examination. Defense would adjust timing to allow for the 1 minute timing decision.)

Any discrepancies between timekeepers less than 15 seconds will not be considered a violation.

Timekeepers may raise time discrepancies only at the end of each segment of the trial presentation. No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of timing disputes are final.

Rule 6.5 Witnesses Bound by Statements

Each witness is bound by the facts contained in his/her own statement/affidavit, the Statement of Facts if the witness was present during the event described in the Statement of Facts, and/or any necessary documentation relevant to his/her testimony.

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

Rule 6.5.1 Unfair Extrapolations

Unfair extrapolations are not permitted. Unfair extrapolations are the subject of objections but best addressed through impeachment and/or closing arguments.

Specifically, unfair extrapolations are:

- a. statements made by a witness that are not contained in the witness's statement/affidavit but touch on a pivotal issue in the case; or
- b. statements made by a witness that are not contained in the Statement of Facts or covered by an event in the Statement of Facts that the witness was present for but touch on a pivotal issue in the case; or
- c. statements made by a witness that are not contained in any necessary documentation relevant to the witness's testimony but touch on a pivotal issue in the case; or
- d. statements made by a witness that are not a reasonable inference from the witness's statement, affidavit, Statement of Facts or necessary documentation relevant to the witness's testimony but touch on a pivotal issue in the case.

It shall not be considered an unfair extrapolation for a witness to testify that he/she agrees or disagrees with what is contained in another witness's statement/affidavit.

If a witness is asked a question that calls for an inference, for information that the other side believes to be admissible, or for any information not in the witness's statement, the following response may be used: "I'm sorry, that information is not in the case materials. I cannot respond to your question." In the alternative, the witness may respond to the question with a creative, reasonable answer, as long as the response is not considered an unfair extrapolation. The creative answers must not be inconsistent with the facts contained in the witness's statement/affidavit.

Rule 6.5.2 Unfair Extrapolation Objection

No unfair extrapolation objections are permitted. Unfair extrapolations are best addressed through impeachment and/or in closing arguments. See Rule 6.5.1 and Rule 6.6.3.

Rule 6.6 Objections

Attorneys shall state their objections loudly enough to be heard by the presiding judge, scoring panelists, and opposing counsel. Objections should begin by stating, "Objection, your honor." Once an attorney has the attention of the presiding judge, the attorney should state the basis for the objection.

Rule 6.6.1 List of Objections

The following is a list of objections that may be used. This is not an exhaustive list. Teams are not precluded from raising additional objections that are available under the Colorado High School Mock Trial Rules of Evidence.

- a. Ambiguous or Unintelligible
- b. Argumentative

c. Asked and Answered

- d. Assuming Facts Not in Evidence
- e. Compound Question
- f. Cumulative
- g. Hearsay
- h. Improper Foundation
- i. Improper Lay Opinion
- j. Lack of Foundation
- k. Lack of Personal Knowledge
- l. Leading
- m. Narrative
- n. Relevant
- o. Speculative

Rule 6.6.2 Opening Statement or Closing Argument Objections

No objections shall be raised during opening statements or during closing arguments. If a team believes that an objection would have been proper during the opposing team's opening statement or closing argument, the team member presenting the same segment of the trial may, following the opening statement or closing argument, stand to be recognized by the presiding judge and once recognized, state, "If I had been permitted to object during the [opening statement/closing argument] I would have objected to _____." The presiding judge will not rule on this "objection." The presiding judge and scoring panelists will weigh the "objection" individually. No rebuttal by the opposing team will be heard.

Rule 6.6.3 Unfair Extrapolation Objection

No unfair extrapolation objections are permitted. Unfair extrapolations are bets addressed through impeachment and/or in closing arguments. See Rule 6.5.1 and 6.5.2.

Rule 6.7 Exhibits

Exhibits can be admitted into evidence only when a sequence of proper procedural steps has been followed. These steps are part of a litany that should be smoothly and efficiently demonstrated by the attorney for each exhibit admitted.

All evidence are pre-marked as exhibits.

Rule 6.7.1 Steps for Exhibit Admission

The following is only offered as examples.

- a. Show the exhibit to opposing counsel or offer them a copy of the exhibit. “Your Honor, let the record reflect that I (am showing/have given) opposing counsel a copy of Exhibit A.”
- b. Obtain permission of the presiding judge to approach the witness. “Your honor, may I approach the witness.”
- c. Show the exhibit to the witness. “Your Honor, let the record reflect I am showing the witness a copy of Exhibit A.”
- d. Lay the proper foundation for the exhibit.
- e. Move for admission of the exhibit into evidence. “Your Honor, at this time I move for the admission of Exhibit A.”
- f. Obtain permission of the presiding judge to publish the exhibit to the jury. “Your Honor, permission to publish Exhibit A to the jury.”
- g. Publish the exhibit.

H. TRIAL CONCLUSION

Rule 7.1 Disputes

Allegations of rule violations that occur within the bar must be filed immediately by a participating team member following the conclusion of that trial round with the presiding judge. Allegations of rule violations that occur outside the bar must be brought to the attention of the State Tournament Coordinator or CBA Mock Trial Subcommittee member by the team’s Teacher or Attorney coach as soon as possible.

Rule 7.1.1 Reporting an Inside the Bar Dispute

If any participating team member believes that a substantial rules violation has occurred, a student attorney must indicate to the presiding judge at the conclusion of the trial that the team intends to file a dispute. The student attorney will record the nature of the dispute on the attached dispute form. The student may communicate with participating team members (counsel and/or student witnesses) before lodging the notice of dispute or in preparing the form.

At no time in this process may team sponsors, coaches, or non-participating team members communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure.

Rule 7.1.2 Dispute Resolution Procedure

The presiding judge will review the written dispute form and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record his/her reasons on the form, announce her/his decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form into the State Tournament Coordinator. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for its 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 judge will conduct a hearing on the dispute, allotting each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will enter her/his ruling on the dispute on the dispute form. The presiding judge may take a recess to consult with the State Tournament Coordinator and/or CBA Mock Trial Subcommittee members.

If the presiding judge determines that a substantial rules violation has occurred, the scoring panelists will consider the dispute before reaching their final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring panelists on individual performance scores.

Rule 7.1.3 Reporting an Outside-the-Bar Dispute

If any participating team member believes that a substantial rules violation has occurred outside the bar, a Teacher or Attorney coach must indicate to the State Tournament Coordinator or a CBA Mock Trial Subcommittee member the nature of the dispute on the attached dispute form. The form will be taken to the Tournament's communications center, whereupon a dispute resolution panel will (a) notify all pertinent parties of the dispute; (b) allow time for a response, if appropriate; (c) conduct a hearing, if needed; and (d) rule on the charge. The dispute resolution panel may notify the scoring panelists of the affected courtroom of the ruling on the charge in case they want to reflect the findings on individual performance scores, or the dispute resolution panel may assess an appropriate penalty.

The dispute resolution panel will be designated by the State Tournament Coordinator and CBA Mock Trial Subcommittee members.

Rule 7.1.4 Code of Ethical Conduct Violations

Allegations of Code of Ethical Conduct violations must be reported immediately to the State Tournament Coordinator or a CBA Mock Trial Subcommittee member. A student, Teacher coach, or Attorney coach may report an alleged violation of the Code of Ethical Conduct. The State Tournament Coordinator or a dispute resolution panel will (a) notify all pertinent parties of the alleged violation; (b) allow time for a response, if

appropriate; (c) conduct a hearing, if needed; and (d) rule on the charge. The dispute resolution panel may assess an appropriate penalty.

The dispute resolution panel will be designated by the State Tournament Coordinator and CBA Mock Trial Subcommittee members.

I. Judging and Team Advancement

Rule 8.1 Scoring Guidelines

The scoring sheets must be completed prior to the beginning of any student performance critique. **Scoring panelists should use the attached scoring criteria during the mock trial to determine the performance level of each student as attorney or witness.** This scoring criteria outline will be provided to each scoring panelist as a reference during the adjudication of the mock trial.

Rule 8.1.1 Completing the Scoring Sheets

The score sheets are to be completed individually by each scoring panelist.

The scoring panelists will score participants on a scale of 1-10, according to the performance of their roles during the trial. The panelists then will total these individual performance scores and shall place the sum in the “totals box.” The team that earned the highest point value on the individual judge’s score sheet is the winner of that judge’s ballot. The scoring panelists shall then circle the team’s role (Prosecution/Plaintiff or Defense) with the highest total points. The team that receives the majority of the three ballots wins the round.

In the event of a scoring panelist having the same total team performance point scores for both teams, the scoring panelists shall circle the team’s role (Prosecution/Plaintiff or Defense) that he/she deems the trial round winner of his/her ballot.

Rule 8.1.2 Team Role Assignments

Teams have options concerning attorney/witness role assignment, order of calling witnesses, and selecting who presents opening and closing arguments, which are explained in the mock trial rules. Scoring panelists are not to pass judgment or impact a point score on how teams make assignments.

In the event that a “team” is missing one of its participating team members in a trial round, for example, due to illness or failure to appear, you shall give the missing participating team a “0” point score for each performance part he/she misses in that trial round and **make a notation in the remarks section of the ballot.** Additionally, you shall score the opposing team member(s) impacted by the missing person with “10” points for each performance in that trial round impacted and **make a notation in the remarks section of the ballot.** This rule applies even if another participating

team member stand in for the missing member. A non-participating member may fill in for the missing participating member with no penalty.

Example 1, Missing Witness: A team does not have one of its three witnesses during a round.

If a witness role is not conducted, both the witness role and the attorney who would have conducted the direct-examination of the witness will receive “0” point scores. Additionally, the opposing attorney who would have cross-examined the witness will receive a “10” point score.

Example 2, Substituted Witness, Participating Team Member: A team does not have one of its witnesses, and a participating team member steps into a second role.

If a participating team member steps into that role, that role portrayal will be scored with “0” points. The attorney from the opposing team who conducted the cross-examination of the substitute participating team member will be scored “10” points.

Example 3, Substituted Witness, Non-Participating Team member: A team does not have one of its witnesses and a non-participating team member fills the role.

If a non-participating team member steps into a witness role, points for all students impacted will be scored as they are earned. No penalties will be assessed.

Example 4, Missing Attorney: A team does not have one of its attorneys during a round.

If an attorney does not conduct a direct examination of a witness, both that attorney role and the witness he/she was to direct will receive “0” point scores. Additionally, the opposing attorney who would have cross-examined the witness will receive a “10” point score.

If the same attorney does not conduct a cross-examination of a witness, that attorney will receive a “0” point score. The opposing team’s witness and the attorney who conducted the direct-examination will both receive “10” point scores.

Example 5, Substituted Attorney, Participating Team Member: A team does not have one of its attorneys during a round, and a participating team member steps into a second role (*i.e.*, doubles).

If a participating team member steps into an attorney role, that team member shall receive a “0” point score for both the direct examination and the cross-examination impacted by the substitution. The opposing team’s witness who is being cross-examined and impacted by the substitution will receive a “10” point score.

Example 6, Substituted Attorney, Non-Participating Team Member: A team does not have one of its attorneys during a round, and a non-participating team member fills the role.

If a non-participating team member fills into an attorney role, points for all students impacted will be scored as they are earned. No penalties will be assessed.

Rule 8.1.3 Merits of the Case

The responsibility of the scoring panelists is to score the student performance for each element of the trial round, **not the merits of the legal case and applicable law**. In other words, the scoring panelists are scoring the **performance** of each of the students as attorneys and witnesses to determine the winning team.

Rule 8.1.4 Mathematical Errors

In the event of a mathematical error in tabulation by a scoring panelists, which when corrected changes the results of the team with the highest point total, such correction will be made by the State Tournament Coordinator or CBA Mock Trial Subcommittee member.

Rule 8.2 Student Critique

The scoring panelists are allowed fifteen minutes total for debriefing. The timekeeper will monitor the critique allowing individual scoring panelists five minutes each. The scoring panelists shall not inform the students of individual performance scores, total team points earned, or ballot decisions.

Rule 8.3 Team Advancement

Rule 8.3.1 Team Rankings

The teams will be ranked at the end of each round based on the following criteria in the order listed:

- a. Win/Loss Record
- b. Total Number of Ballots
- c. Total Number of Points Spread Between a Team and Their Opponents
- d. Total Number of Points Accumulated by the Team

Rule 8.3.2 Team Matching

The teams are matched randomly in the first round of competition, with the exception that teams emerging from their regional tournament as the number one seeds will not be paired against each other. Additionally, two

teams from the same region will not be paired against each other in the first round. Teams will be matched in all subsequent rounds by power matching.

Power matching provides that two brackets will be established: a winners bracket and a losers bracket. Team assignments in rounds two, three, four, and the championship round will be determined by the following criteria in the order listed.

- a. Win/Loss Record
- b. Total Number of Ballots
- c. Total Number of Points Spread Between a Team and Their Opponents
- d. Total Number of Points Accumulated by the Team

The team ranked highest in the bracket will be paired against the team ranked lowest in the bracket. The next highest ranked team will be paired against the next lowest and so on until all teams are paired. Adjustments may be made at the discretion of the State Tournament Coordinator or CBA Mock Trial Subcommittee for the following situations’.

- a. An odd number of teams are participating in the tournament
- b. An odd number of teams are in one or both of the brackets
- c. Two teams already have competed against each other in an earlier round
- d. A team is due to present the other side of the case. To the greatest extent possible, teams will equally present both sides of the case. However, bracket integrity in power matching will supersede alternative side presentation.

Rule 8.3.3 Bye Round Assignments

A “bye” becomes necessary when an odd number of teams are present for any given round of the tournament. It is the intent of the CBA Mock Trial Subcommittee to avoid “bye” round assignments where possible. However, in the event of a circumstance resulting in an odd number of competing teams, the following procedure will be followed:

- a. The team drawing the “bye” in the first round will receive a win and three ballots for that round. For the purpose of power matching, the team will receive the average of the points spread and points earned by all round one winning teams.
- b. The team drawing the “bye” in the second through fourth rounds will receive a win and three ballots for that round. For the purpose of power

matching, the team will receive the average of its points earned in its preceding trials.

Rule 8.4 Championship Round

At the end of four rounds of competition the top two teams will be announced to compete in the championship round. The following procedure will be followed to determine which team will represent which side of the case for the championship round:

- a. The team with the letter/numerical code that comes first alphabetically/numerically will be considered the “designated team”.
- b. A coin will be tossed and allowed to drop on the floor unimpeded by the State Tournament Coordinator or designee.
- c. If the coin lands heads up, the designated team will represent the Plaintiff/Prosecution. If the coin lands tails up, the designated team will represent the Defense.

The championship round may have a larger scoring panel than described in Rule 4.1

J. Review of Decisions

Rule 9.1 Finality

All decisions of the State Tournament Coordinator and the Colorado Mock Trial Committee are final and not subject to appeal.

MOCK TRIAL RULES OF EVIDENCE

In American trials, complex rules are used to govern the admission of proof, *i.e.*, oral or physical evidence. These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a Rule of Evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence probably will be allowed by the judge. The burden is on the mock trial team to know the Mock Trial Rules of Evidence and to be able to use them to protect the client and fairly limit the actions of opposing counsel and its witnesses.

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

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

The Mock Trial Rules of Competition and these Mock Trial Rules of Evidence govern the competition.

Article I. General Provisions

Rule 101. Scope

These Mock Trial Rules of Evidence govern the trial proceedings of local and state tournaments in Colorado.

Rule 102. Purpose and Construction

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

Article II. Judicial Notice-Not applicable.

Article III. Presumptions in Civil Actions and Proceedings-Not applicable.

Article IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

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

Rule 402. Relevant Evidence Generally Admissible

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

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

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

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

- (a) Character Evidence—Evidence of a person’s character or character trait is not admissible to prove action regarding a particular occasion, except:
- (1) Character of accused—Evidence of a pertinent character trait offered by an accused or by the prosecution to rebut same;
 - (2) Character of victim—Evidence of a pertinent character trait of the victim of the crime offered by an accused or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
 - (3) Character of witness—Evidence of the character of a witness as provided in Rules 607, 608, and 609.
- (b) Other Crimes, Wrongs, or Acts—Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

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

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eye-witnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

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

Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements

Except as otherwise provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:

- (a) a plea of guilty which was later withdrawn;
- (b) a plea of *nolo contendere*;
- (c) any statement made in the course of any proceeding under Rule 11 of the Mock Trial Rules of Criminal Procedure or comparable state procedure regarding either of the forgoing pleas; or
- (d) any statement made in the course of plea discussions with an attorney for the prosecuting authority that do not result in a plea of guilty or that results in a plea of guilty that is later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement, if the statement was made by the Defendant under oath, on the record, and in the presence of counsel.

Rule 411. Liability Insurance (civil case only)

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

Article V. Privileges

Rule 501. General Rule

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:

- (a) communications between husband and wife;
- (b) communications between attorney and client;
- (c) communications among grand jurors;
- (d) secrets of state; and
- (e) communications between psychiatrist and patient.

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This Rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 3.1.2)

Rule 607. Who may Impeach

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

Rule 608. Evidence of Character and Conduct of Witness

- (a) Opinion and reputation evidence of character — The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:
 - (1) the evidence may refer only to character for truthfulness or untruthfulness, and;
 - (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.
- (b) Specific instances of conduct — Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness
 - (1) concerning the witness' character for truthfulness or untruthfulness, or
 - (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

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

Rule 609. Impeachment by Evidence of Conviction of Crime (this Rule applies only to witnesses with prior convictions)

- (a) General Rule—For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.
- (b) Time Limit—Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.
- (c) Effect of Pardon, Annulment, or Certificate of Rehabilitation—Evidence of a conviction is not admissible if

- (1) The conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime that was punishable by death or imprisonment in excess of one year, or
 - (2) The conviction has been the subject of a pardon or other equivalent procedure based on a finding of innocence.
- (d) Juvenile Adjudications—Evidence of juvenile adjudications generally is not admissible under this rule. The Court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused, if conviction of the offense would be admissible to attack the credibility of an adult and the Court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.
- (e) Not Applicable.

Rule 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Rule 611. Mode and Order of Interrogation and Presentation

- (a) Control by Court—The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to:
- (1) make the questioning and presentation of evidence effective for ascertaining the truth,
 - (2) avoid needless waste of time, and
 - (3) protect witnesses from harassment or undue embarrassment.
- (b) Scope of Cross-Examination — The scope of cross-examination shall not be limited to the scope of the direct examination but may inquire into any relevant facts or matters contained in the witness' statement.
- (c) Leading Questions — Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.
- (d) Redirect/Re-cross—After cross-examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross-examination. Likewise, additional questions may be asked by the cross-examining attorney on re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

Rule 612. Writing Used to Refresh Memory

If a written statement is used to refresh the memory of a witness either while or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross-examine the witness on the material and introduce into evidence those portions that relate to the testimony of the witness.

Rule 613. Prior Statements of Witnesses

- (a) **Examining Witness Concerning Prior Statement**—In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.
- (b) **Extrinsic Evidence of Prior Inconsistent Statement of Witness**—Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences that are

- (a) rationally based on the perception of the witness and
- (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

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

Rule 703. Bases of Opinion Testimony by Experts

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

Rule 704. Opinion on Ultimate Issue

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may, in any event, may be required to disclose the underlying facts or data on cross-examination.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this Article:

- (a) Statement—A “statement” is an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion.
- (b) Declarant—A “declarant” is a person who makes a statement.
- (c) Hearsay—“Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- (d) Statements that are not hearsay—A statement is not hearsay if:
 - (1) Prior statement by witness—The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is (A) inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or
 - (2) Admission by a party-opponent—The statement is offered against a party and is (A) the party’s own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party’s agent or servant concerning a matter within the scope of the agency or, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Rule 802. Hearsay Rule

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

Rule 803. Hearsay Exceptions. Availability of Declarant Immaterial

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

- (a) Present Sense Impression—A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, immediately thereafter.
- (b) Excited Utterance—A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (c) Then Existing Mental, Emotional, or Physical Conditions—A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will.
- (d) Statements For Purposes of Medical Diagnosis or Treatment — Statements made for the purpose of medical diagnosis or treatment.
- (e) 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 or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

- (f) **Business Records**—Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, 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 to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of the information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
- (g) **Learned Treatises** — To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in a direct examination, statements contained in published 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.
- (h) **Reputation as to Character**—Reputation of a person's character among associates or in the community.
- (i) **Judgment of Previous Conviction**—Evidence of a judgment finding a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

Rule 804. Hearsay Exceptions: Declarant Unavailable

- (a) **Definition of unavailability.** “Unavailability as a witness” includes situations in which the declarant—
 - (1) is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
 - (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the Court to do so; or
 - (3) testifies to a lack of memory of the subject matter of the declarant's statement; or
 - (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
 - (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay exceptions-The following are not excluded by the hearsay Rule if the declarant is unavailable as a witness:

- (1) Former testimony-Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
- (2) Statement under belief of impending death-In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death is imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
- (3) Statement against interest-A statement that was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offering to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
- (4) Statement of personal or family history-(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
- (5) Forfeiture by wrongdoing-A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Rule 805. Hearsay within Hearsay

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

ARTICLE X—Contents of Writing, Recordings and Photographs—Not applicable.

ARTICLE XI – Reserved



Memorandum

To: All Mock Trial Team Members, Attorney Coaches, Teachers, and Observers
From: Colorado Bar Association
Date: September 30, 2006
Subject: **CODE OF ETHICAL CONDUCT for all Participants of the Colorado Mock Trial Competition**

The purpose of the Colorado Bar Association (CBA) High School Mock Trial Program is to stimulate and encourage a deeper understanding and appreciation of the American legal system. This purpose is accomplished by providing students the opportunity to participate actively in the learning 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 cooperation among young people of diverse interests and abilities. As a means of diligent application of the CBA High School Mock Trial Program Rules of Competition, the CBA Public Legal Education Committee and its Mock Trial Subcommittee has adopted the following Code of Ethical Conduct for all participants and their observers:

- 1 Team members and all student participants in local and state Mock Trial programs promise to compete with the highest standards of deportment, showing respect for their fellow team members and participants, opponents, judges, evaluators, attorney coaches, teacher coaches and mock trial personnel. All teams, coaches and supporters will focus on accepting defeat and success with dignity and restraint. Trials, contests, and activities will be conducted honestly, fairly, and with the utmost civility. Students, coaches and supporters will avoid all tactics they know are wrong or in violation of the Rules, including the use of unfair extrapolations. Teams, coaches and participants will not willfully violate or misrepresent the Rules of the program in spirit or in practice.
- 2 Teacher Coaches agree to focus the attorney coach and student attention on the educational value of the Mock Trial Program. They shall discourage willful violations of the Rules and the unprofessional and contentious behavior of their attorney coaches, students and supporters. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the program'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, as well as demonstrate fair play and courteous respect towards their peers at all times during participation in any program-related activities. They will promote conduct and decorum in accordance with the program's Rules and this Code of Ethical Conduct. They will emphasize and focus on the educational value of the experience by requiring that all questions, objections, responses, opening statements, and closing arguments be substantially the work product of the students. Attorney Coaches are reminded that they are in a position of authority and thus serve as positive role models for the students. They shall also conduct themselves a professional manner at all times during any program related meetings.
- 4 All participants (including observers) are bound by all sections of this Code and agree to abide by the provisions. Students, and attorney and teacher coaches, are responsible for insuring that all team observers are aware of and abide by 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 this Code. Violations of this Code of Ethical Conduct, either by participants and/or observers, may be grounds for reductions in scores, disqualification from a contest, and/or suspension or expulsion from the Mock Trial Program.
- 5 Presiding judges and evaluators are asked to observe the trials with an objective eye. Interjecting one's own personal style and biases adds no value in the education process. Students have agreed to abide by the Rules and this Code in spirit and in practice; therefore, violations should result in a lowering of the score. All judges and evaluators promise to be prepared and knowledgeable the Rules of the Competition, the problem, and the mock trial procedures. The appearance of impropriety, bias, or favoritism shall be avoided. Presiding judges will conduct trials with objectivity and honesty. Presiding judges and evaluators will also exercise sensitivity and respect to all students of diversity at all times, especially during round after-chats.

COLORADO HIGH SCHOOL MOCK TRIAL PROGRAM

LOCAL OR STATE TOURNAMENT TRIAL ROSTER

This sheet is to be completed by each team prior to EACH round and copies presented to the presiding judge, opposing counsel and the panel of scoring judges.

TEAM IDENTIFICATION (CODE ONLY!) _____

Circle one: Round I II III IV Championship Round

In this round, students listed on this roster will represent (Circle one):

PLAINTIFF

DEFENSE

Name of Student Portraying Attorney:

Tasks (circle):

1. _____

Opening / Direct / Cross / Closing

2. _____

Opening / Direct / Cross / Closing

3. _____

Opening / Direct / Cross / Closing

Name of Student Portraying Witness:

Role Portrayed:

(Please indicate gender by circling M or F)

1. _____ (m/f) Plaintiff Witness 1 _____

2. _____ (m/f) Plaintiff Witness 2 _____

3. _____ (m/f) Plaintiff Witness 3 _____

4. _____ (m/f) Defense Witness 1 _____

5. _____ (m/f) Defense Witness 2 _____

6. _____ (m/f) Defense Witness 3 _____

(Duplicate for use in all mock trial rounds!)

TEAM DISPUTE FORM
Inside the Bar
[Rule 7.1.1 & 7.1.2]

(Please print)

Round (*circle one*): 1 2 3 4

TEAM LODGING DISPUTE: _____ (*Enter Team Code Only!*)

Grounds for Dispute: _____

INITIALS OF TEAM SPOKESPERSON: _____

HEARING DECISION OF PRESIDING JUDGE (*circle one*): **Grant** **Deny**

Reason(s) for Denying Hearing or Response of Opposing Team: _____

INITIALS OF OPPOSING TEAM'S SPOKESPERSON: _____

Judge's Notes from Hearing:

DECISION AND RULING OF JUDGE REGARDING DISPUTE: _____

This form must be returned to the trial coordinator along with the score sheets of all the panelists.

Signature of Presiding Judge

TEAM DISPUTE FORM
Outside the Bar
[Rule 7.1.3]
or
Code of Conduct
[Rule 7.1.4]

(Please print)

Round (*circle one*): 1 2 3 4

PERSON LODGING DISPUTE: _____

AFFILIATED WITH: _____ (*Enter Team Code*)

Grounds for Dispute: _____

INITIALS OF TRIAL COORDINATOR: _____ TIME DISPUTE PRESENTED TO COORDINATOR: _____

HEARING DECISION OF DISPUTE PANEL (*circle one*): **Grant** **Deny**

Reason(s) for Denying Hearing: _____

Notes from Hearing: _____

Decision/Action of Dispute Panel: _____

Signature of Trial Coordinator

Date/time of Decision

SCORING

SCORING PANELISTS & PRESIDING JUDGES: In performing the mock trial case, team members will be courteous, professional, observe general courtroom decorum, speak distinctly and clearly, and have general knowledge of the law and trial procedures. Points shall not be rewarded to students or teams that behave in a contentious or unprofessional manner. All team members shall be involved in the performance of the case and meet time limits.

IMPORTANT FOR ADJUDICATION: It is very important that scoring panelists and presiding judges read the fact situation and witness statements carefully.

Given the mock trial format, students will refer to specific points/facts and make references to certain pages in the text; you need to be familiar with the pertinent details. After the team's performance, the scoring panelists will debrief the teams. Constructive criticism for improving the teams' performances, including praise, is greatly appreciated by the students and attorney coaches. All scoring panelists are encouraged to make comments. Positive reinforcement and suggestions to both sides helps ensure a beneficial educational experience for everyone.

CRITERIA FOR EVALUATING STUDENTS' OPENING STATEMENT AND CLOSING ARGUMENT	PERFORMANCE DESCRIPTION
<p>Organization:</p> <ul style="list-style-type: none"> • Progressive, logical and easy to follow • Included an introduction, main points and a conclusion • Had appropriate transitions • Included a clearly stated theory/theme of the case <p>Delivery:</p> <ul style="list-style-type: none"> • Clear, persuasive, articulate and confident delivery • Appropriate style: statement for opening, argumentative for closing • Personalization of the client represented • Captures and holds jurors' attention • Made eye contact with jurors: displayed appropriate gestures • Lawyer's courtroom position was appropriate for delivery style (at podium, or with court's permission, around the room) • Use of notes, if any, (not required) was appropriate for delivery style • Used time effectively <p>Statement of the facts:</p> <ul style="list-style-type: none"> • Presented facts expected to be produced during the trial (open) • Responded to courtroom occurrences during trial, highlighted opponent's weaknesses and weaved jury instructions into closing • Volunteered weaknesses in case when appropriate • Stated facts clearly, using simple, appropriate and direct language • Student did not overstate their position 	<p style="text-align: center;">OUTSTANDING 9-10 (The student exhibited 90 to 100% of the listed criteria.)</p> <p style="text-align: center;">EXCELLENT 7-8 (The student exhibited 80 to 89% of the listed criteria.)</p> <p style="text-align: center;">GOOD 5-6 (The student exhibited 70 to 79% of the listed criteria.)</p> <p style="text-align: center;">FAIR 3-4 (The student exhibited 60 to 69% of the listed criteria.)</p> <p style="text-align: center;">POOR 1-2 (The student exhibited less than 59% of the listed criteria.)</p>

CRITERIA FOR EVALUATING STUDENTS' DIRECT AND CROSS EXAMINATIONS	PERFORMANCE DESCRIPTION
<p>Organization:</p> <ul style="list-style-type: none"> Progressive, logical with an easy to follow pattern of questioning Organization was consistent with theory/theme of case, opening statement and other examinations Used appropriate transitions <p>Delivery:</p> <ul style="list-style-type: none"> Pace (speed) of examination was appropriate for dramatic effect and emphasis of points Used appropriate language and simple, clear, understandable questions: non-leading (direct), leading (cross) Let the witness be the center of attention (Direct) Lawyer courtroom position was appropriate for delivery style (at podium, or with court's permission, around the room) Use of notes, if any (not required), was appropriate for delivery style Lawyer listened to answers and adapted as needed Use of exhibits, if any, (not required), was appropriately handled Lawyer controlled the witness appropriately and/or called for bench assistance when necessary (Cross) Questions were purposeful, consistent with case theory Behavior was professional and respectful toward witness Uses method of impeachment effectively (cross) <p>Objections:</p> <ul style="list-style-type: none"> Objections/Responses to objections were clear, appropriate and concise Objections/Responses consistent with the case theory Objections/Responses demonstrated knowledge of evidence rules Objections/Responses demonstrated knowledge of the procedural rules 	<p>OUTSTANDING 9-10 (The student exhibited 90 to 100% of the listed criteria.)</p> <p>EXCELLENT 7-8 (The student exhibited 80 to 89% of the listed criteria.)</p> <p>GOOD 5-6 (The student exhibited 70 to 79% of the listed criteria.)</p> <p>FAIR 3-4 (The student exhibited 60 to 69% of the listed criteria.)</p> <p>POOR 1-2 (The student exhibited less than 59% of the listed criteria.)</p>
CRITERIA FOR EVALUATING STUDENT WITNESS PORTRAYAL	PERFORMANCE DESCRIPTION
<p>Examination:</p> <ul style="list-style-type: none"> Gave responsive, thorough, factually accurate answers, Answered closed- and open-ended questions appropriately within character's role Treated both attorneys similarly, responded fairly to both examinations Did not offer unsolicited information in effort to help teammate Credible, persuasive portrayal of character; engaging; captures and holds jurors' attention; makes eye contact with jurors Poised, articulate and confident in answering questions Maintained credibility and demeanor during examination Answered questions without unnecessary rambling in an attempt to use up the opponent lawyer's allotted time Did not embellish or introduce new facts to the case beyond the witness' affidavit 	<p>OUTSTANDING 9-10 (The student exhibited 90 to 100% of the listed criteria.)</p> <p>EXCELLENT 7-8 (The student exhibited 80 to 89% of the listed criteria.)</p> <p>GOOD 5-6 (The student exhibited 70 to 79% of the listed criteria.)</p> <p>FAIR 3-4 (The student exhibited 60 to 69% of the listed criteria.)</p> <p>POOR 1-2 (The student exhibited less than 59% of the listed criteria.)</p>

REMINDER: PLEASE BE MINDFUL WHEN WRITING COMMENTS THAT STUDENTS WILL SEE THESE SCORESHEETS. YOUR SENSITIVITY TO DIVERSITY TO STUDENT SOCIO-ECONOMICAL, CULTURAL, RELIGIOUS AND EDUCATIONAL DIVERSITIES IS ENCOURAGED AND APPRECIATED. THANK YOU.

PROSECUTION DEFENSE WITNESSES

	OPENING STATEMENT	OPENING STATEMENT		
II's 1st Witness	Direct Examination	Cross Examination	II Witness Performance (Direct and Cross Examination)	
II's 2nd Witness	Direct Examination	Cross Examination	II Witness Performance (Direct and Cross Examination)	
II's 3rd Witness	Direct Examination	Cross Examination	II Witness Performance (Direct and Cross Examination)	
Δ's 1st Witness	Cross Examination	Direct Examination	Δ Witness Performance (Direct and Cross Examination)	
Δ's 2nd Witness	Cross Examination	Direct Examination	Δ Witness Performance (Direct and Cross Examination)	
Δ's 3rd Witness	Cross Examination	Direct Examination	Δ Witness Performance (Direct and Cross Examination)	
	CLOSING ARGUMENT	CLOSING ARGUMENT		
II	General Team Comments:			
Δ	General Team Comments			

The Problem

Introduction

On May 10, 2006, a tragic accident occurred when a pickup truck and a train collided at a train crossing in rural Adams County. Seventeen-year-old John Goodson, the driver of the truck, died at the scene. His passengers, good friends Cody Davis and Sandy Miller, both 17 at the time, were seriously injured.

John had received the brand new truck as an early graduation present from his parents. On the date of the accident, John, Cody and Sandy took the truck out for a drive in the country. They were listening to music, singing along with the radio. John rounded the bend on Ralston Road and approached the train crossing when the train rounded the bend on the track. As required by state regulations, the Engineer reports that he began blowing the train's whistle as the train approached the whistle post and cleared the copse of trees.

The train crossing is an ungated crossing on Ralston Road, but has flashing lights, bells, and advance warnings clearly painted on the highway pavement at the approach to the crossing. One prior, non-fatal, motor vehicle-train collision occurred at this particular crossing over six years before.

Engineer Lee Thompson, a twenty-year veteran with General Palmer Railroad, was driving the train on the date of the accident. Thompson had an impeccable record with General Palmer Railroad Company and was well known at the company as being a clear-headed, serious employee with a commitment to safety and adherence to all rules and regulations.

As the train rounded the bend and exited the trees, Thompson noted that a pickup truck was traveling along the road parallel to the railroad tracks and appeared to be trying to match the train's speed. Thompson states that he/she began blowing the train's whistle in an attempt to call attention to the train, while at the same time easing off the controls to help the train reduce speed. Chris Vasquez, an Adams County farmer, witnessed the accident.

John Goodson was killed instantly. Davis and Miller were both seriously injured and were hospitalized for a number of months following the accident. Both sustained head injuries and were unconscious for a period of days following the accident.

John's parents, Pat and Chris Goodson, are suing the General Palmer Rail Company for the wrongful death of their child. They allege that the rail crossing was not adequately marked, that the train failed to warn, and that the Engineer of the train failed to take adequate action to avoid the accident.

The end result: A senseless loss of life and tragic accident that has affected the lives of many.

STIPULATIONS

Both parties have agreed to the following stipulations:

1. At approximately 1:45 p.m. on May 10, 2006, a General Palmer Railroad freight train rounded the bend on the tracks, passed the ¼ mile whistle post and headed north towards Crossing 8.6, an at-grade crossing at Ralston Road, a two-lane paved road in rural Adams County, Colorado. This road is maintained by Adams County. This particular crossing has flashing lights, bells, crossbucks, and an advance warning of a railroad crossing clearly painted on the highway pavement at the approach to the crossing. This crossing is not gated and does not have bells.
2. For purposes of this mock trial case, rail and train shall be synonymous in any case where either word appears in any materials.
3. The train was traveling at approximately fifty-four miles per hour as it approached Crossing 8.6. At the time, the crossing itself was clear of vegetation; stands of trees are located about ¼ of a mile north and south of this crossing. At the time, the weather was clear and the pavement dry.
4. As this train approached Crossing 8.6 on May 10, 2006, John Goodson was driving his truck toward this Crossing 8.6 at the same time. Two of John Goodson's friends, Cody Davis and Sandy Miller, were passengers in the truck. All three, John Goodson, Cody Davis, and Sandy Miller, were 17 years old at the time.
5. The General Palmer train broadsided John Goodson's truck at Crossing 8.6. John Goodson was killed instantly. Cody Davis and Sandy Miller incurred serious injuries in the crash; both remained unconscious for several days after the crash and spent months in the hospital and in rehabilitative therapy.
6. In response to a 911 call, the Platteville Fire Department ambulances responded to the scene. The response time to the scene was under 5 minutes. John Goodson, Cody Davis, and Sandy Miller were transported to Platteville Community Hospital, located about 5 miles from Crossing 8.6.
7. Drug and alcohol testing of Lee Thompson, following the crash on May 10, 2006, was negative, meaning no drugs or alcohol were detected.
8. All witness affidavits contained in the case file are authentic and may not be disputed.
9. All exhibits contained in the case file are authentic and their authenticity may not be disputed.
10. The Coroner provided originals of the Autopsy Summary Report, prepared in the regular course of the Coroner's business, to Pat Goodson as a parent of the deceased, and also to Kerry Morgan and Terry Martinez, as part of their investigations into the May 10, 2006 crash of John Goodson's truck with the train.
11. Terry Martinez prepared the Crossing 8.6 Exhibit in the regular course of his/her business while investigating the May 10, 2006, crash of John Goodson's truck with the General Palmer Railroad train.

<p>DISTRICT COURT, COUNTY OF ADAMS, STATE OF COLORADO</p> <p>Court Address: 1100 Judicial Center Drive Brighton, Colorado 80601</p> <hr/> <p>Plaintiff(s): PAT GOODSON and CHRIS GOODSON, as Heirs of JOHN GOODSON (Deceased)</p> <p>Defendant(s): GENERAL PALMER RAILROAD COMPANY</p> <hr/> <p>Attorney For Plaintiff: Name: Colorado High School Student Law Office Address: 123 Main Street Everytown, Colorado 80999 Phone Number: 303/555-5000 Fax Number: 303/555-5028 Email: studentlaw@coloradohighschool.com Atty. Reg. #:</p>	<p style="text-align: center;">▲ Court Use Only ▲</p> <hr/> <p>Case Number:</p> <p>Division/ Courtroom:</p>
<p>COMPLAINT AND JURY DEMAND</p>	

COMES NOW, the Plaintiffs, Pat Goodson and Chris Goodson, as Parents and Heirs of John Goodson (Deceased), by and through their attorneys, Colorado High School Student Law Office, and for their Complaint against the Defendant, states and alleges as follows:

INTRODUCTORY ALLEGATIONS

1. The Plaintiffs Pat Goodson and Chris Goodson are the heirs of their child, John Goodson (deceased).
2. Defendant General Palmer Railroad Company is, and was at all times relevant to this case, a corporation duly authorized and existing in engaging in business of common carrier by rail within the County of Adams, Colorado.
3. Ralston Road is, and was at all times relevant to this case, a public road running generally in the north and south direction in Adams County, Colorado, and owned, maintained and supervised by Adams County, Colorado.
4. At all times relevant to this case, Defendant General Palmer Railroad Company, owned and operated trains on certain railroad tracks which they also owned within Adams County, Colorado. In particular, certain of those tracks made a grade crossing over Ralston Road in Adams County, Colorado, said tracks running in a generally north to south direction, but crossing Ralston Road at a right angle.

5. It is apparent from the public use of the location, design and configuration of the subject crossing that there has been created a condition that is not reasonably safe.

6. The Defendant, General Palmer Railroad Company has a duty to use reasonable care to maintain the premises in a reasonably safe condition and to carry on activities conducted on the premises in a reasonably safe manner in view of the foreseeability, if any of injuries to others.

7. On May 10, 2006, the decedent John Goodson was driving a vehicle traveling northbound on Ralston Road in Adams County, Colorado.

8. At or about the same time and place, a General Palmer Railroad Company train was proceeding northbound on the intersecting railroad track.

9. At the railroad grade crossing at Ralston Road, the General Palmer Railroad Company train did forcibly strike and collide with the pick up truck driven by Decedent John Goodson which directly and proximately caused the death of John Goodson and damages as hereinafter more fully described to Plaintiffs, the parents and heirs to John Goodson.

10. The aforesaid collision resulted in the death of John Goodson and damages to the Plaintiffs were the direct and proximate result of the negligence, carelessness, acts and/ or omissions of the Defendant General Palmer Railroad Company including, but not limited to:

- a. Negligently failing to keep the right of way adjacent to its tracks on the grade crossing described herein above clear of trees and vegetation where such things materially obscure the view of approaching vehicles to trains approaching the subject intersection;
- b. Negligently operating its train at a speed that was excessive for the conditions then and there existing at the crossing;
- c. Employees of the Defendant negligently failing to keep a cautious and careful look out as the train approached the grade crossing;
- d. Employees negligently failing to timely apply the brakes on the train when the crew knew, or should have known, that a collision would occur absent prompt action by the train crew;
- e. Failing to stop or slow the train to avoid a collision;
- f. Failing to comply with its own operating rules requiring engineers to sound train whistles before the crossing and to continue until the crossing was fully occupied by the train.

11. As a direct and proximate result of one or more of the negligent acts or omissions, the Decedent John Goodson sustained severe permanent injuries to the head and body, both internally and externally which resulted in death.

12. As a direct and proximate result of the decedent's death, the parents of John Goodson have suffered grief, loss of companionship, impairment of quality of life, inconvenience,

pain and suffering, emotional stress, funeral and burial expense and economic loss including the financial benefit that the Plaintiffs might reasonably have expected from John Goodson living.

13. This action is brought pursuant to C.R.S. § 213-21-210, or in the alternative, C.R.S. § 213-21-211.

WHEREFORE, Plaintiffs Pat Goodson and Chris Goodson, as heirs of John Goodson (Deceased) pray for a judgment to be entered in favor of Plaintiffs Pat Goodson and Chris Goodson and against the Defendant General Palmer Railroad Company for a sum in excess of jurisdictional minimums plus costs, interest, attorneys fees, and for such other relief as the Court may deem just and equitable.

PAT GOODSON AND CHRIS GOODSON
PARENTS AND HEIRS OF
JOHN GOODSON (DECEASED), Plaintiffs

By: _____
Their Attorneys

WITNESSES

For the People:

Pat Goodson
Cody Davis
Terry Martinez

For the Defense:

Lee Thompson
Chris Vasquez
Kerry Morgan

All witnesses may be male or female.

EXHIBITS

<u>Number</u>	<u>Description</u>
Exhibit 1	AUTOPSY REPORT SUMMARY
Exhibit 2	KERRY MORGAN CV
Exhibit 3	TERRY MARTINEZ CV
Exhibit 4	NTSA REPORT
Exhibit 5	HIGHWAY-RAIL CROSSING PROJECT SCHEDULE
Exhibit 6	CROSSING 8.6

**Affidavit of Pat Goodson,
Parent of John Goodson (deceased) – WITNESS FOR PLAINTIFF**

1. My name is Pat Goodson. John Goodson was our son and only child. He was only 17 years old with a lifetime ahead of him when he was killed.

2. I am so sad and angry. The railroads are saying that this accident is all my son's fault. I don't buy that. I think that the railroads bear some of the responsibility for this kind of accident. Sometimes, more than a simple, small crossing sign with dim light needs to be out there to warn of the possible dangers of an oncoming train. Some of the witnesses don't remember hearing the train's whistle. Why aren't they automatic? There are bar scanners on toll-roads, why not on trains? When a train pulls past a certain spot, the whistle should automatically sound, long and loud. Lights should flash at the crossing and on the train. There are so many unanswered questions. Was that train's headlight on? Was it on as brightly as it should have been? Was the whistle blowing? Was it loud enough? The transportation people admit that dirty windows and loud stereos and air conditioning can prevent drivers from hearing the warning signals, but why haven't they done anything about that? Why aren't the whistles louder? Longer? More blaring? Why aren't there crossing gates at those rural crossings, especially the ones where the approaches are visibly blocked by trees, or high crops, or billboard signs or whatever?

3. That engineer should have slowed that train down after he/she thought there might be a problem. Did the brakes fail? I know trains take a long time to stop, but if it had slowed a bit more, maybe the accident wouldn't have been fatal and my kid would have just had a head injury like Cody and Sandy.

4. We raised our son to obey the laws of this country. John was a respectful and thoughtful person with the brightest future imaginable. And he was a smart kid. Not reckless or stupid. I can't remember a time when we had to worry about him making a bad decision. It seemed like John always knew right from wrong and didn't mind at all doing what was right.

5. I feel like losing John is not just my personal loss, not just our family's loss, but also a real loss for the world. John was so special.

6. I don't want the money we're asking for from the railroad company for my own personal gain. I do think that the railroad and that engineer acted irresponsibly in this instance and they should be punished so that they will take greater care in the future. Maybe someone else's child will live if the railroad gives more thought to how they handle these rural crossings. It's not 1900 anymore.

7. My wife/husband and I plan to put any funds that we gain through this court process into a scholarship fund to be used by students from Platteville High School. I'd personally like to offer scholarships to kids who want to go into politics and governmental regulation. Maybe one of John's friends will become a legislator and work toward mandating safer grade crossings everywhere in the state and in the country . . . not just at those in populated areas. The lives of people who live in cities are not more important than those that live in the country. Their lives aren't worth more than John's.

8. John was a great kid. Obedient, socially aware, caring. A parent couldn't want for anything more in a child. His grades were good; he was involved in student council and 4-H activities. He had everything to live for. John was going to graduate in June of 2006. We got the truck as an early graduation present. We were so proud.

9. He loved that truck. From the minute we pulled into the driveway and handed him the keys, he was in love. He was constantly washing, waxing, and dusting that truck. For his birthday in July, he had asked for a liner so the truck bed wouldn't get scratched.

10. John had been driving since his sixteenth birthday. He never got a speeding ticket, a parking ticket or anything of the kind. The local police are pretty strict with the kids, too. They don't let them get away with anything. If John had been cruising and causing problems we would have heard about it.

11. One time, when John was younger, about 12 or so, we were driving back from a family picnic and saw a car racing a train. That car almost didn't make it. John spoke of that for weeks after the incident, and I know it still had some affect on him. John mentioned that near miss the day he took the driver's test. On the day of the accident, John called me at work to let me know that he and two of his friends were going to be out driving the truck on some of the county roads. They wanted to test out the stereo to see how loud it could play, but they didn't want to bother any of the neighbors in town. That's how thoughtful John was. He always thought of others.

12. I told him to be careful. I always did. Not that I really thought he needed reminding. He was always careful.

13. Anyhow, I got a call at about 2:30 p.m. from a doctor at Platteville Community Hospital saying that John had been in an accident and that we should get down there as soon as possible. I could tell by the doctor's voice that something was very wrong. By the time we got to the emergency room, the parents of the other two kids were there and they were all crying. I knew the news was going to be bad, but it never really occurred to me that John would be dead.

14. When the doctor told us, we just collapsed. It seemed so impossible. Our son was gone. Out of our lives. Only a memory. It's too horrible.

15. They are saying that John was racing the train. That is plain silly. In fact, that sounds impossible to me. I've never known him to be anything but sensible, especially about something as serious as driving . . . and with passengers. Caution seemed to be his motto. And then they said that some farmer hadn't even seen the truck's tail lights flash, like the kids just didn't see the train. That got me to wondering if the train had blown its whistle to warn the kids. That crossing out there doesn't have a gate, just some old crossing signs that the kids shoot their BB guns at every year.

16. John was a trusting kind of kid. I'd bet my life that those lights weren't working right. If they weren't, I guess the railroad company will find any number of witnesses to say that everything was working the way it was supposed to work. They won't want to pay for their mistakes and their carelessness. They won't want to pay for taking my son away.

17. If those lights had been working, my son would have obeyed that signal. If he'd heard a train's whistle, he would have obeyed the law and stopped. He would have stopped had there been any indication that a train was approaching.

18. Our only consolation now is that the doctors tell us John died instantly. He never knew what hit him. We are also thankful that the other two passengers survived. I am glad their parents don't have to go through what we've gone through.

Subscribed and Sworn to on this 3rd Day of July, 2006

Pat Goodson

Witness Signature

Affidavit of Cody Davis
Passenger in truck that was hit by the train—WITNESS FOR PLAINTIFF

1. My name is Cody Davis. I'm 17 years old and live in Platteville, Colorado with my parents.

2. On May 10, 2006, I went for a ride in the country with my two friends John Goodson and Sandy Miller. John got a new truck from his parents as an early graduation present, and we were taking it out for a drive. The truck had a great stereo system and we wanted to ride out into the countryside to really test it out. I was sitting next to the door, Sandy was in the middle, and John was driving.

3. I'm not at all familiar with the area outside of Platteville. I moved here a few years ago when my dad, a cop, got a job in Platteville. I met John and Sandy at school. We've been friends since day one. We all liked school, especially history and literature classes. We all liked tennis. And probably best of all, we all liked the same music. We planned to write music together someday.

4. Anyhow, on the day of the accident, we were all out driving around on the back country roads, listening to the stereo, singing along, and just having a good time. School was out in a few weeks and we'd been making plans to get together every week to write lyrics.

5. When the train hit the truck, I was thrown clear. My head was cut pretty bad and I'm told I was in a coma for almost two weeks. I'm okay now, I guess. I don't remember the actual crash or really anything for two weeks after the crash. I woke up in a hospital bed after the accident, missing a whole piece of my life. My parents, grandparents, and my kid sister were all in the room crying. When I woke up, I had no idea what had happened. They had to break the news to me that John died and that Sandy was still in a coma.

6. I don't remember anything that happened right after the crash, but I have started to remember parts of what led up to the accident. We turned onto a narrow road and headed alongside some railroad tracks. I was looking straight ahead, and I never saw or heard a train. We were all singing along with the song playing on the radio. The truck windows were rolled up. We had been on some gravel county roads, and we were laughing about how we were all going to

have to help wash the truck when we got to John's house. We had both the air conditioner and the radio on. People may wonder if we were drinking or doing drugs, but we weren't and none of us ever had; we each had a bottle of water and that was it. None of us smoked or drank, and we sure didn't do drugs.

7. We started the day in town at the Dairy Queen. We got into the truck, turned on the radio, and cruised through town. We passed a few of our friends who honked and waved back. I think we had the radio and the air conditioner on then, too, just like we did out in the country. We heard the car horns in town, but we sure didn't hear any train horns, bells, or whistles before we were hit.

8. I know for a fact that John was a careful driver, and I was never concerned about my safety riding with John. I know John had a deal with his parents: if he maintained a perfectly clean driving record, no speeding tickets, not even a parking ticket, they'd keep paying the insurance. If John got a ticket, the deal was off and he would have to assume full responsibility for all insurance costs. John took that deal very seriously. Heck, whenever we saw someone driving recklessly, John mentioned a near-miss he had seen once. Someone was racing a train and almost didn't make it across. That really got to him.

9. I don't remember John ever speeding, nor ever parking in a restricted area. He was sort of a nut about traffic rules and especially about people parking in handicap spaces. He even talked about starting a community police effort to monitor the vehicles parked in those spaces. John's cousin uses a wheelchair and John was pretty aware of the importance of keeping those spaces for the people who really needed them.

10. At the time of the accident, I'd guess that we were probably going about forty five or fifty miles an hour down a straight part of the road; then, we slowed to round the curve just before the crossing. I've been out there since being released from the hospital to put some flowers by the small memorial the school kids put up in memory of John. The road runs alongside the railroad tracks for a bit. For part of the distance there are trees between the tracks and the road, so you can't really see the tracks or the trains that might be coming. But then the road gently curves right

after the trees end, and there's the crossing, about a half or quarter mile after the trees. We slowed down to make the curve, I remember that, but then John started to speed up again. He must not have noticed the signals at all. I know I don't remember seeing any.

11. The memorial is right next to the railroad crossing warning sign, or crossbucks. I know from now on that every time I see a sign like that, hear a train whistle, or cross tracks, I'll think of John. There are flashing lights on the crossbucks, but no gates. I hope they gate that crossing now.

12. I don't remember ever hearing the train whistle or warning bells, and I don't remember seeing flashing lights on the crossbucks. I don't remember John braking or swerving. We were just cruising along and that train must have come out of nowhere. I guess I'm grateful that I don't remember the crash either. I'm also pretty grateful that the rescue folks got there so fast.

Subscribed and Sworn to on this 3rd Day of July, 2006

Cody Davis

Witness Signature

Affidavit of Terry Martinez, Expert Witness, Colorado Community Safety Coalition- WITNESS FOR PLAINTIFF

1. My name is Terry Martinez. I was asked by the Plaintiff to review this accident and provide an expert opinion in this case. I am President and Chief Financial Officer of the Colorado Community Safety Coalition. The Coalition maintains records of all fatal accidents in the State of Colorado. All accidents are categorized, and statistics are maintained by county, type of accident, and a number of other factors. CCSC is a non-profit corporation and relies on public donations.

2. I founded the Coalition after my brother was killed in a train accident seven years ago. That accident did not have to happen. Alan was doing everything right. He was minding his own business, driving where he was supposed to be driving, obeying the speed limit, had not been drinking or doing drugs. He pulled onto a set of ungated rural railroad tracks and was killed when a passenger train going sixty seven miles per hour hit him.

3. I have a Bachelor's Degree in Engineering Technology and Industrial Design and a Master's Degree in Urban Planning from the University of Colorado. After graduation, I worked for the Colorado Railworkers Association where I obtained firsthand knowledge and experience with regard to railway regulations, safety concerns, and practices. During that time, I successfully lobbied for a number of public policy community safety bills.

4. Statistics in Colorado show that rail crossing accidents since 1990 have decreased. That may be changing. Statistics in some recent studies show that they may actually be on the rise. That does not make me happy. There are already far too many accidents and fatalities.

5. First and foremost, a railroad has a duty of ordinary care to protect the safety of motorists. This means that roads should be clearly marked to indicate that a rail crossing is ahead. State and federal laws address this matter and have established where and how the markings should be made. At some crossings where there is less vehicular traffic, the railroads do the minimum that is required. However, due to the serious nature of the hazard these rail crossings create, the lack of precautions of any kind at a railroad crossing can constitute wanton misconduct by the railroad.

6. The railroads have a duty to warn people that trains are coming. They should absolutely be held accountable for accidents like this one. They had a duty to adequately warn those kids that a train was bearing down on them at 50 or 60 some miles per hour. If the whistle didn't blow, or if it wasn't loud enough, if the headlamp was too dim, or if the flashing lights on the crossbars were obscured by weeds or dust and dirt, then the railroad was negligent.

7. The crossing at Ralston Road had painted X's on the roadway, a sign was posted the required distance before the crossing, and the crossing was marked with crossbucks and flashing lights. These precautions were not enough. This crossing, in the middle of farmland, with stands of trees on either side of the crossing, had the potential to be classified as extra-hazardous. I have visited the accident scene, and prepared crossing 8.6 Exhibit 5 which fairly and accurately depicts my observations and measurements of the dangerous railroad crossing. That means that someone, even exercising ordinary care, could still be in danger unless extra precautions were taken, like gating the crossing.

8. It is the Coalition's position that the easiest and surest way to prevent railroad crossing fatalities is to ensure that all crossings are gated, or that there simply are no grade crossings at all. Some countries actually build over- or under-passes for all rail crossings. The Coalition is currently working to increase awareness of grade crossing safety. We are drafting legislation that would provide for Colorado to have 100 percent of grade crossings either gated or over- or under-passed by the year 2010. We are also constantly fundraising to provide public service announcements and educational materials on community safety.

9. There also may be a move at the federal level to mandate automatic whistles at every crossing. If this were already established policy, there would be a reduction in accidents. If the train doesn't blow it's whistle, there are now ways to have the crossing gates or mechanical devices nearby blow a horn or whistle directed at oncoming vehicular traffic. These devices also can be equipped with strobe lights or other incredibly effective alerting systems. Unfortunately, current industry standards and federal regulations have not yet produced a train that will automatically

whistle when it passes the whistle post. It is still up to the engineer. And that's where human error can come into play. Of course, if it were automatic, then there still would be a chance that there would be a system failure, but at least there would be a backup. Automatic AND human systems are both needed to warn the public of the approaching danger.

10. There are other things that could be done. Instead of tiny crossing arms with little lights that can be dimmed by dust, the railroad industry could use larger lights on those crossbucks that strobe and demand greater attention. The industry is currently testing equipment that actually will reach out and grab a car if it tries to enter a railroad crossing when a train is approaching. The technology is now available to equip all trains with large, multi-colored headlights, almost strobe-like . . . impossible to ignore, even in broad daylight.

11. Everyone sees police, fire, and rescue vehicles coming up behind them, and it's because of the lights. If your stereo is too loud, you would still see the lights on those vehicles. I've been lobbying for legislation at the federal level that would require all passenger and freight trains to be equipped with these kinds of strobe lights. If that train in rural Adams County had been equipped with a colored strobe light, I'm certain that kid would be alive and we wouldn't be here in this Court.

12. There are amazing technologies out there. They just aren't being utilized because the railroad industry does not want to bear the expense. But, if you punish the railroads often enough, hit them where it hurts - in their bank accounts - then they may decide it would be cheaper to equip the trains and crossings with appropriate warning devices.

Subscribed and Sworn to on this 3rd Day of July, 2006

Terry Martinez

Witness Signature

**Affidavit of Lee Thompson
Railroad Engineer—WITNESS FOR DEFENDANT**

1. My name is Lee Thompson. I am 45 years of age. I live in Burlington, Colorado and have worked for General Palmer Railroad Company for twenty years.

2. General Palmer Rail is a good company. They train their employees well and are sticklers for regulations and safety. Each month, all the engineers get safety memos that we need to read and sign. They go into our files so the company knows that we are completely up to date on all federal, state, and local regulations. I have an impeccable record with the General Palmer Railroad. I'm well-known at the Railroad as being a clear-headed, serious employee with a commitment to safety and adherence to all rules and regulations.

3. On May 10, 2006, my train was traveling at a little under sixty miles per hour. Sixty miles per hour was the maximum speed allowed on those tracks. I was heading north on tracks in rural Adams County, Colorado. It was 1:45 p.m., and I was on schedule. That's a good thing.

4. It was a clear afternoon and the day had been pretty uneventful up to that time. I was heading north, and when I rounded the bend and approached Crossing 8.6, every engineer's nightmare started to play out. As I pulled out of the trees and approached the whistle post, I noticed a truck that looked like it was trying to race the train on the two-lane rural road that runs parallel to the tracks. Blowing the whistle is as automatic as breathing. You see the whistle posts up ahead and your hand is already on the whistle. When I saw that truck, I blew the whistle for all it was worth. The usual horn warning for crossings is two long, a short, and then a long until the locomotive enters the crossing, but this time I gave a series of long blasts. I was trying to get the attention of the driver.

5. I knew that Crossing 8.6 was an ungated crossing, but I sure hoped that the flashing lights, bells and the train's whistle would make that truck slow down. I released the throttle and began using the hydraulic brakes, hoping that the brakes along with the low-grade increase would help to slow the train in time. Given the size and weight of the train, it was pretty much a given that unless

the whistle and all the flashing lights at the crossing stopped the driver, then the people in the truck were in big trouble.

6. My train that day had two engines and was pulling sixty six-fully loaded cars. Given the weight and speed of the train, if the truck didn't either slow down or speed up, I knew there would be a collision. My stomach was in knots. Other engineers who had been through things like this told me about their experiences. They said that time slows down. Everything is in slow motion. Your memory never fades. You always see the face of the driver as they turn and realize what's going to happen. It's just like they said. It was awful.

7. I guess I was pretty lucky. But the driver sure wasn't. That poor kid. By the time I was able to stop the train, I was at least a mile down the tracks. I set the brake and called to the brakeman. While I was stopping the train, I used the train's communication system to relay an emergency message to alert the local 911 system, then I left the brakeman with the engine and ran back to the crossing.

8. By the time I got there, paramedics were already at the scene helping the two kids who had been thrown from the truck. The scene was like something from a bad movie. It didn't seem real. The truck was overturned and the fire crew was working to cut off the driver side door. I could still hear the stereo blaring. There was so little blood on the two kids who had been thrown free. It looked like they were sleeping.

9. After being an engineer for twenty years, nothing surprises me anymore. I've had too many close calls to even count. It's unbelievable that people think they can race a train and win. I've seen two people crushed and killed by train's I've been handling. There have been others who have been hurt or maimed; I've lost count of those too. I'd say at least fifteen. The worst part is, when you see someone pull onto those tracks, all you can do is sound the whistle, set the brake and pray they get out of the way. It's sad really, all that training, all the safety warnings, devices, laws and more that are out there to protect the public, and I still see trucks, busses, even school busses, go around lowered gates to try to beat the train.

10. Being an engineer can be stressful, especially when the train is pulling through populated areas. That's where we slow and sound that whistle. I'd say that about 95 percent of engineers I know have had some sort of counseling to help deal with the stress. General Palmer Rail has a certified counselor on staff who helps us through some of the emotional issues after we witness accidents or even close calls. I've been seeing the company counselor in group sessions about every other month since the first fatal crash I witnessed about eighteen years ago. It helps to talk about it, especially with the other engineers who have seen the same kind of accidents and have the same kinds of frustrations. It's a pitiful waste of human life.

11. I sometimes wonder what happened to stop, look, and listen? Sure seems like people are ignoring that important lesson more and more.

Subscribed and Sworn to on this 3rd Day of July, 2006

Lee Thompson

Witness Signature

**Affidavit of Chris Vasquez
Farmer, Adams County, CO—WITNESS FOR DEFENDANT**

1. My name is Chris Vasquez and I own a farm in Adams County, right outside of Platteville. I've farmed that land for more than ten years. The land has been in my family for more than 100 years. I grew up on this farm and know every parcel and view from the farm.

2. The farm is divided by the General Palmer railroad tracks. It's been that way for as long as I can remember. I must cross the Ralston Road crossing at least fifteen or twenty times a week. There's usually not much traffic out this way. Only thing out here is my farm, and the railroad tracks.

3. On May 10, 2006, I was returning from one of my fields. It was a little before 2:00 p.m. My tractor had been making funny noises. I'd been listening for a pinging noise it had been making for about an hour. I had decided to finish work early that afternoon and get home to check things out before dinner that evening. There is no sense in letting things like this go. You don't want to have problems with your machinery.

4. I did hear the train coming that day. It makes a low rumbling noise and then the whistle blows as it comes out of the trees. It's a pretty sight, really. Almost majestic. Even with the crazy noise my tractor was making, I could still hear the train coming.

5. That day, I was on a small rise a bit north and east of the crossing. I saw the train coming and I saw the truck driving along the frontage road. It looked like a real race was going on, except the train always goes that fast. It's a regular freight train. It comes through daily. It's been coming through right on schedule for so long, I sometimes seem to block out the noise of the train and the whistle. I can't say for sure whether the whistle was blowing, but I do know that the lights were flashing at that crossing. That I do remember quite clearly. I never saw brake lights on the truck at all. I noticed the truck. They must never have known what hit them.

6. When the crash happened, I was in a field less than a quarter mile away from the tracks and I was facing the train and the frontage road. I saw the whole thing happen. I've witnessed

some pretty awful things in my life. Farm accidents can be brutal. But I've never seen or heard anything like this. When a train hits a smaller vehicle, and let's face it, pretty much anything is going to be smaller than a train engine, there's no contest. The driver of the car is always going to lose and lose big. I had my cell-phone with me. I turned off the tractor's engine and immediately dialed 911. They said they'd already received a report from the train. By the time I finished the call, I heard a siren approaching. Those kids were lucky. The Platteville Community Hospital is on the edge of town only about five miles from where the accident happened.

7. When I got down to the crossing, a state trooper was already on hand and was giving assistance to one of the kids who had been thrown from the truck. I asked what I could do. The trooper asked if I'd seen what happened and asked that I stay at the scene. By then, more sirens were approaching. The ambulances got there about four or five minutes after the crash. It seemed like an eternity.

8. At first I thought, maybe those kids hadn't seen the train. The crops in my fields couldn't have blocked the view. It was early May. I'd been planting, but the beans and corn were just starting to sprout at that time. Then I thought, maybe the weeds around the crossing had blocked the view of the flashing lights, but then I remembered that I'd spoken with the crew that was out trimming just days before this accident. The view was clear. I saw the whole thing happen. I don't know why the kids didn't see the train coming. It was an amazing thing. The train didn't seem to be hurt at all. I heard it screeching and moaning as it tried to stop. Tons of equipment, probably fully loaded, really does grind to a stop. Must have taken the freighter about a mile to finally drag to a full stop.

9. I feel for the train engineer and for anyone who has to witness that kind of destruction and pain up close. I feel sorry for the kids. I feel sorry for the parents. Heck, I even feel sorry for me. I haven't been the same since seeing that mess. I wake up sweating some nights wondering if there was something that I could have been done to stop the accident. But I was up on the rise; even if I

had foreseen what was to happen, I could never had gotten down to the crossing in time. I was, after all, on my tractor.

Subscribed and Sworn to on this 3rd Day of July, 2006

Chris Vasquez

Witness Signature

**Affidavit of Kerry Morgan,
National Transportation Safety Alliance—WITNESS FOR DEFENDANT**

1. My name is Kerry Morgan. Until 18 months ago, I served as central regional supervisor for the National Transportation Safety Alliance. It was my job to investigate public transportation and freight accidents. I worked for the NTSA for eighteen years.

2. I have a degree in structural engineering and statistics from the Colorado School of Mines in Golden, Colorado, and a master's degree in physics and engineering from Colorado College in Colorado Springs, Colorado. During my studies at Colorado College, I worked for the Denver and Rio Grande Railroad as a quality control officer. It was my job to review specifications for train engines and ensure they were as safe as humanly possible.

3. During my time with the NTSA, I investigated more than 100 rail crossing accidents, twenty-five air crashes, and more than 200 regional transportation accidents. Those numbers may sound low for a career which spanned eighteen years, but trust me, they are high to me. It takes months to reconstruct some of the accidents, and it is painstaking, emotionally draining work, especially when considering the fatalities.

4. I suppose one could say we got lucky in this instance. The engine that was in use by General Palmer Railroad was equipped with a number of safety features and the engine itself was relatively new. The engine was in use for only about ten months.

5. For example, the brake system has a series of hydraulic pumps that act almost like anti-lock brakes. No train is able to stop instantly. Trains are too heavy and they move too fast. But this unit had a better stop zone than most of the older models.

6. The distance from the whistle post at the edge of the trees to the crossing is $\frac{1}{4}$ mile. This is industry standard. All trains must sound their whistles when they approach the whistle post.

7. The whistle on the engine in question was standardized. It must reach a certain decibel level and the blast must be sustained in certain areas for specific lengths of time. For example, when a train passes through a residential community, the train is required to sound the whistle

before every grade crossing. That whistle is a wake up call to the public. It is to be blown at very specific times and for very specific purposes. The study of the train involved in this particular accident found that the whistle did achieve the specified decibel level. It was, in fact, perhaps, a bit louder than required according to federal regulations.

8. The engine in question also was equipped with an “event recorder.” Event recorders are something like the black box found in airlines. The train’s event recorder provides information on rate of speed, amount of fuel used, when and for how long the whistle blows, etc. This train, at the time of impact, was traveling 54.3 miles per hour as it passed through the trees and approached the whistle post. On impact, the train had slowed to 50.2 miles per hour. A number of factors are at play when one tries to stop a train. The weight of the train, the incline or decline of the ground, the weather, all play a role. This train was fully loaded with coal, steel and automobiles. The train was 66 cars in length. When the engineer sounded the whistle and applied the emergency brakes, it is my opinion he/she was doing everything he/she could to stop.

9. The maximum speed allowed by state and federal regulation on those tracks at the accident scene is 60 miles per hour. With a load as heavy as this train was carrying, the rate of speed, of approximately 54 miles per hour, is standard.

10. From my review, the crossing was clear. Weeds were cut back and no crops were tall enough to obstruct seeing a train approaching from either direction. Vehicles using the crossing had an unobstructed view for at least a quarter mile in each direction. In my opinion, 1/4 mile provides sufficient time for a vehicle’s driver to see a train.

11. I saw photos of the truck after the crash, and I visited the crash site. It is very common for vehicles in train collisions to exhibit a tremendous amount of damage. This truck was no different. What was unusual, however, was the amount of dirt on the truck. The occupant’s visibility could have been seriously reduced, given the layers of dust on the remaining windows. The windshield was destroyed so it was virtually impossible to tell if that glass was dirty until a sufficient amount had been collected and reconstructed. After a partial reconstruction, it did appear the windshield,

and other windows, were covered with a significant amount of dust. It is my guess that the driver's view may have been affected by his dirt on the windows.

12. I read the 911 report. The rescue personnel indicated the truck stereo was still playing while they were attempting to remove John Goodson from the vehicle. The reports indicate that the stereo was loud, with the volume control turned to about three-quarter volume capacity. I believe that kind of volume, added to the dirty windows, and any lack of attention on the part of the driver and/or the passengers contributed to this fatality.

13. There was no indication the driver and passengers were drinking. No alcohol was found in the truck or near the crash site. There was no evidence of drug use.

14. One remaining contributing factor would be that the air conditioner was running, which most likely further reduced the ability to hear a train whistle.

15. A high percentage of vehicle-train collisions occur at crossings with active warning devices, flashing lights, gates, and bells. What this suggests is, that drivers need to be paying better attention. If motorists obeyed existing traffic laws, there would be far fewer motor vehicle/train collisions.

16. In 2003, the latest report issued by the NTSA, approximately 6 percent of Colorado rail-highway crossings are equipped with automatic warning devices. However, 38 percent of Colorado crossing accidents and 64 percent of crossing fatalities happened at these gated and signaled crossings. It appears this is due to signalized crossings having more vehicular traffic traversing them, thus increasing the accident exposure factor at these crossings. The 38 percent figures for accidents at crossings with automatic warning devices is reduced from an average of 71 percent over the last twenty years. In 2003, seventy accidents occurred at crossings equipped with gates, forty seven accidents occurred at crossings with crossbucks and flashing lights, sixty six accidents occurred at crossbuck crossings, and two occurred at crossings with other types of warnings.

17. In Colorado, the law requires the driver of a vehicle approaching a railroad crossing to slow down to a speed that is reasonable and safe for the existing conditions. Other provisions provide for stopping for traffic control devices, flag persons, or safety before crossing.

18. There is an increased penalty in Colorado for disregarding a railroad crossing warning device, from a \$75 moving violation to a mandatory \$500 fine or fifty hours of community service. Colorado instituted this kind of law because of the increased number of accidents at railroad crossings.

19. Professionals use the term “exposure factor” to mean the daily average number of trains multiplied by the daily average number of vehicles that use a crossing. Statistics prove that more accidents occur at crossings with gates than crossings without gates even if they have flashing lights and crossbucks. Crossings provided with automatic flashing light signals and gates accounted for 38 percent of the 2003 crossing accidents, but have 85 percent of the total exposure factor.

20. While the installation of automatic warning devices is an important means of reducing the numbers of train-vehicle collisions, this alone will not eliminate all accidents at railroad crossings. This particular crossing is relatively safe. There has been only one non-fatal collision at the site and that was over five years ago. That is a good record for a rural crossing that’s been in use for over 75 years.

21. In my opinion, a railroad has no duty to install warnings at a grade crossing greater than what is required by statute. If there is a substantial risk that a driver, in the exercise of ordinary care, may be unable to avoid colliding with a train that is being operated over the crossing, then something above and beyond flashing lights on crossbucks may be necessary. In a rural setting like the one where this accident occurred, I believe had the driver exercised ordinary care, or any care at all, this accident would not have happened.

22. From my review, this particular train was where it was supposed to be, when it was supposed to be there, and proceeding at a rate of speed lower than required by law. In my opinion, the engineer performed all duties required by law, and more.

23. I am truly sorry for John Goodson and for his parents. But, this accident, like far too many others, should serve as a warning to drivers and pedestrians alike. Drivers need to heed and obey crossing safety rules and signs. When someone is issued a driver's license, they assume certain responsibilities. One responsibility is obeying the rules. Drivers must understand they need to care about their own safety and the safety of their passengers by paying attention.

24. It is my opinion that, considering the information we obtained from the event recorder and from speaking with the engineer, Lee Thompson, that the engineer did everything possible to stop that train and avoid a collision. Sometimes an engineer's hands are virtually tied behind his/her back. The bottom line is trains stay, and have to stay on the tracks, they are not maneuverable and can't swerve.

Subscribed and Sworn to on this 3rd Day of July, 2006

Kerry Morgan

Witness Signature

AUTOPSY REPORT SUMMARY

Decedent's Name: John Goodson
Date of Death: May 10, 2006
Age at Death: 17
Parents: Pat and Chris Goodson
Address: RR 4, Box 11, Platteville, CO
Cause of Death: Permanent, irreversible injuries sustained in auto-train collision
Significant Injuries: Permanent, irreparable brain damage (vegetative state if Decedent had lived), fractured spine, fractured pelvis, crushed chest and ribs, internal bleeding.
Death was instantaneous.
Other Conditions: Sinus and ear infection, pressure on ear drum reducing hearing
Blood Alcohol: 0.00 %
Toxicology Screen: No illegal substances found

May 18, 2006

Signature: ***Mary Ann Johansson***

Mary Ann Johansson, Coroner
Adams County, Colorado

KERRY MORGAN

383 Geddes Place
Arlington, VA 22302

(703) 772-8167
mkelly@comcast.net

EMPLOYMENT EXPERIENCE:

Consultant, Air and Rail Crash Reconstruction and Analysis, LLC: 2003 to present

Began Air and Crash Reconstruction and Analysis LLC to market my expertise with respect to investigation and causation of air and rail crashes.

Expert witness on behalf of airlines and railroads.

Central Regional Supervisor, National Transportation Safety Alliance: 1985—2003

- Successfully established causation analysis for over 100 rail crossing and over 25 air crashes, including 9/11's United Flight 93
- Responsible for on-scene, reconstructive, and follow up investigation with respect to air and rail crashes
- Expertise in aerodynamics, mechanics, physics, engineering, safety, and human factors related to causation of air and rail crashes
- Outstanding attention to detail when reconstructing crashes
- Recognized authority on federal and state safety regulations and requirements for air and rail transportation
- Committed to air and rail safety
- Specialist in statistics related to air and rail crashes
- Extensive, nationwide experience as an expert witness with respect to investigation and causation of crashes

Quality Control Officer, Denver & Rio Grande Railroad: 1981-1985

- Responsible for ensuring train engines are as safe as humanly possible
- Review, comprehension and implementation of safety specifications for train engines

EDUCATIONAL EXPERIENCE:

1985: B.S. Structural Engineering and Statistics: Colorado School of Mines

1987: M.S. in Physics and Engineering: Colorado College

Terry Martinez
245 Briarwood
Colorado Springs, CO 80903
(719) 353-8811
tmartinez@ccsa.org

OBJECTIVE

End train negligence now. Save human lives. Like “The Little Engine That Could,” I never will stop aggressively pursuing improved safety for the public with respect to trains.

EMPLOYMENT HISTORY

President and Chief Financial Officer for CCSC, 7 years
COLORADO COMMUNITY SAFETY COALITION

- Founder of CCSC, a non-profit, committed to improving highway safety at railroad crossings and protecting the public from unsafe railroad practices
- Inspiration for CCSC: my brother’s unnecessary, untimely death in a train-motorist accident 7 years ago
- Relentless pursuit of significant improvements in train safety through lobbying for and drafting legislation at the federal and state levels and educating the public regarding the railroads’ failure to protect motorists
- Proven strategies for improving safety include articles, speeches, booklets, public service announcements, and letter-writing campaigns to politicians
- Responsible for maintaining records of all fatal train accidents in the State of Colorado, including categorizing by county; fatal or not; type of accident; safety devices in use, if any; and much more
- Proven fund-raising track record (thousands in contributions raised for this cause)
- Responsible for all organizational operations and finances
- Primary goal by 2010: 100 percent of road-level crossings either gated or passed over or under

Lobbyist and Proponent of Safety for the Colorado Railworkers Association, 11 Years

- Successfully lobbied for significant safety improvements for railroad workers; these improvements benefited the public too
- Extremely knowledgeable and experienced regarding railroad regulations, safety concerns, continuing unsafe practices by railroads, and railroads’ willingness to risk human lives (to save a little money for the railroads)

EDUCATION

M.A. in Urban Planning—University of Colorado at Boulder—1985

B.S. in Engineering Technology and Industrial Design—University of Colorado at Boulder—1983

- Phi Beta Kappa
- President of Debate Club
- First Place Award in Technology Competition: Best New Safety Design

ARTICLES

- “A Gate at Every Road: Level Crossing Now” May 2000
ATA The Expert
- “Train Safety Now: Use High Tech” July–Aug. 2001
Road Management and Engineering Journal
- “Automatic Train Whistles: No More Chance of Human Error” April 2002
Road Injury Prevention and Litigation Journal
- “End Train Negligence Now: Save Lives” Jan. 2005
Marine Digest and Transportation News

CCSC Booklet (available upon request):

“What Every Motorist Must Know BEFORE Approaching any Railroad Crossing: RAILROAD CROSSINGS ARE NOT SAFE”

SPEECHES

- Too numerous to list all, but include AARP, Rotary, Lions, Kiwanis, senior centers, schools, and churches
- Available to speak to any group on the need for increased train safety

EXPERT WITNESS TESTIMONY

Expert witness for plaintiffs in every Colorado case tried in the last six years that involved motorist-train wrecks at crossings; also, expert witness in Illinois, Indiana, Minnesota, Ohio, and Wisconsin.

NTSA

EFFECTIVENESS OF CROSSING GATES FOR 2003 IN COLORADO

The effectiveness of gates as a means of deterring accidents can be shown in the following table by comparing the exposure factor percentage to the total accidents percentage for each type of warning device:

<u>PROTECTION TYPE</u>	<u>EXPOSURE FACTOR</u>	<u># OF ACCIDENTS</u>	<u>% OF TOTAL</u>
Gates with flashing lights	85%	70	38%
Crossbucks with flashing lights	12%	47	25%
Other	<u>3%</u>	<u>68</u>	<u>37%</u>
Total	100%	185	100%

Thus, crossings equipped with gates and flashing lights have 85 percent of the rail and vehicular traffic, but only 38 percent of the accidents. Crossings equipped with crossbucks and flashing lights have only 12 percent of such traffic, but 25 percent of the accidents.

ACCIDENT STATISTICS FOR 2003 IN COLORADO

<u>Warning Device</u>	<u>Crossings</u>	<u>Accidents</u>	<u>Fatalities</u>	<u>Injuries</u>
Gates & flashing lights	201	70	14	23
Crossbucks & flashing lights	245	47	3	22
Other	<u>2,824</u>	<u>68</u>	<u>5</u>	<u>28</u>
Total	3,270	185	22	73

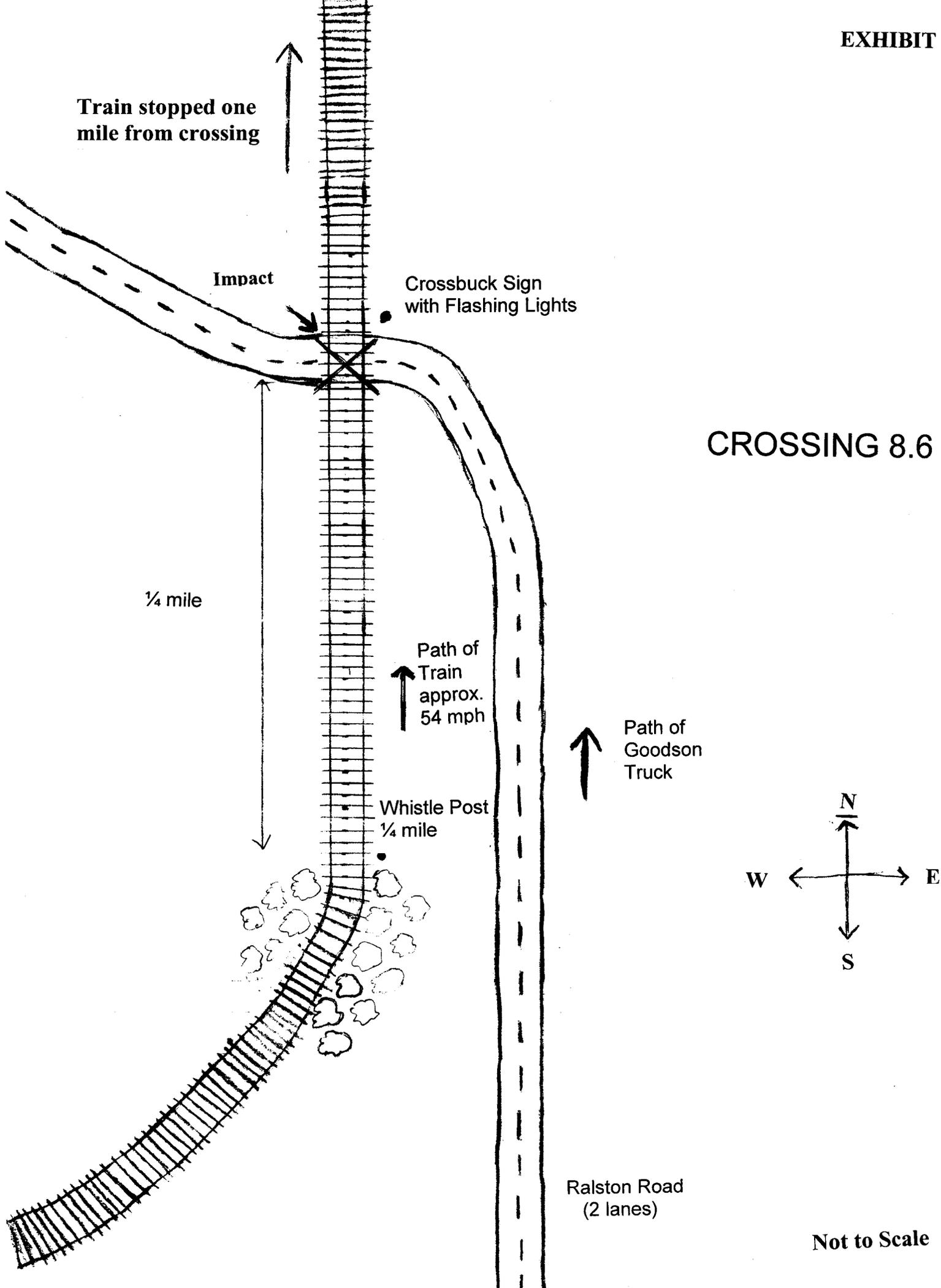
Pub. 2006

Exhibit 5
Highway-Rail Crossing Program
FY 06-08 Crossing Improvement Project Schedule

Crossing ID	FY	Region	Sponsoring Agency	RR Project Location	Rail Carrier	Description of Safety Improvement	Diagnostic Review Date	PUC Final Order	Project Comp. Date
2530655	2006	1	Douglas	5th St. E/O Perry	UPRR	4 Quadrant Gates	4/17/2006	9/15/2006	1/11/6/2006
003288U		2	Otero	CR Z W/O US 350	BNSF	Lights, Gates & Bells	3/31/2006	1/1/2006	1/3/2007
003095J		2	Otero	CR 18 S/O US 50	BNSF	Lights, Gates & Bells	4/1/2006	1/1/2006	1/3/2007
003205O	2006	2	Prowers	CR 30.5 S/O US 50	BNSF	Lights, Gates & Bells	4/1/2006	1/1/2006	1/3/2007
253600S		3	Mesa	CR G 8 NE of Palisade	UPRR	Lights, Gates & Bells	3/31/2006	1/1/2006	1/3/2007
TBON		3	Delta	Delta Rail Corridor	UPRR	Realign Railroad Tracks	4/1/2006	1/1/2006	6/28/2006
804464C	2007	4	Weld	4th St. in Ft. Lupton	UPRR	Lights, Gates & Bells	10/20/2006	3/20/2007	1/3/2008
849370C		4	Weld	US 34 E/O CR 13	GWR	Lights, Gates & Bells	3/31/2006	3/20/2007	1/3/2008
871919L		4	Weld	SH 257 S/O Garden Ln	GWR	Lights, Gates & Bells	4/1/2006	3/20/2007	1/3/2008
244601J		5	Loveland	57th St. @ BNSF	BNSF	PE for Grade Separation	4/1/2006	3/20/2007	5/31/2008
253499E	2008	5	Alamosa	US 285/West Ave.	SL&RG	Lights, Gates & Bells	8/21/2006	7/31/2007	1/3/2008
253498X		5	Alamosa	US 285/State St.	SL&RG	Lights, Gates & Bells	4/3/2006	3/3/2009	1/3/2009
TBON		5	Alamosa	US 285/Hunt St.	UPRR	Lights, Gates & Bells	4/3/2006	3/3/2009	1/3/2009
244766G	2008	6	Ralston Rd.	Adams County	MSR	Lights, Gates & Bells	3/31/2006	3/3/2009	7/14/2009
8046358H		6	Denver	Quebec NB @ Smith Rd.	UPRR	Signal Interconnect	8/21/2006	3/3/2009	5/31/2009



W/O=West of N/O=North of
S/O=South of E/O=East of



Not to Scale

APPLICABLE STATUTES And CASELAW

C.R.S. § 213-21-210 – Actions Notwithstanding Death

When the death of a person is caused by a wrongful act, neglect, or default of another, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, in every such case, the person who or the corporation which would have been liable, if death had not ensued, shall be liable in an action for damages notwithstanding the death of the party injured.

C.R.S. § 213-21-211 – Negligence Cases – Comparative Negligence As Measure of Damages

- (1) Contributory negligence shall not bar recovery in any action by or any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributed to the person for whose injuries, damages, or death recovery is made.
- (2) In any action to which subsection (1) of this section applies, the court, in a nonjury trial, shall make findings of fact or, in a jury trial, the jury shall return a special verdict which shall state:
 - (a) The amount of the damages which would have been recoverable if there had been no contributory negligence; and
 - (b) The degree of negligence of each party, expressed as a percentage.
- (3) Upon the making of the finding of fact or the return of a special verdict, as is required by (2) of this section, the Court shall reduce the amount of the verdict in proportion to the amount of negligence attributable to the person for whose injury, damage or death recovery is made; but, if said proportion is equal to or greater than the negligence of the person against whom recovery is sought, then, in such event, the Court shall enter a judgment for the Defendant.

C.R.S. § 242-24-704 – Vehicle Entering the Roadway

The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed. Any person who violates any provision of this section commits a class A traffic infraction.

C.R.S. § 242-24-706 – Obedience to Railroad Signal

- (1) Any driver of a motor vehicle approaching a railroad crossing sign shall slow down to a speed that is reasonable and safe for the existing conditions. Under any of the following circumstances stated in this Section the driver shall stop within 50 feet but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he can do so with safety.
- (2) The foregoing requirements in paragraph (1) shall apply when:
 - (a) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
 - (b) A crossing gate is lowered or a human flag person gives or continues to give a signal of the approach or passage of a railroad train;
 - (c) A railroad train approaching a highway crossing emits a warning signal and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;
 - (d) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing; or
 - (e) A railroad train is approaching so closely that an immediate hazard is created.
- (3) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed, nor shall any pedestrian pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing while such gate or barrier is closed or being opened or closed.
- (4) Any person who violates any provision of this section commits a class A traffic infraction.

C.R.S. § 242-74-101. SAFETY REQUIREMENTS FOR RAIL CARRIERS - Safety Requirements for Track, Facilities, and Equipment

- (1) Each rail carrier shall, consistent with rules, orders, and regulations of the Federal Railroad Administration, construct, maintain, and operate all of its equipment, track, and other property in this State in such a manner as to pose no undue risk to its employees or the person or property of any member of the public.
- (2) Every rail carrier operating in the State of Colorado shall construct and maintain every highway crossing over its tracks within the State so that the roadway at the intersection shall be as flush with the rails as super-elevated curves will allow, and, unless otherwise ordered by the Commission, shall construct and maintain the approaches thereto at a grade of not more than 5% within the right of way for a distance of not less the 6 feet on each side of the centerline of such tracks; provided, that the grades at the approaches may be maintained in excess of 5% only when authorized by the Commission.

- (3) Every rail carrier operating within this State shall remove from its right of way at all grade crossings within the State, such brush, shrubbery, and trees as is reasonably practical for a distance of not less than 500 feet in either direction from each grade crossing. The Commission shall have power, upon its own motion, or upon complaint, and after having made proper investigation, to require the installation of adequate and appropriate luminous reflective warning signs, luminous flashing signals, crossing gates illuminated at night, or other protective devices in order to promote and safeguard the health and safety of the public. Luminous flashing signal or crossing gate devices installed at grade crossings, which have been approved by the Commission, shall be deemed adequate and appropriate. The Commission shall have authority to determine the number, type, and location of such signs, signals, gates, or other protective devices which, however, shall conform as near as may be with generally recognized national standards, and the Commission shall have authority to prescribe the division of the cost of the installation and subsequent maintenance of such signs, signals, gates, or other protective devices between the rail carrier or carriers, the public highway authority in interest, and in instances involving the use of the Grade Crossing Protection Fund, the Colorado Department of Transportation.
- (4) It is the public policy of the State of Colorado to enhance public safety by establishing safe grade crossings. In order to implement this policy, the Colorado Public Utilities Commission is directed to conduct public hearings and to adopt specific criteria by July 1, 1994, that shall be adhered to by the Colorado Public Utilities Commission in determining if a grade crossing should be opened or abolished. The following factors shall be considered by the Colorado Public Utilities Commission in developing the specific criteria for opening and abolishing grade crossings:
- (a) timetable speed of passenger trains;
 - (b) distance to an alternate crossing;
 - (c) accident history for the last 5 years;
 - (d) number of vehicular traffic and posted speed limits;
 - (e) number of freight trains and their timetable speeds;
 - (f) the type of warning device present at the grade crossing;
 - (g) alignments of the roadway and railroad, and the angle of intersection of those alignments;
 - (h) use of the grade crossing by trucks carrying hazardous materials, vehicles carrying passengers for hire, and school buses;
and
 - (i) use of the grade crossing by emergency vehicles.
- (5) The Colorado Public Utilities Commission, upon petition to open or abolish a grade crossing, shall enter an order opening or abolishing the crossing if it meets the specific criteria adopted by the Commission. Except as otherwise provided in this section, in no instance shall a grade crossing be permanently closed without public hearing first being held and notice of such hearing being published in an area newspaper of local general circulation.
- (6) Freight Trains - Radio Communications. The Commission shall after hearing and order require that every main line railroad freight train operating on main tracks outside of yard limits within this State shall be equipped with a radio communication system. The

Commission after notice and hearing may grant exemptions from the requirements of this Section as to secondary and branch lines.

C.R.S. § 242-74-102 SAFETY REQUIREMENTS FOR RAIL CARRIERS - Safety Requirements for Railroad Operations.

(1) Other Operational Requirements.

(a) Bell and Whistle-Crossings. Every rail carrier shall cause a bell, and a whistle or horn to be placed and kept on each locomotive, and shall cause the same to be rung or sounded by the engineer or fireman, at the distance of a least 1,320 feet, from the place where the railroad crosses or intersects any public highway, and shall be kept ringing or sounding until the highway is reached; provided that at crossings where the Commission shall by order direct, only after a hearing has been held to determine the public is reasonably and sufficiently protected, the rail carrier may be excused from giving warning provided by this paragraph.

(b) Speed Limits. Each rail carrier shall operate its trains in compliance with speed limits set by the Commission. The Commission may set train speed limits only where such limits are necessitated by extraordinary circumstances effecting the public safety, and shall maintain such train speed limits in effect only for such time as the extraordinary circumstances prevail.

Roudebush v. Vidergar, 203 P.3d 1099 (Colo. 2004)

A plaintiff may recover from a defendant if the defendant was negligent. The burden of proving the elements of negligence is on the plaintiff, and that burden is by a preponderance of the evidence.

A cause of action founded on negligence requires proof of the following elements:

(1) a duty or obligation, recognized by law, requiring the defendant to conform to a certain standard of conduct for the protection of others against unreasonable risks (for example, a railroad has a duty to maintain a reasonably safe approach for trains at rural rail crossings)

(2) a failure or breach of duty by the defendant to conform to a standard of conduct required by law or commonly recognized as reasonable;

(3) a sufficient causal connection between the offensive conduct and the resulting injury (for example, if a defendant failed to comply with a safety requirement in the law and that caused the injury or if the defendant failed to act reasonably under the circumstances and that caused the injury); and

(4) actual loss or damage resulting to the interests of the plaintiff.

What's reasonable for these purposes may differ from person to person. It's left to the jury to decide what's reasonable after all the evidence is presented.

One possible defense to negligence is that one or more of the elements of negligence has not been proven. Another possible defense is the plaintiff's own contributory negligence, if any.