

## How to Start a Mock Trial Team

**Mock Trial is a high-school competition typically managed under the umbrella of the National High School Mock Trial Association and your State Bar Association. The contest emulates an actual court trial, typically with two teams from different schools trying a single case. The competition is enticing and challenging, drawing students to excel.**

**Each state uses one case per year, and a team may try it as many as 10 times in a bracketed competition, but teams switch between defense or prosecution in each round. A second case is tried at the national level for the lucky few who win their state competitions. The competition uses real judges, real attorneys, real courtrooms, and cases that are often based in real situations. Students try the cases using real (though abridged) rules of evidence. The learning experience is unparalleled and several ACCS schools have won their state competitions and competed nationally. The competition is a natural fit for classical Christian schools.**

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### Why should CCE schools do Mock Trial?

Mock Trial benefits students in the logic and rhetoric phase in ways no other academic activity will. Students are motivated by the competition. The competition exercises 4 vital rhetorical forms: Memorized oratory (Opening statements), Inquiry (Direct Examination), Debate (cross examination), and improvisational argument (closing argument). Students who compete in mock trial often say that their experience in the program was the most influential part of their rhetorical training.

One myth is that Mock Trial is training for future lawyers. Most who compete in it never intend to pursue law. The skills it hones are just as applicable in the boardroom, public square, or pulpit as in the courtroom. The structure of a courtroom is patterned after ancient trial systems in Greece and Rome. The Oresteia (Aeschylus) brings us the first description of a 12 member jury of one's peers. The method of forensic evidence to 'prove' historical facts (the crime, the civil malfeasance) is a welcome contrast to the 'scientific' method of hypothesis testing, which is wholly inadequate for most human understanding. The discipline of trying a case will show students that proving something happened in the past is very different than proving a repeatable scientific experiment. The rules of evidence provide a strong exercise and practice in Aristotelian logic.

Because CCE schools culminate in Rhetoric, Mock Trial is a natural fit. Often, classical schools, though they make up a tiny fraction of schools nationally, compete well. In one recent year, the top 10 national teams had at least 3 classical representatives in the top 10.

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## How does Mock Trial Work

In this document, we will describe the most common team and competition configuration. However, each state differs. Use this as a guide only.

- **Teams:** A school can enter 1, 2, or sometimes 3 teams in the state competition. Each team is composed of between 6 and 9 members (the national competition allows 8.) Teams must provide 3 witnesses for each side. They must have 2-3 active attorneys per side. And, they must provide a timekeeper or bailiff (also a team member). Alternates are also allowed to stand in for players who cannot perform in an emergency. Typically, the alternates have a role on one side or the other, but not always. Often With 8 players, the witnesses and attorneys mostly have a role on both sides so they can play each round.

- **The Case:** Each year, a single “case” is issued by the sponsoring organization in a state, often the state bar association. The case may be either civil (lawsuit between two parties) or criminal (a statutory crime brought by the state), and consists of stipulations, a complaint and response (description of the crime/complaint by prosecution and response by defense), three witness statements for each Prosecution<sup>1</sup> and Defense, numbered exhibits (evidence), and jury instructions. The case is typically issued in the fall or early winter. The cases run between 30 and 60 pages.

- **Preparation:** Teams have 6 weeks to a few months to prepare both sides of the case. In each round, the team could be asked to play prosecution or defense, so the team needs to be ready for both sides. This is a benefit as students learn that there are two sides to every story—in great depth. Typically, there are 2-3 rounds per competition day. And, each round takes about 1 1/2 to 2 hours total.

- **Venues and judging:** One of the best parts of Mock Trial is that it is typically judged by a panel of real judges or attorneys. And, the competitions are normally held in real courtrooms. This gives a real flavor to the entire event. Often, the judges vary widely because some have never judged high school Mock Trial. At times they can be very direct. This is great. One former female trialer commented *“When I had to present a proposal for my first job in marketing, I walked into the room full of scary older men. After all those courtrooms with crusty old judges, I was prepared!”*

- **Competitions:** Most states have regional and state competitions. The top regional teams compete a few weeks before state (often in February) and the top performers enter the state competition (often in March or April). The state competition will have a championship round. The championship from each state is eligible for the National High School Mock Trial competition. Around 45 states and territories participate at nationals. The national competition location rotates between states each year. The national competition is typically the first or second week of May, typically on the Thursday-Friday-Saturday. Each round lasts about 45 minutes per side, with time out for objections. This makes each round, with judges comments, just short of two hours if both sides use all of their time.

- **Scoring:** There are typically 3 judges— often a presiding judge, an attorney judge, and a lay judge who represents a juror. Each judge has a ballot with a 1-10 score for each student performance. Often, there’s a

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<sup>1</sup> We’ll use prosecution for both “prosecution” (Criminal) and “plaintiff” (Civil), depending on the case.

additional ‘decorum’ score of up to 10 points as well. Therefore, with 8 attorney roles per round, plus 3 witness roles, plus decorum, a total of 120 points is possible. Sometimes, the presiding judge does not have a ballot because they insert 3 pure scoring judges (4 judges in all). The ballot is awarded to the team with the most points out of 120 at the bottom of the ballot. The round is won by the team that takes at least 2 of the 3 ballots during that round. There no points are awarded for the verdict, or the merits of the case— only in the performances of each individual (a lawyer can get a 10, even if the facts presented were weak, because the case provides the only facts you can use and sometimes they are weak. Points are gained when lawyers use them well). Teams with the most wins at the end of a competition win. If there is a tie on wins, the team with the most ballots gets the advantage in the tie. For example, if team A wins all 3 ballots in 3 rounds (9 ballots total) and team B wins all 3 rounds, but only by a 2-1 margin in one of their rounds (8 ballots total), then team A wins the day. If more than one team has the same number of wins and the same number of ballots at the end of the competition, then the total points from all ballots is tallied. The winner has the most points in the case of such a tie.

- **The trial:** The order of proceedings within the trial are typically— Prosecution opening, Defense opening, Prosecution direct of witness 1, Defense cross exam of witness 1, Prosecution direct of witness 2, Defense cross exam of witness 2, Prosecution direct of witness 3, Defense cross exam of witness 3, Defense direct of Witness 4 (defense witness), Prosecution cross of witness 4, Defense direct of witness 5, Prosecution cross of witness 5, Defense direct of witness 6, Prosecution cross of witness 6, Prosecution closing, Defense closing, Prosecution Rebuttal (there is no defense rebuttal).
- **Timing:** Mock trial is a timed event. Most states time each type of performance (openings, directs, cross examinations, and closings.) Each team typically gets between 40 and 55 minutes in total to try their side of the case, and cross examine the other side. Thus, the full time includes about 45 minutes per team, plus about 10 minutes in objections, plus possibly a break and comments by the judging team at the end. This sums to about two hours.

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## Step-by-Step

This is a suggested quick-start guide for a Mock Trial team:

1. **Find a teacher-coach sponsor.** Typically, the rhetoric teacher, logic teacher, or a teacher with a background in law work well. The teacher-coach is typically not a lawyer. They should be on staff at the school. A volunteer from the outside can fill this role, but it often doesn’t work as well. As with any team, the main leader on staff must be enthusiastic, organized, in the school community, and able to recruit. Writing skills (for persuasion) are very helpful.
2. **Find an attorney-coach.** Typically the attorney coach performs an advisory and expert role, not an organizing role. The teacher-coach should do the organization work. You need an attorney with trial experience. This can be a challenge since litigators are often busy. A standard attorney can fill the role, but litigators have a significant advantage. Look for someone in private practice that does litigation, or a defense or prosecuting attorney from your community.

3. **Find the in-state program coordinator.** Nearly every state has one. Start with the State Bar Association. Sometimes, another entity supervises the competition, like the YMCA in Washington State. Or, Google your state name and “mock trial”. One way or the other, you should get the competition schedule and a copy of the case, as well as the rules of the competition and the appropriate Rules of Evidence. Some states use state-specific Rules of Evidence. Others use the Federal rules. You will also probably need to have the school come up with entry fees. These can be recovered by the school by charging students who are placed on the team.

4. **Recruit for your team:** In September or October, you should begin recruiting a team from grades 9-12. The best attorneys tend to be more mature, score well on aptitude tests (like the PSAT), be self-motivated and responsible, have good judgement, excellent oratory skills, excellent writing skills, and a strong presence in the courtroom. Good witnesses are often good actors from the drama program, but with a keen sense about them that will help them stay out of trouble on cross examination. It’s a good idea to hold tryouts. After the tryouts, retain a full 9 members (or whatever your state’s maximum is) in case you lose some. Attorneys for one side, say prosecution, can often be good witnesses on the other side (defense) since your team will need to cover roles for both sides. This is how you can compete with as few as 6 students (3 witnesses, 2 attorneys, 1 timekeeper— All playing both defense and prosecution).

5. **Get commitments:** Publish a syllabus with practice times, competition times, rules for missing practice, and expectations. Be sure students and parents sign the syllabus. Preparation tends to take about 2-3 months and if students drop or fail to come to practice, it will really set the team back. Students need to know the case inside and out. Also, you may want to list the dates of the national competition, just in case. Even if you don’t make it, it’s a goal that motivates most students.

6. **Hold an orientation:** Describe the competition, show a video of a real mock trial, or parts of one.

7. **Set a practice schedule and find a practice space:** Early on, twice a week in practice is sufficient for 2-3 hours at a time. Start as early in the year as you can, even before you get the case. As the competition nears, add at least 4 long Saturday practices (3-6 hours) so you can run the entire case. Any classroom will work for practice, but you may want to rearrange it to approximate a courtroom with a bar, two trial tables, a witness stand, a jury box, and a judge seat. Space is important for students to practice their performance. You probably don’t need the full ‘courtroom’ look until you near the competition.

8. **Before you get the case, train the students:** Cases may come out in November, December or January. Before you get the case you should train the students. The most difficult part of Mock Trial is learning to use the Rules of Evidence. These rules govern nearly every part of the game. Every piece of evidence and testimony comes into the court through the filter of these rules. They are numbered. Commonly used rules include the 400 series ‘relevance’ rules, the 600 series ‘witness’ rules, the 700 series ‘expert witness’ rules, and the 800 series ‘hearsay’ rules. Learning the text of the rules is important, but more important is learning to apply them. Once students have drilled on them a few times, play video of a mock trial and when an objection occurs, pause the video and ask students what the response to the objection is.

9. **Obtain a sample case and practice:** Nothing beats trying a case for practice. Literally. Find a case to use and setup a trial between your team members. They can switch roles, or cover gaps with each other. The point is to give it a try. Mock trial is an active engagement. Lecture won't help much.

10. **Obtain the working case and rules of the competition:** As soon as the state releases its case, obtain it and go over the rules of competition in class. The rules of competition have important details about what is allowed and how things are run in the courtroom. Attorney-coaches need to pay special attention since the Mock Trial environment often varies slightly from real courtrooms. One key point is that there are no pre-trial motions in most states. All objections are heard in the courtroom as part of the competition. After reviewing the rules, it's time to move onto the case.

11. **How to read a case:** Begin by reading the summary or the complaint/response at the beginning of the case. Then, have students outline what must be proven from the jury instructions at the back of the case. This bookends the evidence in between. Once they have outlined the points to be proven, have them read the witness statements on their own and place statements from the witness into the outline to show what they say that helps prove a point from the jury instructions, or that refutes a point from the jury instructions. Do the same with exhibits. This can be done in the form of a brief. The attorney coach can help with having the students create a brief for the case. Don't do it for them. They'll learn the case by doing it.

12. **Discuss your theory of Defense first:** As a team, go through the case facts and find the story you plan to tell. Start with defense because that often makes the prosecution easier. Write a theory of the case for each side. This is a fun cooperative effort as a group with everyone shouting out "but he wasn't even there at that time, etc."

13. **Create a detailed timeline:** Most cases have details that aren't readily apparent in the text of the case. These are often brought out as you do a timeline. Assign this to the attorneys and have the witnesses check them to find errors or additions.

14. **Write a narrative from both sides:** These should be a few paragraphs that arrange the facts as they suit the party (defense or prosecution). This is a story telling exercise. If you skip this step, students often get confused about the story they are trying to tell.

15. **Assign the roles and get started:** Once the case has been read, assign the roles in a preliminary way, to the witnesses. Assign attorneys to the direct examinations and the cross examinations (don't assign the openings or closings at this time.)

16. **Coach on directs:** Have students run the directs at practice with the witness with the questions and answers scripted. Witnesses should work with their directing attorneys to create the script. Assign an attorney to object evidentially on the other side. Check to be sure that the directs deliberately walk step by step through the story or logic of the witnesses testimony. For example, students will typically want to ask something like "what happened on the night of October 31st?" Rather, they should ask, "Where were you at 7:00 P.M. on October 31st" <the swimming hole> "Did you see anyone" <yes, the defendant> "How do you know the defendant?" <we go to school together> "what was the defendant doing when you first arrived?" <he looked like he had been digging> "How do you know that?" <He had mud all over him>... You get the point. This careful

questioning process is very difficult for students to get. Either they try and summarize (which will draw an objection for narration or lack of foundation) or they will waste too much time telling you unnecessary details (called relevance or wasting time). Direct examinations cannot include leading questions, which simplistically means a question which suggests an answer ('you were at the swimming hole, weren't you' is not allowed on direct). Typically, time allows for around 25 questions, so you are limited.

17. **Have attorneys try to cross examine with out a script.** Once the direct is finished, have the crossing attorneys try to cross examine based on the testimony that was just given. Unlike direct examinations, cross examinations should nearly always be leading "You were at the swimming hole at 6:45, not 7:00, isn't that right?" is a good question. Later, they will script some questions for cross examination from the witnesses written statement. But, this exercise will practice them in ad-hoc challenges to the other side's testimony. Both sides should be objecting from day one using the rules of evidence.

18. **Write openings and closings:** Once you've worked through the case for the theory, the narration, the directs and the crosses, it's time to write an opening. The opening tells the story. It starts with a theme, introduces the characters on both sides, and tells the basic narrative of what happens from a certain point of view. Openings CANNOT contain argument. You can say "Johnny wasn't present in the workshop at 8:00", but you can't finish by saying "So he must not have stolen the tools". The first statement is a fact. The second is an argument. The closing is where the money is. It needs to pull the whole case together. Argument is expected in the closing. The only rule is that you cannot state any fact that was not brought into evidence. Because facts are sometimes held out through objections, it's not wise to memorize a closing. You need a nimble, quick-on-your-feet kind of attorney for this part—typically, your most talented thinker and orator.

19. **Refine, refine, refine:** Most of the mock trial documents created by a team are thrown out and redone several times. Sometimes, roles are reassigned. This is because as a good case unfolds, you see things you didn't see initially. Don't try to shortcut and get it all done at the beginning. Leave plenty of time to rewrite everything. It's not uncommon for an attorney to completely rewrite their direct examination the week of the competition.

20. **Scrimmage:** You can do this internally between an A and B team, or you could find another school in the competition. The risk is that you will expose the strategy of your case. Other teams may not want to scrimmage you for this reason.

21. **Work on your acting:** In the final two weeks, your witnesses really need to get their characters down. They need to be believable in the role they've been given. Often, cases include an expert witness. This is an ideal role for an attorney from the opposite side of the case to play. And, any 'dramatization' should be in the context of a courtroom. It's not stage acting. No costumes are allowed.

22. **Final run-through:** Have one final run-through of the whole case within 5 days of the competition. Do a dress rehearsal so that you are aware of what students will be wearing and you can make modifications.

## Hints and tips

- **Dress for success:** You will soon realize that there is an unofficial ‘uniform’ of sorts for mock trial. Students are told to dress up (guys in jackets and ties, gals in skirts). But, typically, first year teams dress ‘too young.’ The students choose what is stylish for their age, and the result is they look like teenagers in the courtroom. The best competitive teams age themselves with their hairstyles (gals pulled up, or straight to the shoulders rather than curled and youthful) and their clothing (looser fitting clothing helps make students look older). The goal is to ‘fool’ the eye into believing these aren’t kids— they’re 30- or 40-somethings. Most states forbid costumes. Witnesses need to be dressed up, but not to look the part. Dark gray or black is fairly standard. Look at youtube videos of past nationals competition for clothing guidelines.
- **Compete with as many teams as you are allowed:** If you have the interest and your state allows 2 or 3 teams, try to do more than one team.
- **Develop a program, not a one-off team:** Mock trial is like a sport. If you develop your talent over years, you will stand out. Many first year teams are blown away when they hit the level of competition they face, especially at the state competition. Sometimes, they wonder if they could ever be that good. Often, they don’t know what hit them. This is great! The pursuit of excellence never comes easily. Students who stay in the program, especially as attorneys, over 3-4 years will develop a 6th sense of the courtroom and be much better competitors. The rules of evidence are so complex that many attorneys confess they don’t know them as well as top mock trialers. It takes time to develop these skills.
- **Find one coach with a passion for it:** At first, Mock Trial is new to anyone. But once you get involved, some people find it consuming. This is the type of person you need coaching and guiding the team year-to-year.